

THE TRANSFER TAX ACT
ARRANGEMENT OF SECTIONS

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SCHEDULE

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THE TRANSFER TAX ACT

[4th August, 1971.]

Acts
 7 of 1971,
 50 of 1973,
 44 of 1974,
 12 of 1975,
 12 of 1985
 Sch.,
 19 of 1988,
 8 of 1994,
 20 of 1999
 S. 3.
 28 of 2003
 S. 2.
 13 of 2013
 Sch.,
 32 of 2013
 Sch.

Part I. *Preliminary*

1. This Act may be cited as the Transfer Tax Act.

Short title.

2.—(1) In this Act—

Interpre-
tion.

“capital sum” means any money or money’s worth except in so far as it—

- (a) shall be treated under section 34 of the Income Tax Act, as a distribution body corporate; or
- (b) shall be charged under the provisions, other than section 34 of the Income Tax Act, to income tax as income, or be taken into account as a receipt in computing income, gains, profits or losses under those provisions; or
- (c) would be charged, or taken into account, as aforesaid but for any enactment by virtue of which income, gains or profits are exempted from being so charged or taken into account,

so, however, that the foregoing exception shall not be construed as inclusive of any money or money’s worth which is taken into account in the making of a balancing charge under Part I or II of the First Schedule to the said Act;

“class”, in relation to shares or securities, means a class of shares or securities of any one company;

12/1985
Sch.
L.N.
165/1999.

“Commissioner” means the Commissioner of Taxpayer Audit and Assessment appointed under section 11E of the Revenue Administration Act;

L.N.
8B/2002.

“Commissioner of Taxpayer Appeals” means the Commissioner of Taxpayer Appeals appointed under section 11B of the Revenue Administration Act;

“company” means any body incorporated under the law of Jamaica or any unincorporated association registered under the law of Jamaica, other than a partnership, and, for the purposes of paragraphs (e) to (i) (inclusive) of subsection (3) of section 4, includes any body incorporated, or unincorporated association registered, under the law of any other country;

“control”, in relation to any company, shall have the meaning assigned to that expression, in relation to a body corporate in the Income Tax Act;

“deed of arrangement” has the meaning assigned thereto by section 2 of the Bankruptcy Act;

“debentures” means, save to such extent as may otherwise be prescribed by regulations under this Act, any debentures, debenture stock or bonds of a company, whether constituting a charge on the assets of the company or not;

“land” includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and messuages, houses, buildings and other constructions, also an undivided share in land, but does not include land outside Jamaica;

“lease” includes an underlease, sublease, tenancy or licence, and any agreement for a lease, underlease, sublease, tenancy or licence, and “rent” shall be construed accordingly;

“legatee” includes any person taking under a devise or other testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as a trustee, and a *donatio mortis causa* shall be treated as a testamentary disposition and

shall not be treated as a gift;

“market value”, in relation to any property, means (except as otherwise provided by this Act or any regulations thereunder) the price which such property might reasonably be expected to fetch on a sale in the open market;

“Minister” means the Minister responsible for finance;

“property” means property in any of the classes to which section 3 applies by virtue of the provisions of subsection (4) thereof;

“registered charitable organization” has the meaning given to it under the Charities Act; 32/2013
Sch.

“relative”, as respects any person, means his or her husband or wife, or brother, sister, uncle, aunt, nephew, niece or lineal ancestor or descendant (the step-child, adopted child or illegitimate child of any person being taken into account as a relative or to trace a relationship in the same way as that person’s child);

“securities” means securities of a company, and includes any shares therein, debentures, and rights or interests in, to or over any securities, but does not include bonds or other securities but does not include bonds or other securities issued by the Government of Jamaica;

“settled property” means any property held in trust, other than property in relation to which subsection (2) of section 3 applies;

“shares” includes stock, and members’ interests in any company without share capital, but references in this Act to shares (as hereinbefore defined) shall be construed with such exceptions or other qualifications, to such extent, as may be prescribed;

“tax” means tax imposed by this Act;

“transfer” means any legal or equitable transfer by way of sale, gift, exchange, grant, assignment, surrender, release, or other disposal, and includes a transfer by or at the

order or direction of a court of competent jurisdiction or by way of compulsory acquisition and “transferor”, in relation to such a transfer of property, means the person from whom the property is so transferred;

“year of assessment” shall have the meaning assigned thereto by subsection (1) of section 2 of the Income Tax Act.

(2) Any reference in this Act to a person connected with another shall be construed in accordance with subsection (3) of section 4.

(3) For the purposes of this Act—

(a) references to a disposal of property (whether they be made by mention of a transfer of property or otherwise) include, except where the context otherwise requires, references to a part disposal of property;

(b) there is a part disposal of property where an interest or right in or over the property is created by the disposal, as well as where it subsists before the disposal, and generally, there is a part disposal of property (hereafter referred to in this paragraph as “the original property”) where, on a person making a disposal, any description of property derived from the original property remains undisposed of.

PART II. TAX IMPOSED ON TRANSFERORS

3.—(1) Subject to and in conformity with the provisions of this Act, tax shall be charged at the rate of seven and one-half *per centum* of the amount or value of such money or money’s worth as is, or may be treated under this Act as being, the consideration for each transfer after the 3rd day of April, 1984, of any property; and tax charged in respect of any such transfer shall be borne by the transferor.

Imposition of
tax on
transferors.
12/1975
S. 2.
19/1988
S. 2(a),(b).

(2) In relation to any property held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee (or for two or more persons who are so entitled in possession, whether as joint tenants or tenants in common), or as a trustee or assignee in bankruptcy or under a deed of arrangement, or as liquidator for any company, this Act shall apply as if the property were vested in, and the acts of the nominee, trustee, assignee or liquidator in relation to the property were the acts of, the person or persons for whom he is the nominee or trustee or who is the bankrupt, debtor or company, as the case may be (transfers between that person or persons and the holder of the said property in his aforementioned capacity being disregarded accordingly); and, for the purposes of this subsection, no person shall be deemed to be entitled otherwise than as aforesaid by reason only of his entitlement as against the trustee being subject to the satisfaction of any outstanding charge, lien or other right of the trustee to resort to the property for payment of duty, taxes, costs or other outgoings.

(3) For the purposes of this Act, and subject to section 8, and to any other provisions of this Act having effect as exceptions (in so far as applicable), where property—

- (a) is owned by any person and he derives therefrom any capital sum in return, or by way of consideration, from any other person for forfeiture or surrender of rights, or for refraining from the exercise of rights, or for use or exploitation of any such property, then, there shall be deemed to be a transfer of property by such owner to that other person;
- (b) is subject to any description of right or restriction, other than an option, and the person entitled to enforce it receives for its extinction or abrogation any capital sum, such extinction or abrogation shall be treated as a transfer of property by that person

to the person entitled to the property such right or restriction, as the case may be, notwithstanding that no property be acquired by him, but nothing provided in this subsection shall be construed to prejudice the generality of any provisions of this Act.

(4) This section applies to property in any of the following classes—

- (a) land;
- (b) a lease of land;
- (c) securities;
- (d) beneficial interests under any settlement of—
 - (i) property in any class mentioned in paragraph (a), (b) or (c);
 - (ii) beneficial interests derived by way of settlement from property in any such class, whether through one or more settlements,

and, without prejudice to the generality of any provisions of this Act, reference in any preceding paragraph of this subsection to any class of property includes reference to any class of right or interest created by way of the part disposal of property in any class referred to in that paragraph, and to any class of option as respects any such property transferable upon the exercise thereof.

Assessment
of con-
sideration
at market
value of
property.

4.—(1) Subject to the provisions and for the purposes of this Act, the transfer of property shall be deemed to be for a consideration equal to the market value of the property where the transferee acquires such property—

- (a) otherwise than by way of a bargain made at arm's length and in particular where he acquires it by way of gift;
- (b) wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration

for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another.

(2) Without prejudice to the generality of subsection (1), a transferee shall be deemed to acquire property as mentioned in paragraph (a) thereof—

- (a) in the case of a transfer after the 17th November, 1970, where the transferer to him of such property is connected with him; and
- (b) in the case of a transfer after the 7th day of November, 1988, where in the opinion of the Commissioner the amount or value of the consideration is substantially less than the market value of the property.

(3) For the purposes of this Act the following persons shall be treated as being connected with a given person ("A") and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) A's relatives;
- (b) the husband or wife of any relative of A;
- (c) (i) A's partners;
(ii) any relative of any of them,
except in relation to transfers pursuant to *bona fide* transactions, being transfers of property belonging to the partnership;
- (d) where A is a trustee of a settlement (other than a settlement where the sole trustee is a trust corporation for the purposes of the Judicature (Trust Corporations) Act, or all the trustees are such corporations, and none of the beneficiaries is connected with a settlor of the settlement or with a person connected with a settlor, or would be so connected if he were the sole beneficial owner of the property comprised in the settlement)—

- (i) any settlor of the settlement;
- (ii) any person connected with a settlor of the settlement;
- (e) any person acting together with A to secure or exercise control of a company;
- (f) any person acting on the directions of A to secure or exercise control of a company;
- (g) companies of which A has control;
- (h) companies of which A and persons connected with him together have control;
- (i) where A is a company (and without prejudice to the application of any of the preceding paragraphs where A is a company)—
 - (i) companies under the control of the same person who has control of A;
 - (ii) companies under the control of persons (other than individuals) connected with the person who has control of A;
 - (iii) companies under the control of the following persons, namely a person who has control of A and persons (other than individuals) connected with that person;
 - (iv) companies under the control of a group of two or more persons which has the same membership as a group having control of A or could be so regarded by treating a member of either group as replaced by a person with whom he is connected.

(4) Except in relation to the transfer of property in satisfaction of debts on securities, property transferred in satisfaction of a debt shall not be treated as transferred for consideration exceeding its market value at the time of such transfer.

Transfer
on death.
12/1975
S. 5(a).

5.—(1) On the death of any individual after the 31st day of May, 1974, all property of which he was, at his death, competent to dispose shall, for the purposes of taxation

in conformity with subsections (2) and (3) of section 12, be deemed to be, for a consideration equal to its market value at the date of his death, transferred by him at the date of his death to the persons to whom such property passes on his death.

(1A) In subsection (1), "property" includes, in relation to any individual dying domiciled in Jamaica, immovable property outside Jamaica and any other property to which section 3 would apply (pursuant to subsection (4) thereof) if the definition of "company" in section 2 had effect generally for the purposes of this Act as for the purposes of subsection (3) of section 4 but without reference to unincorporated associations. ^{12/1975}
S. 5(a).

(2) No tax shall be payable in respect of the transfer of property by any personal representative to a person as legatee in the course of administration of the deceased's estate.

(3) In relation to any property forming part of the deceased's estate, the personal representatives shall be treated for the purposes of this Act as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives).

(4) Property held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death, after the 31st day of May, 1974, of the bankrupt or debtor shall for purposes of this Act, other than the purposes specified in subsection (1), be regarded as held by a personal representative of the deceased; and subsection (2) of section 3 shall not apply in relation to the trust or assignment, as the case may be, after the death. ^{12/1975}
S. 5(b).

(5) Property vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall, for the purposes of this Act, be deemed to be vested in a personal representative of the deceased, and so much of subsection (2) of section

3 as relates to such a trustee, and to such a bankrupt or debtor, shall not apply.

Settlements. **6.**—(1) In relation to settled property, the trustees of the settlement shall, for the purposes of this Act, be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees).

(2) Any disposal of property by way of settlement, whether revocable or irrevocable, is a transfer to the trustees of the settlement, for the purposes aforesaid, of all property thereby becoming settled property notwithstanding that the settlor has some interest as beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.

(3) On the occasion when a person becomes absolutely entitled to settled property as against the trustee, all the property comprised of the settled property to which he becomes so entitled shall be deemed to have been transferred by the trustee, and immediately re-acquired by him in his capacity as a trustee within subsection (2) of section 3, for a consideration equal to its market value but subject to paragraph (b) of the proviso to subsection (2) of section 18.

(4) Subject as aforesaid, upon the termination of a life interest in possession, being such a beneficial interest in settled property as is mentioned in paragraph (d) of subsection (4) of section 3, all such property, except any of it which thereupon ceases to be settled property, shall be deemed, for the purposes of this Act, to be transferred by the trustee, and immediately re-acquired by him, for a consideration equal to its market value:

Provided that, notwithstanding anything to the contrary, where a person's life interest in possession under any settlement by another person terminates by reason of the death

of the first-mentioned person, tax shall not, if that person was married to such other person, be charged in respect of any transfer deemed under this subsection to have been effected upon such termination.

(5) In this section "life interest" in relation to a settlement—

- (a) includes a right under the settlement to the income of, or the use or occupation of, settled property for the life of another or for any other period which will or may terminate before all the settled property becomes property to which some person is absolutely entitled as against the trustee;
- (b) does not include any right which is contingent on the exercise of the discretion of the trustee or the discretion of some other person;
- (c) does not include an annuity, notwithstanding that the annuity is payable out of or charged on settled property.

(6) If there is a life interest in a part of settled property and, where that is a life interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the life interest subsists shall, while it subsists, be treated for the purposes of subsection (4) of this section as being settled property under a separate settlement.

(7) For the purposes of this section, where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another, they shall be treated as together constituting and, notwithstanding that they may act separately, as acting on behalf of a single body of trustees.

(8) Notwithstanding anything to the contrary in this section, if tax is chargeable with respect to any property by virtue of the application of subsection (1) of section 5

12/1975
S. 6.

in relation to any death, no tax shall be chargeable pursuant to subsection (3) or (4) of this section with respect to that property in consequence of such death.

