

**CHAPTER 364****DUTY ON DOCUMENTS AND TRANSFERS ACT**

*To provide in place of the Duty on Documents Act for the imposition of duty on certain documents and transfers.*

25th November, 1992;  
16th July, 1993

*ACT XVII of 1993, as amended by Acts: X and XVI of 1994, XXV of 1995, I of 1998, IX of 1999, XI of 2000, IV and VI of 2001, II of 2002 and II of 2003.*

**ARRANGEMENT OF ACT**

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## PART I

**Preliminary**

Short title.  
Amended by:  
XVI.1994.2.

**1.** The short title of this Act is the Duty on Documents and Transfers Act.

Interpretation.  
Amended by:  
XVI.1994.3;  
I. 1998.2.

**2.** In this Act, unless the context otherwise requires -

"Board" means the Board of Special Commissioners for Duty on Documents and Transfers appointed under article 57;

"body of persons" includes any partnership, fellowship or society of persons, whether corporate or unincorporate or whether vested with legal personality or not;

"Commissioner" means the Commissioner of Inland Revenue;

Cap. 12.

"court" means any of the courts mentioned in articles 3 and 4 of the Code of Organization and Civil Procedure and any board or tribunal established by law;

"document" includes policy of insurance, bill of sale, a banking credit card, a notarial deed and a schedule of redemption of ground rent filed in court;

"duty" means the duty imposed by this Act;

Cap. 16.

"immovable things" has the meaning assigned to it in article 311 of the Civil Code;

"insurance" does not include re-insurance, and expressions which are derivatives thereof or related thereto shall be construed accordingly;

"Malta" has the same meaning as is assigned to it by article 124 of the Constitution of Malta;

"marketable security" includes any share, stock, debenture, bond and any interest in any company or corporation and any document representing the same;

"Minister" means the Minister responsible for finance;

"person" includes a body of persons;

"policy of life insurance" means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending on any life or lives other than a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause;

"prescribed" means prescribed by regulations under this Act;

Cap. 123.

"resident in Malta" has the same meaning assigned to it in article 2 of the Income Tax Act;

"signature" includes any mark or declaration made in lieu of a signature;

"special commissioner" means a member of the Board appointed under article 57;

"transfer" includes any assignment, conveyance, sale, partition, donation, settlement of dowry, sale by instalments, redemption of

ground-rent and any acquisition under any other title, but, except where specifically provided in this Act, does not include any transfer *causa mortis*;

"usufruct" includes the right of use, the right of habitation and any other similar or analogous right of enjoyment.

## PART II

### General Provisions

**3.** (1) There shall be levied by the Commissioner on account of the Government, the duty specified in this Act in accordance with the provisions contained in this Act. Duty.

(2) The duty chargeable under this Act shall be applied according to the intrinsic nature and effects of the transaction to which it refers even where the apparent title or form does not correspond to such nature or effect.

(3) Where a transaction which reduces or would reduce the amount of duty payable under this Act is artificial or fictitious or has not in fact been given effect to, the Commissioner may disregard any such transaction and shall determine the duty in accordance with sub-article (2) hereof.

**4.** A document subject to duty under this Act shall become so subject either from its origin if it is executed in Malta or by reason of its use if it is executed outside Malta. Documents subject to duty.

**5.** (1) Payment of duty in respect of any document or transfer executed in Malta shall be made at such place and in such manner, evidenced in such manner and effected within such term as may be prescribed. Manner of payment of duty.

(2) In the case of documents executed outside Malta which are liable to duty by reason of their use in Malta according to the provisions of this Act, the duty shall be paid before use thereof is made in Malta and shall be made in such place and in such manner, and shall be evidenced in such manner as may be prescribed.

(3) For the purposes of this article -

- (a) where a document has to be signed by two or more persons, it shall be deemed to be complete with the signature of the person by whom it is last signed;
- (b) a notarial deed shall be deemed to be complete when it is signed by the notary by whom it is published;
- (c) a schedule of redemption of ground-rent shall be deemed to be complete when it is filed in court.

**6.** (1) A document executed outside Malta shall be chargeable with duty when use thereof is made in Malta, if such document would have been so chargeable according to the provisions of this Act, had it been executed in Malta. Duty on documents executed outside Malta.  
Amended by:  
XVI.1994.4.

(2) For the purposes of this article, a document executed outside Malta is deemed to be made use of in Malta, where it is

produced before a court, arbitrator or referee as evidence or is produced before any person or authority in Malta for its enforcement or registration.

Preservation of documents.

**7.** Every document mentioned in this Act shall be preserved by the owner thereof for at least four years after the day on which duty thereon has or ought to have been paid, and any person who destroys or mislays or fails to produce any such document before the lapse of the said period shall be liable to the same penalty as if the duty had not been paid.

Documents containing several matters.

**8.** Saving any other provision of law, if a document contains or relates to several distinct matters, it shall be separately and distinctly charged as if it were a separate document in respect of each of such matters.

Declaration of value.

**9.** Where in a document charged with *ad valorem* duty the real value is not ascertainable from the document itself or from any other document annexed to it, or referred to in it, the parties shall make a declaration of such value according to their estimation and the duty shall be charged and paid on the real value so declared.

Commissioner to determine and assess the duty chargeable.

**10.\*** (1) Saving the provisions of article 52, where in the opinion of the Commissioner the value expressed or declared in a document 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 fifteen *per centum* of the value assessed by the Commissioner, the person liable to pay duty shall, in addition to the duty chargeable in accordance with sub-article (1), 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.

Liability of notaries as to declaration of value.

**11.** Any notary who receives any deed which does not contain a declaration of value where such declaration is required under article 9, or who fails to warn the parties particularly as to the importance of the truthfulness of such declaration or to record in the deed that he has complied with such requirement, shall be guilty of an offence under this Act, and shall on conviction be liable to a fine (*ammenda*) of not less than five liri and not more than twenty-five liri and to the payment of the duty due, to be assessed by the court, if necessary with the assistance of referees, at the expense of the notary, saving the latter's right to recover the amount paid by him in respect of duty from any other person liable for the payment of the duty:

Provided that prosecution under this article shall only be commenced at the instance of the Commissioner, and that no such prosecution shall take place where the notary, upon a notice in

\*See article 69(6) of the Act as originally enacted, which sub-article has been omitted under the Statute Law Revision Act, 1980.

writing by the Commissioner, admits liability to pay such penalty and such duty as may be declared to be due by the Commissioner, in which case such penalty and duty shall be due by the notary to the Commissioner as a civil debt.

**12.** The Minister may by rules prescribe the manner in which the value of property or of the consideration for a transfer is to be assessed for the purposes of the payment of duty calculated *ad valorem*.

Manner of calculating value for purposes of *ad valorem* duties.

**13.** A document subject to duty under this Act and on which duty has not been paid shall not, except in criminal proceedings, be admitted in evidence before any court, arbitrator or referee.

Production of documents, on which duty has not been paid, before courts, arbitrators or referees.

**14.** (1) Where the production of a document has not been allowed in terms of article 13, the Registrar of the Courts, the arbitrator or the referee as the case may be, shall draw the attention of the person intending to produce the document in evidence to the fact that duty on such document has not been paid, and shall within two days report this fact to the Commissioner.

Duties of person before whom documents on which duty has not been duly paid to report to Commissioner.

(2) If any such officer or person fails to make such report, he shall be liable to a penalty of not less than five liri and not more than twenty-five liri.

**15.** (1) The payment of any penalty imposed under the provisions of this Act shall not relieve any person liable to pay duty under this Act from any obligation to pay any such duty or such part thereof as may still be due.

Liability for penalty not affected by payment of duty.

