

LAND (DUTIES AND TAXES)

Act 46 of 1984 – 16 July 1984

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PART I – PRELIMINARY

1 Short title

This Act may be cited as the Land (Duties and Taxes) Act.

2 Interpretation

In this Act –

“consideration” means value in money or money’s worth;

“deed of transfer” –

- (a) means a deed witnessing the transfer of property for consideration or by way of donation other than a transfer –
 - (i) by an ascendant to a descendant or the latter’s spouse or surviving spouse;
 - (ii) to a charitable trust under the Trust Act or to a religious body under the Registration Duty Act; and
 - (iii) between the heirs of a deceased person of property acquired by inheritance from that person;
- (b) includes –
 - (i) a deed witnessing a compulsory acquisition under the Land Acquisition Act;
 - (ii) a deed ‘acte de désintéressement’ by which a partner withdraws from a partnership without taking back the property ‘apport’ which he originally brought into the partnership;
 - (iii) a deed witnessing that property owned by a company is, on the winding up, liquidation or dissolution of the company or in any other manner, attributed to a shareholder of the company irrespective of the date on which such attribution takes place;
 - (iv) a deed witnessing that immovable property owned or purchased by a partnership is, on its dissolution, attributed to any partner of the dissolved partnership;
 - (v) a deed witnessing that immovable property brought by way of an ‘apport’ by a partner in a partnership is, on its dissolution, attributed to any of the partners of the dissolved partnership;
 - (vi) a deed by which a purchaser, other than an adjudicatee on a judicial sale, of any property declares that he has purchased the property on behalf of another person and in the name of that person with money belonging to and provided by that person;

“infrastructure works” in respect of land, means the construction of access roads and roadside drains, and the provision of water supply, electricity and sewerage system on the land;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“morcellement” means the parcelling out of land into five or more portions;

“open market value” means the value which a property might reasonably be expected to realise if sold on the open market by a prudent vendor;

“property” –

- (a) means any immovable property or any right or interest in any immovable property;
- (b) includes –
 - (i) any share in a partnership which owns any immovable property or any right or interest in any immovable property;

- (ii) any immovable property brought into a partnership by a person who withdraws 'se désintéresse' from the partnership without taking back the property 'apport' which he originally brought into the partnership;
- (iii) any immovable property owned by a company which is attributed, on winding up, liquidation or dissolution of the company or in any other manner, to a shareholder of the company;
- (iv) any immovable property owned or purchased by a partnership which is attributed, on its dissolution, to any of the partners of the dissolved partnership;
- (v) any immovable property brought by way of an 'apport' by a partner in a partnership which is attributed, on its dissolution, to any of the partners of the dissolved partnership;

"stated amount" means the amount specified in a notice served by the Registrar-General under section 27 or 28;

"tax"–

- (a) means the tax payable under Parts III to VIA; and
- (b) includes any surcharge on tax and penalty or interest imposed under this Act;

"transaction" means any operation creating, transferring or extinguishing a right of obligation;

"transferor" includes –

- (a) the lessee of an immovable property;
- (b) in the case of an exchange, any party who transfers property;
- (c) in the case of a partnership, the property of which is, on its dissolution, attributed to any of the partners of the dissolved partnership immediately before its dissolution;
- (d) in the case of any person withdrawing as a partner from a partnership, the person who so withdraws 'se désintéresse' without taking back the property which he originally brought into the partnership;
- (e) in the case of a company, the property of which is on winding up, liquidation or dissolution or in any other manner attributed to any of its shareholders;
- (f) the purchaser, other than an adjudicatee on a judicial sale, of any property who declares that he has purchased the property on behalf of another person with money belonging to and provided by that person;

"Tribunal" means the Tax Appeal Tribunal established under the Tax Appeal Tribunal Act;

"valuer"–

- (a) means a Government Valuer or a valuer designated by the Registrar-General;
- (b) includes any person authorised in writing by the valuer.

[Amended 4/87; 20/88; 22/89; 30/90; 17/91; 23/92; 23/93; 17/95; 13/96; 9/97; 18/99]

Ed. The amendments to these definitions by section 11 of Act 18/99 do not, by virtue of section 15(f) of Act 25/00, apply to a partnership formed before 1 August 1999.

PART II – REGISTRATION DUTY

3 Duty leviable

(1) Notwithstanding any other enactment but subject to this Act, there shall be levied, on the registration of any deed witnessing a transfer of immovable property or creating a mortgage or a fixed charge ('surêté fixe'), the duty, at the rate in force at the time of registration, in accordance with the Registration Duty Act.

(2) Notwithstanding subsection (1), the duty leviable on the registration of any deed witnessing a transfer of immovable property to a company holding a housing development certificate issued by the Minister under the Income Tax Act shall be reduced by 75 per cent or such other percentage as may be prescribed.

[Amended 17/91; 25/94; 18/99; 25/00]

PART III – LAND TRANSFER TAX

4 Levy of land transfer tax

(1) Subject to subsections (2), (3), (4) and (5) there shall be levied, on the registration of a deed of transfer a tax, to be known as land transfer tax, on –

- (a) the value of any immovable property transferred;
- (b) in the case of any immovable property attributed by a partnership on its dissolution to any of the partners of the dissolved partnership, on the value of the immovable property, such value being inclusive of the value of any building, flat or apartment forming part of the immovable property so attributed;
- (c) in the case of a transfer of any share in a partnership, the value of any immovable property comprised in the assets of the partnership calculated in accordance with the First Schedule.