Leases. 7.—(1) Subject to the provisions of this Act, where the payment of premium is required under a lease of land, or otherwise under the terms subject to which a lease of land is granted, there is a part disposal of the freehold or other property out of which the lease is granted.

(2) Where, under the terms subject to which a lease is granted, a capital sum becomes payable by the tenant in lieu of the whole or part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this section to have required payment of a premium to the landlord (in addition to any other premium) of the amount of that sum.

(3) Where, as consideration for the variation or waiver of any of the terms of a lease, a capital sum becomes payable by the tenant, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum.

(4) Where, under subsection (2) or (3), a lease is deemed to have required payment of a premium, there shall not be any re-computation of the tax chargeable on the granting of the lease or on the receipt of any other premium, and such part disposal (on the assumption of that payment being so required) as is mentioned in subsection (1) shall be taken to have been made by way of a separate transaction.

(5) Subject to any regulations made under section 44, where land is leased, otherwise than at a rack-rent, for any term exceeding such period as may be prescribed, the lease shall be deemed for the purposes of this section to have required the payment of a premium on account of so much rack-rent as is foregone by the lessor.

(6) In this section, "premium" includes any like sum, whether payable to the intermediate or a superior landlord, and for the purposes of this section any capital sum paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment is shown to have been given.

(7) Notwithstanding anything to the contrary, tax shall not, in the case of a transfer of any property consisting of a lease of land, be charged on any rent, but nothing in the foregoing provisions of this subsection shall prejudice any regulations made under paragraph (b) of subsection (1) of section 44 for the purposes specified in subsection (1) of section 5. 12/1975
S. 7.

8.—(1) Notwithstanding anything to the contrary, the transfer by way of security of any property or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over property (including a re-transfer on redemption of the security) shall not be treated as a transfer in respect of which tax is chargeable under this Act, but nothing in this subsection shall be construed to prejudice any liability to tax in respect of the transfer (whether by way of redemption or otherwise) of any debentures or other securities of a company which constitute a charge on its assets. Charges
and in-
cumbrances.

(2) Where a person entitled to property by way of security, or the benefit of a charge or incumbrance on property, deals with the property for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated for the purposes of this Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security,

charge or incumbrance as receiver or manager as it applies to the dealings of the person entitled as aforesaid :

Provided that if it is shown to the satisfaction of the Commissioner that the amount of tax chargeable upon any such person's dealings with property as aforesaid, and such other amount as may lawfully be deducted from their proceeds in satisfaction of the claims of that person and any claims ranking in priority to any of his said claims or *pari passu* therewith, exceed in the aggregate those proceeds, the Commissioner shall relieve the said person from abatement (pursuant to Part IV) of the proceeds for or on account of collection of so much tax as does not amount to more than such excess, and that much tax shall thereafter, in lieu of being collectible from any transferee, be recoverable at the instance of the Commissioner, by way of like procedures and remedies, and otherwise in like manner, as hereinafter provided for (whether in relation to transferees or transferors, but save in so far as imprisonment for the purpose of recovery of tax may be authorized under any such provision), from the person whose nominee is taken to have so dealt with the property.

(3) For the purposes of this Act, property shall be treated as transferred free of any interest or right by way of security subsisting at the time of any transfer of such property; and where the transferee acquires it subject to any such interest or right, the full amount of the liability thereby assumed by him shall form part of the consideration for the transfer in addition to any other consideration.

Contingent
liabilities.

9.—(1) In determining consideration on which tax is chargeable in the first instance, no allowance shall be made—

(a) in the case of a transfer by way of assigning a lease, on account of any liability remaining with the transferor, or assumed by him, which is contingent

on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms or conditions of the lease;

- (b) in the case of a transfer of land or a lease, on account of any contingent liability of the transferor in respect of any covenant for quiet enjoyment or other obligation assumed as vendor of the land or as a lessor.

(2) If it is subsequently shown to the satisfaction of the Commissioner of Inland Revenue that any such contingent liability has become enforceable, and is being or has been enforced, such adjustment shall be made, whether by way of discharge or repayment of any tax or otherwise, as he considers requisite in consequence.

L.N.
165/1999.

10.—(1) Where a contract of transfer, being a contract to transfer any property, whether or not in existence or ascertained at the time of the contract, is made, the contract shall be deemed to be the transfer of the property (for the consideration provided for by the contract, without prejudice to any requirement under this Act that consideration for such a transfer be otherwise assessed) for the purposes of this Act.

Contracts
of transfer.

(2) Where any person, being a person for the transfer of property to whom, or to whose nominee, any such contract as mentioned in this section subsists, makes an assignment, or enters into a contract of assignment, to any other person of the right to the said transfer or enters into a contract of transfer, being a contract to cause the said property to be transferred to any other person pursuant to the subsisting contract, the assignment so made or (as the case may be) the contract so entered into shall be deemed to be the transfer of that property by the first-mentioned person to the other person (for the consideration for which the assignment is so made or the contract so entered into

provides, as the case may be, including any undertaking in consideration thereof to assume or discharge obligations under the subsisting contract, without prejudice to any requirement under this Act that consideration for such a transfer be otherwise assessed) for the purposes of this Act.

(3) Subject to the provisions of subsection (1) of section 16, the transfer of property pursuant to any contract previously made and by virtue of which the property is regarded, on any assumption introduced by the foregoing provisions of this section, as having been transferred shall not be deemed to be a transfer in respect of which tax is chargeable.

Options.

11.—(1) Without prejudice to any provisions of this Part the grant of any option mentioned in subsection (4) of section 3 is the transfer of property (namely the option) and, in particular, shall be treated as such—

- (a) in the case where the grantor binds himself to sell what he does not own and, because the option is abandoned, never has occasion to own;
- (b) in the case where the grantor binds himself to purchase what, because the option is abandoned, he does not acquire,

but subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction.

(2) If an option is exercised the grant of the option and the transaction entered into in fulfilment of the grantor's obligations under the option shall, in accordance with regulations made under section 44, be treated for the purpose of charging tax as a single transaction.

(3) The exercise or abandonment of an option by the person for the time being entitled to exercise it is not a disposal of property.

(4) The foregoing provisions of this section shall apply in relation to a forfeited deposit of purchase money or other consideration money for a prospective purchase which is abandoned as they apply in relation to the consideration for an option which binds the grantor to sell and which is not exercised.

(5) Every reference in the foregoing provisions of this section to selling property or purchasing it shall be construed to include a reference to any transfer of property or acquisition thereof by way of its transfer, respectively.

12.—(1) In relation to matters provided for in Part I of the First Schedule with reference to shares and to debentures and other securities, the provisions of that Part shall have effect for the purposes of this Act.

Special provisions with reference to securities, and to transfers on death. First Schedule. 12/1975 S. 8.

(2) Tax shall on the assumption introduced by subsection (1) of section 5, be imposed with respect to the total consideration for such transfer by an individual as that subsection describes, and the tax so imposed shall be computed on such consideration in accordance with the following rates—

For every dollar of the first \$10,000 of value or such other amounts as may, for the time being, be prescribed Nil
For every dollar of the next \$10,000 of value	7.5 cents
For every dollar of the next \$40,000 of value	10 cents
For every dollar of the next \$50,000 of value	12.5 cents
For every dollar of the remaining value ...	15 cents

(3) In relation to tax imposed by virtue of subsection (1) of section 5—

(a) the provisions of Part II of the First Schedule shall have effect; and

(b) the other provisions of this Act (in so far as they are applicable in relation thereto) shall apply subject to the provisions of subsection (2) of this section and Part II of the First Schedule aforesaid.

First
Schedule.

(4) Nothing in this section shall be construed to prejudice the provisions of section 45.

PART III. *Relief and Exemptions*

Deduction
generally
allowable
from con-
sideration
for transfer
of land.
44/1974
S. 2.
19/1988
S. 4.

12A.—(1) Subject to the provisions of this section, where any transfer is effected on or after the 7th day of November, 1988, or is taken to have been so effected for the purposes of this Act, then if the amount or value of the consideration for the purposes of section 3 (1) does not exceed one hundred and fifty thousand dollars, there shall be allowed a deduction of ten thousand dollars by way of abatement of the amount or value of the consideration for those purposes.

(2) No deduction under subsection (1) shall be allowed from more than one sum, or more than once from any sum, in the case of any such transfer as aforesaid.

(3) Nothing in subsection (1) shall apply to consideration on which tax is imposed with respect to any property in virtue of—

- (a) paragraph (c) of subsection (4) of section 3;
- (b) paragraph (d) of the said subsection (4) in so far as relates to paragraph (c) thereof;
- (c) the provisions of the said subsection (4) as respects any class of option, but without prejudice to the application of subsection (1) of this section (in so far as is consistent with paragraphs (a), (b) and (d) of this subsection) to consideration for the purposes of taxation in conformity with subsection (2) of section 11;
- (d) (without prejudice to the generality of anything in the foregoing provisions of this subsection) the First Schedule.

(4) Regulations made under paragraph (b) of subsection (1) of section 44 may prescribe any sum, in substitution for that specified by subsection (1) of this section, in which deduction shall be allowed under this section.

13. If at any time—

- (a) upon application by a liquidator of any company for relief under this section, or upon application therefor by a person duly appointed in respect of any creditor of a company as a receiver or manager of its property, the Commissioner is satisfied that the payment of tax chargeable in respect of any transfer of property of the company in the course of its winding-up would prejudice the discharge of any liabilities of the company to any creditor thereof; or
- (b) upon application by a Trustee in Bankruptcy (whether or not deemed under section 5 to be a personal representative) for relief under this section, the Commissioner is satisfied that the payment of any tax chargeable in respect of any transfer of property of the bankrupt's or debtor's estate in the course of its administration in such bankruptcy would prejudice the discharge (by way of such administration) of any of his debts,

Application for relief by liquidator, or receiver of property, of company or by Trustee in Bankruptcy.

the Commissioner shall grant relief from so much of the tax as, in his opinion, cannot be paid without prejudicing such discharge.

14.—(1) If, upon the application in accordance with regulations made under section 44 of a transferor of property for relief under this section from tax in respect of his transfer after the 3rd day of April, 1984, of such property, it is shown to the satisfaction of the Commissioner that the tax in respect of the transfer of that property (exclusive of any property so transferred and in relation

Relief from tax on grounds of absence or extent of capital gains. 19/1988 S. 5(a), (b).

TRANSFER TAX

to which relief from the tax as respects the transfer thereof may be granted under subsection (1), (3) or (5) of section 15, or is so granted, or an option for relief from any such tax is exercised under paragraph (a) of the proviso to the said subsection (1) exceeds thirty-seven and one-half *per centum* of the capital gains accruing from the transferor's disposal of the property (except any property excluded under the foregoing provisions of this subsection) or that no capital gains have so accrued, the Commissioner shall grant relief by way of the refund to the transferor of the amount by which such percentage is so exceeded or, as the case may be, the amount of tax in respect of the transfer from which no such gains have accrued as aforesaid, so, however, that without prejudice to any regulations made under paragraph (b) of subsection (1) of section 44, reference in the foregoing provisions of this subsection to any property (except as property excluded thereunder) shall, in relation to relief from any tax paid in pursuance of section 21 by any person, as a transferor of securities during any year of assessment, be construed as collective reference to all the securities in respect of his transfer of which during such year tax has been charged under subsection (2) of section 21.

(2) Every application for relief under this section in respect of any tax shall be made within three years after payment to the Commissioner of all such tax; and no such application shall be made unless the transferor has paid the full amount of tax required to be borne by him in respect of the transfer.

(3) Save as otherwise provided by any regulations made under paragraph (b) of subsection (1) of section 44, capital gains accruing from the transfer of property shall, for the purpose of subsection (1), be taken to be the amount on which tax is charged in respect of such transfer, less—

- (a) (i) the amount or value of the consideration in money or money's worth given by the

transferor or on his behalf wholly and exclusively for the acquisition of that property (whether after the 1st April, 1970, or not); or

(ii) in the event of the property being a right or interest created in, over, or otherwise with respect to, any property belonging to the transferor, the amount or value of so much of the consideration for which the last-mentioned property was acquired by him (whether after the 1st April, 1970, or not) as may, to the satisfaction of the Commissioner, be apportioned to the first-mentioned property; and

(b) (i) the amount of such expenditure, if any, as has been wholly and exclusively incurred on that property by or on behalf of the transferor for the purpose of enhancing the value thereof, being expenditure reflected in the state or nature of the property at the time of the said transfer thereof; or

(ii) in the event of the property being a right or interest created in, over, or otherwise with respect to, any property belonging to the transferor, so much of any like expenditure by or on behalf of the transferor on the last-mentioned property as may, to the satisfaction of the Commissioner, be apportioned to the first-mentioned property.

TRANSFER TAX44/1974
S. 3.

(4) Save as aforesaid, the provisions of this Act as to amount or value of the consideration for which property shall be treated as transferred shall *mutatis mutandis* apply in relation to the amount or value of the consideration for which any property shall, for the purposes of paragraph (a) of subsection (3), be treated as having been acquired and, in particular, section 12A shall apply as aforesaid in the case of any property with respect to which the tax paid as required by subsection (2) of this section was charged on consideration computed in conformity with subsection (1) of section 12A.

(5) Without prejudice to the provisions of subsection (4), no deduction shall, in computing capital gains as provided by subsection (3), be allowed on account of the payment of any tax or stamp duty.

