



Focus Business Services (Malta) Limited

STRAND TOWERS
Floor 2
36 The Strand
Sliema, SLM 1022
P O BOX 84
MALTA

T: +356 2338 1500
F: +356 2338 1111

enquiries@fbsmalta.com

www.fbsmalta.com

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, II of 2003, II and XIII of 2004, II of 2005 and II of 2006; Legal Notice 181 of 2006; Acts IV and XV of 2007; Legal Notice 425 of 2007; Acts XIII and XXXII of 2007; Legal Notices 105 of 2008 and 245 of 2009; and Acts II of 2009, I and XIX of 2010, and IV of 2011.

ARRANGEMENT OF ACT

		Articles
PART I	Preliminary	1-2
PART II	General Provisions	3-24
PART III	Documents chargeable with duty on their origin	25-52
Title I	Insurance Policies	25-31
Title II	Sales and Other Transfers	32-52
Title III	Other Documents	52A
PART IV	Documents upon which Duty must be paid before use thereof is made	53
PART V	Assessments - Objections - Appeals	54-61
PART VI	Refund of the Duty	62
PART VII	Protection of the Duty	63-67

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;
II. 2004.38;
L.N. 245 of 2009;
I. 2010.32;
IV. 2011.32.
2. In this Act, unless the context otherwise requires -
- "body of persons" includes any company, partnership, fellowship, society of persons, or other association of persons, whether corporate or unincorporate, and whether vested with legal personality or not;
- "Commissioner" means the Commissioner of Inland Revenue;
- "company" has the same meaning assigned to it in article 2(1) of the [Income Tax Act](#);
- Cap. 123.
- "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;
- Cap. 12.
- "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;
- "partnership" means:
- Cap. 386.
Cap. 168.
- (a) any partnership constituted under the [Companies Act](#) or under the [Commercial Partnerships Ordinance](#), being either a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares or any other partnership having a legal personality distinct from that of its members constituted, incorporated or registered under any other law in force in Malta;
- (b) any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the aforesaid partnerships;
- "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;

"resident in Malta" has the same meaning assigned to it in article 2 of the [Income Tax Act](#);

Cap. 123.

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

"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, including a declaratory public deed as is referred to in article 371(4) and 354(3) of the [Companies Act](#), and any occurrence that is deemed to be a transfer in accordance with the provisions of article 42B, and for the avoidance of doubt includes any transfer of an asset by a company to its shareholders, or by a partnership to its members, in the course of winding up the company or partnership or in the course of a distribution of assets to its shareholders or members pursuant to a scheme of distribution, but, except where specifically provided in this Act, does not include any transfer *causa mortis*;

Cap. 386.

"Tribunal" means the Administrative Review Tribunal established by article 5 of the [Administrative Justice Act](#);

Cap. 490.

"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.
Amended by:
II. 2004.39.

(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 subarticle (2).

(4) Where any person, as a direct or indirect result of any scheme of which the sole or main purpose was the obtaining of any advantage which has the effect of avoiding, reducing or postponing liability to duty, or of obtaining any refund of duty, has obtained or is in a position to obtain such an advantage, the Commissioner shall determine the duty in accordance with subarticle (2).

(5) In this article "scheme" includes any disposition, agreement, arrangement, trust, grant, covenant, transfer of assets, increase in the share capital of a limited liability company and alienation of property, whatsoever.

(6) Notwithstanding the provisions of any other law a promise of sale or of a transfer of immovable property or any real right thereon shall not be valid unless notice thereof is given to the Commissioner within such time and in such manner, and containing such particulars, as may be prescribed. Such notification shall be accompanied by a provisional payment equivalent to twenty per centum of the amount chargeable in terms of articles 32 and 40.

Documents subject to duty.
Substituted by: I. 2010.33.

4. Subject to the provisions of Part III, Title I of this Act, 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.

Manner of payment of 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.

(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.

Duty on documents executed outside Malta.
Amended by: XVI. 1994.4; I. 2010.34.

6. (1) Subject to the provisions of Part III, Title I of this Act, 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.

(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.

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.

Declaration of value.

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.

Commissioner to determine and assess the duty chargeable.

(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 subarticle (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.

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 eleven euro (11) and not more than fifty-eight euro (58) 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:

Liability of notaries as to declaration of value.

Amended by:
L.N. 425 of 2007.

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 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.

*See article 69(6) of the Act as originally enacted, which subarticle has been omitted under the [Statute Law Revision Act](#), 1980.