(2) Where a person withdraws from a partnership as a partner without taking back any property which he originally brought into the partnership 'apport', the deed witnessing his withdrawal 'acte de désintéressement' shall be deemed to constitute sufficient evidence for the purposes of subsection (1) that he has transferred the property to the partnership on the date on which the withdrawal takes place.

(3) Notwithstanding any other enactment, where any property –

- (a) owned by a company is attributed on winding up, liquidation or dissolution of the company or in any other manner to any of its shareholders;
- (b) owned or purchased by a partnership is attributed, on its dissolution, to any of the partners of the dissolved partnership; or
- (c) brought into a partnership by way of an 'apport' by any of its partners is attributed, on its dissolution, to any of the partners,

the deed witnessing such attribution shall be deemed to constitute sufficient evidence for the purposes of subsection (1) that the property has duly been transferred to that shareholder or partner, as the case may be, on the date the attribution takes place.

(4) The tax shall be –

- (a) paid by the transferor;
- (b) at the rate specified in the Second Schedule.

(5) No tax shall be leviable on a transfer –

- (a) by a company holding a Housing Development Certificate under section 34B of the Income Tax Act;
- (b) of the right to construct a building on top of an existing building ('droit de surélévation') together with a fraction of the ownership of the ground, where the conditions specified in section 45A(2) have been fulfilled; or
- (c) where the transferor has acquired the property to be transferred through inheritance from his spouse, an ascendant, a descendant, a brother or a sister;
- (d) where the transfer is made between spouses.

[Amended 20/88; 22/89; 17/91; 25/93; 18/99]

Ed. The amendments to this section by section 11 of Act 18/99 do not, by virtue of section 15(f) of Act 25/00, apply to a partnership formed before 1 August 1999.

5 Exemption

When the transferor has transferred or transfers to any person other than a descendant by means of one or more operations effected after 16 July 1984 any immovable property or any share in a partnership which owns any immovable property or any right in an immovable property, the tax shall be levied on the value or aggregate value of the immovable property or of the immovable property comprised in the assets of the partnership as specified in section 4(1)(c) after deducting therefrom the sum of 75,000 rupees or such other sum as may be prescribed.

[Amended 56/85; 4/87; 18/99]

6 Declaration by transferor

(1) Every transferor shall declare in the deed of transfer whether he has made any previous transfer of property.

(2) Where a transferor has made any previous transfer of property, he shall declare, in the deed of transfer, the reference to the transcription or registration of each transfer made by him and the value for which each transfer was made.

(3) Where a deed of transfer does not comply with subsections (1) and (2), the tax shall be levied on the full value of the property transferred.

[Amended 18/99]

7 Penalty for incorrect declaration

Where after the registration of a deed of transfer, the Registrar-General is satisfied that a declaration under section 6 is incorrect, he shall, by letter sent by registered post, claim from the transferor the difference between the tax which would have been payable under section 4 and the tax actually paid, together with a penalty equal to half of the amount of that difference.

[Amended 9/97]

PART IV – CAPITAL GAINS (MORCELLEMENT) TAX

8 Interpretation

In this Part –

“immovable property”

(a) means –

- (i) in respect of an immovable property situate, wholly or partly, within 500 metres of the high water mark of the sea coast of the Island of Mauritius, immovable property of an area in excess of 1,000 square metres;
- (ii) in respect of an immovable property situate on an islet around the coast of the Island of Mauritius, immovable property of an area in excess of 1,000 square metres;
- (iii) in respect of an immovable property situate, wholly or partly within the limits of a town as defined under the Local Government Act, immovable property of an area in excess of 2,000 square metres;
- (iv) in any other case, an immovable property of an area in excess of 4,000 square metres;

(b) includes any right in an immovable property;

“lot” means any portion of an immovable property which has been the subject of a morcellement;

“owner” includes lessee;

“purchase price” means in the case of an immovable property or lot acquired –

- (a) by inheritance or legacy and which has not been divided among the heirs, the value of the property as specified in the account of particulars furnished under the Succession and Donation Duties Act or the value of that property as adjusted under that Act for duty purposes;
- (b) by an heir to an inheritance or legacy which has been divided among the heirs, such proportion of the value of the immovable property, as determined under paragraph (a), as the area inherited by the heirs bears to the total area of the immovable property comprised in the inheritance or legacy;
- (c) by an heir or legatee in respect of any succession which has been opened after 31 October 1987, the value assigned in the deed of transfer;
- (d) by prescription –
 - (i) the value at the date of completion of the statutory period for prescription as declared by the transferor where the prescription takes place before 16 July 1984;

- (ii) the value assigned by the owner at the time of the transcription of the document witnessing the prescription where the prescription takes place after the commencement of this Act;
- (e) by a partnership by way of an 'apport' made by one of its members –
 - (i) the value ascribed to the immovable property when it is brought 'apporté' into the partnership; or
 - (ii) notwithstanding section 4 of the Land (Duties and Taxes) (Amendment) Act 1985, such proportion of the price stated in the deed of acquisition of the immovable property as a whole prior to the morcellement of the property as the area of the lot bears to the area of the immovable property as a whole;
- (f) in any other way, the price stated in the deed of acquisition of the immovable property, together with registration duty paid and notarial costs incurred on the acquisition of the immovable property.

[Amended 62/85; 4/86; 20/88; 18/99; 25/00]

9 Levy of capital gains tax

(1) (a) Every owner of an immovable property who makes a morcellement shall, on the transfer of any lot, pay a tax to be known as capital gains tax on the amount of the excess, if any, of the sale price of the lot over the aggregate of the amounts of the purchase price and the cost of infrastructure works of the lot.