(6) Notwithstanding anything to the contrary in the foregoing provisions of this section, there shall be excluded from the sums deductible under subsection (3)—

- (a) any amount defrayed, or which may be defrayed, directly or indirectly from public funds, whether of Jamaica or of any other country;
- (b) any premiums or other payments under a policy of insurance against risks, injury, damage, loss or depreciation of any description;
- (c) any amount allowed or allowable as a deduction (whether in assessment to income tax, or by way of discharge or repayment thereof, or otherwise) in computing income, profits, gains or losses for the purposes of the Income Tax Act, or which would have been so allowed, or would be so allowable, in the computing of losses but for

an insufficiency of income, profits or gains, or in any such computation as aforesaid but for any provision made by or under any enactment for the exemption of income, profits or gains from income tax.

(7) No application for relief shall be entertained under this section in respect of a transfer of property by way of the transferor's trade or business within section 5 of the Income Tax Act apart from provision, if any, for exemption as aforesaid; and, to the extent of any payment of tax in respect of any transfer of property by way of the trade or business as aforesaid of which account shall be taken in ascertaining for income tax purposes the transferor's chargeable income, any income tax under the said Act, on such income from the said trade or business as is so taken into account in ascertaining that chargeable income, shall be abated. Reference in the foregoing provisions of this subsection to a transferor's trade or business shall, in relation to his transfer of property in any class, be construed as reference to the transferor's trade or business of dealing in property in that class.

15.—(1) If, upon the application of any individual for relief under this subsection from tax in respect of the transfer by him of his interest in land consisting of a dwelling-house or part thereof and owned by him, it is shown to the satisfaction of the Commissioner that the transferor used the dwelling-house or, as the case may be, the part thereof as his sole or principal residence, and occupied the land accordingly, until it was so transferred or until such use was terminated with a view to such transfer, the Commissioner shall grant relief from all tax in respect of that transfer:

Relief from tax in case of residential, agricultural, religious or educational use.

Provided that—

19/1988
S. 6.

- (a) no such application shall be made if the tax in that respect is imposed on a consideration exceeding one hundred and fifty thousand dollars.
- (b) no applicant shall claim or be taken to have used two or more dwellings as principal residences, respectively, at the same time for the purposes of this subsection;
- (c) no applicants shall claim or be taken to have used different dwellings as principal residences, for the purposes of this subsection, at any time when they were husband and wife living together.

(2) [*Repealed by Act 19 of 1988.*]

(3) Reference in subsection (1) to land consisting of a dwelling-house or part thereof includes reference to any land transferred as aforesaid with the dwelling-house or part thereof, as the case may be, and which the transferor had for his own occupation and enjoyment as its garden or grounds up to an area (inclusive of its site) of one acre, or such larger area as the Commissioner may in any particular case allow on being satisfied that, regard being had to the size and character of the dwelling-house, the larger area was required for the reasonable enjoyment of it (or the part in question) as a residence:

Provided that in the case where part of the land occupied with a residence is and part is not within the foregoing provisions of this subsection, then (up to the permitted area) that part shall be taken to be within such provisions which, if the remainder were separately occupied, would be most suitable for occupation and enjoyment with the residence.

(4) If, upon the application of a transferor of land for relief under this subsection from tax, it is shown to the satisfaction of the Commissioner that a growing crop, or any growth of trees cultivated for the production of timber in the course of business, was included in the transfer, the Commissioner shall grant relief from the tax as respects the transfer thereof, being tax upon so much of the consideration for the first-mentioned transfer as, in the opinion of the Commissioner, is equal to the market value of that crop or, as the case may be, growth of trees at the time of such transfer.

(5) In subsection (4)—

“crop” means agricultural produce of any kind, and includes a crop of grass, fruit or vegetables, which is cultivated for the purpose of the harvesting thereof;

“harvesting” includes collection, however effected.

(6) If, upon the application of any transferor of land for relief under this subsection from tax, it is shown to the satisfaction of the Commissioner that user of any such land was principally for the purposes of a registered charitable organization and continued to be principally therefor until the land was so transferred or until the said user was terminated for the purpose of such transfer, the Commissioner shall grant relief from the tax in respect of the transfer of any of the land which was the subject of such user as aforesaid.

13/2013
Sch.

32/2013
Sch.

(7) Subject to any regulations made under subparagraph (ii) of paragraph (b) of subsection (1) of section 44, consideration shall be apportioned wherever required for the purposes of subsection (1) or (6) and every such apportionment shall be made to the satisfaction of the Commissioner.

Relief from
tax on
contracts.

16.—(1) If, upon the application of any person regarded by virtue of section 10 as the transferor in the case of any contract of transfer or of assignment, the Commissioner is satisfied that—

- (a) the contract is discharged, in the case of a conditional contract, failing satisfaction of the condition or, in any case, by mutual consent or operation of law; or
- (b) default has been made in carrying out the contract and, by reason of that default, there is no conveyance or transfer to implement the contract (whether by or to the person originally making the contract or another),

then, subject to the provisions of subsection (4) of section 11, the Commissioner shall grant relief from the liability to pay any tax imposed on the applicant as such transferor or, if paid, shall refund to the applicant such payment of the tax so imposed, and no property shall thenceforth, for the purposes of this Act, be regarded on account of the contract as having been transferred and any amount so refunded shall be dealt with according to the rights of the parties to the contract (including any requirement of a deposit implied therein under subsection (4) of section 18).

(2) If, upon any such application is aforesaid, it is shown to the satisfaction of the Commissioner that such consideration provided for by the contract in question as is mentioned in section 10—

- (a) is wholly or partly irrecoverable; or
- (b) is abated for any error in or default under the contract,

then, the Commissioner shall grant relief from liability to tax, or shall refund to the applicant any payment thereof, to such extent as the case may require, on the principle that neither any amount of irrecoverable consideration, in so far as it is shown to the satisfaction of the Commissioner to be

unrealized by disposal of the right to consideration, nor any amount by which consideration is abated as aforesaid, shall be taken into account for the purposes of section 10 as consideration for which the contract provides; and any amount so refunded shall be dealt with according to the rights of the parties to the contract (including any such requirement of a deposit as may be implied therein under subsection (4) of section 18).

17.—(1) There shall be exempt from taxation under this Part— Exemptions.

(a) any transfer by the Government of Jamaica other than a transfer of property out of or into the National Insurance Fund established under the National Insurance Act, or the Kingston and St. Andrew Corporation, or any Parish Council— 28/2003 S. 2.

(i) of property belonging to the transferor;

(ii) of any right or interest created in, over or otherwise with respect to any such property;

(b) any transfer by the Government of Jamaica, or the Kingston and St. Andrew Corporation, or any Parish Council, of land which is reserved for the use of the transferee, such reservation having been made in the course of a subdivision of land and in compliance with any condition of the sanction of such subdivision under the Local Improvements Act;

(c) any transfer by way of gift to a registered charitable organization; 13/2013 Sch. 32/2013 Sch.

(d) any transfer mentioned in subsection (2) of section 6, not being a transfer for money or money's worth (apart from section 4), where the property so transferred is settled exclusively for an approved purpose, being such a purpose as is referred to in paragraph (c);

(e) transfers of securities in the course of business on the Jamaica Stock Exchange, or any other stock exchange signified by order of the Minister to be recognized for the purposes of this paragraph, where such securities are quoted on the Jamaica Stock Exchange.

(2) For the purposes of subsection (1)—

- (a) “approved” means approved by order of the Minister;
- (b) the reference in sub-paragraph (i) of paragraph (a) thereof to property belonging to a transferor shall, in relation to the Government of Jamaica or other authority mentioned in that paragraph, be construed to include property vested in the Commissioner of Lands or the Accountant-General for, or for the use or benefit of, the authority;
- (c) in the case of the transfer by the Commissioner of Lands or the Accountant-General of property vested in him as aforesaid or any right or interest created with respect thereto, or the transfer to the said Commissioner of property which he thereby acquires for, or for the use or benefit of, any authority mentioned as aforesaid, the authority in question shall be deemed to be the transferor of the property so vested or the right or interest so created, or to be the transferee of the property so acquired, as the case may be;
- (d) property settled for a purpose mentioned in paragraph (d) thereof shall not be deemed, by reason only of the settlor being a beneficiary under the settlement, to be settled otherwise than exclusively for that purpose.

(3) Where by way of any transfer mentioned in subsection (2) of section 6, not being a transfer for money or money’s worth (apart from section 4), the property so trans-

ferred is settled for a purpose referred to in paragraph (d) of subsection (1) of this section, but not exclusively for that purpose, the Commissioner shall, in charging any tax in respect of such transfer, allow a deduction of so much of the consideration therefor as he considers just and reasonable to attribute to any disposition for that purpose by way of the settlement.

(4) Notwithstanding anything to the contrary, the Minister may, by order, provide that, subject to such terms and conditions as may be specified in such order, no tax shall be charged in respect of any transaction or class of transactions specified therein which, but for the order would have been subject to tax in accordance with the provisions of this Act.

(5) Every order made under subsection (4) shall be subject to affirmative resolution of the House of Representatives.

17A. Nothing in the foregoing provisions of this Part, except subsections (4) and (5) of section 17, shall apply in relation to tax imposed in virtue of subsection (1) of section 5.

Restriction
on applica-
tion of
Part III.
12/1975
S. 9.

PART IV. *Payment and Enforcement of Tax*

18.—(1) Subject to the provisions of this Act, all tax imposed on a transferor in respect of any transfer shall be paid to the Commissioner of Inland Revenue by the transferee, who shall, notwithstanding anything to the contrary provided or agreed, be entitled to recover the amount of the tax by way of deduction from any consideration for the transfer, or by way of suit against the transferor as for a simple contract debt in the sum so paid, or by any other lawful means at the transferee's disposal after such payment by him. Every such suit as aforesaid for any sum whatsoever shall be cognizable in the Resident Magistrate's Court.

Tax to be
paid by
transferee.
L.N.
165/1999.

(2) Without prejudice to the generality of any provisions of this Act, reference in subsection (1) to a transferor or transferee shall, in relation to any transfer taken to have been made as mentioned in any provisions of this Act introducing any assumption in that behalf, be construed as a reference to such person as may be treated as the transferor or transferee, as the case may be, for purposes of that assumption, and subsection (1) shall, in its application to transferors or transferees in their capacities as personal representatives or trustees of settled property, be construed in conformity with subsection (3) of section 5 or subsection (1) of section 6 (as the case may be) and, if recovery under subsection (1) of this section from any such trustees is impracticable by reason of their absence from the Island or for any other cause, recovery from any person having a beneficial interest in possession under the settlement may be effected in like manner:

Provided that—

- (a) liability incurred under this Act by any trustees or personal representatives may be enforced in pursuance of this Part against any of them or any of such persons as may succeed them in that capacity;
- (b) where tax is chargeable in respect of a transfer and immediate reacquisition of property as provided by subsection (3) or (4) of section 6, such transfer and reacquisition shall be treated as effected by one transaction consisting of a single transfer.

(3) Liability in any sum of which this Part provides for the payment by, or the recovery from, a transferee or transferor shall, in the case of joint transferees or transferors, be enforceable against them jointly or severally, so, however, that the total amount recovered by way of such enforcement shall not exceed the said sum.

(4) Every contract made after the 3rd day of April, 1984, and in respect of which tax is chargeable by virtue of subsection (1) of section 10, being a contract for the transfer by way of sale of property consisting of land, shall require a deposit of not less than seven and one-half *per centum* of such consideration for the transfer as may be payable under the contract, a requirement by the contract of a deposit of such percentage as aforesaid being implied in lieu of any requirement of a lesser deposit, or in default of requirement of a deposit, by express provision of the contract; and the transferee shall, towards discharge of his obligation to pay tax in respect of the transfer on the assumption thereof introduced by the said subsection, and in the exercise of his right of recovery by deduction from consideration, pay to the Commissioner of Inland Revenue at least so much of the deposit as is compulsory, by virtue of this subsection, for the contract to require.

19/1988
S. 7(a)(i),(ii).

L.N.
165/1999.

(4A) Any deduction allowable in the manner provided by section 12A in the case of any transfer to which that section relates shall be allowed in like manner for the purpose of determining, in keeping with the provisions of subsection (4), the consideration to be taken into account in reckoning the percentage specified in that subsection.

44/1974
S. 5.

(5) Every transferee who contravenes the requirement to make any payment under subsection (4) shall be guilty of an offence against this Act.

19.—(1) Subject to the provisions of section 21 and without prejudice to the provisions of sections 29, 30 and 32 or any provisions of this Act as to relief or appeal from taxation or objection thereto or as to refund of tax but notwithstanding anything to the contrary otherwise provided, where any transfer (or, without prejudice to the generality of any provisions of this Act, any such contract of transfer, or any such assignment or contract of assignment of the

Payment of
tax as
stamp duty.

right to a transfer under any such contract, as is required to be treated as a transfer by virtue of section 10) is effected or evidenced (apart from the provisions of this section) by any document stamped as required under the Stamp Duty Act, any amount of tax which is chargeable in respect of the said transfer shall be regarded, collected and otherwise treated as additional stamp duty imposed in respect of that document by that Act and to which subsection (3) of section 32 thereof applies; and the provisions of section 18 shall, in relation to the payment of the said amount under the foregoing provisions of this subsection, apply as in relation to payment of such tax.