(2) The payment of any duty shall not relieve any person from any liability for any default for which a penalty could have been imposed upon him in accordance with the provisions of this Act at the time the duty was paid.

**16.** (1) Save as otherwise expressly provided, all penalties which may be imposed under this Act shall be imposed by the Commissioner and shall be paid to him, and all actions for the recovery of any duty due and of any penalty incurred under this Act shall be brought by the Commissioner before the courts of civil jurisdiction, and the provisions of article 466 of the Code of Organization and Civil Procedure shall apply with regard to any such penalty or duty.

Actions for recovery of any penalty to be taken by Commissioner.

Cap. 12.

(2) No proceedings, however, shall be instituted against any defaulter who, within fifteen days from an intimation to that effect made to him by the Commissioner, pays the duty due on the document together with the minimum of the penalty due in accordance with the provisions of this Act.

(3) The provisions of sub-article (2) shall not be applicable in the cases to which the proviso to article 11 applies; or where, in the opinion of the Commissioner, the default would not be adequately punished by the application of the penalty in its minimum.

Prescription for offence.

**17.** Saving the cases where a longer period of prescription applies, criminal actions for offences under this Act is barred by the lapse of five years.

Limitation of action for recovery of duty and penalty.

**18.** Save as otherwise expressly provided, the action for the recovery of any penalty imposed by virtue of this Act may not be brought after the lapse of five years from the day on which the default occurs:

Provided that no use shall be made of any document on which duty chargeable under this Act has not been fully paid.

Power of public officers authorized to examine documents, etc.  
*Substituted by: XVI.1994.5.*

**19.** (1) Where the Commissioner, or any officer authorised by him in writing, suspects that this Act has not been complied with in respect of a document, he shall have the power to require any person holding such document to produce it for the purposes of verifying that this Act has been complied with in respect of such document, and may seize the document if there are reasonable grounds for it to appear to him that the provisions of this Act have not been complied with in respect of that document.

(2) Where the Commissioner, or any officer authorised by him in writing, suspects that assets have been undervalued for the purposes of the application of this Act, he or any architect or surveyor authorised by him shall have full and free access to all buildings or places to the extent that such access is likely to assist him in determining the value of the said assets, but shall not have any power to seize any item or remove it from the premises.

(3) If access to any of the premises referred to in the previous sub-article requires access to premises occupied in whole or in part for the purposes of habitation, such access shall not take place between seven o'clock in the evening and nine o'clock in the morning.

(4) The examination of notarial acts shall be carried out by the visitors constituting the Court of Revision of Notarial Acts who shall make a report to the Commissioner of any offence against this Act which may come to their notice during such examination:

Provided that the provisions of this sub-article shall not preclude any such officer as is referred to in sub-article (1) from inspecting acts *inter vivos* at the premises or elsewhere of a notary for the purpose of ascertaining compliance with this Act.

(5) In the exercise of the powers under this article, any architect or surveyor referred to in sub-article (2) may not inspect any document or other record whatsoever, and the Commissioner, or any person authorised by him as aforesaid, may not inspect any document, or other record which is protected by the duty of professional secrecy, or listen to any conversation or recording device which is protected by the same duty. The Commissioner or his duly authorised officer may require the holder of a document protected by professional secrecy to communicate to him an abstract of the document so as to remove references to any information protected by professional secrecy. If such abstract does not enable the Commissioner or his duly authorised officer to decide whether all the provisions of this Act have been complied

with in respect of such document, the matter shall be referred to the competent Court of Voluntary Jurisdiction which shall have the power to order the production of such document before it by any person, and which shall make a report to the Commissioner of any failure to comply with this Act which comes to its notice during such, examination.

(6) The Commissioner and, as the case may be, the person authorised by him, shall be bound by the duty of professional secrecy in respect of anything which may come to his knowledge in the course of the exercise of his powers under this Act and shall not disclose the result thereof except to any authority competent in relation to the collection of duty under this Act. Any such officer who otherwise discloses such result shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one hundred liri and not more than one thousand liri, or to imprisonment for a period not exceeding six months, or to both such fine (*multa*) and imprisonment.

(7) Saving any provision of the Criminal Code, where the fact constitutes a crime liable to a higher punishment, any person who prevents or obstructs the said officer, architect or surveyor in the execution of his duties under sub-article (2), or refuses to comply with any request made by such officer in accordance with the provisions of this article, shall, on conviction, be liable to a fine (*multa*) not exceeding fifty liri or to imprisonment for a term not exceeding six months or to both such fine and imprisonment. Cap. 9.

**20.** (1) If any person -

- (a) forges any die, mark or any other instrument used by the Government or under its authority, to denote the payment of duty; or
- (b) sells or offers for sale, utters or makes use of any forged die, mark, instrument used by the Government or under its authority, to denote the payment of duty, or any impression thereof, knowing the same to be forged; or
- (c) knowingly and without lawful excuse (the proof whereof shall lie on the accused) keeps in his possession any forged die, or mark or instrument used by the Government or under its authority, to denote the payment of duty, or any impression thereof,

he shall be liable to imprisonment from thirteen months to three years.

(2) The same punishment established in sub-article (1) shall apply to any person who without lawful authority makes use of any genuine die, mark or other instrument used by the Government or under its authority to denote the payment of duty.

**21.** In the crimes referred to in article 20, any of the offenders who shall, prior to the commencement of any proceedings, give information thereof to the Commissioner of Police or other competent authorities shall be exempted from punishment.

Punishment for forging, etc., dies, etc.

Exemption from penalty.

Power to make regulations.

**22.** (1) The Minister may make regulations for securing the payment of duty and generally for giving effect to the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing -

- (a) for regulating the payment of duty on any category of documents otherwise than at the office of the Commissioner;
- (b) for ordering the registration or the giving of a notice of any class of documents chargeable with duty, and for prescribing the form of such registration or notice, the time within which such registration or notice must be given, the persons bound to make or give the same, the office in or to which the registration or notice is to be made or given and the civil effects and sanctions consequent upon the default of such registration or notice;
- (c) for regulating the manner in which duty on any particular category of documents is to be denoted;
- (d) for prescribing anything that may be prescribed in accordance with the provisions of this Act.

(2) The regulations may provide for the imposition of a penalty of not more than one thousand liri for any failure to comply therewith, which penalty shall be recoverable as is provided in article 16.

Cap. 294 - Repealed.

(3)\* Until such time as regulations are made under this Act, regulations made under the Duty on Documents Act or any law saved thereunder, shall, where applicable be deemed to have been made under this Act.

Power of Minister to grant exemptions.

**23.** (1) The Minister may by order direct that a specified document or transfer chargeable with duty under this Act be exempt from duty in whole or in part.

Cap. 294 - Repealed.

(2)† Any exemptions granted under the provisions of the Duty on Documents Act and of the Stamp Duties Ordinance, repealed by the said Act, shall be deemed to have been granted by the Minister under the powers vested in him by sub-article (1).

Power of Commissioner to remit or reduce certain penalties and additional duty.

**24.** *Repealed by Act II.2003.32.*

### PART III

#### Documents chargeable with Duty on their Origin

#### TITLE I

##### *Insurance Policies*

Duty on policy of life insurance.

**25.** There shall be charged on any policy of life insurance a

\*Article 68(2) of the Act as originally enacted.

†Article 68(1) of the Act as originally enacted.

duty of ten cents for every one hundred liri or part thereof of the sum assured.

**26.** *Repealed by: I.1998.3.*

Duty on policies of insurance of third party risks or comprehensive of such insurance.