Duties of person before whom documents on which duty has not been duly paid to report to Commissioner.
Amended by: L.N. 425 of 2007.

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.

(2) If any such officer or person fails to make such report, he shall be liable to a penalty of not less than eleven euro (11) and not more than fifty-eight euro (58).

Liability for penalty not affected by payment of duty.

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.

(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.

Actions for recovery of any penalty to be taken by Commissioner.
Amended by: IV. 2011.33.

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 60A shall apply with regard to any such penalty or duty.

(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 subarticle (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.
Amended by: L.N. 425 of 2007.*

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 subarticle 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 subarticle shall not preclude any such officer as is referred to in subarticle (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 subarticle (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 two hundred and thirty euro (230) and not more than two thousand and three hundred euro (2,300), or to imprisonment for a period not

exceeding six months, or to both such fine (*multa*) and imprisonment.

Cap. 9.

(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 subarticle (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 one hundred and fifteen euro (115) or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Punishment for forging, etc., dies, etc.

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 subarticle (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.

Exemption from penalty.

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.

Power to make regulations.
Amended by:
L.N. 425 of 2007.

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 two thousand and three hundred euro (2,300) for any failure to comply therewith, which penalty shall be recoverable as is provided in article 16.

(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.

Cap. 294 -
Repealed.

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.

Power of Minister
to grant
exemptions.

(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 subarticle (1).

Cap. 294 -
Repealed.

24. *Repealed by Act II.2003.32.*

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

PART III

Documents chargeable with Duty on their Origin

TITLE I

Insurance Policies

25. Notwithstanding the provisions of any other article in this Act, including articles 4 and 6, there shall be charged on any policy of life insurance which is not renewable every year, wherever such policy is executed or used, a duty of ten cents for every one hundred euro or part thereof of the sum assured:

Duty on policy of
life insurance.
Amended by:
II. 2004.40;
L.N. 425 of 2007.
Substituted by:
I. 2010.35.

Provided that duty under this article shall only be chargeable on policies where the policyholder is resident in Malta, or in the case where the policy holder is a legal person, where such policy holder is incorporated or otherwise created in Malta:

Provided further that persons referred to in article 47(3) shall in no case be deemed to constitute persons referred to in the first proviso of this article.

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

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

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

26. *Repealed by: I.1998.3.*

Duty on policies of insurance.

Amended by:

I. 1998.4;

XI. 2000.22;

II. 2002.37;

II. 2005.27;

L.N. 425 of 2007.

Substituted by:

I. 2010.36.

27. Notwithstanding the provisions of any other article in this Act, including articles 4 and 6, there shall be charged on every policy of insurance, wherever such policy is executed or used and in respect of which article 25 does not make specific provision, a duty of ten cents for every euro 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:

Provided that -

- (a) the minimum duty chargeable under this article shall be eleven euro and sixty-five cents (€11.65);
- (b) where the premium payable is less than eleven euro and sixty-five cents (€11.65), the minimum duty chargeable shall be reduced to ten per centum of the amount of premium so payable;
- (c) no duty shall be chargeable on any policies of insurance in respect of Aviation, Marine Cargo, Marine Hull or Boat, Credit and Suretyship, and Medical Cover;
- (d) duty under this article shall only be chargeable on policies relating to risks referred to in the definition of the term "risk situated in Malta" contained in article 2(1) of the [Insurance Business Act](#);
- (e) persons referred to in article 47(3) shall in no case be deemed to constitute persons as referred to in paragraph (d) of the definition of "risk situated in Malta" in the said article 2(1) of the [Insurance Business Act](#).

Cap. 403.

Cap. 403.

Endorsement of policies of insurance.

Amended by:

L.N. 425 of 2007.

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 -

- (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 subarticle (1) or (2), a duty of two euro and thirty-three cents (2.33).

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 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,

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

*Amended by:
L.N. 425 of 2007.*

shall for every such offence, be liable to a penalty of not less than twenty-three euro (23) but not exceeding two hundred and thirty euro (230).

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.

Liability to pay duty on policies of insurance.

*Amended by:
L.N. 425 of 2007.*

(2) Any person who fails to comply with the provisions of subarticle (1) shall be liable to pay a penalty of not less than twenty-three euro (23) but not exceeding two hundred and thirty euro (230).

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 twenty-three euro (23) but not exceeding two hundred and thirty euro (230).

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

*Amended by:
L.N. 425 of 2007.*

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;
L.N. 425 of 2007;
XXXII. 2007.70;
L.N. 105 of 2008;
I. 2010.37;
IV. 2011.34.