(2) Every such document effecting or evidencing as aforesaid any transfer of property shall be impressed either—

- (a) with a stamp denoting that the full amount of tax collectible as stamp duty thereon (which shall be assessed in the manner provided by subsection (3) of section 32 of the Stamp Duty Act upon the requisition, in the prescribed form, of the person by whom it is payable) has been paid; or
- (b) with a stamp denoting that no amount of tax is so collectible in the case of such transfer, whether by reason of subsection (3) of section 10 providing for its not being treated as a taxable transfer, or by virtue of any exemption under this Act, or for any other cause,

and for the purposes of the Stamp Duty Act, no such document shall be deemed to have been duly stamped unless it is stamped as required by this subsection.

8/1994
S. 2.

(2A) On and after the 22nd day of April, 1994, subsection (2) shall not have effect in relation to any document effecting or evidencing a transfer of securities which is certified by the Jamaica Stock Exchange or, where applicable, such other stock exchange as is referred to in sub-

section (1) (e) of section 17, as falling within the exemption specified in that subsection.

(3) Nothing in this section affecting the enforceability or evidential or other effect of any document shall preclude its admission in evidence in any proceedings for an offence under this Act or otherwise prejudice any liability imposed by this Act.

19A.—(1) The Jamaica Stock Exchange or where applicable, such other stock exchange as is referred to in subsection (1) (e) of section 17 shall furnish to the Commissioner of Inland Revenue in respect of each transaction relating to a transfer of securities referred to in subsection (2A) of section 19 or subsection (2A) of section 33, as the case may be, a monthly return containing the particulars specified in subsection (2) of this section.

Returns to be furnished in respect of transactions by Jamaica Stock Exchange, etc. 8/1994 S. 3. L.N. 165/1999.

(2) The particulars referred to in subsection (1) are as follows—

- (a) the transfer number;
- (b) the name of the security being transferred;
- (c) the number of units transferred;
- (d) the consideration relating to such transfer; and
- (e) the name of the transferor.

(3) Any stock exchange referred to in subsection (1) which fails to furnish a return as required by subsection (2) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars.

20.—(1) Where any amount of tax would (apart from provision, if any, to the contrary in subsection (1) of section

Payment of tax otherwise than as stamp duty.

46) be collectible in the manner provided by section 19 in the case of any transfer mentioned therein but for its not being effected or evidenced as so mentioned, the like amount of tax shall nevertheless be chargeable in the case of that transfer.

(2) The provisions of section 18 shall, in relation to payments in pursuance of subsection (1), apply in like manner as provided by subsection (1) of section 19; and such person as may be required by virtue of the foregoing provisions of this subsection to pay (as mentioned in section 18) the amount chargeable under this section in the case of any transfer, or, in default of his compliance with the requirements of the following provisions of this subsection, the transferor, shall transmit to the Commissioner a return thereof in the prescribed form, within the prescribed time, for the purpose of his assessing and making any such charge required under this section.

(3) For the purposes of the requirement to submit any return under subsection (2), an amount shall be deemed to be chargeable as aforesaid notwithstanding that such charge may be wholly or partly precluded or avoided by virtue of section 12A or upon satisfying the Commissioner as to any facts (not being grounds for exemption under section 17).

44/1974
S. 6.

Special
provisions
for payment
of tax on
transfers
of securities.

21.—(1) Notwithstanding anything to the contrary, any person—

- (a) upon whom liability for any amount of tax is imposed under section 19 or 20 with reference to a transfer of any securities during any year of assessment; and
- (b) from whom such amount if it had been paid in accordance with section 18 would be recoverable thereunder by virtue of its application pursuant to

subsection (1) of section 19 or subsection (2) of section 20, as the case may be, may, during the said year of assessment, notify the Commissioner in writing that he elects to pay in pursuance of this section all amounts for which he may be liable in respect of transfers by him of any securities during that year of assessment; and, pursuant to such notification, nothing in section 18 shall require any payments to be made on account of such person or authorize their recovery from him in the case of any transfer of securities by him during the year aforesaid :

Provided that no such election shall be made during any year of assessment by any person on whose account any such payment has been made in the case of any such transfer as aforesaid during that year of assessment.

(2) Within the prescribed period after the end of any year of assessment during which an election has been made under subsection (1) by any person, a return of all transfers of securities made by him during that year of assessment shall for the purpose of his being charged to tax assessed in respect thereof, be transmitted in the prescribed form to the Commissioner by such person.

22.—(1) Where any return is required by section 20 in the case of any transaction made after the 4th August, 1971, and relating to the transfer of a beneficiary's interest under a settlement or in property to which the beneficiary is absolutely entitled as against a trustee as mentioned in subsection (2) of section 3, such transaction shall not be valid or effectual unless and until notified to the trustees of the settlement or the said trustee, as the case may be, and, notwithstanding anything to the contrary, the trustees or trustee notified shall transmit to the Commissioner the return required as aforesaid.

Returns
by trustees.

(2) References in subsection (1) to trustees of a settlement shall be construed in conformity with subsection (1) of section 6, and references in subsection (1) to a trustee shall, in relation to any property the subject of any such entitlement as aforesaid, be construed in like manner, without prejudice to paragraph (a) of the proviso to subsection (2) of section 18.

Penalty
for failure
to make
return.

23. Every person required to transmit a return in accordance with any provisions of this Part shall, in default of transmission of such return in accordance with those provisions, be guilty of an offence and be liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars and treble the amount of any tax proved to be outstanding in consequence of such default, or in default of payment of such fine to imprisonment for a term not exceeding two years.

Assess-
ments.

24.—(1) Upon the transmission of any return to the Commissioner pursuant to this Part, the Commissioner shall proceed to the assessment of such amount of tax, if any, as appears to him chargeable and shall, as soon as practicable, cause his notice of any such assessment or of his decision that no such amount appears chargeable, as the case may be, to be served by registered post on the person who is or would be liable to pay any such tax in case of its being chargeable and a copy of such notice to be served by registered post on any other person from whom any such amount is or, as the case may be, might have been recoverable pursuant to section 18.

(2) Where a person has delivered a return, the Commissioner may—

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and, to the best of his judgment, assess the amount of tax which ought

to be charged in respect of the transfer to which the return relates.

(3) Where the Commissioner is of the opinion that tax ought to be charged in respect of a transfer but neither a return nor a requisition in that behalf for assessment pursuant to section 19 has been made within the time required under this Act, he may, according to the best of his judgment, assess the amount of such tax; but no such assessment shall affect any liability otherwise incurred, by reason of failure or neglect to deliver a return or to requisition such assessment as aforesaid.

(4) Where it appears to the Commissioner that tax has been assessed in respect of any transfer to a less amount than that which ought to have been charged, the Commissioner may, within the period of six years after the date of such assessment, assess such additional amount of tax in respect of the transfer as, according to the best of his judgment, ought to have been charged:

Provided that the Commissioner may make an assessment under this subsection, notwithstanding the expiration of the said period, if the lesser amount was charged in consequence of any form of fraud or wilful default committed by, or on behalf of, the transferor or, with his knowledge or connivance, by or on behalf of any other person who requisitioned pursuant to section 19, or made the return for the purposes of, the assessment whereby such lesser amount was charged.

(5) The Commissioner's notice of any assessment made under subsection (3) or (4) shall be served by registered post on the person liable to pay the amount so assessed and a copy of such notice shall be served by registered post on any other person from whom the recovery of such amount pursuant to section 18 is provided for by this Act.

(6) The provisions of subsections (2) and (3) of section 99 of the Income Tax Act, shall *mutatis mutandis* apply to any assessment, charge or other proceeding pur-

[The inclusion of this page is authorized by L.N. 79/1996]

porting to be in accordance with this Act, and to the description of any property or consideration, as they apply to any assessment, charge or other proceeding purporting to be made in accordance with that Act, and to any description referred to in sub-paragraph (ii) of paragraph (a) of subsection (3) aforesaid, respectively.

Objections.

25.—(1) Any assessment made by the Commissioner under section 24 or for the purposes of section 19 (as mentioned in paragraph (a) of subsection (2) thereof) may, within the prescribed period after notice thereof is served under section 24 or given pursuant to section 19, be objected to by any person who is liable to pay the amount so assessed or from whom the recovery of any such amount pursuant to section 18 is provided for by this Act :

Provided that if the Commissioner is satisfied that any such person objecting to an assessment as aforesaid (hereinafter referred to as an “objector”), owing to absence from the Island, sickness, or other reasonable cause, was prevented from so doing within the prescribed time, the Commissioner may extend the time as he thinks just.

(2) Every such objection shall be made by notice thereof in writing, stating precisely the grounds of the objection and applying to the Commissioner to review and revise his assessment of the amount payable by, or recovery of which is authorized from, the objector; and the objector shall forthwith serve by registered post, on any other person allowed by subsection (1) to object to such assessment, a copy of such notice for his information as to the objection having been made under this section.

(3) In the event of the Commissioner and the objector agreeing as to the amount for which he is liable as aforesaid, the assessment shall be amended accordingly; and in that or any other event the Commissioner shall cause notice of such amendment or of his decision in respect of the

objection, as the case may be, to be given in like manner as notice of such assessment.

26.—(1) Any person dissatisfied with any decision of the Commissioner in respect of his objection, or in respect of any claim or application made by him for refund of tax or other relief, may appeal to the Commissioner of Taxpayer Appeals within thirty days of the date of receiving the Commissioner's decision:

Appeals
L.N.
170/1972.

L.N.
8B/2002.

Provided that the Commissioner of Taxpayer Appeals 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, shall extend the period as may be reasonable in the circumstances.

(2) The onus of proving that the assessment or other decision of the Commissioner complained of is erroneous shall be on the person complaining.

(3) Upon an appeal under subsection (1) the Commissioner of Taxpayer Appeals may confirm, reduce the amount under or vacate the decision complained of.

L.N.
8B/2002.

(4) An appellant who is dissatisfied with the decision of the Commissioner of Taxpayer Appeals may appeal to the Revenue Court within thirty days of the date of receiving that decision or within such longer period as may be permitted by or pursuant to rules of court.

L.N.
8B/2002.

(5) An appeal under subsection (4) shall be limited to the grounds stated in the notice of objection but the Revenue Court may, in its discretion, permit the grounds of appeal to be amended.

L.N.
8B/2002.

(6) Every notice of appeal, or of any decision on appeal, given to or by an objector shall forthwith and in accordance with any relevant rules of court, for the information of any other person who was competent under subsection (1) of section 25 to object to the assessment in question, be served on him by registered post.

L.N.
8B/2002.

Payment of
amount
assessed
pending
appeal.

27.—(1) Notwithstanding the institution of an appeal against the decision of the Commissioner on an objection to any assessment, payment of the amount assessed by him shall be made in accordance with such decision, and any document on which such amount is assessed as stamp duty shall, upon payment thereof, be stamped accordingly, but without prejudice to the refund of such amount (if any) as may be decided on appeal or otherwise under this Act, or to the collection of any sum by which the amount assessed is increased on appeal.

(2) The refund in accordance with any such decision on appeal as aforesaid of any payment under subsection (1) shall be made with interest thereon at the prescribed rate.

Assessments
or amended
assessment to
be final.

28. Where no valid objection or appeal from any decision thereon has been lodged within the time limited therefor in pursuance of this Act against an assessment, or where the amount so assessed has been agreed to under subsection (3) of section 25 or determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as to the amount chargeable in respect of the transaction to which such assessment relates:

Provided that nothing herein contained shall preclude the grant of any relief, or refund by way of relief or otherwise, under this Act or prejudice the provisions of subsection (4) of section 24 or any liability for an offence against this Act.

Collection.
12/1985
Sch.

29.—(1) After the expiration of the period prescribed pursuant to section 25 for objecting to any assessment or, if an objection thereto is made, after the expiration of such period following the giving of notice under subsection (3) of section 25 in relation to the objection as may be prescribed, the Commissioner of Inland Revenue shall proceed to collect the amount assessed which is due and payable:

L.N.
165/1999.

Provided that if objection to the assessment is made pursuant to the proviso to subsection (1) of section 25, such collection shall not be proceeded with until the expiration of the time extended by the Commissioner of Taxpayer Audit and Assessment pursuant to that proviso.

L.N.
165/1999.

(2) Subject to the proviso to subsection (1), where any amount due and payable under subsection (1) remains outstanding—

- (a) the Commissioner of Inland Revenue or a Collector of Taxes may without any further or other demand than the relevant notice of assessment or of determination of any objection thereto under subsection (3) of section 25, as the case may be, proceed to enforce under the provisions of the Tax Collection Act payment against the person liable to pay that amount in like manner as if an assessment under the provisions of that Act for the enforcement of tax had been made; and
- (b) interest at the prescribed rate shall be charged thereon for any period during which the amount is outstanding after the expiration of the period subsequent to which the amount is collectible pursuant to subsection (1).

(3) Interest payable on any amount pursuant to this section—

- (a) may be added thereto and shall be collectible and recoverable accordingly by a Collector of Taxes or the Commissioner of Inland Revenue;
- (b) may be remitted in whole or in part by the Commissioner of Inland Revenue for reasons which appear to him sufficient.

(4) A certificate given by a Collector of Taxes that any amount of tax or interest due thereon is payable under this Act and that payment has not been made to him, or, to the best of his knowledge and belief, to the Commissioner or any other Collector of Taxes or to any other person acting on his behalf or on behalf of the Commissioner or another Collector of Taxes, shall be sufficient evidence that the sum mentioned in the certificate is outstanding and is due to the Government, and any document purporting to be such a certificate as is mentioned in this subsection shall be deemed to be such a certificate, unless the contrary is proved.

30. Without prejudice to any means available for the collection of any amount of tax from any person, the

12.1985
Sch.

L.N.
165/1999.