**27.** There shall be charged on every policy of insurance in respect of which article 25 does not make specific provision, a duty of ten cents for every lira or part thereof of the agreed yearly premium, or, if a compounded premium is agreed upon as a lump sum payment, or a once only premium is otherwise payable, then of that agreed consideration:

Duty on policies of insurance not otherwise specifically provided for.  
*Amended by:*  
*I. 1998.4;*  
*XI. 2000.22;*  
*II. 2002.37.*

Provided that the minimum duty chargeable under this article shall be five liri:

Provided further that where the premium payable is less than five liri the minimum duty chargeable shall be reduced to fifty *per centum* of the amount of premium so payable:

Provided further that no duty shall be chargeable on any policies of insurance in respect of Aviation, Marine Cargo, Marine Hull or Boat, Export Credit and Suretyship, and Medical Cover.

**28.** (1) Any endorsement of an insurance policy shall be chargeable with duty as a new policy if the effect of the endorsement is to make any alteration in the policy relating to -

Endorsement of policies of insurance.

- (a) the person or thing insured; or
- (b) the risks insured; or
- (c) the duration of the policy.

(2) Where an endorsement increases the amount of the insurance or of the premium, duty shall be payable on such policy as endorsed but allowance shall be made for any duty paid in respect of the policy.

(3) There shall be charged on endorsements of policies for which provision is not made under sub-article (1) or (2), a duty of one lira.

**29.** Any person who -

- (a) becomes an insurer upon any insurance mentioned in the foregoing articles, or in the capacity of insurer enters into any contract for any such insurance, or directly or indirectly receives, or contracts or takes credit on account of any premium or consideration for any such insurance, or knowingly takes upon himself any risk or renders himself liable to pay, or pays, any sum of money upon any loss, peril or contingency relative to any such insurance, unless the insurance is expressed in a policy of insurance; or
- (b) in the capacity of insured, makes or effects or knowingly procures to be made or effected, any insurance under the foregoing articles, or directly or

Policy of insurance to be issued in any agreement to insure.

indirectly gives or pays, or renders himself liable to pay, any premium or consideration for any such insurance, or enters into any contract for any such insurance, unless the insurance is expressed in a policy of insurance; or

- (c) is concerned in any fraudulent contrivance or device, or is guilty of any wilful act, neglect or omission, with intent to evade the duties payable on policies of insurance, or whereby the duties may be evaded wholly or in part,

shall for every such offence, be liable to a penalty of not less than ten liri but not exceeding one hundred liri.

Liability to pay duty on policies of insurance.

**30.** (1) Any person issuing or signing any policy of insurance referred to in the foregoing articles, shall pay duty thereon in accordance with the provisions of this Act or of any regulations made thereunder.

(2) Any person who fails to comply with the provisions of sub-article (1) shall be liable to pay a penalty of not less than ten liri but not exceeding one hundred liri.

Copies of policies of insurance on which duty has not been duly paid.

**31.** Any person who makes or issues or causes to be made or issued any document purporting to be a copy of a policy of insurance chargeable with duty where there is not, at the time, in existence, such a policy, shall, in addition to any other penalty to which he may be liable, be liable to a penalty of not less than ten liri but not exceeding one hundred liri.

## TITLE II

### *Sales and Other Transfers*

Duty on sales and other transfers.  
Amended by:  
XVI.1994.6;  
XXV.1995.435;  
I. 1998.5;  
XI. 2000.23;  
II. 2003.33.

**32.** (1) There shall be charged on every document and on every judgment, decree or order of any court or other lawful authority, whereby any immovable or any real right over an immovable is transferred to any person, and on every declaration made in accordance with article 33 in respect of persons from whom the transfer *causa mortis* originates who died on or after the 23rd November, 1999, a duty of five liri for every one hundred liri or part thereof of the amount or value of the consideration for the transfer of such thing or of the value of such thing, whichever is the higher.

(2) *Repealed by XI.2000.23.*

(3) Notwithstanding any other provisions of this Act, no duty shall be charged on the assignment of immovable property and on the transfer of marketable securities between spouses consequent to a consensual or judicial separation between the spouses, or the dissolution of the community of acquests existing between them or on any partition of any property held in common between spouses, being community property or otherwise on the death of one spouse between the surviving spouse and the heirs of the deceased spouse.

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- (4) (a) Subject to the provisions of paragraph (b) hereof, in the case of a person who does not require a permit by the Minister for the purposes of the Immovable Property (Acquisition by Non-Residents) Act and who acquires *inter vivos*, any immovable property or any real right over such property for the purpose of establishing therein or constructing thereon his sole, ordinary residence, or who redeems any groundrent or other burthen imposed on any such property acquired by him by any title *inter vivos*, duty under this Title in respect of the first thirty thousand liri or such greater amount as may be prescribed, of the aggregate value of the consideration paid for the acquisition and for the redemption of such property shall be charged at the rate of three liri and fifty cents per one hundred liri or part thereof. Cap. 246.
- (b) Where such residence is acquired by an emphyteutical or subemphyteutical grant made for a period exceeding fifty years, even though the relative ground-rent may be revised at stated intervals of time, and there is also payable on such deed any other consideration, the duty chargeable under this Act shall be reckoned as follows:
- (i) where the aggregate value of the consideration paid or payable together with the ground-rent imposed on the deed, capitalised at the rate of five *per centum*, do not exceed thirty thousand liri or such greater amount as may be prescribed in accordance with paragraph (a); in respect of the said ground-rent at fifty *per centum* of the result obtained by applying the rates specified in article 40(1) and at the rate of three liri and fifty cents per one hundred liri or part thereof in respect of any other consideration; and
  - (ii) where the aggregate value of the consideration paid or payable together with the ground-rent capitalised as in sub-paragraph (i) hereof (hereinafter in this paragraph called "the aggregate consideration") exceeds thirty thousand liri or such greater amount as may be prescribed in accordance with paragraph (a) hereof there shall be first calculated a duty in respect of the ground-rent at fifty *per centum* of the result obtained by applying the rates specified in article 40(1) and at the rate of three liri and fifty cents per one hundred liri or part thereof in respect of any other consideration, hereinafter called "the initial duty", and then adding thereto a further duty reckoned in accordance with the following formula:
    - ONE The groundrent shall be first capitalised at the rate of five *per centum* and added to the consideration;

TWO The groundrent so capitalised shall be divided by the sum obtained at point ONE hereof, and the result shall then be multiplied by the sum of the total consideration that is in excess of twenty thousand (or such greater amount as may be prescribed as aforesaid) and then divided by forty;

THREE The consideration paid on the deed shall be divided by the sum obtained at point ONE hereof and the result shall then be multiplied by the sum of the consideration in excess of twenty thousand (or such greater amount as may be prescribed as aforesaid) and the result so obtained shall then be multiplied by three over two hundred;

FOUR The further duty shall be the sum of the results at points TWO and THREE.

- (c) Where such property is not fully acquired by such person the amount of the value that shall be charged at the rates specified in this sub-article shall be such amount as is proportionate to thirty thousand liri or the value of the property (whichever is the less) as the proportion of the share so acquired by such person is to the whole.
- (d) The notary who receives any deed to which this article refers shall record in the deed a declaration by the person so acquiring the immovable that the said property is being acquired by him for the purpose stated in paragraph (a) and the said notary shall warn the said person of the importance of the truthfulness of such declaration.
- (e) For the purposes of this article "residence" shall also include a garage attached to or underlying such residence or a garage situated in the same block of residential apartments of which the residence forms part or a garage of not more than 30 square metres situated within five hundred metres of such residence or block of apartments, where such garage has been acquired together with such residence on the same deed.

