

No. of 2003.

Constitutional Amendment No. 27 – Sales and Services Tax.

Certified on : 27 OCT 2003

Operation: Sec.1. on 19.07.1995
Sec.2 on 27.10.2003

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Constitutional Amendment No. 27 - Sales and Services Tax.

ARRANGEMENT OF SECTIONS.

1. Constitution, Functions, etc., of Provincial Governments and Local-level Governments (Amendment of Section 187C).
2. New Schedule 6.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Constitutional Amendment No. 27 - Sales and Services Tax,

Being a Law -

- (a) to alter the *Constitution* by amending the provisions relating to the imposition and collection of taxation by the National Government and Provincial Governments and Local-level Governments; and
- (b) to validate the imposition and collection by the National Government of a sales and service tax (value added tax) on and from 1 July 1999 and all matters relative thereto,

MADE by the National Parliament -

- (a) in respect of Section 1 - to be deemed to have come into operation on 19 July 1995; and
- (b) in respect of Section 2 - to come into operation on certification.

1. CONSTITUTION, FUNCTIONS, ETC., OF PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS (AMENDMENT OF SECTION 187C).

Section 187C of the *Constitution* is amended -

- (a) by repealing Paragraph (b) of Subsection (4) and replacing it with the following:-

“(b) subject to Subsection (4A), the imposition, collection and distribution of taxation by Provincial Governments and Local-level Governments;”;

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

“(4A) Where an Organic Law provides for the imposition, collection and distribution by Provincial Governments and Local-level Governments of sales and service tax, it may also provide that the National Government has concurrent power to impose, collect and distribute sales and service tax.

“(4B) An Act or Acts of the Parliament -

- (a) passed during the period between 19 July 1995 and the date of certification of *Constitutional Amendment (Sales and Services)*; and

- (b) providing for the National Government to impose, collect and distribute a sales and services tax (by whatever name known),

are validated, to the extent that the provisions of the Act or Acts were in contravention of this Constitution, in accordance with Schedule 6.”.

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2. **NEW SCHEDULE 6.**

The *Constitution* is amended by adding the following new schedule:-

"SCHEDULE 6.

Sch.6.1. Validation of certain matters relating to the *Value Added Tax Act 1999*.

(1) In Schedule 6.1 –

“the Act” means the *Value Added Tax Act 1998*;

“the relevant period” means the period commencing on 1 July 1999 and ending on the coming into operation of this section.

(2) The imposition of -

(a) value added tax; and

(b) additional value added tax; and

(c) further additional value added tax,

under and in accordance with the Act during the relevant period is hereby validated.

(3) The assessment and collection of -

(a) value added tax; and

(b) additional value added tax; and

(c) further additional value added tax,

under and in accordance with the Act during the relevant period are hereby validated.

(4) The Commissioner General of Internal Revenue and all officers acting under his authority are, in respect of all actions taken by them, under and in accordance with the Act during the relevant period, indemnified against civil or criminal liability alleged on the grounds that the Act was, during the relevant period, declared unconstitutional.

(5) All proceedings, civil or criminal, initiated under and in accordance with the Act during the relevant period are not invalid by reason only of the fact that the Act was, during the relevant period, declared unconstitutional.

(6) All penalties (financial and otherwise) imposed under and in accordance with the Act during the relevant period are not invalid by reason only of the fact that the Act was, during the relevant period, declared unconstitutional.

(7) All -

(a) objections to assessments; and

(b) objections to decisions; and

(c) decisions of the -

(i) Commissioner General of Internal Revenue; and

(ii) Review Tribunal; and

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(iii) National Court,
in relation to objections referred to in Paragraph (a) or (b), under an in accordance with the Act during the relevant period are not invalid by reason only of the fact that the Act was, during the relevant period, declared unconstitutional.

- (8) All -
(a) exemptions from payment of value added tax; and
(b) refunds of value added tax; and
(c) set off of value added tax,

under and in accordance with the Act during the relevant period are not invalid by reason only of the fact that the Act was, during the relevant period, declared unconstitutional.

6.2. Validation of certain matters relating to the *Value Added Tax Revenue Distribution Act 1998*.

- (1) In Schedule 6.2 --
“the Act” means the *Value Added Tax Revenue Distribution Act 1998*;
“the relevant period” means the period commencing on 1 July 1999 and ending on the date of coming into operation of this section.

- (2) The establishment and operations of --
(a) the National VAT Revenue Trust; and
(b) the Provincial VAT Trust; and
(c) the National VAT Trust Account; and
(d) the trust accounts established in each province,

under and in accordance with the Act during the relevant period are hereby validated.

- (3) The -
(a) payments made into the Trust Accounts referred to in Subsection (2)(c) and (d); and
(b) payments made out of the Trust Accounts referred to in Subsection (2)(c) and (d); and
(c) the method of calculation of value added tax distribution to the provinces; and
(d) the order of precedence of distributions from the Trust Accounts referred to in Subsection (2)(c) and (d),

under and in accordance with the Act during the relevant period are hereby validated.

- (4) The -
(a) Commissioner General of Internal Revenue; and

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- (b) officers acting under the authority of the Commissioner General of Internal Revenue; and
- (c) the trustees of the National VAT Revenue Trust; and
- (d) the trustees of each Provincial VAT Trust,

are, in respect of all actions taken by them under and in accordance with the Act during the relevant period, hereby indemnified against civil or criminal liability alleged on the grounds that the Act was, during the relevant period, declared unconstitutional.”.

I hereby certify that the above is a fair print of the *Constitutional Amendment No. 27 – Sales and Services Tax* which has been made by the National Parliament

Clerk of the National Parliament.

Constitution.

CERTIFICATE UNDER SECTION 14.

I, **BILL SKATE**, Speaker of the National Parliament, hereby certify that the requirements of Section 14(1), (2) and (3) of the *Constitution* were complied with in respect of the *Constitutional Amendment No. 27 – Sales and Services Tax* and that the law was made by the National Parliament as follows:-

- (a) the first vote was taken on 14 March 2003 when the number of seats in the National Parliament were 109 and those voting for the proposal were 73 and none voted against the proposal; and
- (b) the second vote was taken on 22 May 2003 when the number of seats in the National Parliament were 109 and those voting for the proposal were 78 and none voted against the proposal.

Speaker of the National Parliament.