(b) Where an owner of an immovable property makes a morcellement and any lot therein is brought 'apporté' by him into a partnership, that partnership shall, on the transfer of that lot, pay a capital gains tax in accordance with paragraph (a).

(2) Notwithstanding subsection (1), no tax under this Part shall be levied on any deed of transfer –

- (a) where the transfer is made by an ascendant on the one hand to a descendant or the latter's spouse or surviving spouse on the other hand;
- (b) where the transferor has acquired the property to be transferred through inheritance from his spouse, an ascendant, a descendant, a brother or a sister.

[To remove doubt, for the purpose of computing capital gains tax in relation to a 'société', the purchase price shall be and shall always be deemed to have been the value ascribed to the property when brought 'apporté' into the partnership.]

(3) The tax leviable under subsection (1) shall be at the rate specified in the Third Schedule.

(4) Section 2 of the Finance Act 1980 and the Finance Act 1981 shall apply to the tax leviable under this section.

[Amended 25/93; 18/99]

10 Sale price and cost of infrastructure works

For the purposes of section 9 –

- (a) the sale price of a lot shall be –
 - (i) the value of the lot as stated in the deed of transfer; or
 - (ii) the value of the lot as determined in accordance with section 28 or in accordance with the determination of the Tribunal, whichever is the higher;
- (b) the purchase price of a lot shall be such proportion of the purchase price of the immovable property as a whole, as the area of the lot bears to the area of the immovable property as a whole;
- (c) the cost of infrastructure works of a lot shall be –
 - (i) where the infrastructure works are exclusively in respect of the lot, the expenditure incurred on those infrastructure works as stated in the deed of transfer;
 - (ii) the cost of infrastructure works as determined in accordance with section 27 or in accordance with the determination of the Tribunal; or

- (iii) where the infrastructure works are in respect of the lot and any other lot, such proportion of the total expenditure incurred on infrastructure works as the area of the lot bears to the total area of the lots in respect of which the expenditure was incurred.

[Amended 23/93]

11 Contents of deed

Every deed of transfer shall –

- (a) indicate the precise location of the lot;
- (b) specify the purchase price of the lot and the cost of infrastructure works of the lot, if any.

PART V –

12-15 –

PART VI – CAMPMENT SITE TAX

16 Interpretation

In this Part –

“authorised officer” means any public officer designated by the Minister;

“campement site” means any land which is situated wholly or partly within 81.21 metres from the high water mark and has a sea frontage or a private access to the sea;

“owner” means –

- (a) in respect of a campement site situate on ‘pas geometriques’, the lessee of the site;
- (b) in respect of any other campement site –
 - (i) the person who receives, or if the site were let, would be entitled to receive, rent either for his own benefit or that of another person; and
 - (ii) where no such person can be found or ascertained, the occupier of the site;

“plan” means the plan specified in section 17;

“register” means the register established under section 18;

“zone” means any area designated by the letters A to E as specified in Part I of the Fifth Schedule and as shown on the plan.

17 Plan

(1) The authorised officer shall prepare a plan indicating the various zones in which are situated campement sites.

(2) Any person may, on application to the authorised officer, inspect the plan during office hours.

18 Register

(1) There shall be established for the purposes of this Part a register in which the authorised officer shall enter the particulars of every campement site and of every declaration made under section 19.

(2) Any person may, on application made to the authorised officer, inspect the register during office hours.

19 Declaration

(1) Every owner of a campement site shall, within one month of 16 July 1984, make a declaration in the prescribed form to the authorised officer.

(2) Every person shall, within one month of –

- (a) acquiring; or
- (b) becoming the lessee of a campement site,

make a declaration in the prescribed form to the authorised officer.

(3) The declaration under subsection (2), shall in the case of inheritance, be made by the heirs or any one of them.

(4) Every person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

20 Powers of authorised officer

(1) The authorised officer or any person authorised by him in writing may, for the purpose of ascertaining whether any land is a campement site –

- (a) at all reasonable times and, if so required, on production of proof of his authority, enter on and inspect the land;
- (b) require by notice the owner or occupier of the land to furnish in writing, within such period as may be specified in the notice, such information relating to the land or to its ownership or occupation, as he may require.

(2) Any person who –

- (a) obstructs the authorised officer or any person authorised by him in writing in the exercise of his functions under subsection (1)(a);
- (b) being the owner or occupier of any land, fails, without reasonable excuse or justification, to comply with a notice under subsection (1)(b), or, in supplying information under that subsection makes any statement which is false, misleading or incomplete in a material particular,

shall commit an offence, and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 3 months.

[Amended 23/92]

21 Notice of entry on register

Where the authorised officer is of opinion that any campement site in respect of which a declaration has not been made under section 19 ought to be entered on the register, he shall enter the campement site on the register and give notice to the owner or the occupier of the campement site of his decision, giving reasons for his decision.

22 Removal of entry on register

(1) Where any site which is entered on the register is, in the opinion of its owner, no longer a campement site, the owner may, by notice, require the authorised officer to remove the site from the register.

(2) Where the authorised officer is of opinion that the site to which a notice under subsection (1) relates ought not to be removed, he shall give notice of his decision to the owner, giving reasons for his decision.

23 Campement site tax

(1) There shall be levied on every owner of a campement site situated in a zone specified in Part I of the Fifth Schedule an annual tax to be known as the campement site tax at the appropriate rate specified in Part II of that Schedule.

(2) Subject to section 51(4), the tax shall be payable to the authorised officer on or before 31 July in every year.