(5) Where any duty chargeable in respect of any immovable property transferred *causa mortis* has been paid, or no duty is payable on such transfer, and the notary declares on the relative deed that the property in question came to the co-owners through a transfer *causa mortis* and that a complete declaration, including the property to which the partition refers, has been duly made in accordance with article 33, the duty chargeable under this article on deeds partitioning such immovable property between co-owners shall not be levied. The notary shall on any such deed give the

relevant details of all the declarations made in accordance with article 33.

(6) Notwithstanding the foregoing provisions of this article, where the Commissioner issues a certificate attesting that any immovable or any real right over an immovable is transferred from one company to another company forming part of the same group of companies, and that he is satisfied that such requirements or conditions, if any, as may be prescribed by regulations under this Act are fulfilled, he shall, according to the case, either refund the duty or order that no duty shall be chargeable on such a transfer.

For the purposes of this sub-article, "a group of companies" shall have the same meaning assigned to it in article 42.

**33.** (1) It shall be the duty of every person to whom immovable property is transferred *causa mortis*, (hereinafter in this article referred to as "transferee *causa mortis*") to make a declaration of such transfer by means of a public deed within such term as may be prescribed.

Declaration of transfers *causa mortis*.

(2) The public deed referred to in sub-article (1) (hereinafter referred to as "declaration") shall contain:

- (a) such particulars as may be prescribed in respect of the transferee *causa mortis* and of the person from whom the transfer *causa mortis* originates;
- (b) the date and place of death of the person from whom such transfer *causa mortis* originates;
- (c) such particulars as may be prescribed of all the immovable property or rights thereon transferred to the transferee *causa mortis*; and
- (d) such details as may be prescribed of the manner in which the property devolved on the transferee *causa mortis*.

(3) The declaration shall also contain a statement by the transferee *causa mortis* of the true value of each property or share therein transferred to him, and the provisions of article 11 shall apply in relation to such statement.

(4) Article 50 of the Notarial Profession and Notarial Archives Act shall apply to a declaration referred to in this article as if such declaration were any of the acts referred to in article 50(1).

Cap. 55.

(5) Heirs or legatees who do not intend to declare or who have not yet declared their intention to accept the inheritance or the legacy may nonetheless make the declaration referred to in sub-article (1), but such declaration shall not of itself be evidence of his acceptance of the inheritance or of the legacy.

(6) Tutors or curators of heirs and legatees, curators of vacant inheritances and testamentary executors shall be responsible to make the declaration referred to in sub-article (1) in like manner as the transferee *causa mortis*. If in any particular case there is more than one tutor, curator or executor, they shall be jointly and severally responsible for compliance with such obligation.

(7) Where the opening of a succession takes place in consequence of the long absence of any person from Malta, a transfer *causa mortis* shall be deemed to have taken place on the date when a judgment given by a court declaring that the person is presumed to be dead becomes a *res judicata*. If no such judgment is given, the said transfer *causa mortis* shall be deemed to have taken place on the date of the court order granting the absolute possession of the property of the absent person and the absolute exercise of the rights depending on his death.

Rebate of duty on declarations.

**34.** The duty due in accordance with article 32 on declarations shall be rebated to such extent and in such circumstances as may be prescribed.

Special rules applicable to declarations.  
Amended by:  
XVI.1994.8.

**35.** (1) Saving the provisions of article 34 in assessing the duty chargeable on declarations in accordance with this Act no account shall be taken of:

- (a) (i) The first ten thousand liri or such other greater amount as may be prescribed of the value of a dwelling house, being an ordinary residence of the person from whom the transfer *causa mortis* originates, in any transfer *causa mortis* of the ownership or usufruct or of any real right over the said dwelling house:

Provided that where such dwelling house is not fully owned or otherwise held by the person from whom the transfer *causa mortis* originates, the amount of the value that shall not be taken into account shall be such amount as is proportionate to ten thousand liri or such other greater amount as may be prescribed as aforesaid or the value of the dwelling house (whichever is the less) as the proportion of the share of the ownership or other title under which the dwelling house is held by such person is to the whole:

Provided further that where such dwelling house is transferred to more than one transferee *causa mortis*, the amount of the value that shall not be taken into account shall be such proportion of the amount arrived at in accordance with the first proviso hereof as is equal to the proportion of the share held by the person from whom the transfer *causa mortis* originates that is transferred to the transferee *causa mortis*.

- (ii) Where in respect of the dwelling house to which this sub-article refers, relief has also been granted in terms of article 6 of the Home Ownership (Encouragement) Act, the relief granted under this sub-article and under the said article 6 of the said Act, shall not be compounded, but the person otherwise liable to

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pay duty shall have the right to opt for the relief which is more advantageous to him.

- (b) The value of the usufruct of any property chargeable under this Act bequeathed by the person from whom the transfer *causa mortis* originates in favour of his surviving spouse.
- (2) Saving the exemptions granted in sub-article (1):
- (i) where such property consists of a dwelling house, being the ordinary residence of the person from whom the transfer originates, and where such dwelling house is also occupied at the time of such transfer *causa mortis* by any one or more of the transferees *causa mortis*, duty shall be charged at the rate of three liri and fifty cents for every one hundred liri or part thereof of such share transferred to each transferee *causa mortis* occupying such dwelling house as his ordinary residence as represents that part of the value of such dwelling house which exceeds ten thousand liri but not twenty thousand liri, or such greater amounts as may be prescribed; and where such dwelling house was not fully owned or otherwise held by the person from whom the transfer *causa mortis* originated, the amount of the value chargeable at the said rate shall be such amount as is proportionate to ten thousand liri or to that part of its value which exceeds ten thousand liri but not twenty thousand liri or such greater amounts as may be prescribed as aforesaid, and the value of such house (whichever is the less) as the proportion of the share of the ownership or other title under which the dwelling house was held by such person was to the whole; and
  - (ii) where such property consists of a dwelling house not being a dwelling house to which sub-paragraph (i) refers, but being the ordinary residence occupied by any one or more of the transferees *causa mortis* in a transfer *causa mortis* of the ownership or usufruct of any real right over the said dwelling house, duty shall be charged at the rate of three liri and fifty cents for every one hundred liri or part thereof in respect of such share transferred to each transferee *causa mortis* occupying such dwelling house as his ordinary residence as represents the first twenty thousand liri or such greater amount as may be prescribed as aforesaid, of the value of such dwelling house; and where such dwelling house was not fully owned or otherwise held by the person from whom the transfer *causa mortis* originated, the amount of the value chargeable at

the said rate shall be such amount as is proportionate to twenty thousand liri or such greater amount as may be prescribed as aforesaid, or the value of the dwelling house (whichever is the less) as the proportion of the share of the ownership or other title under which the dwelling house was held by such person was to the whole.

(3) Where the declaration is made more than one year after the happening of the transfer *causa mortis* there shall be payable together with the duty assessed in accordance with this Act interest at the rate of eight *per centum per annum*, or such rate as may be prescribed, on any duty remaining unpaid in respect of each year or part thereof that elapses between the first anniversary of the date of the transfer *causa mortis* and the date of the making of the declaration.

(4) Where a declaration refers to a usufruct that is transferred *causa mortis* to several persons jointly or successively, or jointly and successively, the duty on the said declaration in respect of such transfer *causa mortis* shall be levied only at the commencement of the usufruct.

(5) Notwithstanding any other provision of this Act, the following provisions of this article shall apply to a declaration in respect of a transfer *causa mortis* subject to a suspensive condition which is not merely potestative:

- (a) the declaration shall be made and the duty shall be due and paid by the administrator of the inheritance, or in the absence of an administrator by the heirs, in accordance with the provisions of this Act, notwithstanding the contingent nature of the transfer *causa mortis*, subject to any right of reimbursement against the person benefiting under the said transfer *causa mortis*;
- (b) the duty chargeable under this Part shall be assessed as if the transfer was one in favour of the person standing to benefit from the transfer, failing the contingency.

