

CHAPTER 236

THE LAND SALES DUTY ACT

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LAND SALES DUTY

(30th April, 1965.)

13/1964.
9/1969.
23/1976.

Part I — Preliminary

1. This Act may be cited as the Land Sales Duty Act. **Short title.**
2. (1) In this Act unless the context otherwise **Interpretation.**
requires—

"Appeal Board" means the persons appointed by the Governor-General to be the Appeal Board for the purposes of this Act;

"Commissioner" means the person for the time being performing the duties of Commissioner of Inland Revenue and includes any officer duly authorised to act on his behalf;

"concession" means every relief in respect of customs duties, income tax or any kind of tax whatsoever granted by Government to persons to encourage the expenditure of monies upon the construction or equipment of hotels in Antigua and Barbuda or upon the development of land used in connection with any industry or enterprise;

"fee simple" means an estate in fee simple in possession and also the estate of a Registered Proprietor under the Title by Registration Act: **Cap. 429.**

Provided that for the purpose of determining the value of any land or for determining the value of any consideration for the transfer of land, the expression "fee simple" shall be deemed to mean the estate of a Registered Proprietor of any land held under the Title by Registration Act or the estate in fee simple in possession in any land free from any lesser estate or interests therein or any encumbrances thereon and free also from any restrictive covenants other than restrictive covenants created by a Crown Grant or by law;

"fair value" means in relation to land, the amount which the land, if sold in the open market by a willing seller, might be expected to realise if offered for sale on such reasonable terms and conditions existing at the time as a bona *fide* seller would require;

"land" includes all tenements and hereditaments and also all messuages, houses, buildings or other construction whether the property of any corporation, or of any private individual, and all trees growing or standing thereon;

"special development area" means an area deemed by section 3 to be a special development area;

"transfer" includes conveyance and memorandum of transfer under the Title by Registration Act;

"transferor" includes all joint owners who join in a transfer but does not include any persons who join in the execution of the instrument by which the transfer is effected, or agreed to be effected, for the purpose only of conveying any estate vested in them as trustees or encumbrancers, or of acknowledging the receipt of the consideration money, or of giving consent.

(2) For the purposes of this Act the expression "the date of the grant of the concession" in relation to any special development area or part thereof means, the date of the grant of a concession by Government to the owner with respect to that special development area or part thereof, and in the case of more than one concession with respect to any particular area of land, the date of the grant of the first concession.

Application.

3. (1) Subject to the provisions of subsection (2) of this section all land in Antigua and Barbuda belonging to persons who have received, or to persons who after the commencement of this Act receive, the benefit of concessions

by Government in respect of either the development of such land or the establishment of any facilities on such lands to be used in connection with any industry or enterprise shall be deemed to be a special development area for the purposes of this Act.

(2) The Governor-General may by order—

(a) declare that the provisions of this Act shall not apply in relation to any special development area;

(b) declare that the provisions of this Act shall no longer apply in relation to any special development area.

4. The Minister shall cause to be published in the *Gazette* from time to time lists of properties comprised in special development areas in Antigua and Barbuda containing a short description of each area, the person or persons to whom a concession has been granted by the Government and the date of the grant of the concession in each case. **Gazette notice.**

5. The administration of this Act is vested in the Commissioner. **Administration.**

Part II — Duty on Sales of Land

6. (1) Subject to the provisions of this Part of this Act there shall be charged, levied and paid on the capital gains arising on any occasion specified in subsection (2) of this section a duty called special land sales duty at the rate specified in accordance with subsection (3) of this section. **Imposition of duty on capital gains.**

(2) Subsection (1) of this section shall apply on the occasion of every transfer on sale of the fee simple of any land subject to this Act at any time while it is subject to the provisions of this Act.

(3) Subject to the provisions of subsection (4) of this section the Governor-General may from time to time by order, having regard to the value of the concessions made in respect of any special development area, determine the percentage not exceeding twenty-five per centum chargeable under this Act as special land sales duty.

(4) No order under this section shall come into force unless it is approved by resolution of the Legislature.

Ascertainment of capital gains.

7. For the purpose of this Part of this Act, the capital gain made by any person on sale of the fee simple of land in a special development area shall be deemed to be the amount (if any) by which the value of the consideration for the transfer of land exceeds the sum of—

(a) the fair value of the land at the date of the grant of the concession by Government in respect thereof; and

(b) any expenditure of a capital nature on the land by the transferor or his predecessor in title subsequent to the date of the grant of the concession by Government; and

(c) an amount equivalent to five per centum of the value of the consideration.