(3) The owner of a campement site who fails to pay the tax within the period specified in subsection (2) or section 51(4) shall be liable to, in addition to the tax, a surcharge representing –

- (a) 10 per cent of the tax together with 100 rupees for the first month or part of the month during which the tax remains unpaid; and
- (b) 2 per cent of the tax for each subsequent month or part of the month during which the tax remains unpaid.

(4) The tax shall be paid and may be recovered notwithstanding an appeal against the levy of the tax.

[Amended 23/92]

24 Appeal to Minister

(1) Any person who is aggrieved by any decision taken by the authorised officer under this Act may, within 14 days of the notification of the decision, appeal to the Minister in the prescribed manner.

(2) The Minister may, on an appeal, confirm, amend or cancel any decision taken by the authorised officer.

(3) Where the Minister cancels or amends a decision of the authorised officer, he shall order the authorised officer –

- (a) to refund to the appellant the amount of any tax paid together with interest at the legal rate on the amount of the refund from the date of payment; and
- (b) to remove or amend any entry made in the register.

25 Service of notice

(1) Any notice which is to be given to the authorised person may be sent to him by post.

(2) Any notice which is required to be given by the authorised officer to the owner of a campement site may be –

- (a) given to him personally or to his authorised agent;
- (b) sent by post to his last known address or that of his authorised agent; or
- (c) where the owner or his authorised agent cannot be found, or his address is not known, posted up in a conspicuous position on the site.

26 Burden of proof

Notwithstanding any other enactment, the burden of proof that any tax has been paid or any campement site is exempt from tax shall lie on the person –

- (a) liable to pay the tax;
- (b) claiming that the tax has been paid; or
- (c) claiming that the campement site is exempt from tax.

PART VIA – TAX ON TRANSFER OF LEASEHOLD RIGHTS IN STATE LAND

26A Tax on transfer of leasehold rights in State land

(1) There shall be levied, on the registration of a deed of transfer –

- (a) of leasehold rights in State land;
- (b) of shares in a civil society, partnership, association or company which reckons among its assets any leasehold rights in State land;
- (c) of shares in a company which is an associate in a partnership which reckons among its assets any leasehold rights in State land,

irrespective of the date on which the transfer takes place, a tax on the open market value of the leasehold rights at the rate specified in the Seventh Schedule.

(2) The tax under this section shall be paid by the transferor and the transferee in equal proportion.

(3) Where a transfer of shares referred to in subsection (1)(b) or (c) takes place, the tax shall be payable in such proportion as the nominal value of shares transferred bears to the capital of the civil society, partnership or association or the issued share capital of the company, as the case may be.

(4) Notwithstanding subsection (1), no tax under this section shall be paid on the registration of a deed of transfer where –

- (a) in respect of leasehold rights in State land, the application to the Ministry of Housing and Land Development for the transfer was made before 9 June 1997; or
- (b) a transfer of shares in a company referred to in subsection (1)(b) or (c) takes place and no duty under the Registration Duty Act is leviable on the transfer by virtue of the exceptions specified in item 8 of paragraph J of Part I of the First Schedule to the Registration Duty Act.

(5) The surcharge imposed by the Finance Act 1980 and the Finance Act 1981 shall not apply to the tax imposed under this section.

(6) (a) Subject to paragraph (b), the transferor shall be under no obligation to seek approval from the Ministry of Housing and Land Development for the transfer of his leasehold rights.

(b) The transferor shall, within 14 days of the date of the registration of the deed of transfer, notify the Ministry of Housing and Land Development of the transfer.

[Amended 9/97; 18/99]

PART VII – GENERAL

27 Assessment of cost of infrastructure works

(1) Where the Registrar-General is dissatisfied with the cost of infrastructure works mentioned in a deed of transfer, he may, by written notice, forwarded to the transferor within a period of 7 months from the date of registration of the deed of transfer, make an assessment of the cost of those infrastructure works, state the amount of capital gains tax payable under section 9 and give the basis of his assessment.

(2) A notice under subsection (1) in a form approved by the Registrar-General shall be sent by registered post to the place of residence of the transferor as specified in the deed of transfer.

(3) Where the Registrar-General has given written notice under subsection (1), the transferor shall pay the tax specified therein within 28 days of the date of the notice.

(4) Any transferor who is aggrieved by a notice under subsection (1) may appeal to the Tribunal in accordance with section 4A of the Tax Appeal Tribunal Act 1984.

[Amended 23/93]

27A Assessment of land and building

(1) Where no documentary evidence establishing that a building or any other fixture existing on a property belongs to, or has been erected by, a person, other than the transferor, is attached to a deed of transfer, the duty and tax leviable under this Act or the Registration Duty Act shall, where applicable, be levied on –

- (a) the consideration mentioned in the deed; or
- (b) the open market value of the property, including the building or fixture existing on the property as determined in accordance with section 28 or in accordance with the determination of the Tribunal,

whichever is the higher.

(2) Subsection (1) shall not apply to a deed of transfer which contains –

- (a) a complete description of any building or fixture existing on the property;
- (b) a statement by the transferor that he retains full ownership of the building or fixture;
- (c) an undertaking by the transferor that he will not transfer the building or fixture otherwise than by an authentic deed.

[Amended 19/86; 23/93]

28 Valuation of property

(1) (a) The value of any property that is transferred, brought into a partnership or acquired by prescription, as specified in paragraph (b), shall for the purposes of levying duty and taxes under this Act be determined in accordance with this section.