Suit for tax.

L.N.
165/1999.

L.N.
170/1972.

Commissioner of Inland Revenue or a Collector of Taxes may sue for and recover any amount of tax in the Revenue Court or in a Resident Magistrate's Court with full costs of suit as for a simple contract debt due to the Government—

- (a) from the person by whom such amount is payable;
- (b) if the said amount was assessed in the case of any transfer to which such person was a party in the capacity of trustee of a settlement, then, in so far as it is impracticable to recover the amount from the trustees of the settlement by reason of their absence from the Island or for any other cause, from any person having a beneficial interest in possession under the settlement or from the settlors or any of them:

Provided that a beneficiary or settlor shall have the like right (if any) as the trustee in pursuance of section 18 to recover so much of any amount recovered from him under this subsection as represents tax to be borne by any other person;

- (c) from any person who might have been sued for recovery of any such tax in conformity with section 18 if payment thereof had been made by any person mentioned in paragraph (a),

and reference in the foregoing provisions of this section to the recovery of an amount from any person by suit as for a simple contract debt due to the Government shall be construed to include reference to the recovery in the like manner from that person of any interest payable thereon under section 29.

Stamping
pursuant to
collection by
Collector of
Taxes.

31. Where the amount assessed in the case of any transfer effected or evidenced by a document as mentioned in section 19 is collected or recovered by a Collector of Taxes as hereinbefore provided, it shall be lawful to stamp the document under subsection (2) of section 19 accordingly.

Tax to be
enforceable
against
property.

32.—(1) Any tax imposed in respect of the transfer after the 4th August, 1971, of any property, other than securities, is hereby declared to be a first charge and lien on such

property, ranking *pari passu* with any charge created thereon under section 21 of the Tax Collection Act, subject nevertheless to any charges or liens existing thereon at the 4th August, 1971, and to the rights of any *bona fide* purchaser for value without notice as mentioned in subsection (3) of the charge; and, in this subsection, "purchaser" includes any mortgagee, lessee or other transferee; and subsections (2) and (3) of section 21 of the Tax Collection Act shall *mutatis mutandis* apply to a charge and lien created by this section as they apply to a charge and lien created by that section.

(2) Where a charge is created by subsection (1), a memorandum of the charge may, at any time during its subsistence, be prepared in the prescribed form and transmitted by the Commissioner of Inland Revenue to the Deputy Keeper of the Records. L.N.
165/1999.

(3) The Deputy Keeper of the Records shall keep a record of every memorandum received by him under this section, and such record shall be, unless subsection (4) applies to that memorandum, in which event the caveat entered thereunder shall be, sufficient notice to all the world of the existence of the charge to which the memorandum refers and such record may be inspected by any person without payment of a fee; but, notwithstanding anything in the foregoing provisions of this subsection, where a charge is created by subsection (1) in the case of any transfer, the transferee shall be taken to have had, at all material times, notice of the charge.

(4) Where any such charge as aforesaid affects land which is under the operation of the Registration of Titles Act, the Commissioner of Inland Revenue shall, at the time of transmission of the memorandum of such charge to the Deputy Keeper of the Records, transmit a copy of such memorandum to the Registrar of Titles who shall, upon L.N.
165/1999.

receipt thereof, cause a caveat to be entered against the title to the land described in the memorandum.

(5) Subject to the provisions of subsection (3) as to notice by entry of a caveat, every charge of which a memorandum is recorded under the provisions of this section shall have the same force and effect as if the charge had been fully recorded.

L.N.
165/1999.

(6) A release of property from any such charge shall be prepared by the Commissioner of Inland Revenue in the prescribed form upon payment of all tax secured by the charge.

(7) Every release prepared under subsection (6) shall be transmitted to the Deputy Keeper of the Records who shall, upon receipt thereof, make the appropriate entry in his records to show that the property described in the memorandum of the charge to which the release relates has been released from the charge.

(8) Where a copy of the memorandum of charge to which any release relates was transmitted to the Registrar of Titles under subsection (4), a copy of such release shall, at the time of its transmission under subsection (7), be transmitted to him and he shall, upon receipt thereof, remove the caveat entered against the title to the land described in the memorandum.

(9) Notwithstanding anything to the contrary, every release transmitted to the Deputy Keeper of the Records in accordance with subsection (7) shall operate as a full and effectual release of the charge in respect of which it was made.

Transfers
not to be
registered
unless tax
paid.
L.N.
165/1999.

33.—(1) In the case of the transfer of any property, the transferee may—

(a) upon payment of tax in respect thereof, apply to the Commissioner of Inland Revenue for a certi-

ificate that all tax charged in that respect has been paid; or

- (b) apply to the Commissioner for a certificate that no tax is payable in respect thereof by the transferee pursuant to section 18.

(2) Notwithstanding anything to the contrary, but subject to subsection (2A), after the 4th August, 1971, no such transfer shall—

8/1994
S. 4 (a).

- (a) in the case of a transfer of any securities of a company incorporated or registered under any enactment, be registered or recorded thereunder, and no effect shall otherwise be given by the company to any such transfer;
- (b) be registered, recorded, perfected, or otherwise given or carried into effect, under any provisions of the Registration of Titles Act, or under the authority of the Deputy Keeper of the Records,

except upon production of a certificate granted under subsection (1) in the case of that transfer or pursuant to an instrument impressed under subsection (2) of section 19 with a stamp denoting that tax in respect of such transfer has been collected as stamp duty or is not so collectible; and, without prejudice to the generality of the foregoing, the provisions of subsection (2) of section 167 of the said Act shall apply in relation to tax as they apply in relation to duty imposed by that section, but with the substitution for reference therein to due impression on an application of reference to impression of the application in the manner provided by subsection (2) of section 19.

(2A) On and after the 22nd day of April, 1994, the provisions of subsection (2) shall not have effect in relation to a transfer of securities which is certified by the Jamaica Stock Exchange or, where applicable, such other

8/1994
S. 4 (b).

stock exchange as is referred to in subsection (1) (e) of section 17, as falling within the exemption specified in that subsection.

(3) Every person who contravenes paragraph (a) of subsection (2) shall be guilty of an offence against this Act.

Construc-
tion.

34. Reference in this Part to a beneficiary under a settlement shall be construed in keeping with subsection (6) of section 6 as if the application thereof had not been limited by reference to the purposes of subsection (4) of section 6.

PART V. *Miscellaneous*

Refund of
tax over-
paid.

L.N.
165/1999.

35.—(1) If it is proved to the satisfaction of the Commissioner of Inland Revenue that any amount of tax has been paid in excess of that properly payable pursuant to this Act, the Commissioner shall cause the amount so paid in excess to be refunded to any person appearing to be entitled thereto.

(2) No claim for a refund under this section shall be made after the expiration of a period of six years from the date of the payment in question :

Provided that, where any person satisfies the Commissioner of Inland Revenue that, in the special circumstances of the case, it was not reasonably practicable for that person to make his claim within such period therefor as aforesaid, the Commissioner shall extend the period as he thinks just.

L.N.
165/1999.

Duty of
public
officer to
furnish
information.

36.—(1) It shall be the duty of every public officer to furnish information required by the Commissioner for the purpose of this Act and which may be in his possession or which he may lawfully be able to procure, and in particular, the Registrar of Companies shall furnish any information required as aforesaid that he has obtained pursuant to the Second Schedule, which shall have effect in relation to the matters therein provided for :

Second
Schedule.

Provided that this section shall not apply to information as to proceedings held *in camera* otherwise than pursuant to Part IV.

(2) [Repealed by Act 20 of 1999, S. 3.]

37.—(1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information and returns obtained or received under the authority of this Act as secret and confidential and shall make and subscribe a declaration to that effect before a Justice of the Peace, and, accordingly, nothing delivered to the Registrar of Companies pursuant to the Second Schedule shall be open to inspection except by a person, or for the purposes, mentioned in paragraph (a) or (b) of subsection (2).

Secrecy.

Second
Schedule.

(2) Every such person having control over any such documents, information or returns as aforesaid, or possession thereof or access thereto, who at any time communicates or attempts to communicate any such information or anything contained in any such documents or returns to any person—

(a) other than a person to whom he is authorized by the Minister to communicate it; or

(b) otherwise than for the purposes of this Act,

shall be guilty of an offence against this Act.

38.—(1) Every person, whether or not he is chargeable to tax, upon whom the Commissioner of Inland Revenue or the Commissioner of Taxpayer Audit and Assessment, as the case may be (hereinafter referred to as the “relevant Commissioner”) may cause a notice to be served requiring him to make and deliver a return of such particulars affecting or connected with any question to be determined by the relevant Commissioner in the execution of his functions under this Act as may be specified in the notice, shall make and deliver to the relevant Commissioner a return as

Duty of
person
served with
notice to
make return,
to attend
before the
Commis-
sioner and
to produce
documents.
L.N.
165/1999.

L.N.
165/1999.

aforesaid, and the return shall be made in such form, if any, as the notice may require, and shall be delivered within the time specified therein.

L.N.
165/1999.

(2) The relevant Commissioner may, by not less than fourteen days' notice in writing, require any person to attend before him and give evidence with respect to any transaction relating to the transfer of property.

L.N.
165/1999.

(3) The relevant Commissioner may require any person to furnish a statement of receipts and expenditure by such person relating to any such transactions or property and, where the relevant Commissioner is not satisfied with the statement delivered by any such person and there exist for purposes hereof reasonable grounds so to do, he may serve on that person a notice in writing requiring him to do any of the following things, that is to say—

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165/1999.

(a) to deliver to the relevant Commissioner copies of accounts (including balance sheets) relating to any such transactions or property, and specified or described in the notice, within such period as may be therein specified, including, where the accounts have been audited, a copy of the auditor's certificate;

L.N.
165/1999.

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165/1999.

(b) to make available within such time as may be specified in the notice, for inspection by the relevant Commissioner or any person authorized in writing by him, all such books, accounts and documents in his possession or under his control as may be specified or described in the notice, being books, accounts and documents which contain information as to any such transactions or property.

L.N.
165/1999.

(4) If without reasonable excuse (the proof whereof shall lie upon him) any person on whom a notice has been served under this section fails to comply with the requirements of the notice or, being in attendance before the relevant Commissioner in pursuance of subsection (2), refuses

to answer any lawful question touching the matters under consideration, he shall be guilty of an offence against this Act.

(5) The service of notices under this section shall be by registered post.

(6) No solicitor or counsel shall be required under this section to disclose, whether by way of the production of any document or otherwise any privileged communication made by or to him in that capacity, except the name and address of his client.

39.—(1) The Commissioner or any officer, servant or other person authorized in that behalf in writing by the Commissioner shall have power, where reasonably required for purposes of this Act, to do any of the following things, that is to say, to exercise any functions under subsection (2) and to enter, at all reasonable hours during the daylight, in or upon any land (without being liable to any legal proceedings or molestation whatever on account of such entry):

Access to
land and
buildings.

Provided always that neither the Commissioner nor any officer, servant or other person authorized as aforesaid shall enter into any dwelling-house in actual occupation unless with the consent of the occupier thereof, without previously giving forty-eight hours' notice in writing to such occupier.

(2) Every person in possession of land after being served with a notice in writing signed by the Commissioner or by a person authorized by the Commissioner, shall—

- (a) show to the Commissioner or person authorized as aforesaid all maps, plans, diagrams, documents of title and documents containing information as to rents, issues and profits of such land in his custody or control; and
- (b) permit the Commissioner or person authorized as aforesaid to make tracings or copies of such maps, plans, diagrams or documents; and

(c) on the date appointed in the notice being not less than seven days after the service thereof, meet the Commissioner or such person on such land and answer all such questions as may be put to him concerning such land and point out the boundaries thereof, in so far as he is able so to do.

(3) Every person who contravenes the provisions of subsection (2) shall be guilty of an offence against this Act.

Notices.
L.N.
165/1999.

40.—(1) Every notice to be given by a relevant Commissioner under this Act shall be signed by the relevant Commissioner or by some person or persons from time to time appointed by him for that purpose, and every such notice shall be valid if the signature of the relevant Commissioner or of such person or persons is duly printed or written thereon:

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165/1999.

Provided that any notice in writing under this Act to any person requiring him to furnish particulars to a relevant Commissioner, or any notice under this Act requiring the attendance of any person or witness before the relevant Commissioner shall be personally signed by the relevant Commissioner or by a person duly authorized by him.

L.N.
165/1999.

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165/1999.

(2) A signature attached to any notice and purporting to be the signature of any person so appointed or otherwise lawfully authorized to sign it shall be taken to be the signature of that person until the contrary is shown.

(3) In the case of a person assessed who is absent from the Island any notice required may be served on the agent of such person and such service shall be deemed to be service on such person.

(4) Notice required to be served on a person by registered post may be served by being sent by registered post to his last-known business or private address or, notwithstanding such requirement, may be served on him personally.

(5) Any notice sent by registered post shall be deemed to have been served, in the case of a person resident in the Island not later than the fourteenth day succeeding the day when posted, and in the case of a person not so resident, not later than the thirtieth day succeeding the day on which the notice would have been received in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

41.—(1) Every person who for the purpose of obtaining any allowance, deduction, abatement or refund of any tax or in relation to any assessment under this Act either for himself or for any other person, or who in any return made under this Act, knowingly makes any false statement or false representation, shall, notwithstanding any other provision in this or any other law, be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two thousand dollars and treble the amount of tax with which he or that person (as the case may be) ought to be charged under this Act, or to imprisonment for a term not exceeding two years.

