

I assent.

(L.S.)

PAUL XUEREB
Acting President

6th December 1988

ACT No. XXXVI of 1988

AN ACT further to amend the Duty on Documents Act, 1981.

BE IT ENACTED by the President, by and with the advise and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and
commencement.
Act No. XXXI
of 1981.

1. (1) This Act may be cited as the Duty on Documents (Amendment) Act, 1988, and shall be read and construed as one with the Duty on Documents Act, 1981, hereinafter referred to as “the principal Act”.

(2) This Act shall come into force on such date as the Minister responsible for finance may appoint by notice in the Gazette, and different dates may be appointed for different provisions of this Act.

Amendment of
section 2 of the
principal Act.

2. Section 2 of the principal Act shall be amended as follows:

(a) immediately before the definition of “body of persons” there shall be inserted the following new definition:

““Board” means the Board of Special Commissioners for Duty on Documents, appointed under section 66 of this Act;”;
and

(b) after the definition of “signature” there shall be inserted the following new definition:

““Special Commissioner” means a member of the Board appointed under section 66 of this Act;”.

Substitution of
section 10 of the
principal Act.

3. For section 10 of the principal Act there shall be substituted the following:

"Commis-
sioner to
determine
and assess
the duty
chargeable

10. (1) Where in the opinion of the Commissioner the value expressed or declared in a document other than a document to which section 53 of this Act refers, is lower than the real value at the time of the execution of the document, he shall proceed to determine by order in writing the amount of the duty chargeable and shall raise an assessment accordingly.

(2) Where the value assessed by the Commissioner as aforesaid exceeds the value expressed or declared in the document by more than one-fourth of the value assessed by the Commissioner, the person liable to pay duty shall, in addition to the duty chargeable as in subsection (1) of this section, pay by way of penalty, an additional sum, equivalent to the amount of duty calculated on the total value assessed by the Commissioner as aforesaid."

4. In section 24 of the principal Act, for the words "any penalty incurred under this Act" there shall be substituted the words "any additional duty or any penalty incurred under this Act".

Amendment of
section 24 of the
principal Act.

5. In section 50 of the principal Act:

Amendment of
section 50 of the
principal Act.

(a) immediately before the proviso thereto there shall be added the following:

"Provided that the liability of the notary publishing such deed shall be limited to the duty chargeable on such transfer established on the basis of the value declared in the deed and to the penalties contemplated in sections 51 and 52 of this Act:

Provided further that the notary shall have a special privilege in respect of the duty payable and paid by him on any transfer effected by a public deed, over the immovable transferred:

The special privilege granted by this section shall be registered by the notary within two months from the date of such deed and shall have the same rank as the privileges contemplated in paragraph (c) of section 2010 of the Civil Code:"; and

Cap. 16.

(b) for the words "Provided that the duty chargeable on the memorandum" in the present proviso there shall be substituted the words "Provided further that the duty chargeable on the memorandum".

6. In subsection (4) of section 52 of the principal Act, for the words "of not less than one pound and not more than fifty pounds" there shall be substituted the words "of not less than ten Maltese liri and not more than five hundred Maltese liri".

Amendment of
section 52 of the
principal Act.

7. For sections 53, 53A, 53B and 53C of the principal Act, there shall be substituted the following:

Substitution of
sections 53, 53A,
53B and 53C of
the principal Act.

"Commis-
sioner to
determine
and assess
the duty
chargeable.

53. (1) Where the Commissioner is satisfied that the price of an immovable declared in the deed of sale is less than three-fourths of the real value of the immovable sold, he shall proceed to determine by order in writing the amount

of duty chargeable on the difference between the value declared in the deed of sale and the value of the immovable as determined by him and shall raise an assessment accordingly.

(2) The transferor and the transferee shall be jointly and severally liable to pay the duty referred to in subsection (1) of this section and, where in the opinion of the Commissioner the deed of sale does not reflect the true conditions of the sale, the transferor and the transferee shall each be liable to pay an additional duty equal to ten times the difference between the duty paid on the deed of sale and the duty chargeable on the value of the immovable as determined by the Commissioner.

(3) The Commissioner may raise an assessment as provided in subsections (1) and (2) of this section, at any time, within one year from the day of the receipt by the Commissioner of the notice referred to in section 52 of this Act.”.

Substitution of Part VI of the principal Act.

8. Part VI of the principal Act shall be amended as follows:

- (a) for the heading “Part VI” there shall be substituted the heading “Part VII”; and
- (b) section 64 thereof shall be renumbered section 71.

Addition of new Part to the principal Act.

9. Immediately after section 63 of the principal Act there shall be added the following new Part:

“PART VI

Assessments — Objections — Appeals

Service of assessments.

64. (1) The Commissioner shall cause to be served on the person liable to pay the duty, or on his lawful representative, a notice stating the amount of duty payable, and indicating his rights under section 65 of this Act.

(2) An assessment shall for all purposes of this Act be deemed to have been made by the Commissioner on the date of service of the notice aforesaid.

Objections against assessments.

65. (1) If any person served with or affected by a notice of assessment wishes to contest that assessment, he may apply to the Commissioner for its revocation or revision by a notice of objection in writing specifying the grounds of the objection to the assessment and made within thirty days from the date of the service of the notice aforesaid:

Provided that the Commissioner shall extend the said period as may be reasonable in the circumstances if he is satisfied that that person was prevented from contesting the assessment owing to sickness, or absence from Malta, or any other reasonable cause.

(2) Where any person who has objected to an assessment agrees with the Commissioner as to the amount

of duty payable thereunder, the assessment shall be amended accordingly, and notice of the duty payable shall be served upon such person.

(3) If no agreement is reached as provided in subsection (2) of this section, the Commissioner shall determine the duty by order in writing and serve on the person objecting a notice of his refusal to amend the assessment as desired by such person.

