

LAND DEVELOPMENT DUTY

1

THE LAND DEVELOPMENT DUTY ACT

REGULATIONS
(*under section 31*)

The Land Development Duty Regulations, 1960

L.N. 45/60

THE LAND DEVELOPMENT DUTY ACT

REGULATIONS
(under section 31)

THE LAND DEVELOPMENT DUTY REGULATIONS, 1960

(Made by the Governor in Council under the above section and by virtue of section 9 of the Jamaica (Constitution) Order in Council, 1959 on the 13th day of March, 1960) L.N. 45/60

1. These Regulations may be cited as the Land Development Duty Regulations, 1960. Short title.

2. In these Regulations, "Commissioner" means the Commissioner of Income Tax. Interpretation.

Capital Gains Duty

3.—(1) Any person who sells or agrees to sell the fee simple in any land situated in a special development area shall forthwith notify the Commissioner of such sale or agreement to sell. Notification of sale or agreement to sell.

(2) Any person who, without reasonable cause, fails to comply with the provisions of paragraph (1) shall be guilty of an offence against these Regulations.

4.—(1) The transferor on sale of the fee simple of any land in a special development area shall, within three months of such transfer, make and deliver to the Commissioner in Form A in the Schedule a return of any capital gain arising from such transfer. Return of capital gain; accompanying documents. Form A.

(2) The return required under paragraph (1) shall be accompanied by the instrument by means of which the transfer is effected or agreed to be effected, or reasonable particulars thereof.

5.—(1) Subject to the provisions of paragraph (3), the Commissioner shall proceed to assess the amount of capital gains duty payable by every person as soon as may be after delivery of the return required to be made pursuant to regulation 4. Assessment of duty.

(2) Where a person has delivered a return of capital gains the Commissioner may—

- (a) accept the return and assess the duty accordingly; or
- (b) refuse to accept the return and, according to the best of his judgment, determine the amount at which that person ought to be charged and assess him accordingly.

(3) Where a person has not delivered a return and the Commissioner is of the opinion that that person is liable to pay capital gains duty, he may, according to the best of his judgment, make an assessment upon that person of the amount at which he ought to be charged, but such assessment shall not affect any liability otherwise incurred by that person by reason of his failure or neglect to deliver a return.

Notice of
assessment.

6. The Commissioner shall cause to be served upon each person assessed a notice stating the amount of capital gains assessed and the amount of capital gains duty payable thereon, and informing the person of his right under regulation 18.

Presentation
of
instru-
ment.

7. If the return made pursuant to regulation 4 is not accompanied by the instrument by means of which the transfer is effected or agreed to be effected, the person assessed shall, upon receipt of the notice of assessment, present such instrument to the Commissioner to be noted in accordance with the provisions of regulation 8.

Note to be
made on
instrument
by Com-
missioner.

8.—(1) The Commissioner shall upon receipt of the instrument by means of which the transfer is effected or agreed to be effected, as the case may be, indicate thereon—

- (a) the amount of capital gains duty payable; or
- (b) that no capital gains duty is payable as may be appropriate in the circumstances of the case.

(2) Where the instrument by means of which the transfer is effected or agreed to be effected, as the case may be, is, before completion of the assessment by the Commissioner, required for use by the person submitting such instrument the Commissioner may—

- (a) indicate thereon, if such is the case, that he is satisfied that all particulars have been delivered to him which in his opinion are necessary for the purpose of the assessment of capital gains duty; and
- (b) if he thinks fit, require that security be given to him for the payment of such duty.

(3) Where the consideration for any transfer or proposed transfer takes the form of instalment payments the Commissioner shall determine and fix the amount and time of payment of each instalment of capital gains duty and shall indicate on the instrument the amount and times so fixed.

9. Any duty assessed by the Commissioner on capital gains shall be payable by the transferor to the Commissioner of Stamp Duties who shall, on presentation to him of the instrument by means of which the transfer is effected or agreed to be effected, as the case may be, stamp such instrument pursuant to subsection (3) of section 8 of the Act in accordance with the direction of the Commissioner under regulation 8: Payment of duty.