Penalties
for false
statements.

(2) Any person who knowingly and wilfully aids, abets, assists, counsels, incites or induces another person to—

- (a) make or deliver any false return or statement under this Act; or
- (b) keep or prepare any false account concerning any property, in relation to the transfer of which tax is imposed,

shall be guilty of an offence against this Act.

(3) If any person, by himself or by any person in his employ, obstructs, molests or hinders—

- (a) an officer or any person employed for any purpose under this Act in the execution of his duty or of

any of the powers or authorities by law given to him; or

- (b) any person acting in the aid of an officer or any person so employed,

he shall be guilty of an offence against this Act.

General provisions as to penalties.

42.—(1) Any person guilty of an offence against this Act for which no specific penalty is provided by this Act shall, on summary conviction before a Resident Magistrate—

- (a) in the case of an offence committed in contravention of any provisions of this Act with which his compliance is requisite for the purpose of duly charging or assessing the amount of tax payable with reference to any transaction to which he is a party, or for the purpose of determining any claim or application by him for abatement or refund of tax, be liable to a fine not exceeding two thousand dollars and treble the amount of tax (if any) with which he ought to be charged under this Act or to imprisonment for a term not exceeding two years;
- (b) in any other case, to a fine not exceeding two thousand dollars and in default of payment to imprisonment for a term not exceeding one year.

(2) Upon the conviction of any person for an offence against this Act, a certificate that the offence was committed as mentioned in paragraph (a) of subsection (1), or that any person ought to be charged with any amount of tax, or that any amount of tax is outstanding in consequence of the offence, shall be *prima facie* evidence of the matters so certified if the certificate is signed in the case of an offence not committed on appeal, by the relevant Commissioner, and subsection (2) of section 40 shall, as it applies to a notice, apply to a certificate for the purposes of this subsection.

L.N.
170/1972.

L.N.
165/1999.

43. Without prejudice to any specific power of apportionment conferred by any provisions of this Act, where it is necessary for the purposes of the provisions of this Act to apportion any values, consideration, capital gains or relief as between properties or between parts of properties, such values, consideration, capital gains or relief (as the case may be) shall be apportioned by the relevant Commissioner in such manner as he may determine, subject to the provisions of any regulations made for the purpose under section 44.

Apportionment.

L.N.
165/1999.

44.—(1) The Minister may make regulations in regard to all or any of the following matters, that is to say—

Regulations.

- (a) anything authorized or required by this Act to be prescribed;
- (b) prescribing the principles, basis and method of—
 - (i) determination or assessment, whether by reference to market value or otherwise, of the consideration (in particular, any market value or other money or money's worth prescribed or hereby required to be deemed or taken into account as consideration) for, and of any capital gains accruing from, the transfer of any property;
 - (ii) apportionment in the exercise of any power conferred in that behalf by this Act;
- (bb) amending Part II of the First Schedule;
- (c) the payment of tax by instalments and the enforcement and collection of any such payments;
- (d) the procedure and times (without prejudice to the specific limitation of any periods as hereinbefore provided) for making and determining claims and applications under this Act;
- (e) the methods and procedure to be followed for securing and notifying assessments under subsection (3) of section 32 of the Stamp Duty Act,

12/1975
S. 11(a).
First
Schedule.

and denoting documents, for the purposes of section 19;

- (f) the forms to be used (including the prescription of information to be supplied therein) for the purposes of this Act;
- (g) the extension (before or after the expiration) of the time limited for doing anything, whether under the Stamp Duty Act or otherwise, for the purposes of this Act;
- (h) generally providing for such matters as the Minister considers necessary or expedient for giving full effect to the provisions of this Act.

(2) Any regulations made under subsection (1) may provide in respect of the breach of any of the provisions thereof that the offender shall be liable to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding twelve months, or to both such fine and imprisonment as may be prescribed therein.

(3) Any regulations made under paragraph (b) or (bb) of subsection (1), or made pursuant to subsection (5) of section 7 or subsection (2) of section 11, or (for the prescription of any amount) pursuant to subsection (2) of section 12, shall be subject to affirmative resolution of the House of Representatives.

12/1975
S. 11(b)(i),
(ii).

Double
taxation
relief.
50/1973
S. 2.

45.—(1) The Minister may by order declare that arrangements specified in the order have been made with the Government of a territory outside of Jamaica with a view to affording relief from double taxation in relation to tax under this Act and any tax of a similar character imposed by the laws of that territory; and the arrangements shall have effect in relation to tax under this Act notwithstanding anything in this Act or in any other enactment.

(2) Where arrangements have effect by virtue of subsection (1) the obligation as to secrecy imposed by section 37 shall not prevent the disclosure to an authorized officer of the Government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(3) The Minister may make rules for carrying out the arrangements aforesaid and for applying this Act in such respects, and with such adaptations and modifications, as appear to him necessary or expedient in consequence of the arrangements; and any such rules may be made with retrospective effect to a date not earlier than 4th August, 1971.

(4) Rules under subsection (3) shall be subject to negative resolution of the House of Representatives.

(5) An order under subsection (1) may be made with retrospective effect to a date not earlier than 4th August, 1971.

46.—(1) If the Minister is satisfied that it would be just and equitable to do so, he may remit any amount of tax charged or chargeable under this Act, and he shall cause notice of the remission to be published in the *Gazette*. Remission
of tax.
13/2013
Sch.

(2) This section does not apply to any tax charged or chargeable in respect of a transfer of property to or from a registered charitable organization. 13/2013
Sch.
32/2013
Sch.

TRANSFER TAX

12/1975
S. 12(a),
(b).

FIRST SCHEDULE

(Sections 5,12, 29
and 44)

PART I

SPECIAL PROVISIONS WITH REFERENCE TO SHARES AND TO
DEBENTURES AND OTHER SECURITIES

Letters of allotment

1. Shares or debentures comprised in any letter of allotment or similar instrument shall be treated as thereby issued unless the right to the shares or debentures thereby conferred remains provisional until accepted and there has been neither acceptance nor transfer by the allottee of his rights before or after the making of such provisional allotment.

Allotment or issue of securities not a transfer

2. Without prejudice to the imposition of any tax to be borne by the transferor in respect of any such transfer as is mentioned in paragraph 1 of this Schedule, no allotment or issue by a company of securities thereof shall be treated as a transfer by the company.

Capital distributions

3.—(1) Where after the 17th November, 1970, a person receives or becomes entitled to receive in respect of shares in a company any capital distribution from the company (other than a new holding as defined in paragraph 4 of this Schedule) he shall be taken to have, in consideration of that capital distribution, transferred an interest in those shares and the company shall be treated as the transferee:

Provided that if, upon application for relief of the applicant from taxation as a transferor by virtue of the foregoing provisions of this paragraph in respect of any capital distribution from a company, the Commissioner of Inland Revenue is satisfied that the distribution comprises any amount on account of a capital distribution—

- (a) from a subsidiary of the company;
- (b) passing to the company either directly from that subsidiary

L.N.
165/1999.

or through a succession of capital distributions, each of them being a distribution from a subsidiary to a holding company thereof; and

- (c) in the case whereof tax has, by virtue of the said provisions, been paid on the consideration which such capital distribution from the subsidiary mentioned at (a) above is taken, for the purposes of such provisions, to represent,

the Commissioner of Inland Revenue shall grant relief from tax on the consideration which the amount comprised as aforesaid is taken, for purposes of those provisions, to represent; and any question whether a company is any other company's subsidiary or holding company for the purposes of this proviso shall be determined in conformity with section 149, in like manner as if for the purposes, of the Companies Act. L.N. 165/1999.

(2) In this paragraph "capital distribution" means any distribution from a company, including a distribution in the course of dissolving or winding-up the company, in money or money's worth except in so far as it—

- (a) shall be treated under section 34 of the Income Tax Act, as a distribution by a body corporate; or
- (b) shall be charged under the provisions, other than section 34 of the Income Tax Act, to income tax as income, or be taken into account as a receipt in computing income, gains, profits or losses under those provisions; or
- (c) would be charged, or taken into account, as aforesaid but for any enactment by virtue of which income, gains or profits are exempted from being so charged or taken into account.

Reorganization of share capital, conversion of securities, etc.

4.—(1) This paragraph shall apply in relation to any reorganization or reduction of a company's share capital; and for the purposes of this paragraph—

- (a) reference to reorganization of a company's share capital include—
- (i) any case where persons are, whether for payment or not, allotted shares in or debentures of the company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in the company or of any class of shares in the company; and

[The inclusion of this page is authorized by L.N. 3/2001]

(ii) any case where there are more than one class of share and the rights attached to shares of any class are altered; and

(b) "original shares" means shares held before and concerned in the reorganization or reduction of capital, and "new holding" means, in relation to any original shares, the shares in and debentures of the company which, as a result of the reorganization or reduction of capital, represent the original shares (including such, if any, of the original shares as remain).

(2) Subject to the following sub-paragraphs, a reorganization or reduction of a company's share capital shall not be treated as involving any disposal of the original shares.

(3) Where, on a reorganization or reduction of a company's share capital, a person receives (or, without prejudice to the generality of any provisions of this Act, is deemed to receive) or becomes entitled to receive any consideration, other than the new holding, for the disposal of an interest in the original shares, and in particular—

(a) where under paragraph 3 of this Schedule he is to be deemed to have, in consideration of a capital distribution, disposed of an interest in the original shares; or

(b) where he receives (or, without prejudice as aforesaid, is deemed to receive) consideration from other shareholders in respect of a surrender of rights derived from the original shares,

he shall be treated as having for that consideration transferred accordingly an interest in the original shares.

(4) Where on a reorganization of a company's share capital a person receives or becomes entitled to receive in respect of any shares a provisional allotment of shares in or debentures of the company, then, unless he neither accepts the allotment nor transfers his rights before or after the making of the allotment, those rights shall be treated in relation to him and in relation to any person acquiring them directly or indirectly from him as if they were the shares or debentures to which they relate and as if the consideration to be given for the shares or debentures were a liability attaching to the rights.

(5) References in the provisions of this paragraph to a reduction of share capital do not include the paying off of redeemable share capital, and where shares in a company are redeemed by the company otherwise than by the issue of shares or debentures, with or without

consideration, and (without prejudice to any other provisions of this Act) otherwise than in liquidation, the shareholder shall be treated as transferring the shares to the company at the time of the redemption.

5.—(1) Paragraph 4 shall apply with any necessary adaptations in relation to the conversion of securities as it applies in relation to the reorganization or reduction of a company's share capital.

(2) For the purposes of this paragraph—

(a) "conversion of securities" includes—

(i) a conversion of securities of a company into shares in the company;

(ii) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash;

(iii) any exchange of securities effected in pursuance of any enactment (including an enactment passed after this Act) which provides for the compulsory acquisition of any securities in exchange for other securities;

(b) "securities" does not include shares.

Company amalgamations

6.—(1) Subject as hereinafter provided, where a company issues shares or debentures to a person in exchange for shares in or debentures of another company, paragraph 4 shall apply with any necessary adaptations as if the two companies were the same company and the exchange were a reorganization of its share capital.

(2) This paragraph shall apply only where the company issuing the shares or debentures has or in consequence of the exchange will have control of the other company, or where the first-mentioned company issues the shares or debentures in exchange for shares as the result of a general offer made to members of the other company or any class of them (with or without exceptions for persons connected with the first-mentioned company) the offer being made in the first instance on a condition such that if it were satisfied the first-mentioned company would have control of the other company.

7.—(1) Where under any arrangement between a company and the persons holding shares in or debentures of the company or any class of such shares or debentures, being an arrangement entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation, another company issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of the first-mentioned shares or debentures, but the first-mentioned shares or debentures are either retained by those persons or cancelled, then those persons shall be treated as exchanging the first-mentioned shares or debenture for those held by them in consequence of the arrangement (any shares or debentures retained being for this purpose regarded as if they had been cancelled and replaced by a new issue):

Provided that sub-paragraph (2) of paragraph 6 shall not apply.

(2) Where any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business) no tax shall be charged in respect of the transfer as aforesaid of any property.

(3) In this paragraph "scheme of reconstruction or amalgamation" means a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise.

Alteration of share rights

8.—(1) If any person or persons having control of a company exercise after the 17th November, 1970, his or their control so that value passes out of shares in the company, being shares owned by him or any such persons or a person who is connected with him or any of them (whether value passes as aforesaid by way of cancellation of such shares or in any other manner whatsoever) and passes into other shares in the company (whether by way of their issue or in any other manner whatsoever), the first-mentioned shares shall be deemed to have been transferred by such owner or owners, as the case may be, to the person owning such other shares.

(2) Without prejudice to the generality of the provisions of this Act as to the transactions which are transfers of property, any transaction which under sub-paragraph (1) is to be treated as a transfer of

property shall be so treated notwithstanding that there is no consideration and so far as, on the assumption that the parties to the transaction were at arm's length, the party making the transfer could have obtained consideration, or additional consideration, therefor the transaction shall be treated as not being at arm's length and the consideration so obtainable, or (as the case may be) the additional consideration so obtainable added to the consideration actually passing, shall be treated as the market value of what is transferred.

(3) For the purposes of sub-paragraph (1), rights over a company which are exercisable by any person shall be regarded as shares in the company which are owned by him.