(b) The property referred to in paragraph (a) shall be the following –

- (i) any property, including any immovable property which forms part of the assets of a partnership or of a company;
- (ii) any property which is deemed under subsections (2) and (3) of section 4 to have been transferred;
- (iii) any property brought into a partnership;

- (iv) any property the open market value of which is stated under section 3(a) of the Affidavits of Prescription Act;
- (v) any property acquired by inheritance or legacy after 31 October 1987.
- (vi) any immovable property which is the subject of a document attracting the proportional duty under any of items 10 to 13 of paragraph I or under any of items 10 to 14 of paragraph J of Part 1 of the First Schedule to the Registration Duty Act.
- (vii) any property which is the subject matter of a deed by which a purchaser of the property, other than an adjudicatee on a judicial sale, declares that he has purchased the property on behalf of another person and in the name of that person with money belonging to and provided by that person.

(2) Where the Registrar-General is dissatisfied with the value mentioned in any deed of transfer of any property, he may –

- (a) exercise a right of pre-emption under section 20 of the Registration Duty Act; or
- (b) where he does not exercise the right of pre-emption, by written notice in a form approved by him which shall be forwarded by registered post within 7 months from the date of the registration of the deed to the transferee and the transferor including the person who acquires by prescription or by inheritance or legacy and the partnership to which property has been brought or, if there are several, to any one of them, make an assessment of the value of that property, state the amount of duty or tax, if any, payable thereon and give the basis of the assessment.

(3) Where the Registrar-General has given written notice under subsection (2)(b), the person to whom the notice has been given shall pay any duty or tax specified therein within 28 days of the date of the notice.

(4) Any person who is aggrieved by a notice under subsection (2)(b) may appeal to the Tribunal in accordance with section 4A of the Tax Appeal Tribunal Act.

(5) (a) Where a notice under subsection (2)(b) is returned undelivered, the Registrar-General shall inscribe against the person liable to any additional duty or tax, on all properties belonging or which may subsequently belong to that person, a privilege for the additional duty or tax specified in the notice.

(b) Notwithstanding section 44, the additional duty or tax secured by the privilege inscribed under paragraph (a) may be claimed at any time.

(6) For the purpose of this section, the valuer shall, not more than 5 months from the date of the registration of the deed or transcription of the affidavit of prescription, advise the Registrar-General of the open market value of the property.

(7) The valuer may –

- (a) require, by letter forwarded by registered post, the transferee or transferor including the person who acquires by prescription or by inheritance or legacy and the partnership to which property has been brought or, if there are several, any one of them, to show and identify, within such time as may be specified in the letter, the property under reference and to furnish such information as to enable the valuer to make an accurate assessment of the open market value of the property;
- (b) enter and inspect any property under reference after giving not less than 24 hours written notice to the transferee or occupier of the property.

(8) A valuer, other than a Government Valuer, shall in relation to any valuation made by him under this section be paid such fee as the Minister may determine.

[Amended 15/88; 20/88; 22/89; 30/90; 23/92; 23/93]

29 Transfer of immovable property between ascendants and descendants

(1) Subject to subsection (2), where an ascendant transfers an immovable property to a descendant and the property so transferred was acquired by the ascendant from a descendant,

the duties and taxes under this Act or the duty under the Registration Duty Act shall, notwithstanding any other provisions of this Act or the Registration Duty Act, be levied on the deed of such transfer.

(2) Where a descendant transfers an immovable property to an ascendant and the property so transferred was acquired by the descendant from that same ascendant, no duty or tax under this Act and no duty under the Registration Duty Act shall be levied on the deed of such transfer.

[Amended 18/99]

30-33 –

34 Amendment of tax and duty

Where the cost of infrastructure works or the value of any property is revised under section 27 or 28, or is determined by the Tribunal, any tax or duty payable in respect of the property shall be revised accordingly.

[Amended 23/93]

35 Penalty for undervaluation

(1) Where the open market value of a property, as determined in accordance with section 28 or in accordance with the determination of the Tribunal, exceeds the value of the property as specified in the deed of transfer, the Registrar-General shall impose and claim from the transferee or the transferor, as the case may be, except where the parties are brothers and sisters, a penalty at the rate specified in the Sixth Schedule.

(2) Where the cost of infrastructure works specified in a deed exceeds the cost of infrastructure works as revised under section 27 or as determined by the Tribunal, the Registrar-General shall impose and claim from the transferor, except where the parties are brothers and sisters, a penalty equivalent to the amount of additional tax payable under Part IV.

[Amended 23/93; 9/97]

36 Payment of duty and tax

(1) (a) Notwithstanding any other enactment a notary shall, in respect of any deed of transfer drawn up by him, compute and collect the duty and taxes leviable under Part II, Part III, Part IV and Part VIA and pay the duty and taxes so collected to the Registrar-General.

(b) Where, on the basis of the information contained in a deed of transfer, duty and taxes have been insufficiently paid under paragraph (a), the notary who draws up the deed shall pay to the Registrar-General the duty and taxes so insufficiently paid, and in case such payment is effected after the time limit for the registration of the deed, the notary shall, in addition, be liable to pay a penalty equivalent to 20 per cent of the amount of duty and taxes insufficiently paid.

(c) The penalty referred to in paragraph (b) shall not be claimed or collected from the parties at whose request the deed of transfer was drawn.

(d) Where a notarial deed becomes liable to the penalty referred to in paragraph (b), the Registrar-General shall claim from the notary the penalty together with the duty and taxes insufficiently paid.

(e) Where a claim is made under paragraph (d), the notary shall pay the amount claimed within 7 days of the date of the claim.

(f) Any notary who is aggrieved by a decision under this section may appeal to the tribunal in accordance with the Tax Appeal Tribunal Act.