(6) When the contingency referred to in sub-article (5) happens, or where effect is given to the transfer of property before the happening of the contingency -

- (a) a declaration making a statement of the happening of the contingency, or that effect has been given to the transfer *causa mortis*, shall be given by the transferee *causa mortis* benefiting thereunder; and such transferee *causa mortis* shall, in addition to any reimbursement of duty, be also liable for the payment of any duty assessed in virtue of the provisions of this sub-article; and
- (b) the happening of the contingency or the earlier transfer as aforesaid shall be deemed to be a transfer *causa mortis* and the transferee *causa mortis* benefiting

thereunder shall reimburse to any person having made a declaration and paid duty in accordance with sub-article (5) hereof the duty so paid, and shall where the duty payable pursuant to this sub-article is more than the duty paid pursuant to sub-article (5) only the difference between such duties shall be payable, and where the duty payable is less he shall be entitled to a refund paid in excess.

36. *Repealed by Act II.2002.38.*

Duty on assignment of a debt, etc.  
*Amended by: IV. 2001.35.*

37. *Repealed by Act X.1994.25.*

Duty on a transfer of a motor car.

38. *Repealed by Act II.2002.39.*

Where a transfer is to be made in writing.  
*Amended by: X.1994.25.*

39. (1) Where, in an auction sale of movables, the total amount payable for the article or articles purchased by any one person, other than motor cars as defined in the Traffic Regulation Ordinance, ships, aircraft and articles of food and drink, exceeds one hundred liri or such amount as may be prescribed, there shall be charged on the memorandum wherein such sale is recorded and to which this article applies, a duty of two liri and sixty cents for every one hundred liri or part thereof of the price payable by such purchaser.

Duty on transfers in auction sales.  
*Amended by: X.1994.25. Cap. 65.*

(2) Every auctioneer shall keep a memorandum of each sale effected by him in a sale by auction in such manner as may be prescribed.

(3) Any auctioneer failing or omitting to comply with the provisions of this article or of any regulation made thereunder shall be liable to a penalty of not less than ten liri but not exceeding one hundred liri for each such failure or omission.

40. (1) There shall be charged on every contract of emphyteusis or sub-emphyteusis a duty to be assessed in respect of the yearly ground-rent or increase in the yearly ground-rent, as the case may be, as follows:

Emphyteutical grants.  
*Amended by: II. 2003.34.*

if the term does not exceed  
twenty five years ..... twelve liri per one hundred liri  
or part thereof

where the term exceeds twenty-  
five years but does not exceed  
fifty years..... sixty liri per one hundred liri  
or part thereof

where the term exceeds fifty  
years but does not exceed  
seventy-five years ..... eighty liri per one hundred liri  
or part thereof

where the term exceeds seventy  
 five years ..... one hundred liri per one  
 hundred liri or part thereof

- (2) (a) Where the duration of the emphyteusis may be extended, or is extended, or where two or more emphyteutical grants are made in respect of the same immovable in favour of the same emphyteuta or his successor in title, duty shall be assessed at the rates applicable to the total duration of the emphyteutical grant or grants, but allowance shall be made for any duty already paid in respect thereof.
- (b) Where in an emphyteutical grant the ground-rent may be revised or increased at stated intervals of time during the duration of such grant, the amount of ground-rent shall, for the purpose of the assessment of duty, be reckoned as is provided in paragraphs (c) and (d).
- (c) Where the ground-rent is to be revised or increased at specified amounts or rates:
- (i) where the duration of the grant is for a perpetual period of time, the amount of ground-rent specified in the deed shall be increased by the specified amount or rate as it would increase in one hundred years and duty shall be charged on the amount of the ground-rent so increased; and
  - (ii) where the duration of the ground-rent is for a definite period of time the amount of ground-rent specified in the deed shall be increased by the specified amount or rate for the duration of such grant and duty shall be charged on the amount of ground-rent so increased:
- Provided that the duty charged under this sub-paragraph may in no case be more than that which would be chargeable had the grant been one as is referred to in sub-paragraph (i).
- (d) Where the ground-rent is to be revised or increased in relation to the rate of inflation or in relation to a rate which cannot be quantified at the time of the grant:
- (i) where the duration of the grant is for a perpetual period of time the amount of ground-rent specified in the deed shall be increased by an amount equivalent to three *per centum* for each year for one hundred years and duty shall be charged on the amount of the ground-rent so increased; and
  - (ii) where the duration of the grant is for a definite period of time the amount of ground-rent specified in the deed shall be increased by an amount equivalent to three *per centum* of the original ground-rent in respect of each year or

part thereof specified in the deed, and duty shall be charged on the average between the amount of ground-rent so increased and the amount specified in the deed:

Provided that the duty charged under this subparagraph shall in no case be more than that which would be chargeable had the grant been one as is referred to in sub-paragraph (i).

(3) Where an ordinary residence, as defined in article 32, is acquired by an emphyteutical or sub-emphyteutical grant for a period exceeding fifty years, even though the relative ground-rent may be revised at stated intervals of time, the duty chargeable under this Act on the first one thousand and five hundred liri or such greater amount as may be prescribed of the yearly ground-rent shall be reckoned at fifty *per centum* of the result obtained by applying the rates specified in sub-article (1):

Provided that where, together with the imposition of ground-rent, there is also payable any other consideration the duty shall be reckoned at the rates established in article 32(4)(b).

**41.** A contract of exchange shall be deemed to constitute one transfer and the duty chargeable thereon shall be assessed on the higher of the values of the things transferred:

Duty on contracts of exchange.

Provided that if different rates apply, duty shall be charged on the value of either of the things transferred at the rate or rates which attract the higher amount of duty.

**42.** (1) A duty of two liri for every one hundred liri or part thereof of the amount or value of the consideration or the real value, whichever is the higher, of the marketable security shall be charged:

Duty on transfer of marketable securities.  
*Amended by:*  
*XVI.1994.9;*  
*XI.2000.24.*

(a) on every document whereby any foreign marketable security is transferred *inter vivos* to, or by any person resident in Malta:

Provided that no duty shall be chargeable where such transfer is effected through a local bank or through a person holding an investment services licence under the Investment Services Act;

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(b) on every document whereby a marketable security other than those mentioned in paragraph (a) hereof is transferred to or by any person in Malta:

Provided that upon any restructuring of holdings through mergers, demergers, amalgamations and re-organisations within a group of companies, no duty shall be chargeable on:

- (i) the transfer by an individual of any shares, held in his own name, forming part of a group of companies in exchange of shares in a company or companies forming part of the same group;
- (ii) the exchange of shares from one company to

- another where such shares are in companies forming part of the same group of companies;
- (iii) the transfer of shares for consideration from one company to another, where such companies form part of the same group of companies;
- (c) on every notice of the transfer *causa mortis* of company shares made in accordance with article 45.

In this sub-article, "a group of companies" means:

- (i) a holding company and its subsidiaries; a company shall be deemed to be a subsidiary if more than fifty per cent of its voting shares are beneficially owned by its holding company; and
- (ii) companies which are controlled and beneficially owned directly or indirectly to the extent of more than fifty per cent by the same shareholders.

(2) Where it results that seventy-five per cent or more of the assets, excluding all current assets other than immovable property, of the company whose marketable securities are transferred *inter vivos* or are transmitted *causa mortis* in respect of persons from whom the transfer *causa*

*mortis* originates who died on or after the first January, 2000, consists of any immovable property or any right over an immovable, the duty chargeable in virtue of sub-article (1) shall be increased by three liri for every one hundred liri or part thereof of the amount or value of the consideration or the real value of the marketable security, whichever is the higher.