(4) For the purposes of sub-paragraph (1), a person shall be taken to have control of a company—

- (a) if he exercises, or is able to exercise, or is entitled to acquire, control (whether direct or indirect) over the company's affairs and, in particular (without prejudice to the generality of the foregoing), if he possesses or is entitled to acquire, the greater part of the share capital or voting power in the company; or
- (b) if he possesses or is entitled to acquire, either—
 - (i) the greater part of the issued share capital of the company; or
 - (ii) such part of the capital as would, if the whole of the income of the company were in fact distributed to the members, entitle him to receive the greater part of the amount so distributed; or
 - (iii) such redeemable share capital as would entitle him to receive on its redemption the greater part of the assets which, in the event of a winding-up, would be available for distribution among members; or
- (c) if in the event of a winding-up he would be entitled to the greater part of the assets available for distribution among members,

and where two or more persons together satisfy any of the foregoing conditions, they shall be taken to have control of the company.

(5) In sub-paragraph (4), "member" includes any person having a share or interest in the capital or income of the company, and for purposes of that sub-paragraph a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire; but for the purposes of sub-paragraph (4) (b) (iii) and (c) any person who is a loan creditor of the company, otherwise than in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of a business of banking carried on by him, may be treated as a member (and references to share capital as including loan capital).

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(6) For purposes of sub-paragraph (4), there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(7) For purposes of sub-paragraph (4) there may also be attributed to any person all the rights and powers of any company of which he has, or he and persons connected with him have, control or any two or more such companies, or of any person connected with him or of any two or more persons connected with him, including those attributed to a company or connected person under sub-paragraph (6) but not those attributed to such a person under this sub-paragraph.

(8) In sub-paragraph (5) "loan creditor" means a creditor in respect of any redeemable loan capital issued by the company or in respect of any debt incurred by the company, being a debt—

- (a) for money borrowed or capital assets acquired by the company;
- (b) for any right to receive income created in favour of the company; or
- (c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon).

Transfer of shares outside Jamaica indirectly effecting transfer of land

9.—(1) Subject to the provisions of this paragraph, where a person resident in Jamaica for purposes of the Income Tax Act, transfers shares in a corporation after the 17th November, 1970, and, immediately before the transfer, either—

- (a) the corporation is or has control of a land-owning company, and is one which is under the control of not more than five persons and in which he has a substantial interest; or
- (b) the corporation, or a company of which it has control, has a substantial interest in a land-owning company under the control of not more than five persons, and the corporation is one of which he has control or of which he and persons connected with him have control,

then, such transfer shall be deemed to be a transfer of, and the shares included therein shall be treated as, securities; and any question whether shares in a corporation have been transferred shall be determined accordingly, for the purposes of this paragraph, in conformity with the provisions of this Act, in particular, section 10, but exclusive of paragraphs 6 and 7 of this Schedule:

Provided that, without prejudice to such liability to bear tax as may be imposed on any transferor by virtue of the foregoing provisions of this sub-paragraph; the transferor shall have, incur and discharge such duties and liabilities as would be imposed on any other person as the transferee by virtue of those provisions apart from this proviso and (if it be applicable) section 22.

- (2) For the purposes of this paragraph—
- (a) “company” has the like meaning as is assigned by section 2 for the purposes of paragraphs (e) to (i) (inclusive) of subsection (3) of section 4 to that expression, except that it does not include an unincorporated association;
 - (b) “corporation” means any body incorporated under the law of any country except Jamaica;
 - (c) a corporation shall be deemed to have control of a company as mentioned in sub-paragraph (1) (a) or (b) if the corporation has power to secure by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or by virtue of any powers conferred by the articles of association or other document regulating that or any other company, that the affairs of the first-mentioned company are conducted in accordance with the wishes of the corporation; and any person, or a person and others connected with him, shall be deemed to have control of a corporation as mentioned in sub-paragraph (1) (b) if such a condition as corresponds to the foregoing is satisfied in relation to him or them, as the case may be, and the corporation;
 - (d) reference to any corporation or company which is under the control of not more than five persons is a reference to any corporation or company, as the case may be, to which section 20 of the Income Tax Law, 1954, Law 59 of 1954, applies as provided by subsections (2) and (3) thereof or would so apply if the expression “company”, instead of being defined as provided in subsection (4) of that section, were therein defined in the like manner as in this paragraph; and, in determining whether section 20 of the Law applies or would apply as aforesaid, no account shall be taken of any requirement otherwise provided for purposes of the said Law, in particular, any such requirement by virtue of subsection (6) of section 20 aforesaid or as to residence;
 - (e) “land-owning company” means a company entitled to land to a value equal to or exceeding two-fifths of the net value of all its assets (that is to say, their value less the value of the debts and liabilities of the company); and, for this purpose—
 - (i) the value of the said land shall be taken to be the value of the company’s interest free of any liability charged thereon, and to include the value of interests which the company has unconditionally contracted to acquire, but not that of interests which the company has unconditionally contracted to dispose of;
 - (ii) “value”, in relation to a company’s land, means market value;
 - (iii) the net value of a company’s assets is the net value they would have on a sale in the open market of the company’s business as a going concern;

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- (iv) the first-mentioned value shall be exclusive of the market value of any buildings, erections or other constructions on the land;
- (f) any person shall be deemed to have a substantial interest in any company if one-tenth or more in market value of the issued shares of the company is held by him or is held partly by him and partly by persons connected with him;
- (g) "share", in relation to a company not limited by shares (whether or not it has share capital), includes the interest of a member of the company as such, whatever the form of that interest, and the transfer of rights attached to or forming part of a share (at equity or otherwise) shall be treated as if the rights included in the transfer and those not included were separate shares;
- (h) sections 21 and 33 shall not apply.

PART II

SPECIAL PROVISIONS AS REGARDS TAX RESPECTING TRANSFERS
ON DEATH*Interpretation of this Part*

10—(1) In this Part—

"deceased person" means any individual referred to in subsection (2) of section 12, who is deceased, and "the deceased" shall be construed accordingly;

"deceased's transfer" means such transfer, mentioned in subsection (2) of section 12, as a deceased person is deemed to have made;

"incumbrances" includes mortgages and terminable charges;

"representation" means probate of a will or letters of administration;

"tax" means tax imposed by virtue of subsection (1) of section 5;

"will" includes any testamentary instrument.

(2) For the purposes of this Part—

(a) subsection (1A) of section 5 shall apply as it applies for the purposes of subsection (1) of section 5;

(b) reference to personal representatives, as regards any obligation under this Part, includes any person who takes possession of, or intermeddles with, the property of a deceased person.

Disposable property passing on death for tax purposes

11.—(1) A deceased person shall be deemed to have been, at his death, competent to dispose of property—

- (a) if he had at his death such an estate or interest therein, or such general power, as would have enabled him, if of full age and capacity, to dispose of the property; or
- (b) without prejudice to the generality of the foregoing, if at his death he was entitled to revoke a *donatio mortis causa* of the property, or entitled in respect of the property to a tenancy in tail whether in possession or not, or had such power or authority (exercisable whether by instrument *inter vivos* or will, or both) as to enable him, in the capacity of donee or other holder thereof, to appoint or dispose of the property as he thinks fit,

but exclusive of any power or authority exercisable as tenant for life under the Settled Land Act or as mortgagee, or exercisable in a fiduciary capacity under a disposition not made by himself, and a disposition taking effect out of the deceased's interest shall be treated as having been made by him, whether the concurrence of any other person was or was not required.

(2) For the purposes of sub-paragraph (1)—

- (a) if the deceased was not domiciled in Jamaica, he shall nevertheless be deemed to have been so domiciled;
- (b) if the property was not situated in Jamaica, it shall nevertheless be deemed to be so situated.

(3) The property passing on the death of an individual competent to dispose thereof shall be taken to include any property which (having been so disposable) passes—

- (a) to his personal representative; or
- (b) either immediately on his death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation; or
- (c) at a period ascertainable only by reference to the deceased's death.

(4) Subject to sub-paragraph (5), where a deceased person was immediately before his death beneficially entitled to a point tenancy of any property, his severable share of that property shall be treated as property of which he was competent to dispose at his death.

(5) Nothing in sub-paragraph (3) shall apply in relation to any property which is shown to the satisfaction of the Commissioner of Taxpayer Audit and Assessment to be a dwelling-house which was—

- (a) owned by the deceased or, as the case may be, by the deceased and his spouse jointly or as tenants in common, or by the deceased and any one or more of the following relatives of the deceased, whether jointly or as tenants in common, that is to say—
 - (i) mother or step-mother;
 - (ii) father or step-father;
 - (iii) son or step-son;

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- (iv) daughter or step-daughter;
 - (v) sister or brother, whether of the whole or half blood;
 - (vi) grandfather or grandmother;
 - (vii) grandson or granddaughter; and
- (b) used as the principal residence of each of them :

Provided that more than one residence of the deceased shall not be accepted as having been his principal residence for the purposes of this sub-paragraph.

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(6) Reference in sub-paragraph (5) to the deceased's spouse includes any person who the Commissioner of Taxpayer Audit and Assessment is satisfied—

- (a) was a single woman or widow living with the deceased, being a single man or widower, as his wife; or a single man or widower living with the deceased, being a single woman or widow, as her husband; and
- (b) ought to be treated as having been, in all the circumstances of the case, the deceased's spouse for the purposes of sub-paragraph (5).

Aggregation of property for tax purposes

12.—(1) All property of which a deceased person was, at his death, competent to dispose shall be aggregated, as forming the subject of the deceased's transfer, for the purposes of computing the tax imposed in respect thereof as provided by subsection (2) of section 12.

(2) Property shall not be aggregated as aforesaid more than once, nor shall the tax computable pursuant to such aggregation be more than once imposed, in the case of the same death; and—

- (a) tax payable as regards any portion of the property so aggregated shall accordingly be in the same ratio, to the tax so computed, as the value attributable to such portion, and included pursuant to such aggregation, bears to the total consideration for the deceased's transfer of the property aforesaid;
- (b) liability for tax (rateable in manner aforesaid) in respect of any portion of property chargeable under subsection (1) of section 32 shall attach and be thereunder secured on that portion forthwith upon the death of the deceased, but without prejudice to—
 - (i) any means otherwise by law available to the Commissioner of Inland Revenue or a Collector of Taxes for recovery of any amount so secured;
 - (ii) the provisions of paragraph 14 of this Schedule.

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Allowances

13.—(1) Subject as may be otherwise provided by regulations under paragraph (b) of subsection (1) of section 44, in determining the value of property aggregated as aforesaid, allowance shall be made for reasonable expenses as respects the deceased's funeral, and for debts and incumbrances: provided that an allowance shall not be made—

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- (a) for debts incurred by the deceased or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest; nor
- (b) for any debt in respect whereof there is a right to reimbursement from any other person or his estate, unless such reimbursement cannot be obtained; nor
- (c) subject to sub-paragraphs (3) and (4), for any funeral expenses, debts or incumbrances (not charged on any such property prior to the death of the deceased), except to the extent to which it is shown to the satisfaction of the Commissioner of Taxpayer Audit and Assessment that they cannot be discharged out of such of the deceased's assets as are not included in property aggregated as aforesaid; nor L.N. 165/1999.
- (d) in respect of the fees of any court in relation to proceedings or process for obtaining representation; nor
- (e) more than once for the same debt or incumbrance charged upon different portions of the property, and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the Island (unless contracted to be paid in the Island or charged on assets situated within the Island), except out of the value of any property of the deceased situated out of the Island in respect of which the tax is paid; and there shall be no repayment of the tax in respect of any such debts to the extent to which it is shown to the satisfaction of the Commissioner of Taxpayer Audit and Assessment that the assets of the deceased situated in the country in which the person to whom such debts are due resides is insufficient for their payment: L.N. 165/1999.

Provided that nothing in the foregoing provisions of this sub-paragraph shall be construed to prejudice anything provided by virtue of sub-paragraph (1) (a) to (e) (inclusive).

(3) Where any property passing on the death of the deceased is situated outside Jamaica, and the Commissioner of Taxpayer Audit and Assessment is satisfied that by reason of such death any tax, duty or other impost in respect of that property is payable in the country wherein it is situated, he shall make an allowance of the amount of that tax, duty or impost from the value of such property. L.N. 165/1999.

(4) Where the Commissioner of Taxpayer Audit and Assessment is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situated out of the Island, he may make an allowance from the value of the property on account of such expense, not exceeding in any case five per centum on the value of the property. L.N. 165/1999.

Charge on property not passing to personal representatives

14.—(1) Without prejudice to any lawful means of levying tax as hereinbefore provided, tax rateable in the manner provided by subparagraph 2 (a) of paragraph 12 with reference to any portion of property which does not pass to the deceased's personal representatives as such shall be a first charge on the portion so taxable:

Provided that the property shall not be chargeable under this paragraph against a *bona fide* purchaser thereof for valuable consideration.

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(2) On an application submitting the description of the lands or other subjects of property (whether hereditaments, stocks, shares, or securities) and of the debts and incumbrances allowed by the Commissioner of Taxpayer Audit and Assessment in assessing the value of the property for the purposes of the tax, the Commissioner of Taxpayer Audit and Assessment shall grant a certificate of the tax paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

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(3) Subject to repayment of any of the tax arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Part an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioner of Taxpayer Audit and Assessment shall be conclusive evidence that such amount of the tax as is specified therein as a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid:

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Provided that any such repayment by the Commissioner of Inland Revenue shall be made to the person producing to him the said certificate.