(3) (a) Where land is disposed of by judicial sale, levy or licitation, the Master and Registrar shall withhold from any deposit made at the time of adjudication, the amount representing the taxes leviable under Parts III, IV and VIA and pay it to the Registrar-General.

(b) The Master and Registrar shall direct the adjudicatee to deduct from the purchase price and pay to the Registrar-General in preference to other creditors –

(i) where no deposit has been made, an amount representing the taxes leviable under Parts III, IV and VIA;

(ii) where a deposit has been made but is not sufficient to cover the tax leviable, an amount representing the difference between the amount of the taxes leviable under Parts III, IV and VIA and the amount of tax paid from the deposit.

- (4) Any tax leviable –
(a) under Part V shall be paid to the Ministry of Works;
(b) under Part VI shall be paid to the authorised officer.

[Amended 9/97; 25/00]

37 Inscription of privilege

(1) The Registrar-General may, at any time, inscribe a privilege on all properties belonging or which may subsequently belong to the person for an amount representing any duty or taxes remaining unpaid under Part II, Part III, Part IV, Part VIA and section 36, as appropriate.

(2) The authorised officer may cause an inscription of privilege to be inscribed on all properties belonging or which may subsequently belong to a person for any amount of tax due under Part VI by that person.

(3) (a) The inscription enrolled under subsection (1) shall be erased on payment of the duty or tax.

(b) The inscription may be erased in respect of any property belonging to the debtor where the Registrar-General is satisfied that the value of his other properties is sufficient to secure payment of the amount due.

(4) The inscription of privilege under subsection (2) shall be erased upon a request in writing to that effect by the authorised officer.

[Amended 23/92; 9/97; 25/00]

38 Abatement or deferment of duty or tax

No payment of duty or tax shall be abated or deferred on the ground that the amount of duty or tax payable is in dispute or on any other ground.

39 Payment of one tax only

Where a person is liable, on transfer of any property, to payment of tax under Parts III and IV, only the higher tax shall be leviable.

40 –

41 Validity of notice by post

A notice or letter under this Act shall be deemed to have been validly served on the transferor or transferee if the notice or letter has been sent by registered post to the address indicated in the deed of transfer –

- (a) of the transferor or transferee; or
(b) of the elected domicile of the transferor or transferee.

42 Recovery of duty

(1) Where any duty or tax is due under Part II, Part III, Part IV, Part VI, Part VIA and section 36, the Registrar General or the authorised officer, as the case may be, may apply to a Judge in Chambers for an order ('contrainte') to issue against the debtor.

- (2) An order made under subsection (1) shall be –
(a) executory; and
(b) served on the debtor.

(3) Any debtor aggrieved by an order made under subsection (1) may within 10 days of the service of the order appeal to the Supreme Court.

- (4) No costs shall be awarded against an unsuccessful party except disbursements for –
(a) stamp duty;
(b) service of the order;

(c) execution of the order.
[Amended 23/92; 9/97, 25/00]

43 Refund of duty

(1) Where duty or tax has been properly levied on any document in accordance with Parts II to IV and Part VIA, the duty or tax shall not be refunded whatever may be the effect of any subsequent event or declaration on the transaction witnessed by the document.

- (2) Where duty has not been properly levied –
- (a) application may be made to the Registrar-General for a refund; and
 - (b) subject to section 44, the Registrar-General may refund the excess.

[Amended 9/97]

44 Time limit for claims or refunds

(1) Subject to section 28(5)(b), subsection (2) and to article 2245 of the Code Napoléon, a claim for –

- (a) duty or tax not levied on a stipulation in a document;
- (b) any balance of duty or tax insufficiently levied;
- (c) any additional duty or tax leviable by reason of an incorrect or a false declaration;
- (d) refund of duty or tax,

shall not be receivable after the expiry of 5 years from the date on which the deed was registered.

(2) The time limit of 5 years specified in subsection (1) shall, where the open market value of the property or the cost of infrastructure works has been determined by the Tribunal, be reckoned from the date of the determination.

[Amended 23/93]

45 Payment to be in multiples of 5 rupees

Any duty payable under this Act, which is less than a multiple of 5 rupees, shall be increased to the next higher figure which is a multiple of 5 rupees.

45A Derogation

(1) Notwithstanding this Act or any other enactment, a deed of transfer, for the construction of a residential building, of a lot excised from a larger portion of land or a portion of land on which exists a house by a partnership or a company to a worker who is either employed or who, immediately before his retirement, was employed by the vendor shall, where the deed of transfer contains a declaration from –

- (a) the Fund that the partnership or company is registered with it;
- (b) the partnership or company that the transferee is, or immediately before his retirement was, in its employment and that it has not effected on or after 1 July 1986 any transfer of land to the worker,

be exempt from payment of the duty and taxes leviable under Parts II to V, the surcharges leviable under any enactment and the duty leviable under the Transcription and Mortgage Act.

(2) Notwithstanding this Act or any other enactment, the duty leviable under Part II on any deed of transfer to an individual for the construction of a residential building of –

- (a) a portion of bare land; or
- (b) the right to construct a building on top of an existing building ('droit de surélévation') together with a fraction of the ownership of the ground,

shall be reduced by 100,000 rupees or such other sum as may be prescribed where the deed of transfer contains a declaration from –

- (i) the Ministry of Housing, Lands and Town and Country Planning that –
 - (A) the portion of bare land; or
 - (B) the existing construction in relation to which the right to build on top is transferred,

is situated in a residential zone unless the Registrar General is satisfied that no such declaration is required;

- (ii) the transferee that –

- (A) he is acquiring the portion of bare land or the right to construct a building on top of an existing building ('droit de surélévation') for the sole purpose of putting up a residential building and that the building shall be put up within a period not exceeding 5 years from the date of acquisition;
- (B) no residential building exists on the portion of land he is acquiring;
- (C) he or his spouse, if any, has not benefited since 1 July 1986 from any reduction under this subsection or under subsection (3);
- (D) he or his spouse, if any, is not already the owner in whole of any residential building;
- (E) he or his spouse, if any, has not purchased or acquired in exchange the whole of any residential building during the period of 5 years immediately preceding the transfer; and
- (F) he or his spouse, if any, has not brought into or transferred to a partnership any residential building during the period of 2 years immediately preceding the transfer.