Reduction of special land sales duty on payment of income tax.
Cap. 212.

8. Where a person who has paid special land sales duty on the sale of land subject to this Act is liable under the Income Tax Act to pay income tax in respect of profit or gains made on the sale of such land the amount paid by such person as special land sales duty shall for the purpose of section 10 of the Income Tax Act be regarded as an expense wholly and exclusively incurred by such person for the purpose of acquiring such profit or gain during the year in which the special land sales duty is paid.

Collection of duty.

9. (1) On any transfer on sale of the fee simple of any land subject to this Act special land sales duty shall be assessed by the Commissioner and paid by the transferor to the Commissioner.

(2) It shall be the duty of the transferor on the occasion of any transfer on sale of the fee simple of land subject to this Act to present to the Commissioner within three months of such transfer the instrument by means of which the transfer is effected or agreed to be effected or reasonable particulars thereof for the purpose of the assessment of duty thereon.

(3) Any such instrument shall not for the purposes of the Stamp Act, notwithstanding anything in that Act, be deemed to be duly stamped unless it is stamped by the Commissioner either— Cap. 410.

(a) with a stamp denoting that the special land sales duty has been assessed by the Commissioner and paid in accordance with the assessment; or

(b) with a stamp denoting that all particulars have been delivered to him which in his opinion are necessary for the purpose of enabling him to assess the duty and that security has been given for the payment of duty in any case where he has required security; or

(c) with a stamp denoting that upon the occasion in question no duty is payable,

but where a document is so stamped, it shall, notwithstanding any objection relating to the special land sales duty be deemed to be duly stamped so far as respects that duty.

(4) Any duty assessed by the Commissioner under this section shall be a debt due to the Government from the transferor of the land and may be sued for and recovered in the High Court or in the Magistrate's Court, as the circumstances of the case may require, by the Commissioner or by a person acting on the Commissioner's instruction with costs of suit from the person charged therewith as a debt due to the Government.

(5) Where joint owners join in transferring any land the Commissioner may proceed against all or any of them.

(6) In any case where special land sales duty shall have been paid under the provisions of this section, but the transaction in respect of which the duty shall have been paid was subsequently not carried into execution, the duty shall be returned to the transferor on his making application to the Commissioner within two years after the payment of the duty in accordance with the regulations made under this Act.

(7) Where any agreement for a transfer is stamped in accordance with this section it shall not be necessary, for the purposes of this Act, to stamp any conveyance or assign-

ment made subsequently to and in conformity with the agreement but the Commissioner shall, if application is made to him for the purpose, denote on the conveyance or assignment the amount of duty paid.

(8) If the transferor fails, without reasonable excuse, to comply with the provisions of this section, he shall be liable on summary conviction before a Magistrate to a fine not exceeding twenty thousand dollars and treble the amount of land sales duty with which he ought to be charged under this Act, or to imprisonment, with or without hard labour, for a term not exceeding twelve months.

(9) Where a company is guilty of a contravention of the provisions of this section, every director, manager, agent, and officer of the company in Antigua and Barbuda who is knowingly a party to the contravention shall be liable to the penalties specified in subsection (8) of this section.

Part III — Appeals

Appeals.

10. (1) Except as expressly provided in this Act, any person aggrieved by a decision of the Commissioner may appeal to the Appeal Board constituted as provided in section 11 of this Act within such time and in such manner as may be provided by rules made under section 21 of this Act against—

(a) the amount of any assessment of special land sales duty under this Act; or

(b) a refusal of the Commissioner to make any allowance or to make any allowance claimed where the Commissioner has power to make such an allowance under this Act; or

(c) any apportionment of special land sales duty or apportionment of any values or any consideration on any transfer made by the Commissioner under this Act; or

(d) the determination of any other matter which the Commissioner is to determine or may determine under this Act.

(2) Upon the hearing of an appeal, the Appeal Board after hearing the person aggrieved and the Commissioner, and any evidence which may be adduced by the person aggrieved and the Commissioner, or by either of them, may affirm, reverse or vary the decision appealed against in such manner as they think just and may make such order as to the costs of the appeal, not exceeding in any case one hundred dollars, as they think just.

(3) The decision of the Appeal Board upon any appeal before them shall be that of the majority of the members present; but if no such majority decision is reached, the decision of the chairman shall prevail.

(4) The Appeal Board shall hear all appeals in camera.