Provided that no such instrument shall be stamped in accordance with paragraph (2) of regulation 8 unless the Commissioner indicates thereon either that he does not require security for payment of the duty or that the security required by him has been given.

10. Where in accordance with the provisions of subsection (6) of section 8 of the Act, any transferor applies to the Commissioner for a refund to him of duty paid in respect of a transaction which was not subsequently carried into effect, he shall furnish to the Commissioner the particulars set out in Form B in the Schedule and such other information as the Commissioner may require. Refund of duty where transaction abortive.
Form B.

Betterment Charge

11. The return required by subsection (2) of section 13 of the Act to be made by every person liable to pay betterment charge shall be made to the Commissioner in Form C in the Schedule. Return of improved value.
Form C.

12.—(1) Where a person has delivered a return of the improved value of land in a special development area the Commissioner may accept the return and make an assessment accordingly or he may refuse to accept the return and, to the best of his judgment, make an assessment upon that person of the amount at which he ought to be charged. Assessment of betterment charge.

(2) Where a person has not delivered a return and the Commissioner is of the opinion that such person is liable to pay betterment charge, he may, according to the best of his judgment, make an assessment upon such person of the amount at which he ought to be charged, but such assessment shall not affect any liability otherwise incurred by that person by reason of his failure or neglect to deliver a return.

Lists of persons liable for betterment charge.

13.—(1) After completing the assessment of betterment charge payable in respect of any land in a special development area, the Commissioner shall prepare lists of persons liable to pay the charge and such lists shall contain the names and addresses of the persons liable to pay such betterment charge and the amount payable by each person.

Form D.

(2) Subject to paragraph (4) the Commissioner shall forward to the Collector General for collection of betterment charge extracts from the assessment lists in Form D in the Schedule, and such extracts shall contain the names and addresses of every person liable to pay betterment charge together with the amount of the charge payable by each such person.

(3) The production of an extract from the assessment lists shall be sufficient evidence that any person named in such extract is liable to pay the amount of betterment charge specified therein in relation to that person's name, and any document purporting to be such an extract as aforesaid shall be deemed to be such extract until the contrary is proved.

(4) Where any person has appealed to the Revenue Court from any assessment the name of that person shall not be included in any assessment list until the Revenue Court has determined the amount of betterment charge (if any) payable by that person.

Notice of assessment. Form E.

14. The Commissioner shall cause to be served on each person whose name appears on the assessment list, a notice in Form E in the Schedule stating the amount at which he is assessed and the amount of betterment charge payable by him, and informing him of his right under regulation 18.

Payment of betterment charge.

15. Payment of betterment charge shall be made to the Collector of Taxes for the parish in which is payable the property tax on the land to which the charge relates.

Payment in instalments, etc.

16.—(1) Payment of betterment charge may be made in equal annual instalments over a period of five years or may be made in a single payment.

(2) Where payment of betterment charge is made in a single payment within six months from the date when it becomes due and payable there shall be allowed to the person charged with such payment a rebate of a sum equal to five *per centum* of the amount of the charge.

(3) Where payment of betterment charge is being made by annual instalments the following provisions shall have effect in relation thereto—

- (a) the provisions of the Tax Collection Act which permit payment to be made in moieties or quarterly, as the case may be, shall apply with the necessary modifications to each annual payment;
- (b) if any moiety or quarterly instalment as the case may be remains unpaid for a space of thirty days after such moiety or quarterly instalment falls due, the total outstanding amount of the annual payment shall forthwith become due and payable;
- (c) if any annual payment remains unpaid for a period of twelve months after such annual payment falls due, the total outstanding amount of the betterment charge shall forthwith become due and payable;
- (d) the person charged with the payment may at any time pay in one sum the amount of betterment charge which is outstanding at that time and such person shall be allowed a rebate of a sum equal to five *per centum* of any amount paid in advance of the date when it would have become due.