Facilities for raising tax

15.—(1) A person authorized or required to pay the tax in respect of any property shall, for the purpose of paying such tax, or raising the amount thereof when already paid, have power, whether the property is or is not vested in him, to raise the amount of the tax in respect thereof and any interest and expenses properly paid or incurred by him in that behalf, by the sale or mortgage of or a terminable charge on that property or any part thereof, and to execute all necessary conveyances, transfers and mortgages in respect thereof; and where the title of any such property is under the Registration of Titles Act, a transfer or mortgage signed by the person authorized or required to pay the tax aforesaid shall have the same force and effect as a transfer or mortgage signed by the proprietor under the said Act.

(2) A person having a limited interest in any property, who pays the tax in respect of that property, shall be entitled to the like charge as if the tax in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, may be expended in paying any of the tax in respect of property comprised in the settlement and held upon the same trusts.

(4) If the rateable part of the tax as regards any property is paid by the personal representatives, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the tax is in respect of real property, it may be repaid in manner provided for in paragraph 21.

Acceptance of realty in lieu of tax

16.—(1) The Commissioner of Inland Revenue may, if he thinks fit, on the application of any person liable to pay the tax in respect of property including real estate, accept in satisfaction of the whole or any part of the tax aforesaid any such real estate agreed upon between the Commissioner of Inland Revenue and that person. L.N. 165/1999.

(2) All necessary conveyances, transfers and assignments shall be made and executed for vesting such real property in the Commissioner of Lands. L.N. 165/1999.

(3) No stamp duty, transfer tax, recording or registration fees shall be payable on any conveyance, transfer or assignment of such property to the Commissioner of Lands under this paragraph.

Revenue Affidavit

17.—(1) Before obtaining representation the personal representatives of the deceased shall deliver to the Commissioner of Taxpayer Audit and Assessment an affidavit (herein called the "revenue affidavit") and, subject as may be prescribed under paragraph (f) of subsection (1) of section 44, shall specify in appropriate accounts annexed thereto particulars of all property of which the deceased was competent to dispose at his death and the values thereof in respect of which the tax is payable: L.N. 165/1999.

Provided that where the Administrator-General obtains representation he may deliver the revenue affidavit within such time thereafter as the Commissioner of Taxpayer Audit and Assessment may prescribe. L.N. 165/1999.

(2) All land registered under the Registration of Titles Act in respect of which tax is payable shall be subject to the tax whether or not the same shall be registered as a charge or incumbrance on the Certificate of Title.

(3) Interest at the rate of six *per centum* per annum shall be paid upon any of the tax outstanding from and after the expiration of twelve months of the date of the death of the deceased to the date of payment and shall be recoverable in the same manner as if it were part of the tax.

(4) The revenue affidavit shall be sworn by the personal representatives before any person authorized to administer oaths.

(5) Subject as may be prescribed under paragraph (f) of subsection (1) of section 44, where the personal representatives do not know the amount of value of any property of which the deceased was competent to dispose as aforesaid, they may state in the revenue affidavit that such property exists but they do not know the amount or value thereof and that they undertake, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the tax

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for which they are or may be liable, and any further tax payable by reason thereof for which they are or may be liable in respect of the other property mentioned in the revenue affidavit.

Persons liable for payment of tax

18.—(1) Subject to sub-paragraph (2), the personal representatives of the deceased shall pay the tax in respect of the property of which the deceased was, at his death, competent to dispose.

(2) Notwithstanding anything to the contrary, the personal representatives shall not be accountable for payment of the tax—

- (a) except in so far as relates to property received, managed or controlled by them, or in respect of which the deceased's right, title or interest passes to the personal representatives as such, or of which they are entitled to the receipt, management or control, so, however, that the personal representatives may, at the request of the person accountable in that behalf, if they think fit, pay the tax in respect of any other property of which the deceased was competent to dispose as aforesaid;
- (b) in so far as it is in excess of all the property of which they have taken or assumed, or are entitled to take or assume, or might have taken or assumed but for their own neglect or default, receipt or management or control.

(3) Subject to the provisions of sub-paragraph (3) of paragraph 21 of this Schedule, section 19 of this Act (which relates to payment of tax as stamp duty), in its application as provided by subsection (3) of section 12, shall, as regards so much of the tax in relation to a deceased's transfer as is payable by his personal representatives who obtain representation, have effect as if any order or process of a court or other document whereby such representation is granted were such a document evidencing the deceased's transfer as is mentioned in that section.

(4) If any property passes on the death of a deceased person and personal representatives of the deceased are not accountable for payment of the tax in respect of such property—

- (a) every person to whom any property so passes for any beneficial interest in possession; and
- (b) to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested; and
- (c) every person in whom the same is vested in possession by alienation or other derivative title,

shall be accountable for payment of the tax on the property; and his return for assessment thereto shall be transmitted within six months, or such further time as the Commissioner of Taxpayer Audit and Assessment allows, from the date of such death, instead of within the time prescribed pursuant to subsection (2) of section 20; and section 23 shall apply accordingly:

Provided that nothing in this paragraph contained shall render a person accountable for the tax who acts merely as agent or bailiff for another person in the management of property.

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(5) A *bona fide* purchaser for value shall not be accountable, by virtue only of anything provided by sub-paragraph (4), for any of the tax.

(6) Without prejudice to any rights or powers exercisable under this Part, no provision in this Act for any amount charged under this Act to be borne by a transferor entitles any other person—

- (a) to recover any amount of tax, respecting a deceased's transfer, for which such other person has incurred or discharged liability under sub-paragraph (4) of this paragraph or pursuant to any obligation for the purposes whereof he is the deceased's personal representative within the meaning of this Part by virtue only of sub-paragraph (2) (b) of paragraph 10;
- (b) to be in any way relieved or indemnified as to any raising or payment of tax respecting a deceased's transfer of any property received or (apart from any such raising of tax) receivable by such other person upon distribution under any will, or on intestacy, of the deceased.

Apportionment of tax paid on property securing annuity, etc.

19.—(1) In the case of property which does not pass to the personal representatives as such, an amount equal to the proper rateable part of the tax may be recovered by the person, who being authorized or required to pay the tax in respect of any property has paid such tax, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition not containing any express provisions to the contrary.

(2) (a) Any dispute as to the proportion of the tax to be borne by any property or person, may be determined upon application by any person interested by originating summons in the Supreme Court, or where the amount in dispute is less than two thousand dollars by ordinary summons in the Resident Magistrate's Court for the parish in which the person recovering the same resides or the property in respect of which the tax is paid is situated.

(b) The person claiming to recover the amount in dispute shall be plaintiff, and the person resisting such payment shall be defendant. Particulars of demand shall be filed in every such proceeding, and shall state concisely the nature of the dispute, and the relief or order which the plaintiff claims.

(3) Any person from whom a rateable part of the tax can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioner of Inland Revenue.

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Assessment to tax

20.—(1) The Commissioner of Taxpayer Audit and Assessment shall, if he is satisfied with the particulars set out in the revenue affidavit or account, assess the tax on the footing of such particulars, but it shall

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be lawful for that Commissioner, if he is dissatisfied with such particulars, to cause a valuation to be made by a person named by him and to assess the tax on the footing of such valuation:

L.N.
165/1999. Provided that the reasonable costs of such valuation shall be defrayed by that Commissioner.

(2) Nothing in sub-paragraph (1) shall prejudice any powers exercisable under any other provisions of this Act for the purposes of assessing tax.

Postponement of payment of tax

L.N.
165/1999. 21.—(1) Where the Commissioner of Inland Revenue is satisfied that the tax leviable in respect of any property cannot without excessive sacrifice be raised at once or cannot be paid on the grant of representation, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding six per cent on such terms, as he may think fit.

L.N.
165/1999. (2) The Commissioner of Inland Revenue may require the personal representative to enter into a bond with or without sureties in such an amount as he may think fit to secure the payment of the proper tax thereon within such time as shall be named in such bond, or he may require the personal representatives to deposit in his hands such sum of money as he may think fit to be held as security for the payment of the proper tax within such time as he may appoint.

L.N.
165/1999. (3) Where the Commissioner of Inland Revenue allows as aforesaid postponement of any payment collectible pursuant to sub-paragraph (3) of paragraph 18 of this Schedule, a stamp indicative of such matters with regard to that payment as the Commissioner of Inland Revenue thinks fit shall be impressed in lieu of the stamp required by virtue of paragraph (a) of subsection (2) of section 19 of this Act as respects such payment.

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Oaths

L.N.
165/1999. 22.—(1) Any oath required for the purposes of the tax pursuant to this Part may be taken before the Commissioner of Taxpayer Audit and Assessment, who is hereby authorized to administer such oath, and no fee shall be payable therefor.

L.N.
165/1999. (2) The Commissioner of Taxpayer Audit and Assessment may, if he thinks fit, accept a statement by or on behalf of any accountable person as a correction of any revenue affidavit or return, without requiring that statement to be verified on oath.

SECOND SCHEDULE (Sections 36 and 37)

Returns to be made by "personal companies" incorporated abroad

1.—(1) With effect from the 4th August, 1971, it shall be the duty of every personal company—

(a) before any land is transferred to it;

- (b) upon becoming a subsidiary of another personal company, if the first-mentioned personal company is entitled to land;
- (c) within three months (or such longer period not exceeding six months as the Minister may allow) after the 4th August, 1971, in the case of a personal company entitled to any land transferred to it before such date,

to cause to be delivered to the Registrar for filing such documents and particulars as are specified in section 346 of the Act, together with a list of the members of that company containing such particulars with respect to the members as are by the Act required to be contained in the register of members of a company with respect to members thereof for the time being and, if that personal company is or becomes as aforesaid a subsidiary of another personal company, the like documents, particulars and list in relation thereto; but nothing in the foregoing provisions of this subsection requires a personal company, upon any occasion referred to at (a), (b) or (c) above, to furnish anything to the Registrar when the same or all information suppliable therein has, in conformity with any law, been furnished by the company to the Registrar for inclusion in any file that he is maintaining in respect of the company.

(2) Information delivered to the Registrar upon any such occasion arising at any time as is mentioned in sub-paragraph (1) (b) shall be in relation to that time and shall be delivered within a like period as is referred to in paragraph 2 of this Schedule.

2. Where there is any alteration in any such particulars, or in matters set out in any such list or other document, as aforesaid in relation to a personal company which is entitled to land, or in relation to any personal company of which a personal company so entitled is a subsidiary, the personal company entitled as aforesaid shall, within twenty-one days after the date on which particulars of the alteration could, in due course of post and if despatched with due diligence, have been received in this Island from the place where that company is incorporated, deliver to the Registrar for inclusion in such company's file, a return containing the prescribed particulars of the alteration.

3.—(1) Every personal company entitled to land shall in every calendar year deliver to the Registrar a balance sheet and profit and loss account and, if the company is a subsidiary of any other personal company, a copy of the same in relation thereto, in such form, and containing such particulars and including such documents, as under the provisions of the Act, it would, if it had been a company incorporated under the Act, have been required to make out and lay before the company in general meeting.

(2) The Minister shall have like powers to modify any of the requirements imposed by virtue of sub-paragraph (1) as are conferred by subsection (4) of section 349 of the Act.

(3) If any document mentioned in sub-paragraph (1) is not in the English language, there shall be annexed thereto a certified translation thereof.

4.—(1) The provisions of section 351 of the Act shall apply to any personal company entitled to land, and to any personal company of which a personal company so entitled as a subsidiary, as they apply to a company to which Part X of the Act applies, but with the deletion from the section of the words “under this Part” and the substitution therefor of the words “as being that of a person authorized to accept service on its behalf”.

(2) The provisions of section 353 of the Act shall apply in respect of any personal company entitled to land as they apply in respect of a company to which Part X of the Act applies, but with the insertion immediately after the words “of this Part” in the section, of the words “which apply to it, or with the requirements of the Second Schedule to the Transfer Tax Act, or to perform any duty imposed on it by that Schedule.”.

5. If any personal company entitled to land ceases to be so entitled, it shall forthwith give notice of that fact to the Registrar, and as from the date on which notice is so given, the obligation of the company (as being entitled to land) to deliver any document to the Registrar under this Schedule shall cease:

Provided that, in case the Registrar is satisfied by any other means that the company has ceased to be entitled to land it shall be lawful for him to close the file of the company, unless it is necessary to maintain the file for the purposes of the Act, and upon such closure the obligation of the company (as being entitled to land) to deliver any document to the Registrar under this Schedule shall cease.

6. Any duties and obligations imposed by this Schedule on any personal company, except in so far as the same are imposed on it by the Act, are in addition to the duties and obligations (if any) imposed by the Act on such company.

7.—(1) In this Schedule—

“the Act” means the Companies Act;

“certified” means certified in the manner prescribed to be a correct translation;

“personal company” means any corporation under the control of not more than five persons within the meaning of paragraph 9 of the First Schedule;

“corporation” has the meaning assigned thereto by sub-paragraph (2) (b) of paragraph 9 of the First Schedule;

“Registrar” has the meaning assigned thereto by section 2 of the Act.

(2) Any question whether a personal company is a subsidiary of any corporation for the purposes of this Schedule shall be determined in conformity with section 149, in like manner as if for the purposes, of the Act.

8. Notwithstanding the incorporation of any company under the law of Jamaica, if (apart from this paragraph) any duties or obligations would, but for the company's incorporation not being under the law of another country, have been imposed by the foregoing provisions of this Schedule on such company as being or becoming the subsidiary of any personal company, the said provisions shall, as respects particulars, lists and other documents relating to that personal company, apply to the company so incorporated, and in relation to the said personal company, as if the first-mentioned company had been incorporated under the law of a country other than Jamaica, such country being, for the purposes of paragraph 2 of this Schedule, taken to be the country where the said personal company is incorporated.