(3) Notwithstanding this Act or any other enactment, the duty leviable under Part II on any deed of transfer to an individual of –

- (a) a residential lot in a building which has been the subject of a duly registered and transcribed deed witnessing a 'règlement de co-propriété' in accordance with Articles 664 and 664-1 to 664-94 of the Code Napoléon; or
- (b) a portion of land, whether freehold or leasehold but with a residential building thereon,

shall be reduced by 110,000 rupees or such other sum as may be prescribed where the deed of transfer contains a declaration from –

- (i) the Ministry of Housing, Lands and Town and Country Planning that the portion of land is situated in a residential zone unless the Registrar General is satisfied that no such declaration is required;
- (ii) the transferee that –
 - (A) he or his spouse, if any, has not benefited since 1 July 1986 from any reduction under this subsection or under subsection (2);
 - (B) he or his spouse, if any, is not already the owner in whole of any residential building;
 - (C) he or his spouse, if any, has not purchased or acquired in exchange the whole of any residential building during the period of 5 years immediately preceding the transfer; and
 - (D) he or his spouse, if any, has not brought into or transferred to a partnership any residential building during the period of 2 years immediately preceding the transfer.

(4) (a) Notwithstanding this Act or any other enactment, the duty leviable under Part II on any deed containing creation of a mortgage or fixed charge ('sûreté fixe') against an individual to secure the repayment of a loan contracted for the purpose of –

- (i) putting up a residential building on a plot of land or on the top of an existing building; or
- (ii) acquiring a plot of land with a residential building thereon or acquiring a residential lot in a building or acquiring a house built on leasehold land or reimbursing a debt contracted for the purpose of any such acquisition,

shall, where the conditions specified in paragraph (b) are satisfied, be –

- (A) where the amount of the loan, or the aggregate amount of the loans contracted by the individual, does not exceed 500,000 rupees, a maximum of 300 rupees;
- (B) where the amount of the loan, or the aggregate amount of the loans contracted by the individual, exceeds 500,000 rupees, 300 rupees

together with 2.475 per cent on that part of the loan, or the aggregate amount of the loans, which is in excess of 500,000 rupees.

(b) The conditions to be satisfied for the purposes of paragraph (a) are that the deed witnessing the creation of a mortgage or fixed charge ('sûreté fixe') shall contain –

(i) where the loan is contracted for the sole purpose of putting up a residential building, a declaration from the individual that –

(A) he is contracting the loan for the sole purpose of putting up a residential building, on the plot of land which is being mortgaged or charged, or on the existing building together with a right to construct on the top ('droit de surélévation') which is being mortgaged or charged, within the period of 2 years from the date of the deed or, where the deed relates to a subsequent loan, within a period of 2 years from the date of the deed witnessing the initial loan; and

(B) he or his spouse, if any, is not already the owner in whole of any residential building.

(ii) where the loan is contracted for the sole purpose of acquiring, or reimbursing a debt contracted for the acquisition of, a plot of land with a residential building thereon or a house built on leasehold land, a declaration from the individual that –

(A) he is contracting the loan for the sole purpose of acquiring, or reimbursing a debt contracted for the acquisition of the plot of land with a residential building thereon or the house built on leasehold land which is being mortgaged or charged;

(B) the property was acquired during the period of one year immediately preceding the date of the deed or, where the deed relates to a subsequent loan, during the period of one year immediately preceding the date of the deed witnessing the initial loan; and

(C) he or his spouse, if any, is not already the owner in whole of any residential building.

(iii) where the loan is contracted for the sole purpose of acquiring, or reimbursing a debt contracted for the acquisition of, a residential lot in a building, a declaration from the individual that –

(A) he is contracting the loan for the sole purpose of acquiring, or reimbursing a debt contracted for the acquisition of, a residential lot in a building which has been the subject of a duly registered and transcribed deed of 'règlement de co-propriété' in accordance with Articles 664 and 664-1 to 664-94 of the Code Napoléon and which is being mortgaged or charged;

(B) the property was acquired during the period of one year immediately preceding the date of the deed or, where the deed relates to a subsequent loan, during the period of one year immediately preceding the date of the deed witnessing the initial loan; and

(C) he or his spouse, if any, is not already the owner in whole of any residential building.

(c) Where the deed witnessing the creation of a mortgage or fixed charge ('sûreté fixe') relates to a subsequent loan, the individual shall make a declaration in the deed of the aggregate amount of the loans contracted previously by him with a reference to the date and Inscription Volume number of the deeds witnessing the previous loans.

(5) (a) Subject to paragraph (b), where after registration of a deed of transfer or of a deed creating a mortgage or a fixed charge ('sûreté fixe') the Receiver of Registration Dues is satisfied that –

- (i) any statement contained in or attached to the deed is incorrect;
- (ii) the land purchased, mortgaged or charged has been put to any use, other than for putting up a residential building,

he shall, by written notice sent by registered post, claim the duty and taxes leviable under this Act together with a penalty equal to 20 per cent of the amount of duty and taxes leviable.

