

WORLD TRADE ORGANIZATION

G/SCM/N/74/PNG¹
18 June 2001

(01-3006)

Committee on Subsidies
and Countervailing Measures

Original: English

SUBSIDIES

Requests Pursuant to Article 27.4 of the Agreement on Subsidies and Countervailing Measures

PAPUA NEW GUINEA

The following communication, dated 27 April 2001, has been received from the Department of Trade and Industry, Papua New Guinea.

The Government of Papua New Guinea wishes to advise the Committee of the following subsidies. The Government grants export subsidies under Section 45 of the Income Tax Act, which allows 100 per cent of the income derived from export sales of a wide variety of goods for three years to be treated as exempt income. After this period any export income which is in excess of the average of the prior years can be treated as exempt, up to and including the seventh year.

Under Part VIII of the Agreement Papua New Guinea does not appear to have special treatment as we are not classified as a "least developed country", which we believe means that we have until 1 January 2003 to eliminate export subsidies. Given the importance of this subsidy to foreign investors, the Government of Papua New Guinea wishes to apply for an extension of this transition period under Article 27.4, until such time as we improve our export competitiveness, which would allow Papua New Guinea to become fully compliant.

It would be very much appreciated if an official of the Secretariat could contact the relevant officer directly at the following address:

Secretary
Department of Trade and Industry
P.O. Box 375
WAIGANI, NCD
Papua New Guinea

Commissioner General
Internal Revenue Commission
P.O. Box 777
PORT MORESBY, NCD
Papua New Guinea

¹ This document cancels and replaces documents G/SCM/N/73/PNG, dated 28 May 2001 and G/SCM/N/73/PNG/Add.1, dated 29 May 2001, which were incorrectly symbolled.

Attached herewith please find a copy of the legislation related to issues of export subsidies in Papua New Guinea, in respect of which an extension of the transition period has been requested pursuant to Article 27.4 of the Agreement on Subsidies and Countervailing Measures.

DIVISION 1A.—EXPORT INCENTIVES

SECTION 45A. INTERPRETATION

45A(1) [Definitions] In this Division, unless the contrary intention appears—

"allowable deductions" means all deductions that would be allowable under this Act if no part of the income of the taxpayer was exempted from tax by the operation of this Division;

"average export sales" means an amount equal to the export sales of the base period divided by three;

"base period" means the three years of income immediately preceding the year of income in respect of which an exemption under this Division is claimed;

"consideration receivable", in relation to a sale or other disposal of export goods, means—

- (a) in the case of a sale or disposal other than one to which Paragraph (b) applies—the amount or value of the consideration for the sale or disposal; or
- (b) where the sale or disposal is part of or is connected with a transaction in which any other assets are sold or disposed of—such part of the amount or value of the consideration as the Commissioner General is satisfied is attributable to the sale or disposal of the export goods,

reduced by any amounts paid or payable (otherwise than as an agent) by the person selling or disposing of the goods, by way of freight for carriage of the goods outside Papua New Guinea or by way of insurance or other outgoings in relation to the goods attributable to events or contingencies occurring or arising, or services performed, after the placing of the goods upon a ship or aircraft for export from Papua New Guinea;

"declared year of income" means the year in respect of which the taxpayer became entitled to the exemption offered under Section 45B;

"export goods" means goods exported from Papua New Guinea by the taxpayer, being goods—

- (a) which were manufactured by the taxpayer in Papua New Guinea; and
- (b) which were sold or disposed of by the taxpayer; and
- (c) of which the taxpayer was the owner at the time of the sale or disposal; and
- (d) which are not non-qualifying goods; and
- (e) which are qualifying goods;

"export sales" means the consideration received by the taxpayer in relation to the sale or other disposal of export goods;

"new manufactured product" has the meaning ascribed to it in Section 1 of the *Industrial Development (Wage Subsidy) Act 1984*;

"non-qualifying goods", in relation to export goods means—

- (a) goods exported by way of gift; and
- (b) goods taken or sent out of Papua New Guinea with the intention that they will at some later time be returned to Papua New Guinea otherwise than for repair or replacement;
- (c) goods which are sold by retail to persons departing from Papua New Guinea; and
- (d) such other goods as are prescribed as non-qualifying goods for the purposes of this Division; and
- (e) goods (except new manufactured products) not prescribed as qualifying goods;

"qualifying goods", in relation to export goods, means such goods, or goods included in such classes of goods, as are prescribed for the purposes of this Division, or new manufactured products.

Sec. 45A(2)

(2) [Purchase or sale of business] For the purposes of calculating the average export sales of a taxpayer, where during a year of income the taxpayer acquired, by purchase or otherwise, an existing business, the export sales of the taxpayer for the base period shall be deemed to be an amount equal to the sum of the export sales derived by the taxpayer during the base period and the export sales derived by each other person who owned that business during that period.

SEC. 45B. Exemption related to export sales

(1) [First export sale after 1 September 1984] Subject to Subsection (3) and Section 45C, where a taxpayer first derives income from export sales after 1 September 1984—

- (a) 100 per cent of the amount of the export sales made prior to the last day of the third year of income following the year in which export sales commenced; and
- (b) 100 per cent of the amount by which the export sales for each subsequent year exceeds the average export sales,

shall be exempt income.