(5) The person aggrieved or the Commissioner may be represented before the Appeal Board by counsel, solicitor or agent.

(6) The onus of proving that any assessment appealed against is excessive shall be on the person aggrieved.

(7) Evidence shall be given on oath and the proceedings before the Appeal Board shall be deemed to be judicial proceedings for the purposes of the Perjury Act.

Cap. 324.

(8) The Appeal Board may in any appeal give such directions and regulate its procedure in such manner, as they may think just.

11. (1) The Appeal Board shall consist of such persons as shall be appointed by the Governor-General and such persons shall hold office for such period as the Governor-General may think fit.

Constitution of Appeal Board.

(2) The Appeal Board shall meet as often as circumstances may require. Three members shall form a quorum.

(3) The Appeal Board shall appoint one of the members to be chairman and every decision of the Appeal Board shall be signified under the hand of the chairman.

(4) The Governor-General shall appoint some person to be secretary to the Appeal Board and all notices and documents other than decisions of the Appeal Board may be signified under the hand of the secretary.

Power of Appeal Board.

12. (1) The Appeal Board may, by not less than fourteen days notice in writing, require any person to attend before the Appeal Board and give evidence with respect to any transaction or thing which affects or is connected with any question to be determined by the Appeal Board and to produce all books and other documents in his custody or under his control relating to such transaction or thing.

(2) Any person who without lawful excuse refuses or neglects to attend or to give evidence in pursuance of such notice, or to produce such books, or other documents, or who refuses to answer any lawful question touching the matters under consideration, or who knowingly or wilfully gives any false evidence before the Appeal Board shall be guilty of an offence against this Act.

Appeal to Judge in Chambers.

13. (1) If either the Commissioner or the person aggrieved is dissatisfied with the decision of the Appeal Board upon the determination of any appeal before them, he may, within thirty days after the decision, appeal against such decision by summons to a Judge in Chambers.

(2) Written notice of such appeal shall be given to the secretary of the Appeal Board within the period specified in subsection (1) of this section and the party appealing shall within such time pay to the Appeal Board the sum of six dollars to cover the cost of preparing a statement of the case setting forth the facts and the determination of the appeal.

Special land sales duty to be paid pending further appeal.

14. Notwithstanding that any notice of appeal to a Judge in Chambers against any decision of the Appeal Board has been given and notwithstanding any other provision of this Act special land sales duty shall be paid in accordance with the decision of the Appeal Board until the Judge in Chambers before whom the appeal is heard, shall otherwise order.

15. On appeal to the Judge in Chambers the following provisions shall have effect—

Provisions relating to appeals to Judge in Chambers.

(a) fourteen clear days notice shall, unless rules made hereunder otherwise provide, be given to the person aggrieved and to the Commissioner of the date fixed for the hearing of the appeal;

(b) the onus of proving that the assessment complained of is excessive shall be on the person aggrieved;

(c) all appeals shall be heard in camera, unless the Judge, on the application of the person aggrieved, otherwise directs;

(d) the costs of the appeal shall be in the discretion of the Judge hearing the appeal and shall be a sum fixed by the Judge;

(e) the decision of the Judge hearing the appeal shall be final;

(f) the Chief Justice may make rules governing such appeals:

Provided that until varied or revoked by rules made under this paragraph the rules contained in the Schedule to this Act shall be in force.

Schedule.

Part IV — General

16. (1) Where the value of any consideration for a transfer is to be determined for the purpose of this Act, that value shall, so far as the consideration consists of the payment of a capital sum, be taken to be the amount of that capital sum, and so far as the consideration consists of a periodical money payment, be taken to be such sum as appears to the Commissioner to be the capital value of that payment.

Determination of value of consideration.

(2) If the Commissioner is satisfied that any covenant or undertaking or liability to discharge any encumbrance has formed part of the consideration the Commissioner shall regard, or, as the case may be, allow such sum as he thinks just in respect thereof as an addition to the value of the consideration.

(3) Where it is necessary for the purposes of this Act to apportion any values or any consideration as between properties or between parts of properties, such values or such consideration shall be apportioned by the Commissioner in such manner as he may determine.

Duty of person served with notice to make return, to attend before Commissioner and to produce documents.

17. (1) Every person, whether or not he is liable to pay special land sales duty, upon whom the Commissioner may cause a notice to be served requiring him to make and deliver a return of such particulars as may be specified in the notice shall, within fifteen days of the service of such notice make and deliver to the Commissioner a return as aforesaid.

