

L.N. 98 of 1993

DUTY ON DOCUMENTS AND TRANSFERS ACT, 1993
(ACT NO. XVII OF 1993)

Duty on Documents and Transfers Rules, 1993

IN exercise of the powers conferred by sections 5, 12, 22, 33, 34, 39, 46, 51 and 62 of the Duty on Documents and Transfers Act, 1993, hereinafter referred to as "the Act", the Minister of Finance has made the following rules:—

Title and
commencement.

1. (1) These rules may be cited as the Duty on Documents and Transfers Rules, 1993.

(2) These rules shall be deemed to have come into force on the 25th November, 1992 except for paragraph (4) of rule 2 which shall come into force on the next day following the publication of these rules.

Manner of
payment of
duty etc.

2. (1) The duty in respect of any document or transfer executed in Malta shall be made at the Office of the Commissioner within fifteen working days following that on which the document or transfer is completed.

(2) Payment of duty in respect of any document denoted by means of franking machines shall be effected before the relative document is drawn up, signed or completed.

(3) Payment of duty in respect of documents executed outside Malta which are liable to duty by reason of their use in Malta shall be effected at the Office of the Commissioner before use thereof is made in Malta.

(4) Payment of duty in respect of a schedule of redemption of ground-rent to be filed in court shall be noted by the Commissioner and it shall not be lawful to file any such schedule in Court before payment thereof has been made.

(5) The duty chargeable on any transfer referred to in sections 32, 33 and 40 shall be paid by means of a Bank Draft and a copy of the notice mentioned in section 51 of the Act and to which the First Schedule of these Rules refers, duly stamped by the Commissioner, shall be annexed to the deed relating to the transfer by the notary publishing such deed:

Provided that where payment is effected by means of a Bank Draft within the time in which such duty is payable in accordance with these Rules, no liability shall attach on the notary or the parties to the deed if the Bank Draft is subsequently not honoured by the bank issuing the Draft.

(6) The receipt for the duty paid on any transfer referred to in sections 36, 37, 39 and 42 of the Act shall be annexed to the document relating to such transfer.

Value of property.

3. (1) The value of any property subject to duty under the Act, transferred *inter vivos* or transmitted *causa mortis*, shall be the value of such property on the date of the said transfer *inter vivos* or on the date of

death of the person from whom the transfer *causa mortis* originates, as the case may be, (hereinafter referred to as "the relevant date") and such value shall be established in accordance with the following provisions.

(2) The value of the full ownership of any property on the relevant date shall be the average price which such property would fetch if sold on the open market on that date, due regard being had to all circumstances affecting such property.

(3) The value of the usufruct of any property on the relevant date shall be established as follows:

(a) where the duration of the usufruct is for the life of the usufructuary or for any other indefinite period, the value of the usufruct shall be the percentage of the value of the full ownership set out in the Second Schedule to these Rules reckoned according to the age of the usufructuary on that date: so however that where a usufruct devolves on several persons jointly or successively, or jointly and successively, and the provisions of the Act apply, the value of the usufruct shall be determined according to the age of the youngest of such persons on the relevant date;

(b) subject to the provisions of subparagraph (c) hereof, where the duration of the usufruct is limited to a definite period, the value of the usufruct shall be one and a half per cent of the value of the full ownership of the property multiplied by the number of years, or the remaining number of years, (in all cases a fraction of a year being taken as one whole year), of the duration of such usufruct;

(c) the provisions referred to in subparagraph (b) hereof are:

(i) where, having regard to the age of the person, or if the usufruct devolves jointly or successively, or jointly and successively, on more than one person, the age of the youngest of such persons, upon whom the usufruct devolves on the relevant date, the value of such usufruct established in accordance with the provisions of subparagraph (a) hereof is less than the value established in accordance with the provisions of subparagraph (b) hereof, the value of the usufruct shall be that established in accordance with the provisions of the said paragraph (a);

(ii) where it is provided that the usufruct is to terminate on the death of a stated person even if such death happens before the expiration of the definite period, the value of the usufruct shall also be that established in accordance with the provisions of subparagraph (a) or of subparagraph (b) hereof, whichever value is the less, having regard to the age of the said person on the relevant date;

(iii) in no case shall the value of the usufruct established in accordance with the provisions of subparagraph (b) hereof exceed the value of the full ownership of the property.

(4) The value of the *nuda proprietas* on the relevant date shall be the difference between the value of the full ownership of the property on that date and the value on the same date of the usufruct encumbering it established in accordance with the provisions of paragraph (3) hereof.