Transfer of marketable securities executed in Malta or abroad.

**43.\*** (1) Every transfer *inter vivos* of marketable securities executed in Malta shall, under pain of nullity, be made in writing.

(2) Where the transfer of any foreign marketable security is executed outside Malta upon an order given directly in Malta by any person, such person shall give a notice in writing to the Commissioner of such transfer in such manner and in such term as may be prescribed:

Provided that notice shall not be given where duty is not chargeable under any of the provisions of this Act.

Failure to produce writings, etc.  
Substituted by:  
XVI.1994.10.

**44.** Where any person fails to produce to the Commissioner, or to the officer referred to in article 19, any document chargeable with duty, or, where the document is protected by professional secrecy, the abstract of the document referred to in article 19(4), it shall be presumed that duty on such document has not been paid and it shall then be lawful for the Commissioner to proceed with the collection of duty and penalty in accordance with this Act.

\*Sub-articles (1) and (2) were originally numbered articles 43 and 44 respectively.

**45.** (1) A person to whom shares in a limited liability company registered in Malta, are transmitted *causa mortis* (hereinafter in this article referred to as a "transferee *causa mortis*") shall not later than such term after the happening of the transfer *causa mortis* as may be prescribed, give notice to the Registrar of Partnerships, appointed in accordance with the Commercial Partnerships Ordinance.

Transferees *causa mortis* to give notice.

Cap. 168 - Repealed.

(2) The notice referred to in sub-article (1) shall contain such particulars of the person from whom the transfer *causa mortis* originates and of the transferee *causa mortis*, the details of the shares being the object of the transfer and the manner in which the shares devolved on the transferee *causa mortis*, as may be prescribed.

(3) The Registrar of Partnerships shall register the notice referred to in sub-article (1) in a register which shall be open to public inspection, and which shall be kept and indexed in such manner as may be prescribed.

**46.** Any broker, agent or other person who as an intermediary transfers any marketable security to which article 42 refers, shall draw up the document evidencing such transfer if the transfer is effected in Malta or if the transfer is effected outside Malta, give notice of such transfer to the person on whose behalf he has acted within two days from the transfer.

Liability of brokers, agents, etc., executing purchases, etc., of marketable securities either in Malta or abroad.  
Amended by:  
XVI.1994.11.

**47.** (1) Acquisitions or disposals for any reason whatsoever of marketable securities by the persons defined in sub-articles (3) and (4) shall be exempt from the provisions of this Act.

Exemptions for certain marketable securities.  
Added by:  
XVI.1994.12.  
Amended by:  
I.X. 1999.15.

(2) Acquisitions or disposals for any reason whatsoever of marketable securities issued by the persons defined in sub-articles (3) and (4) shall be exempt from the provisions of this Act.

(3) The persons referred to in sub-articles (1) and (2) are:

(a) collective investment schemes holding a collective investment scheme licence under the Investment Services Act;

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(b) persons holding an investment services licence issued under the Investment Services Act, and whose activities comprise the provision of management, administration, safekeeping, or investment advice to collective investment schemes as defined in the aforesaid Act;

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(c) international trading companies as defined in article 2(1) of the Income Tax Act;

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(d) companies falling within the scope of sub-article (4).

(4) A company is a company falling within sub-article (3)(d) if more than half the ordinary share capital, voting rights and rights to profits are held by persons who:

(a) are not resident in Malta; and

(b) are not owned or controlled directly or indirectly by

persons resident in Malta,

and such company has been determined by the Commissioner as having the majority of its business interests outside Malta.

(5) For the purposes of sub-article (4), a company which is wholly owned and controlled directly by persons who are not ordinarily resident or domiciled in Malta shall be deemed to be not resident in Malta.

(6) A company may apply to the Commissioner, on such form as the Commissioner shall provide, for a determination pursuant to sub-article (7) or sub-article (8).

(7) The Commissioner shall determine that a company falls within sub-article (3)(d) if, in addition to satisfying the requirements of sub-article (4)(a) and (b) either:

- (a) more than half of the distributable profits of the company were allocated to the foreign income account (within the meaning of the Income Tax Act) in the last complete financial year of the company; or
- (b) none of the assets held by the company are situated in Malta. For this purpose, the term "assets" shall not include marketable securities in companies referred to in sub-article (3)(c) and (d) or any other assets in Malta held by the company for the purposes of carrying on its business.

(8) The Commissioner may, in his discretion, determine that a company falls within sub-article (3)(d) if it is likely that more than half of the distributable profits of the company will be allocated to the foreign income account in the first financial year of the company.

(9) The Commissioner may, for the future, cancel a determination under sub-article (7) or sub-article (8) if it appears to him that the company has ceased to satisfy the provisions of those sub-articles or of sub-article (4), but such cancellation shall not have retroactive effect.

**48.** Save as otherwise provided in this Act any person who fails to comply with any of the provisions of articles 32, 33, 39, 40, 41, 42, 43, 45 or 46 shall be liable to a penalty of not less than ten liri but not exceeding five hundred liri for each omission.

**49.** Saving the provisions of article 50, the transferor in a transfer *inter vivos* and the transferee, and where the transfer is effected by public deed or in the case of a declaration made in terms of article 33 the notary publishing the relative deed, shall be jointly and severally liable to pay the duty chargeable on such transfer or deed:

Provided that:

- (a) the liability of the notary publishing such deed shall be limited to the duty chargeable on such transfer established on the basis of:

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Penalty for  
contravening  
articles 32, 33, 39  
to 43, 45 and 46.  
Amended by:  
II. 2002.40.

By whom duty on  
transfers is due.

- (i) the declarations made in terms of sub-article of article 32(4)(d), of article 33(3) and of article 35 when made for purposes of any relief granted under that article, where applicable;
  - (ii) the value declared in the deed; and
  - (iii) the penalties contemplated in articles 50 and 51;
- (b) the notary shall have a special privilege in respect of the duty payable and paid by him on any transfer effected or declaration made by a public deed, over the immovable transferred.

The special privilege granted by this article 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 article 2010(c) of the Civil Code;

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- (c) the duty chargeable on a schedule of redemption of ground-rent shall be paid by the emphyteuta; and
- (d) the duty chargeable on the memorandum of any auction sale shall be paid by the auctioneer, and the buyer shall not be entitled to obtain delivery of such movable unless the amount of duty so paid is reimbursed to the auctioneer.

**50.** Any notary who -

- (a) fails to pay in whole or in part the duty chargeable under the provisions of this Act on any deed received by him; or
- (b) fails to mention in such deed the amount of duty so chargeable; or
- (c) fails to comply with any duty imposed on him by any regulation under this Act,

Liability of notaries.

shall be guilty of an offence and shall be liable on conviction to a penalty of not less than five liri but not exceeding two hundred liri; and the proviso to article 11 shall apply to this article.

**51.** (1) Where a notary receives a deed of transfer of any immovable property or a deed containing a declaration made in accordance with article 33, whether duty is chargeable thereon in accordance with this Act or otherwise, he shall, within such time as may be prescribed for the payment of any duty, and together with such payment, if any, give notice of such deed to the Commissioner in such form and containing such particulars as may be prescribed:

Notary to give notice of deeds subject to duty.

Provided that no notice shall be given where the Government or the Housing Authority is the transferee.

(2) Any notary who fails to give such notice or gives incorrect or incomplete particulars or details shall incur a penalty of not less than five liri and not more than two hundred liri.

Commissioner to determine and assess the duty chargeable.  
Amended by:  
II. 2003.35.