(2) The Commissioner may by not less than fourteen days notice in writing personally signed by the Commissioner require any person to attend before him and give evidence with respect to any transaction in relation to land in a special development area.

(3) If any person on whom a notice has been served under this section fails, without reasonable excuse, to comply with the requirements of the notice, he shall be guilty of an offence against this Act.

Penalty for offences for which no specific penalty otherwise provided.

18. Any person guilty of an offence against this Act for which no specific penalty is provided in this Act shall be liable on summary conviction before a Magistrate to a fine not exceeding five thousand dollars and in default of payment to imprisonment with or without hard labour for a term not exceeding six months.

Proceedings.

19. Any proceedings for offences under this Act may be taken in the name of the Commissioner or the Commissioner of Police.

Power to remit duty.

20. If the Governor-General is satisfied that it would be just and equitable to do so, he may remit the whole or any part of the special land sales duty payable by any person.

Rules.

21. The Governor-General may make Rules in regard to—

(a) methods and procedure to be adopted for denoting documents in relation to special land sales duty;

(b) all forms which he may deem desirable in connection with special land sales duty;

(c) the time within which appeals to the Appeal Board under section 10 of this Act should be made and the procedure to be adopted in relation to such appeals.

22. The Governor-General may, by order, exempt from all or any of the provisions of this Act such categories of persons or categories of lands as he may deem fit.

Power to exempt categories of persons or categories of lands.

SCHEDULE

(Section 15)

1. These Rules may be cited as the Special Land Sales Duty (Appeals) Rules.

2. In these Rules "the Act" means the Land Sales Duty Act, "Appeal Board" has the same meaning as is assigned to that expression by the Act, and "Registry" means the Registry of the High Court.

3. (1) Every summons under section 13 of the Act shall be prepared by the appellant or his solicitor, and shall be sealed in the office of the Registrar, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the office of the Registrar a copy thereof, which shall be filed and stamped in the prescribed manner. The summons shall contain an address for service.

(2) The grounds of appeal shall be filed by the person obtaining the summons at the time of the issue of the summons and shall contain—

(a) a concise statement of the facts on which the appellant relies in support of his appeal; and

(b) the points of law, if any, on which the appellant intends to rely in support of his appeal.

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4. The summons together with a copy of the grounds of appeal shall be served by or on behalf of the person obtaining the summons on the Commissioner (if he is not the appellant) and upon the respondent if the Commissioner is the appellant and also upon the secretary of the Appeal Board not less than twenty-eight clear days before the date fixed for the hearing of the appeal.

5. Within twenty-one days of the service on him of the summons and grounds of appeal the secretary of the Appeal Board shall—

(a) file in the Registry the statement of the case setting forth the facts and the determination of the Appeal Board; and

(b) serve a copy of such statement on the parties to the appeal.

6. (1) The parties to an appeal shall be entitled to tender evidence orally and by affidavit at the hearing of the appeal.

(2) Notice of intention to tender oral evidence shall be filed in the Registry and a copy of such notice shall be served on the opposite party at least seven days before the date fixed for the hearing of the appeal.

(3) The notice of intention to tender oral evidence shall state the nature of the evidence to be tendered.

(4) Except with the leave of the Judge affidavits containing evidence to be used at the hearing shall be filed in the Registry and copies thereof served on the opposite party not less than five days before the date fixed for the hearing of the appeal:

Provided that counter-affidavits for the purpose of rebutting evidence contained in previous affidavits filed by the opposite party may be filed in the Registry and copies thereof served on the opposite party not less than two days before the date fixed for the hearing of the appeal.

(5) Either party may, by notice in writing served upon the opposite party not less than two days before the date fixed for the hearing of the appeal, require the attendance at the hearing, for the purpose of cross-examination, of the deponent to any affidavit intended to be used by the opposite party. A notice requiring the attendance of a deponent to a counter-affidavit filed in accordance with the proviso to paragraph (4) of this rule may be served on the day before the date fixed for the hearing.

7. The Judge may give leave to amend the grounds of appeal or the statement of reasons.

8. All summonses and other documents required to be served by these Rules on the Commissioner or on the respondent if the Commissioner is the appellant shall be sufficiently served if left at the address for service contained in the summons with any person resident at or belonging to such place before the hour of four in the afternoon, except on Saturdays when it shall be effected before the hour of one in the afternoon. Service effected after four in the afternoon on any week day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

9. Save as aforesaid the procedure and practice for the time being of the High Court so far as applicable shall be followed.
