

Land Development Duty

Cap. 78.

**LAND DEVELOPMENT DUTY REGULATIONS,
1965**

L.N. 1965/16.
1974/248.
1985/96.

Authority: These regulations were made by the Minister under section 34 of the *Land Development Duty Act, 1965*.

Commencement: 13th April, 1967.

1. These Regulations may be cited as the *Land Development Duty Regulations, 1965*. Short title.

2. In these regulations "Commissioner" means the Commissioner of Inland Revenue. Interpretation.

DEVELOPMENT DUTY

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

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

4. (1) The transferor on sale of the fee simple of any land in a special development area shall, within 3 months of such transfer, make and deliver to the Commissioner in Form A in the *Schedule* a return of any capital gain arising from such transfer. Return of capital gain accompanying documents. Form A.

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

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

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

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

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

Notice of
assessment.

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

Presentation
of
instrument.

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

Note to be
made on
instrument
by Com-
missioner.

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

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

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

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

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

9. Any duty assessed by the Commissioner on capital gains shall be payable by the transferor to the Commissioner who shall, on presentation to him of the instrument by means of which the transfer is effected or agreed to be effected, as the case may be, stamp such instrument pursuant to subsection (3) of section 8 of the Act, but no such instrument shall be stamped in accordance with paragraph (2) of regulation 8 unless the Commissioner indicates thereon either that he does not require security for payment of the duty or that the security required by him has been given.

Payment of duty.

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

Refund of duty where transaction abortive.

Form B.

11. – 16. *Revoked by S.I. 1985/96.*

GENERAL

17. Where for the purposes of the Act any valuation has been made of land in a special development area, notice of valuation in writing shall be given by the Commissioner to the person in possession of the land and such notice shall state that any person dissatisfied with the valuation may lodge with the Commissioner an objection to the valuation within 30 days after service of the notice of valuation.

Notice of valuation to be given to person in possession

18. If any person disputes the assessment of development duty he may, by notice of objection in writing, apply to the Commissioner to review and revise the assessment made upon him. Such application shall state precisely the grounds of objection to the assessment and shall be made within 30 days from the date of service of the notice of assessment, but the Commissioner, upon being satisfied that owing to absence from Barbados sickness, or other reasonable cause, the person disputing

Review of assessment 1985/96.

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the assessment was prevented from making the application within such period, may extend the period as may be reasonable in the circumstances.

Particulars
of objection
to assessment.

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

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

Agreed
assessment.

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

(2) Where no valid objection to an assessment has been lodged within the time limited by these regulations, or where the amount at which a person is liable to be assessed has been agreed upon under paragraph (1) of this regulation, or where the assessment has been determined on objection or appeal, such assessment as made or agreed to or determined on objection or appeal, as the case may be, shall be final and conclusive as regards the amount thereof, but nothing herein contained shall prevent the Commissioner from making any refund under the provisions of regulation 21 or any assessment which does not involve re-opening any matter which has been determined on objection or appeal.

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

Refund of
excess duty
or charge.
1985/96.

(2) Any claim for repayment under this regulation shall, in the case of development duty, be made within 6 years of the date on which the duty first became due.

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

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

22. (1) If it is proved to the satisfaction of the Minister responsible for Finance that any person

Remission of
duty in
certain cases.
1985/96.

(a) who was the owner of any land in a special development area at the specified base date; and

(b) who is liable under the Act to pay any development duty in respect of that land,

has granted any part of that land to the Government for the purpose of road construction in such area or for any other project on which the Government undertakes or proposes to undertake expenditure from public funds in such area, the Minister may, pursuant to section 33 of the Act, remit such part of the development duty as is specified in paragraph (2) of this regulation.

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(2) That part of the development duty which may be remitted by the Minister shall be an amount equal to the value of the land granted to the Government being the value of the land as at the specified base date.

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23. Save as is otherwise provided in regulation 17, where in any regulation notice in writing is required to be served upon any

person, the provisions of section 27 of the Act shall apply to the giving and service of such notice.

Penalty for offences.

24. (1) Any person guilty of an offence against these regulations is, on conviction thereof by a court of summary jurisdiction, liable to a fine not exceeding \$100 or to imprisonment for a term not exceeding 3 months.

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

SCHEDULE

1985/96.

(Regulation 4 (1))

FORM A

Cap. 78.

The Land Development Duty Act, Cap. 78.

DEVELOPMENT DUTY

Valuation Period the day of 19.....
to the day of 19.....

RETURN OF CAPITAL GAINS

In pursuance of the provisions of the *Land Development Duty Act*, you are required to make on this form a true and correct return of the Capital gain realised by you on the transfer on sale of the fee simple of land in the Special Development Area of..... during the Valuation Period referred to above.

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

Commissioner of Inland Revenue,
Bridgetown.

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

STATEMENT OF CAPITAL GAIN

| Location of Property. | Name of Development Area. Situation of Property. Date of Transfer. |
|--|--|
| Gross value of consideration... .. | \$ |
| <i>Less:</i> | |
| Value of growing crops, etc., deductible by virtue of section 22 of the Act | \$ |
| Net value of consideration | \$ |
| <i>Less:</i> | |
| (a) Improved value of the land at the specified base date | \$ |
| (b) Any expenditure on the land of a capital nature subsequent to the specified base date | \$ |
| (c) Amount equal to 10% capital expenditure referred to in paragraph (b) above ... | \$ |
| (d) Amount equal to 5% per annum of the value of the land at the specified base date | \$ |
| (e) Amount expended in relation to the transfer of land by way of | |
| (i) Stamp Duty | \$ |
| (ii) Fees for an Attorney-at-Law for professional services rendered ... | \$ |
| (iii) Property Transfer Tax... .. | \$ |
| | <u>\$</u> |
| | <u>\$</u> |

DECLARATION WHICH MUST BE COMPLETED AND SIGNED

I declare that, to the best of my judgment and belief, in the foregoing statement and in the instrument (sent herewith) whereby the transfer was effected or agreed to be effected

- (a) I have given a full, just and true return and particulars of the whole of the capital gain whatsoever chargeable under the *Land Development Duty Act*, Cap. 78, according to the directions and regulations of the said Act; and
- (b) all statements and declarations are true and correct.

Given under my hand this..... day of.....19.....

..... Signature

..... Address

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

Name of Agent

Address of Agent.....

FORM B

(Regulation 10)

The Land Development Duty Act, Cap. 78.

Information required on Application for refunds under section 8(6).

- (1) Date of Transfer Agreement.
- (2) Value of Consideration.
- (3) Description of Land.
- (4) Special Development Area in respect of which duty was paid.
- (5) Valuation Period.
- (6) Assessment Number.
- (7) Amount of Duty Paid.
- (8) Date of Payment.
- (9) Name and Address of Payer.
- (10) The Stamped Instrument or Agreement of Transfer in respect of which the duty was paid.
- (11) The Official Receipt Number, etc.
- (12) (Any other information, document or thing which the Commissioner may deem necessary in order to satisfy himself that the transaction in respect of which the duty has been paid was not carried into execution. This may include affidavits.)