**52.\*** (1) Where the Commissioner is satisfied that the price or consideration, or the value of an immovable as declared in a deed of transfer or in a declaration of a transfer *causa mortis* made in accordance with article 33, is less than eighty five *per centum* of the real value or consideration as established by the Commissioner, or is less than the consideration that results to the Commissioner to have been actually paid on the deed, or where a declaration that ought to be made in terms of article 33 has not been made, he shall proceed to determine by order in writing the amount of duty chargeable on the difference between the value or consideration declared in the deed and the value or consideration of the immovable as established or as results to the Commissioner to have been actually paid or the duty that would have been payable on a declaration, as the case may be, and shall raise an assessment accordingly:

Provided that where a declaration has not been made as aforesaid, nothing in this sub-article shall be construed as exempting the transferee *causa mortis* from any obligation to make the relative declaration in accordance with article 33 but any duty paid following an assessment shall be taken into account in any declaration made subsequent thereto:

Provided further that where a declaration has not been made as aforesaid the Commissioner may not exercise his powers under this article after the lapse of thirty years from the happening of the transfer *causa mortis*.

(2) If the Commissioner is satisfied that the declaration referred to in article 32(4)(d) or that any statement made for the purpose of any relief under article 33, is not complete, correct and true in all details he shall proceed to determine by order in writing the amount of the duty chargeable being the difference between the duty properly chargeable in the absence of such declaration or such statement, as the case may be, and the duty paid on the deed.

(3) In a transfer *inter vivos*, the transferor and the transferee shall be jointly and severally liable to pay the duty referred to in this article.

(4) Where the Commissioner has determined that the value of an immovable as declared in a deed of transfer or in a declaration of a transfer *causa mortis* is less than eighty five *per centum* of the real value or consideration as provided in subarticle (1) or where in the opinion of the Commissioner the deed of transfer or the deed of declaration made in accordance with article 33 does not reflect the true conditions of the transfer, the transferor in a transfer *inter vivos* and the transferee shall be liable to pay an additional duty equivalent to the amount of duty assessed by the Commissioner as aforesaid:

Provided that:

(a) where payment of the duty and additional duty as provided in this article is made within the time from

\*See sub-article (6) of article 69 of the Act as originally enacted, which sub-article has been omitted under the Statute Law Revision Act, 1980.

the date of an assessment as stated in the first column hereunder, the additional duty chargeable shall be reduced to the percentage amount corresponding thereto in the second column hereunder, and no additional duty shall be chargeable with respect to the amount of duty and corresponding additional duty so paid, and no objection shall be entertained with respect thereto:

First Column	Second Column
Within ninety days	10
Within one hundred and twenty days	20
Within one hundred and fifty days	30
Within one hundred and eighty days	40
Within two hundred and ten days	50
Within two hundred and forty days	60
Within two hundred and seventy days	70
Within three hundred days	80
Within three hundred and thirty days	90
After three hundred and thirty days	100;

- (b) additional duty shall still be due on any amount of duty not paid within the times stated in the first column in paragraph (a) hereof at the rates stated in the second column therein;
- (c) the transferee only shall be liable to any duty or additional duty assessed because the declaration or statement referred to in subarticle (2) is not complete, correct and true..

(5) Saving the other provisions of this article, the Commissioner may raise an assessment as provided in this article, at any time, within one year from the day of the receipt by the Commissioner of the notice referred to in article 51:

Provided that in the case of a notice in respect of a declaration of a transfer *causa mortis* such assessment may be made within six years of the receipt of such notice.

Added by:  
I. 1998.6.

### TITLE III

#### *Other Documents*

Banking credit  
cards.  
Added by:  
I. 1998.6.

**52A.** There shall be charged on banking credit cards issued by any bank in Malta, a duty of seven liri for each year or part thereof during which the facility of a banking credit card is operative in respect of an account held with that bank; such duty shall be paid on the issue of the first banking credit card by the bank in respect of each account held with the bank providing such facility, and on each anniversary date thereafter during the continuance of such facility:

Provided that where any such facility had already been granted before the coming into force of this article and was still operative on the date of its coming into force, such facility, for the purposes of this article, shall be deemed to have been granted on the date when the first renewal of any banking credit card issued in connection with that account is effected.

### PART IV

#### **Documents upon which Duty must be paid before use thereof is made**

Duty on documents  
made outside  
Malta.

**53.** (1) Duty on every document executed outside Malta being such as, if executed in Malta would be liable to duty, shall, before any use thereof is made in Malta, be paid by the person by whom such use is made at the rate prescribed in this Act for such document were it executed in Malta.

(2) Any person who fails to comply with the provisions of this article shall be liable to the same penalty as would be applicable to the default if it were committed in respect of a document of an identical or analogous nature executed in Malta.

### PART V

#### **Assessments - Objections - Appeals**

Service of  
assessments.

**54.** 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 in accordance with the provisions of this Act, and indicating his rights under article 56 hereof.

Date of notice.

**55.** 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.

**56.** (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 sub-article (2), 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.

**57.** (1) The President of Malta may by notice in the Gazette appoint a Board of Special Commissioners for Duty on Documents and Transfers consisting of a chairman and two other persons for the purpose of hearing and determining appeals in accordance with the provisions of article 58. 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 person who is a retired judge or a retired magistrate or a person who has practised as an advocate in Malta for a period or periods amounting, in the aggregate, to not less than seven years.

Establishment of Board of Special Commissioners.  
Amended by:  
*XVI. 1994.13;*  
*VI. 2001.23.*

(2)\* The Board of Special Commissioners for Duty on Documents constituted under the Duty on Documents Act shall continue to operate as the Board of Special Commissioners for Duty on Documents and Transfers established under this Act, and any appeal pending before the coming into force of this Act before the Board of Special Commissioners for Duty on Documents shall continue to be heard before the Board of Special Commissioners for Duty on Documents and Transfers and any appeal which under the Duty on Documents Act could be made before the Board of Special Commissioners for Duty on Documents shall be made before the Board of Special Commissioners for Duty on Documents and Transfers.

Cap. 294 -  
Repealed.

(3) 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.

(4) Every special commissioner shall hold office for such period as may be specified in his appointment, or, where not so specified, for a period of one year.

(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

\*Article 69(3) of the Act as originally enacted.

chairman shall have the power to administer the oath to any person appearing before the Board:

Provided that no person shall, by virtue of this sub-article, be obliged to disclose information in respect of which the first person is under the duty of professional secrecy.

(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.

L.N. 10 of 1990.

(9)\* The Appeals (Board of Special Commissioners for Duty on Documents) Rules, 1990 shall apply to the Board of Special Commissioners for Duty on Documents and Transfers as if they were made under sub-article (8).

Appeals to the Board of Special Commissioners.

**58.** (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 article 56(1), 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 sub-article (3), 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 article 61 to the person appealing, together with a notice informing such person of

\*Article 69(4) of the Act as originally enacted.

his rights under article 59:

Provided that in the case of a declaration that is required to be made in terms of article 33 or of a notice that is required to be made in terms of article 45, the Board shall summarily reject any appeal before it and confirm the assessment complained of, unless *prima facie* evidence is brought before it that such declaration or notice, as the case may be, has been made by the date on which the appeal was entered.

(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.

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

Appeals to the  
Court of Appeal.  
Amended by:  
VI. 2001.23.

(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 (Inferior Jurisdiction) 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 article 61.

(6) The Board established under article 29 of the Code of Organization and Civil Procedure may make rules concerning appeals to the Court of Appeal (Inferior Jurisdiction) under this article.

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(7)\* The powers vested under sub-article (6) shall also apply to the making of rules relative to appeals made from the Board of Special Commissioners for Duty on Documents.