Sec. 45B(2)

(2) [Export sales before 1 September 1984] Subject to Subsection (3) and Section 45C, where a taxpayer derives income from export sales before 1 September 1984—

- (a) in any year of income which commenced prior to 1 January 1982 or any approved substituted accounting period in lieu thereof, 50 per cent of the amount by which the export sales for the year of income exceeds the average export sales; or
- (b) in any year of income which commenced on or after 1 January 1982, but prior to 1 January 1984, or any approved substituted accounting period in lieu thereof, 100 per

cent of the amount by which the export sales for the year of income exceeds the average export sales; or

- (c) in any year of income which commenced on or after 1 January 1984, or any approved substituted accounting period in lieu thereof—
 - (i) 100 per cent of the amount by which the export sales made prior to 1 September 1984 exceed 75 per cent of the average export sales; and
 - (ii) 100 per cent of the amount derived from export sales made after 1 September 1984 but prior to the end of the third year of income following the date of the commencement of export sales; and
 - (iii) 100 per cent of the amount by which the export sales for each subsequent year exceeds the average export sales,

shall be exempt income.

Sec. 45B(3)

(3) **[Period of exemption]** The provisions of Subsections (1) and (2) shall apply to income derived from export sales during each of the seven years commencing with the declared year of income.

SEC. 45C Exemption in respect of restricted period

Where, during a year of income, a taxpayer acquired, by purchase or otherwise, or disposed of, an existing business, the exempt income of the taxpayer under Section 45B in relation to that business shall be no greater than that which would have accrued to the previous owner had the business not been disposed of.

SEC. 45D. Calculation where goods qualify for part period only

(1) **[Non-qualifying goods]** Where, during a year of income, goods in respect of which this Division would otherwise apply became non-qualifying goods, the calculation of the export sales for the base period shall be adjusted by excluding those goods, for the purposes of calculating any increase in export sales in accordance with this Division.

Sec. 45D(2)

(2) **[Qualifying goods]** Where, during a year of income, goods that were not qualifying goods became qualifying goods, calculation of export sales for the base period shall be adjusted by including those goods, for the purpose of calculating any increase in export sales in accordance with this Division.

SEC. 45E. Arrangements to increase exemptions

Notwithstanding anything in this Division, where the Commissioner General is of the opinion that arrangements have been made between a taxpayer and any other person with a view to the affairs of the taxpayer being so conducted to have the effect of obtaining for the taxpayer an improper advantage under this Division that he would not, but for that arrangement, have otherwise obtained, the amount of exempt income calculated under this Division in respect of that taxpayer shall not

exceed the amount that, in the opinion of the Commissioner General, would have been calculated if that arrangement had not been made.

SEC. 45F. Modification of tax information

(1) **[Inaccurate information]** Subject to Subsection (2), where, after considering the information furnished or otherwise available to him as to the amount of export sales of a taxpayer for a year of income or for the base period, the Commissioner General is not satisfied as to the accuracy of that information, he is not required to determine the appropriate amount or the amount of income of the taxpayer that, but for this section, would have been exempt income under this Division.

Sec. 45F(2)

(2) **[Deemed export sales]** Where, in a case where Subsection (1) would otherwise apply, the Commissioner General is satisfied that the amount of export sales of the taxpayer for the year of income or the base period does not exceed a particular amount, but he is not satisfied that it is less than that particular amount, that particular amount shall be deemed to be the amount of the relevant export sales for the purpose of determining the exempt income of the taxpayer under this Division.

Sec. 45F(3)

(3) **[Abnormal trading conditions]** Where, within the time within which he is required to furnish a return of his income for a year of income, or within such further time as the Commissioner General permits, a taxpayer makes application in writing to the Commissioner General for a reduction of the amount that would otherwise be the amount of his export sales for the base period for the purpose of determining exempt income under this Division, on the grounds that, by reasons of abnormal trading conditions or other extraordinary circumstances during the base period the amount of export sales for the base period is greater than it would otherwise have been and that he is, by reason of that fact, under an unfair disadvantage, the Commissioner General may, for the purposes of this Division, make such adjustments in respect of the amount of those export sales as he thinks fit.

SEC. 45G. Deductions in calculating exemption

(1) **[Deductions from exempt income]** Subject to Subsection (2), where, in a year of income a taxpayer derives any income which is exempt under this Division, the amount to be excluded from his allowable deductions for the year of income shall be the amount of the allowable deductions (excluding any amount allowable under Section 72C) relating to that exempt income or, where the Commissioner General is satisfied that the amount cannot accurately be determined, an amount which bears to that total allowable deduction relating to the business from which the exempt income arose the same ratio as the exempt income under this Division bears to the total income arising from carrying on that business during the year of income.

(2) **[Not to exceed exempt income]** The amount to be excluded under Subsection (1) from a taxpayer's allowable deductions shall not exceed the amount of exempt income referred to in that subsection.

SEC. 45H. Gaining improper advantages, etc.

(1) **[Offence]** A taxpayer, or where the taxpayer is a company, the company, or a public officer or a director, servant or agent of the company, who or which, by any act, default or neglect, or by any fraud or contrivance whatever, gains or attempts to gain an improper advantage or an exemption to which he or it or his company would not lawfully be entitled under this Division, is guilty of an offence.

Penalty: A fine of not less than K 500.00 and not exceeding K 10,000.00.

Sec. 45H(2)

(2) [Tax-based penalty] In addition to any fine imposed under Subsection (1), the Court before which the action is brought may order the person or company, as the case may be, to pay to the Commissioner General a sum not exceeding double the amount of tax that, in the opinion of the court, was avoided or attempted to be avoided.

(3) [Counselling or assisting] Without derogating the provisions of any other law, where the court is satisfied that the commission of an offence against this section was counselled or assisted in any way by any other person (whether in a professional or other capacity) the court may order that person to be liable, or jointly and severally liable with any other person, for the payment of the additional tax under Subsection (2).