(5) The value of the *dominium utile* of any property on the relevant date shall be established as follows:

(a) where the *dominium utile* is perpetual, or where its remaining period is not less than fifty years, the value of the *dominium utile* shall be the difference between the value of the full ownership of the property established in accordance with the provisions of paragraph (2) of this rule and the value of the *dominium directum* established in accordance with the provisions of subparagraph (a) of paragraph (7) hereof;

(b) where the remaining period of the *dominium utile* is less than fifty years, the value of the *dominium utile* shall be such portion of the value of the *dominium utile* of the same property, established as if it were perpetual in accordance with the provisions of subparagraph (a) of this paragraph, as takes fairly and adequately into account the duration of the remaining period and all other relevant circumstances.

(6) The value of the *dominium directum* of any property on the relevant date shall be established as follows:

(a) where the *dominium utile* of the property is perpetual, or where its remaining period is not less than fifty years, the value of the *dominium utile* of that property shall be:

(i) in respect of a transfer *causa mortis*, the value resulting from the capitalisation of the annual ground rent at the rate of eight per cent;

(ii) in respect of any document whereby a schedule of redemption of ground rent is filed in Court, the value resulting from the capitalisation of the annual ground rent as established in any law governing such redemption; and

(iii) in any other case, the value or the amount of the consideration, whichever is the higher, which the annual ground rent would fetch if redeemed or transferred on the open market.

(b) where the remaining period of the *dominium utile* of the property is less than fifty years, the value of the *dominium directum* of that property shall be the difference between the value of the full ownership of that property and the value of its *dominium utile* on the same date established in accordance with the provisions of subparagraph (b) of paragraph (5) hereof.

(7) (a) Where the consideration for a transfer or the value upon which the duty is to be assessed consists of a periodical payment in perpetuity, or for a period of twenty years or more, or for an indefinite period, an *ad valorem* duty shall be charged on the total amount payable during the period of twenty years.

(b) Where the periodical payment is to continue for a definite period of less than twenty years, an *ad valorem* duty shall be charged on the total amount payable during such period.

(c) Where the periodical payment is to continue during any life or lives, an *ad valorem* duty shall be charged on the total amount payable during the period of twelve years.

(d) Where a document is chargeable with *ad valorem* duty in respect of an amount expressed in foreign currency, the duty shall be calculated on such amount converted into Maltese currency at the rate of exchange current on the day of the date of the document.

4. (1) The declaration of a transfer *causa mortis* to be made in terms of section 33 of the Act shall be made within six months of the relative transfer *causa mortis*. Declaration of transfers *causa mortis*.

(2) The declaration shall contain:

(a) the particulars referred to in paragraph (c) of subsection (1) of section 28 of the Notarial Profession and Notarial Archives Act in respect of the transferee *causa mortis* and of the person from whom the transfer *causa mortis* originates; Cap. 55.

(b) the precise description of all the immovable property or rights thereon transferred to the transferee *causa mortis* including the requirements listed in subparagraph (ii) of paragraph (f) of the said subsection (1) of section 28 of the Notarial Profession and Notarial Archives Act; and

(c) an indication of whether the transfer *causa mortis* devolved on intestacy or otherwise, as well as a reference to any will or any decree or judgement of any court whereby the succession was declared open in favour of the transferee *causa mortis*.

5. (1) Where the total duty payable at the rates specified in section 32 of the Act on the value of any property contained in a declaration made by a transferee *causa mortis* in accordance with section 33 of the said Act is less than one thousand liri such duty shall, for the purposes of section 34 of the Act, be rebated by an amount of Lm100 and where such rebate exceeds the amount of duty chargeable the rebate shall be reduced to the amount of duty so chargeable. Rebate of duty.

(2) Where a transferee *causa mortis* omits to make in a declaration a full statement of all the property transferred to him comprised in the transfer *causa mortis*, any subsequent declaration

making a statement of such property shall be deemed as one with the first declaration and the said rebate shall apply to all the declarations made by a transferee *causa mortis* in respect of any one transfer *causa mortis* cumulatively.

(3) Such rebate shall not apply to such part of the duty in respect of any property transferred to a transferee *causa mortis* and contained in any declaration made more than six months after the happening of the relative transfer *causa mortis*.

Memorandum of
auction sales.

6. The memorandum of an auction sale mentioned in section 39 of the Act shall contain a description of the article sold, the price and lot number thereof, the date of the sale, the name and address of the bidder to whom the sale is made, the total amount payable by each bidder for the article or articles purchased and the duty which may be due in accordance with the provisions of the Act.

Transfers *causa mortis* of company shares.

7. (1) For the purposes of section 46 of the Act, a person to whom shares in a limited liability company registered in Malta are transmitted *causa mortis* shall not later than six months after the happening of the transfer *causa mortis* give notice thereof to the Registrar of Partnerships.

(2) The notice shall contain:

(a) the name and last address of the person from whom the transfer *causa mortis* originates;

(b) the name and address of the transferee *causa mortis*;

(c) the number of the official document produced for ascertaining the identity of the transferee *causa mortis* and of the person from whom the transfer *causa mortis* originates.