General

17. Where for the purposes of the Act any valuation has been made of land in a special development area notice of valuation in writing shall be given by the Commissioner of Valuations to the person in possession of the land and such notice shall state that any person dissatisfied with the valuation may lodge with the Commissioner of Valuations an objection to the valuation within thirty days after service of the notice of valuation.

Notice of valuation to be given to person in possession.

18. If any person disputes the assessment of capital gains duty or betterment charge he may, by notice of objection in writing, apply to the Commissioner to review and revise the assessment made upon him. Such application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of assessment:

Dispute of duty or charge.

Provided that the Commissioner, upon being satisfied that owing to absence from the Island, sickness, or other reasonable cause, the person disputing the assessment was prevented from making the application within such period, may extend the period as may be reasonable in the circumstances.

Particulars of objection to assessment.

19.—(1) On receipt of the notice of objection the Commissioner may require the person giving the notice to furnish such particulars as the Commissioner may think relevant to the assessment of capital gains duty or betterment charge, as the case may be, and to produce all books and other documents in his custody or under his control relating thereto and the Commissioner may by notice summon any person whom he thinks able to give evidence respecting the assessment to attend before him and may examine such person upon oath or otherwise.

(2) Any person who without lawful excuse refuses or neglects to attend or to give evidence in pursuance of a notice served on him under paragraph (1), or to produce any books or documents which he is required to produce under the said paragraph, or who refuses to answer any lawful question touching the matters under consideration, or who knowingly gives any false evidence before the Commissioner, shall be guilty of an offence against these Regulations.

Agreed assessment.

20.—(1) Where a person who has objected to an assessment made upon him agrees with the Commissioner as to the amount at which he is liable to be assessed, the assessment shall be amended accordingly. In any other event the Commissioner shall give notice in writing to the person of his decision in respect of the objection.

(2) Where no valid objection to an assessment has been lodged within the time limited by these Regulations or where the amount at which a person is liable to be assessed has been agreed upon under paragraph (1), or where the assessment has been determined on objection or appeal, such assessment as made or agreed to or determined on objection or appeal, as the case may be, shall be final and conclusive as regards the amount thereof:

Provided that nothing herein contained shall prevent the Commissioner from making any refund under the provisions of regulation 21 or any assessment which does not involve re-opening any matter which has been determined on objection or appeal.

Refund of excess duty or charge.

21.—(1) If it be proved to the satisfaction of the Commissioner that any person has paid capital gains duty or betterment charge, as the case may be, in excess of the amount with which he is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded and the Commissioner shall make the refund accordingly and in the case of capital gains duty shall note the amount of such refund on the instrument which had been stamped in relation to that capital gains duty.

(2) Any claim for repayment under this regulation shall, in the case of capital gains duty, be made within six years of the date on which the duty first became due, and in the case of betterment charge, within six years from the end of the valuation period to which the charge relates.

(3) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any assessment made upon a person who has failed or neglected to deliver a return, unless it is proved to the satisfaction of the Commissioner that such failure or neglect did not proceed from any fraud or wilful act or omission on the part of such person.

(4) Any person who objects to the amount of any refund made by the Commissioner may appeal to the Revenue Court in the same manner as an appeal may be made against an assessment.

22. Save as is otherwise provided in regulation 17, where in any regulation notice in writing is required to be served upon any person the provisions of section 26 of the Act shall apply to the giving and service of such notice. Notices.

23.—(1) Any person guilty of an offence against these Regulations shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty dollars or to imprisonment with hard labour for a term not exceeding three months. Penalty for offences.

(2) Where a company is guilty of an offence against these Regulations every director, manager, agent and officer of the company in this Island who is knowingly a party to such offence shall be liable to the penalties specified in paragraph (1).

THE LAND DEVELOPMENT DUTY REGULATIONS, 1960

SCHEDULE

C.G. 2

FORM A

(Regulation 4(1))

THE LAND DEVELOPMENT DUTY ACT

Capital Gains Duty

Valuation period the day of 19
to the day of 19

Return of Capital Gains

In pursuance of the provisions of the Land Development Duty Act, you are required to make on this form a true and correct return of the capital gain realised by you on the transfer on sale of the fee simple of land in the special development area of.....during the valuation period referred to above.