(b) Where the Receiver of Registration Dues is satisfied that no residential building has been put up on the land within the time limit specified in subsections 2(b)(i) and 4 (a), he shall claim only the duty and taxes leviable under this Act.

(6) In this section –

“Fund” means the Sugar Insurance Fund;

“partnership or company” means a partnership or company engaged in the milling of sugar or the planting of sugar canes and which is registered with the Fund;

“residential building” includes a lot in a building which has been the subject of a duly registered and transcribed deed witnessing a ‘règlement de co-propriété’.

“worker” has the same meaning as in the Labour Act.

[Amended 19/86; 22/89; 30/90; 17/91; 25/93; 25/94; 17/95, 9/97; 10/98; 18/99]

46 Remission

The Minister may, if he thinks fit, remit or refund the whole or part of any duty or tax leviable under this Act.

[Amended 56/85]

47 Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for the amendment of the Schedules and for exemption from tax leviable under this Act, including exemption in relation to any owner who occupies a campement site exclusively for the purpose of his one and only residence.

48-49 –

50 Application

This Act shall apply to the Island of Mauritius only.

51-52 –

FIRST SCHEDULE

(section 4 (1)(c))

Value $\frac{N \times I}{C}$

C

Where –

- (a) N is the nominal value of the share transferred;
- (b) I is the value of all the immovable properties comprised in the assets of the partnership; and
- (c) C is the capital of the partnership.

SECOND SCHEDULE

(section 4 (4))

Where the transfer is made after a period not exceeding 5 years of the date of acquisition of the property 10 per cent

Where the transfer is made after a period exceeding 5 years of the date of acquisition of the property 5 per cent

[Amended 30/90]

THIRD SCHEDULE

(section 9 (3))

Where the transfer of a lot is made after a period not exceeding 5 years of the date of acquisition of the immovable property.....	30 per cent
Where the transfer of a lot is made after a period exceeding 5 years but not exceeding 10 years of the date of acquisition of the immovable property.....	25 per cent
Where the transfer of a lot is made after a period exceeding 10 years but not exceeding 15 years of the date of acquisition of the immovable property.....	20 per cent

FOURTH SCHEDULE

—

FIFTH SCHEDULE

(section 23(1))

PART I

	A	B	C	D	E
1	From the public beach south of Trou aux Biches Hotel to Anse La Raie Youth Camp	From the Junction of Japonnais Road with Pointe aux Piments - Mon Choisy Coast Road to the public beach south of Trou aux Biches Hotel	From the mouth of Rivulet Terre Rouge to the Junction of Japonnais Road with Pointe aux Piments - Mon Choisy Coast Road	From the mouth of River Poste de Flacq to Pointe de Flacq Cemetery	From the mouth of Rivière Sèche to the mouth of Rivière La Chaux
2	From Pointe de Flacq Cemetery to the Fish Landing Station at Palmar	From the mouth of Rivière du Rempart to the boundary between Rivière du Rempart and Flacq Districts	From Anse la Raie Youth Camp to the mouth of Rivière du Rempart	From the mouth of Rivière des Anguilles to the intersection of Pas Géométriques l'Embrasure with Black River Savanne Coast Road	From Pas Géométriques La Cambuse to the mouth of Rivière des Anguilles
3	From Pointe Jérôme Youth Camp to Pas Géométriques La Cambuse	From the Fish Landing Station at Palmar to the mouth of Rivière Sèche	From the boundary between Rivière du Rempart and Flacq Districts to the mouth of River Poste de Flacq	From Pas Géométriques Mon Plaisir to Petit Verger Prisons Grounds	From Pas Géométriques Comtesse de La Marque to the mouth of Petite Rivière Noire
4	From the intersection of Pas Géométriques l'Embrasure with the Black River Savanne Coast Road (B9) to Pas Géométriques Comtesse de La Marque	From the mouth of Petite Rivière Noire to the mouth of Grande Rivière Noire excluding Ilot Fortier	From the mouth of Rivière La Chaux to Pointe Jérôme Youth Camp	-	-
5	From the mouth of Grand Rivière Noire to the mouth of River Tamarin	-	From the mouth of River Tamarin to Pas Géométriques Wolmar	-	-
6	From Pas Géométriques Wolmar to Flic en Flac Public Beach	-	From Flic en Flac Public Beach to Pas Géométriques Mon Plaisir	-	-
	-	-	From Petit Verger Prisons Grounds to the mouth of Grand	-	-

River North West

7

Ilot Fortier

[Amended GNs 109/85; 24/87]

PART II

Rs	Rate of Tax	Zones
6 rupees per square metre.....		A
5 rupees per square metre.....		B
4 rupees per square metre.....		C
3 rupees per square metre.....		D
2 rupees per square metre.....		E
..... [Amended 4/86; 18/99]		

SIXTH SCHEDULE

(section 35(1))

Where the difference between the open market value and the value specified in the deed –	Amount of penalty
(a) does not exceed 50 per cent of the value specified in the deed	Nil
(b) exceeds 50 per cent but does not exceed 100 per cent of the value specified in the deed	20 per cent of additional duty or tax leviable under Parts II to IV and Part VIA of this Act or under the Registration Duty Act.
(c) exceeds 100 per cent of the value specified in the deed or tax	50 per cent of additional duty leviable under Parts II to IV and Part VIA of this Act or under the Registration Duty Act.

[Amended 9/97]

SEVENTH SCHEDULE

(Section 26 A(1))

Rate of tax.....20 per cent
 [Added 9/97]