(d) a complete list of the shares included in the transfer, irrespective of whether the company to which the transfer refers is registered with the Registrar of Partnerships or otherwise; and

(e) the manner in which the shares devolved on the transferee *causa mortis* giving all the details as are referred to in subparagraph (c) of paragraph (2) of rule 4 hereof.

(3) The Registrar of Partnerships shall register and index the said notice by reference to the name of the transferee, the name of the person from whom the transfer *causa mortis* originates, and the name of the company to which the shares refer.

(4) The payment of duty shall be indicated by the Commissioner on the notice aforesaid, and no such notice shall be accepted by the Registrar of Partnerships unless the payment of the relative duty is so indicated thereon.

Notice to be given
by Notary on
deeds of transfer.

8. (1) For the purposes of section 51 of the Act, the notary shall give notice of the relative deed to the Commissioner.

(2) The notice shall be typewritten or in block letters and in the form set out and contain the information required in the First Schedule to these rules.

(3) The Commissioner shall not accept payment of the relative duty before the said notice has been filed.

9. (1) Claims for the refund of any duty under section 62 of the Act shall be made in writing and shall not be considered by the Commissioner if made after four years from the payment of the duty. Refund of duty.

(2) In the case of an assessment served under section 54 of the Act —

(a) no claim for refund or adjustment shall be made after the lapse of four years from the date on which the assessment to which the claim refers becomes final and conclusive in accordance with the provisions of the Act; and

(b) in cases where no duty is chargeable, the claim may be made within ten years of the date of the *inter vivos* or *causa mortis* transfer.

(3) Documents, other than notarial acts, in respect of which a refund is claimed shall be surrendered to the Commissioner.

This notice must be filed in duplicate

FIRST SCHEDULE

NOTICE, (TYPEWRITTEN OR IN BLOCK LETTERS), TO BE FILED ON DEEDS OF TRANSFER OR DECLARATION, FOR THE PURPOSE OF PROVISIONAL TAX IN TERMS OF SECTION 74A OF THE INCOME TAX ACT, CAP. 123, AND FOR THE PURPOSE OF SECTION 51 OF THE DUTY ON DOCUMENTS AND TRANSFERS ACT, 1993.

Provisional Tax: Global Amount Lm	Duty on Documents: Lm
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DECEASED/ TRANSFEROR/S	Details regarding the Income Tax Number. (where the Income Tax number is different from the Identity Card Number, the latter is to be given also). Surname and Name, year of birth, apportioned amount of Provisional Tax and address of each vendor should be inserted in this space in the order specified. Continuation sheets may be used if necessary retaining the same order. The Income Tax number must be given in column form as indicated.
<i>I.T. No/s</i>	
TRANSFEEEE/S	Details regarding the Identity Card Number, surname and name, and address and, in the case of a transfer <i>causa mortis</i> , the apportioned amount of duty on documents of each transferee <i>causa mortis</i> should be inserted in this space in the order specified. Receipt of duty paid will be sent to the first buyer/transferee <i>causa mortis</i> indicated by the notary.

Name of Notary	
Date of Deed	
The amount of the consideration or the value declared	Lm
Provisional Tax	Bank Draft No/s
Duty on Documents	

FOR OFFICIAL USE ONLY

(P.T.O.)

DECLARATION BY NOTARY

1. In the case of a deed of declaration made in terms of section 33 of the Duty on Documents and Transfers Act, 1993, a copy of the relative deed and of any Will or Wills, or extract thereof, and any other relevant documents, including site plans of rural property, should be annexed.
2. In *inter vivos* transactions of immovable property a full description of such property is to be given and a site plan of any rural property is to be annexed.

Public Registry Enrolment Number:

Nature of Transaction:

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Signature of Notary

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Provisional Tax Paid: Lm _____ Receipt No/s : _____ : _____ : _____ : _____ Date of Receipt/s : _____	Duty on Documents Paid: Lm _____ Receipt No/s : _____ : _____ : _____ : _____ Date of Receipt/s : _____
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SECOND SCHEDULE

Value of the usufruct as a percentage of the value of the full ownership

<i>Age of the usufructuary</i>	<i>Percentage of the value of full ownership</i>
where the usufructuary has not completed twenty years of age:	seventy per cent
where the usufructuary has completed twenty years of age but not thirty years:	sixty per cent
where the usufructuary has completed thirty years of age but not forty years:	fifty per cent
where the usufructuary has completed forty years of age but not fifty years:	forty per cent
where the usufructuary has completed fifty years of age but not sixty years:	thirty per cent
where the usufructuary has completed sixty years of age but not seventy years:	twenty per cent
where the usufructuary has completed seventy years of age:	ten per cent.