Establish-
ment of
Board of
Special
Commis-
sioners

66. (1) The President of Malta may by notice in the Gazette appoint a Board of Special Commissioners for Duty on Documents consisting of a Chairman and two other persons for the purpose of hearing and determining appeals in accordance with the provisions of section 67 of this Act. The President of Malta may also appoint three other persons to act as Special Commissioners, one to replace the Chairman and any one of the other two to replace any of the other Special Commissioners whenever the Chairman or any of the other Special Commissioners, as the case may be, is, for any reason, unable to carry out his functions. Both the Chairman and the substitute Chairman shall be a Magistrate or a retired Magistrate.

(2) A person shall be disqualified from being appointed or from continuing to be a Special Commissioner so long as he is a member of the House of Representatives.

(3) Every Special Commissioner shall, before entering upon his office, make and subscribe a declaration on oath in the form prescribed to that effect before the Court of Appeal.

(4) Every Special Commissioner shall hold office for such period as may be specified in his appointment.

(5) The Commissioner shall publish all decisions given by the Board on points of law.

(6) The Board shall have power to summon any person to give evidence or to produce books or other documents before it, and the Chairman shall have power to administer the oath to any person appearing before the Board.

(7) The Special Commissioners shall not be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the proceedings of the Board.

(8) The Minister may make rules governing appeals to the Board and, without prejudice to the generality of the foregoing, may make rules:

(a) prescribing the manner in which an appeal shall be made to the Board;

(b) prescribing the procedure to be adopted by the Board in hearing an appeal and the records to be kept by the Board;

(c) prescribing the manner in which the Board shall be convened and the places where and the times at which the Board shall hold sittings;

(d) prescribing fees to be paid in respect of appeals to the Board; and

(e) generally for the better carrying out of the provisions of this Part relating to the Board.

Appeals to
the Board
of Special
Commissioners.

67. (1) Any person who feels aggrieved by an assessment, and has not agreed with the Commissioner on the amount of duty payable as provided in subsection (1) of section 65 of this Act, may enter an appeal to the Board within thirty days from the date of the service upon him of a notice of the refusal of the Commissioner to amend the assessment as desired.

(2) Every person appealing shall appear before the Board either in person or by an agent.

(3) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(4) Subject to the provisions of subsection (3) of this section, the Board shall confirm, reduce, increase or annul the assessment or make such order thereon as it may deem appropriate, but any such reduction or increase may refer only to those heads of the Commissioner's decision against which an appeal is entered. Notice of the Board's decision, of the date thereof, and of any amendment to the assessment shall be sent to the Commissioner who shall cause a copy thereof to be served in the manner provided in section 70 of this Act to the person appealing, together with a notice informing such person of his rights under section 68 of this Act.

(5) An appeal to the Board shall not be withdrawn or discontinued except with the consent of the Commissioner.

(6) The Board may order the correction of any arithmetical error incurred in any of its decisions on an application filed by either party within ten days from the service upon him of such decision and served on the other party.

Appeals to
the Court
of Appeal.

68. (1) Any person who, having appealed to the Board, feels aggrieved by its decision, may appeal against the decision, on a question of law only, to the Court of Appeal by an application filed within thirty days from the date of service upon him of the decision of the Board.

(2) The Commissioner may, if he is dissatisfied with the decision of the Board, appeal against the decision, on a question of law only, to the Court of Appeal by an application filed within thirty days from the date of the Board's decision.

(3) Unless rules made hereunder provide a longer period, seven clear days' notice shall be given to the parties of the date fixed for the hearing of the appeal.

(4) The Court may confirm, reduce, increase or annul the assessment as determined by the Board or make such order thereon as it may deem appropriate but any such reduction or increase may refer only to those heads of the Board's decision against which an appeal is entered.

(5) Notice of the amount of duty payable under the assessment as determined by the Court shall be served by the Commissioner in the manner provided in section 70 of this Act.

(6) The Commissioner shall publish all decisions given by the Court.

(7) The Board established under section 29 of the Code of Organisation and Civil Procedure may make rules concerning appeals to the Court of Appeal under this section, and prescribing the fees to be paid on such appeals.

When
assessments
or amended
assessments
are final and
conclusive.

69. Where no valid objection or appeal has been lodged against an assessment, or where the amount of the duty has been agreed to under subsection (2) of section 65 of this Act, or where an appeal has been withdrawn or discontinued, or where the amount of duty payable has been determined on objection or appeal, the assessment as made or agreed to or determined on objection or appeal, as the case may be, shall be final and conclusive for all purposes of this Act:

Provided that nothing in this Part of this Act shall prevent the Commissioner from making any refund or adjustment under the provisions of section 63 of this Act or any assessment or additional assessment which does not involve re-opening any matter which has already been determined on appeal.

Service of
notices.

70. (1) A notice given by the Commissioner for the purposes of this Act shall be served on the person to whom it is addressed either personally or by being sent by registered post to his last known business or private address.

(2) In the case of service by registered post, unless the contrary is proved, the notice shall be deemed to have been served:

(a) in the case of a person residing in Malta, not later than the third day succeeding the day of postage;

(b) in the case of a person not so residing, on the day succeeding that on which the notice would have been received in the ordinary course by post."

Transitory
provision.

10. (1) The provisions of this Act shall not affect anything lawfully done or omitted to be done under the principal Act or any judicial proceedings which are pending before any court on the date of the coming into force of this Act.

(2) Subject to the provisions of subsection (1) of this section, the provisions of this Act shall apply to any matter which is outstanding or has not been finalised on the date of the coming into force of this Act.

Passed by the House of Representatives at Sitting No. 176 of the 29th November, 1988.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives.