

CHAPTER 340
THE PROPERTY TRANSFER TAX ACT

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CHAPTER 340

PROPERTY TRANSFER TAX

Act No.
 12 of 1984
 4 of 1986
 11 of 1987
 28 of 1990
 4 of 1994
 4 of 2002
 3 of 2005

An Act to provide for the charging and collection of a tax based on the value realised from the transfer of certain property in the Republic; and to provide for matters connected with or incidental to the foregoing.

[30th March, 1984

1. (1) This Act may be cited as the Property Transfer Tax Act. Short title and commencement
- (2) This Act shall come into operation on 1st April 2005.
2. (1) In this Act, unless the context otherwise requires- Interpretation
 "Commissioner-General" means the Commissioner-General appointed under section *nineteen* of the Zambia Revenue Authority Act; Cap321
 "immediate family" means a spouse, child, duly adopted child or step-child;

"land" includes any building, structure or other improvement thereon;

"person" includes a partnership;

"property" means-

(a) any land in the Republic;

(b) any share issued by a company incorporated in the Republic;

"realised value" means the value, as calculated in accordance with the provisions of section *five*, of any property liable to tax;

"Registrar" means -

(a) the person appointed as Registrar under section three hundred and sixty-six of the Companies Act; and

(b) the person appointed as Registrar under section three of the Lands and Deeds Registry Act and includes an Assistant Registrar and any person appointed to act in any of such capacities;

"share" includes any stock or any certificate or warrant relating to any share or stock;

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"tax" means the property transfer tax charged under this Act;

"transfer"-

Cap. 185

(a) in relation to land, excludes-

(i) letting or sub-letting;

(ii) leasing, under-leasing or sub-leasing, for a period of less than five years;

(b) in relation to a share, excludes the allocation of the same by the company to the member in whose name it is first registered.

(2) Unless the context otherwise requires, words and expressions not defined in this Act but defined in the Income Tax Act shall, in this Act, have the meaning assigned thereto in the Income Tax Act.

Cap. 323

(As amended by Act No.4 of 2002 and Act No. 3 of 2005)

3. (1) The Commissioner-General shall, subject to the direction of the Minister, be responsible for giving effect to the provisions of this Act, and shall for that purpose have all the powers conferred on the Commissioner-General by the Income Tax Act.

Functions and powers of Commissioner
Cap. 323

(2) The Commissioner-General may, in writing and subject to such conditions as the Commissioner-General may specify, delegate to the Commissioner or to any officer in the Direct Taxes Division any power conferred, or any duty imposed, on the Commissioner-General by this

section.

(As amended by Act No.4 of 2002)

4. (1) Whenever any property is transferred, there shall be charged upon, and collected from, the person transferring such property a property transfer tax in accordance with the provisions of this Act.

Property transfer
tax

(2) The rate of tax shall be two and one-half per centum of the realised value of the property.

(3) For the purpose of establishing the taxable value of transactions, the Commissioner-General may use assessments done by the Government Valuation Department or any other relevant organisation he considers expedient.

(As amended by Act 4 of 1984, 28 of 1990 and No. 4 of 1994)

5. (1) Where the property to be valued is land, the realised value shall be the price at which it could, at the time of its transfer, reasonably have been sold on the open market as determined by the Commissioner-General.

Realised value

(2) Where the property to be valued is a share, the realised value shall be the price at which it could, at the time of its transfer, reasonably have been sold on the open market as determined by the Commissioner-General or its nominal value, whichever is the greater.

(3) Where the Commissioner-General determines that there has been unreasonable delay between the date on which the property is sold and the date on which it is transferred, and that as a result of such delay the value of the property is different at the two dates, the realised value of such property shall be the greater of the two values.

(4) Where a person transfers his property to a member of his immediate family, the realised value of such property shall be the actual price, if any, received therefor by such person.

(5) Where, within a group of companies, a company transfers property to another company (other than a company which is not resident in the Republic) within the same group and the Commissioner-General is satisfied that such transfer was carried out for the purpose of effecting internal organisation of that group, he may determine that such transfer shall have no realised value.

(As amended by Act No.4 of 2002)

6. (1) The following shall be exempt from the provisions of this Act:

Exemptions

- (a) the Government;
- (b) any foreign government;
- (c) such international organisation, foundation or agency as the Minister may approve for the purpose;
- (d) any charitable organisation or trust registered as such under the Income Tax Act; Cap. 323
- (e) any co-operative society registered under the Co-operative Societies Act; Cap. 397
- (f) the various organisations listed in paragraph 5 (1), 5 (2), 5 (2) (a) and 5 (2) (b) of the Second Schedule to the Income Tax Act; Cap. 323
- (g) any transfer of property by a shareholder of a company incorporated under the Companies Act, if such transfer is his contribution towards the equity of that company.

(2) Where property held in trust or constructive trust is transferred to another person to hold in trust or constructive trust for the same beneficiaries, such transfer shall not be liable to tax.

(3) Where property is settled in trust for the benefit of a member of the immediate family of the settler, the transfer of such property to the trustees or the transfer by the trustees to such beneficiary shall not be liable to tax.

(4) Where property devolves upon death, the resulting transfer of such property shall not be liable to tax if the transferee is a member of the immediate family of the deceased; nor shall any intermediate transfer to or by an executor, administrator, personal representative or other person acting in similar capacity be liable to tax if such intermediate transfer is carried out to give effect to such devolution.

(5) The Minister may, by statutory order, exempt from tax any person, transfer or property, or any class thereof.

(As amended by Act No. 11 of 1987)

7. (1) Any transfer of property to a person in his capacity as a liquidator shall not be liable to tax. Liquidators, receivers, trustees in bankruptcy etc.

(2) Where a person in his capacity as a liquidator holds any property belonging to a debtor, any transfer of such property by him to any person other than the debtor shall be liable to tax and the amount of such tax shall be recoverable from the liquidator.

(3) In this section-

"debtor" includes a bankrupt or other person whose property has been placed in the hands of a liquidator for the purpose of settling the affairs or debts of such debtor, and in the case of a company, for the purpose of winding up such company;

"liquidator" includes receiver, trustee in bankruptcy, assignee in bankruptcy or under a deed of arrangement, or any other person acting in a similar capacity.

8. (1) Where a mortgagee transfers any mortgaged property to enforce his rights under a mortgage, the mortgagee shall be deemed to be an agent of the mortgagor and subsection (2) shall apply. Transfer by agents, mortgagees, etc.

(2) Where an agent, attorney, sheriff, or other person acting in the name of the owner or holder of any property transfers such property, the owner or holder of such property and such agent, attorney, sheriff or other person, as the case may be, shall both be jointly and severally liable for tax in respect of such transfer.

(3) In this section "mortgagee" includes any person entitled to security in any property, or to the benefit of a charge, encumbrance or other similar liability over any property, of another, and "mortgage", "mortgagor" and "mortgaged property" shall be construed accordingly.

9. (1) Every person who transfers any property, whether such property was transferred on his own behalf or on behalf of another, shall render a provisional return of tax in such form and giving therein such details of the property and the transaction as may be prescribed by the Commissioner-General. Returns, notices, etc.

(2) The provisional return referred to in subsection (1) shall be submitted-

(a) in the case of land, to the Commissioner of Lands together with the application for consent to transfer such property;

(b) in all other cases, to the Commissioner-General within thirty days of the transfer.

(3) The Commissioner of Lands shall satisfy himself that the details given in the provisional return received by him under sub-section (2) are correct and shall thereafter forward it to the Commissioner-General.

(4) The Registrar shall not register any transfer of property unless he is satisfied that any tax due under this Act in respect of such transfer has been paid.

(5) Without prejudice to the other provisions of this Act, sections

forty-five, forty-six, forty-seven, forty-eight, fifty-seven, fifty-eight, sixty-six, sixty-nine and seventy of the Income Tax Act shall apply, *mutatis mutandis*, in relation to the tax under this Act as they apply in relation to the tax under the Income Tax Act.

Cap. 323
Cap. 323

(6) An assessment shall be made in respect of every person liable to tax under this Act, and sections *sixty-three to sixty-nine* (inclusive) of the Income Tax Act shall apply, *mutatis mutandis*, in relation to the assessments under this Act as they apply in relation to the assessments under the Income Tax Act.

Cap. 323
Cap.323

9A. Subject to the other provisions of this Act, the provisions of Part X of the Income Tax Act relating to offences and penalties shall apply, with necessary changes, to the offences and penalties under this Act.
(As amended by Act No. 11 of 1987)

Penalties under
Income Tax Act to
apply.
Cap. 323

10. Any determination or assessment made under this Act may be objected to or appealed against by the person affected thereby; and without prejudice to the other provisions of this Act, the provisions of Part XI of the Income Tax Act relating to objections and appeals shall apply, *mutatis mutandis*, in relation to objections and appeals under this Act as they apply in relation to objections and appeals under the Income Tax Act.

Objections and
appeals
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Cap323

11. (1) The tax shall become due and payable within fourteen days of the date of issue of the assessment in respect thereof.

Payment of tax and
penalty for late
payment

(2) Where any amount of tax is not paid within the period specified in subsection (1), a penalty equal to five per centum of the unpaid amount shall be charged for each month or part thereof for which the tax remains unpaid; and for the purposes of recovery and collection such penalty shall be deemed to be part of the tax.

(3) (a) Where any amount of tax or penalty due is not paid within the period specified in sub-section (1), such an amount shall attract interest at the rate prescribed in paragraph (b) and shall continue to attract such interest until such date as the payment of the tax has been remitted;

(b) the rate of interest prescribed for the purpose of paragraph (a) shall be the discount rate published from time to time by the Bank of Zambia

plus two per centum per annum.

(As amended by Act No. 4 of 1994)

12. Subject to the provisions of this Act, sections *seventy-nine*, *seventy-nine A*, *seventy-nine B*, *seventy-nine C* and *seventy-nine D* of the Income Tax Act shall apply, *mutatis mutandis*, to the recovery of tax under this Act as they apply to the recovery of tax under the Income Tax Act.

Recovery of tax
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Cap. 323

13. The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act.

Regulations