Dated this.....day of.....19.....

Commissioner of Income Tax,
Income Tax Department,
Kingston.

NOTE: The instrument by means of which the transfer was effected, or agreed to be effected, should be attached to this form and sent along therewith. Where such instrument is not available at the time of submission of this return reasonable particulars thereof should be furnished.

Statement of Capital Gain

Location of property ... { Name of development area.
Situation of property.
Date of transfer.

Gross value of consideration	\$
<i>Less</i>				
Value of growing crops, etc., deductible by virtue of section 21 (1) (a)	\$
				\$
Net value of consideration	\$
<i>Less</i>				
(a) Improved value of the land at the specified base date	...	\$		
(b) Any expenditure on the land of a capital nature subsequent to the specified base date	...	\$		
(c) Legal expenses, etc.	...	\$		\$
				\$
Capital gain	...			\$

THE LAND DEVELOPMENT DUTY REGULATIONS, 1960

B.C. 2

FORM C

(Regulation 11)

THE LAND DEVELOPMENT DUTY ACT

BETTERMENT CHARGE

DEVELOPMENT DATE.....

Valuation period the day of 19
to the day of 19



Return of Betterment

In pursuance of the provisions of the Land Development Duty Act, you are required to make on this form a true and correct return of the amount on which betterment charge is due and payable in respect of each parcel of land in your possession on the development date referred to above in the special development area of.....and in respect of the valuation period the day of

19 to the day of 19

Dated this.....day of.....19.....

Commissioner of Income Tax, Kingston.

NOTE: If you have already made your return for this valuation period please give the following particulars—

- (a) location of property in respect of which return was made;
(b) business or other address from which return was made;
(c) date on which return was made.

(The rest of the form need not then be completed).

Statement of Betterment

Location of property

{ Improved value of land at development date \$

Less:

- (a) Improved value of land at specified base date

OR

Value of consideration if land purchased by you subsequent to specified base date	...	\$	
(b) Capital expenditure incurred subsequent to specified base date or purchase	...	\$	
		<hr/>	<hr/>
		\$	\$
Amount on which betterment charge is assessed			<hr/>
			\$
			<hr/>

NOTE: If you were in possession jointly with any other person or persons on the development date under reference kindly state the name and address of such person or persons in the space provided hereunder—

Name.....

Address.....

Name.....

Address.....

Name.....

Address.....

DECLARATION WHICH MUST BE COMPLETED AND SIGNED

I declare that, to the best of my judgment and belief, in the foregoing statement—

- (a) I have given a full, just and true return and particulars of the whole of the amount on which betterment charge is due and payable under this Act according to the directions and regulations of the said Act; and
- (b) all statements and declarations are true and correct.

Given under my hand this day of 19 .

.....Signature
Business Address

Private Address

If absent from the Island state the name and address of an agent residing in the Island.

Name of agent.....
 Address of agent.....

OBJECTIONS TO ASSESSMENTS

If you dispute this assessment or any part thereof you may apply to the Commissioner of Income Tax by notice of objection in writing to review and to revise the assessment. Such notice must state precisely the grounds of your objection to the assessment and *must be made within thirty days from the date of the service of this notice* upon you.

The Commissioner may, notwithstanding the lapse of the above period of thirty days, extend such period for such time as may be reasonable in the circumstances, if it is shown to his satisfaction that owing to absence from the Island, sickness or other reasonable cause you were prevented from making the objection within the aforesaid period of thirty days.

APPEALS

Any person who has disputed his assessment by notice of objection and is dissatisfied with the decision of the Commissioner thereon, may give to the Registrar of the Revenue Court, written notice of his intention to appeal against such decision.

Notice of appeal must be given *within thirty days* of the date of receiving the Commissioner's decision, and a copy of such notice must also be served upon the Commissioner.

The total betterment charge on any notice of assessment must be paid to the Collector of Taxes within the time stipulated by Regulations made under the Act.

No further demand for payment will be made.

Income Tax Department,
Kingston.

Date.....

Commissioner of Income Tax