(8) The Minister responsible for justice may by regulations under this subarticles establish the fees payable in the registry of the courts in relation to the filing of judicial acts in connection with an appeal to the Court of Appeal (Inferior Jurisdiction) under this

\*Article 69(5) of the Act as originally enacted.

Act:

Provided that until rules are so established by the Minister, the fees contained in Schedule A to the Code of Organization and Civil Procedure shall apply.

When assessments or amended assessments are final and conclusive.  
Amended by:  
II. 2003.36.

**60.** Where no valid objection or appeal has been lodged against an assessment, or where the amount of the duty has been agreed to under article 56(2), or where an amount of the duty and additional duty is paid as provided in article 52 of the Act, in respect of such duty and additional duty so paid, 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 article 62 or any assessment or additional assessment which does not involve re-opening any matter which has already been determined on appeal.

Service of notices.

**61.** (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; and
- (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.

## PART VI

### Refund of Duty

Refund of duty.

**62.** (1) The Commissioner may, subject to such conditions as may be prescribed, refund the duty where -

- (a) any document has been inadvertently spoiled, mutilated, or rendered unfit for use before it is executed; or
- (b) a document is subsequently expressly declared to be null by any competent court; or
- (c) the material condition of a document is such as to justify its substitution by another document of a similar nature, provided that the consent of the Commissioner for such substitution is obtained before it is made and that the duty applicable for the document at the time the substitution is made has been duly paid; or
- (d) the amount received by the Commissioner was not

due; or

- (e) due to an error in computation, excessive duty has been paid; or
- (f) a document drawn for purposes of registration or filing with an authority established by law is rejected owing to its non-conformity with the requirements of the authority concerned, where the document, whether or not it may be construed to have some validity between the parties, has failed to achieve the purpose for which it was executed.

(2) Claims for the refund of any duty under this article shall be made in such manner and within such period as may be prescribed.

(3) Where in the case of the person mentioned in article 32(4)(a) who acquires a second residence as defined in the same article it is proved to the satisfaction of the Commissioner that his former residence was sold within one year from the date of acquisition of his second residence, such person shall be entitled to a refund of the duty paid in excess of the duty properly chargeable in respect of the acquisition of such residence as established under the provisions of articles 32 and 40.

(4) Nothing in this article contained shall be deemed or made use of to supersede or replace the provisions of article 56.

## PART VII\*

### Protection of the Duty

**63.** (1) No person bound to make a declaration or lodge a notice in respect of a transfer *causa mortis* or liable for the payment of the duty under any of the provisions of this Act may, after the lapse of the time prescribed for the making of such a declaration or notice, institute or prosecute any legal proceedings, or make any claim in any government department, in respect of any property which should be included in such a declaration or notice unless it is shown that the declaration or notice as the case may be has been made and includes the property to which the proceedings or claim refers.

Court proceedings, etc., in respect of chargeable property.

(2) The default of proof that the declaration or notice has been made may be pleaded by the parties at any stage of the legal proceedings, and shall in all cases be raised by the court *ex officio*. The legal proceedings shall thereupon be stayed forthwith and shall not be prosecuted until the omission is rectified by the person liable therefor or by any other interested party.

(3) In the cases referred to in this article, the court shall give the necessary directions in order that the property forming the subject-matter of the legal proceedings shall not suffer any prejudice.

(4) The provisions of this article shall not apply after the lapse

\*See article 71 of the Act as originally enacted, which has been omitted under the Statute Law Revision Act, 1980.

of ten years from the relative transfer *causa mortis*.

Registration of  
share transfers.

**64.** (1) No person or authority shall, where a transfer *causa mortis* is subject to duty under this Act register any transfer of company shares in the name of a transferee *causa mortis* or any other person claiming through or under him before ascertaining that a notice of such transfer has been lodged with the Registrar of Partnerships in accordance with this Act.

(2) Any person acting in contravention of this article shall be liable for the payment of the relative duty.

Duties of notaries  
in the execution of  
deeds concerning  
immovable  
property.

**65.** (1) It shall be the duty of every notary executing any deed of partition, sale, grant, assignment or other transfer of immovable property or of rights annexed thereto, to state in the deed whether the property in question came to the partitioners, sellers, grantors, assignors, or other transferors by onerous title or under a transfer *causa mortis* or otherwise, and -

- (a) where such property came to the said persons by onerous title, or was assigned to such persons under a deed of partition, or was acquired by such persons under any title, other than by a transfer *causa mortis*, or came to the said persons under a transfer *causa mortis* happening at least twenty years before the date of the deed, or came to the said persons under a chargeable transmission referred to in article 3 of the Death and Donation Duty (Repeal) Act, 1993, to record in the deed all relevant details;
- (b) where such property, not being property assigned to the said persons under a deed of partition, came to the said persons under a transfer *causa mortis*, other than by a transfer as is referred to in paragraph (a), to indicate in the deed the date on which a declaration in respect of the transfer *causa mortis* was made giving all details of the deed whereby the declaration was made:

Provided that the provisions of this sub-article shall not apply where the property is transferred by the Government.

(2) No deed referred to in sub-article (1) shall be executed where the property has come to the partitioners, sellers, grantors, assignors or other transferors under any transfer *causa mortis* other than a transfer referred to in sub-article (1)(a) unless the relative declaration of the transfer *causa mortis* has been made.

(3) If a notary contravenes the provisions of sub-article (1), he shall be guilty of an offence and shall be liable, on conviction, to a fine (*ammenda*) of not less than ten liri and not exceeding one hundred liri for each contravention, and the proviso to article 11 shall apply to this article.

(4) If a notary contravenes the provisions of sub-articles (1) or (2), he shall be liable for the payment of double the relative duty.

**66.** (1) Where any immovable property or rights annexed thereto are sold by judicial auction, the Registrar of the Court under the authority of which the sale has taken place shall, after notifying the person or persons appearing to be interested therein, remit to the Commissioner from the proceeds lodged in court, with preference over any other person not having a prior claim to that of the Government as provided in sub-article (4), the amount of any duty which may still be due in respect of the property or rights sold.

Immovable property sold by judicial auction.

(2) Any interested party may oppose the remittance aforesaid by writ of summons filed against the Commissioner within six working days from the receipt of the Registrar's notification.

(3) No bid *animo compensandi* made in any judicial sale by auction of immovable property or rights annexed thereto shall be approved for the purposes of article 331 of the Code of Organization and Civil Procedure unless it is shown that the duty to which the property affected by the sale may be subject has been paid.

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(4) (a) Government shall have a special privilege in respect of the duty payable under this Part of this Act over all the property transferred *causa mortis*.

(b) With regard to immovable property, the special privilege granted to Government by this article shall not affect:

(i) real rights acquired by third parties over the property in question before the happening of the transfer *causa mortis*; or

(ii) third parties in possession of the property:

Provided that the said special privilege shall not affect:

(i) the privilege or hypothec registered by the creditors of such person before his death or within three months of his death or any shorter period established by law;

(ii) the rights of those creditors who have demanded the separation of the said person's estate from that of his heirs:

Provided further that this benefit shall not apply to the legatees who may have obtained such separation of estates.

(c) The special privilege granted by this sub-article over immovable property shall be registered by the Commissioner within two months from the date on which the relative assessment raised in accordance with the provisions of this Act becomes final and conclusive and shall rank immediately after the privileges contemplated in article 2010 of the Civil Code.

Cap. 16.

**67.** Every person required or authorized by any of the provisions of this Act to do anything for the protection of the duty

Indemnification granted.

shall be and is hereby indemnified against any person whomsoever for anything done by him in pursuance or by virtue of any of those provisions.

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