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 euro (5.00) for every one hundred euro (100) 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.

(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 one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (116,468.67) 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 euro and fifty cents per one hundred euro or part thereof.

(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 one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or such

Cap. 246.

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 euro and fifty cents per one hundred euro 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 one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (116,468.67) 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 groundrent at fifty *per centum* of the result obtained by applying the rates specified in article 40(1) and at the rate of three euro and fifty cents per one hundred euro 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 seventy thousand euro (70,000) (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 sixty-nine thousand eight hundred and eighty-one euro and twenty cents (69,881.20) (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 subarticle shall be such

amount as is proportionate to one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (116,468.67) 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)* (a) 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 subarticle, "a group of companies" shall have the same meaning assigned to it in article 42.

- (b) The provisions of paragraph (a) shall only apply where the individual, direct or indirect, beneficial owners of the companies referred to in the said paragraph are the same and each such individual holds, directly or

*this subarticle was originally added by Act XXV of 1995 as article 32A.

indirectly, substantially the same percentage interest in the nominal share capital and voting rights in each of the said companies.

For the purpose of this paragraph an individual is deemed to hold substantially the same percentage interest in the nominal share capital and voting rights in each of the said companies where the difference between the percentage interest held in each company does not exceed twenty percent:

Provided that where an individual holds, directly or indirectly, less than twenty percent of the nominal share capital and voting rights in only one of the companies referred to in paragraph (a), such individual shall not be taken into account in determining whether the individual direct or indirect beneficial owners of the companies referred to in paragraph (a) are the same:

Provided further that if more than one individual holds, directly or indirectly, less than twenty percent of the nominal share capital and voting rights in one of the said companies, the preceding proviso shall not apply where together such individuals hold, directly or indirectly, twenty percent or more of the nominal share capital and voting rights in that company:

Provided also that the whole of this paragraph shall not apply, where the companies referred to in paragraph (a) are directly or indirectly owned as to eighty percent or more by a company whose securities are listed on a stock exchange recognised under the [Financial Markets Act](#).

Cap. 345.

- (c) Notwithstanding the foregoing provisions of this article, no duty shall be chargeable on a transfer of immovable property by a company to its shareholder in the course of winding up or in the course of a distribution of assets pursuant to a scheme of distribution, where the said shareholder is an individual or his spouse who owns or own all of the share capital (disregarding the holding of one share having no preferential rights) of the said company transferring the property as aforesaid and the Commissioner issues a certificate attesting that he is satisfied that the requirements and conditions under this paragraph are fulfilled:

Provided that this paragraph shall only apply and the Commissioner shall only issue a certificate, where all the following conditions have been satisfied:

- (i) the said shareholder held all of the share capital (disregarding the holding of one share having no preferential rights) of the company transferring the said immovable property for a period exceeding five years immediately preceding the

- date of the transfer of the property as aforesaid;
- (ii) the said immovable property consists of one transferable unit, being either a dwelling house, garage, shop, office, store or warehouse;
- (iii) the said immovable property is held as a capital asset by the company and has been so held for a period exceeding five years immediately preceding the date of the transfer of the property as aforesaid.

Special rules
applicable to trusts.
Added by:
XIII. 2004.72.

32B. (1) Notwithstanding any other provisions of this Act, no duty shall be chargeable on any transfer of immovable property or any real right over an immovable property:

- (a) by a settlor to the trustees of a trust of which the settlor is the sole beneficiary and where the settlor has an irrevocable vested right to receive the trust property;
- (b) by a settlor to the trustees of a trust created for the purpose of a designated commercial transaction;
- (c) by a settlor to the trustees of a trust created for the purpose of a commercial transaction not being a designated commercial transaction but which has been approved by the Commissioner for the purposes of this paragraph;
- (d) between trustees consequent to a change in the trustees (whether by addition, substitution or otherwise) holding the immovable property upon trust provided that no beneficial interest in the trust is also transferred upon such change in trustees;
- (e) by trustees to the settlor where the trust property reverts back to the settlor; and
- (f) by trustees to a beneficiary of the trust where duty has been previously charged on the initial transfer by the settlor to the trustees in accordance with article 32(1); provided that duty shall be chargeable in relation to any increase in value between the date of the initial transfer to the trustees and the subsequent distribution to the beneficiaries:

Provided that in all cases the trust must be established or evidenced by means of a written instrument.

For the purposes of this subarticle, "designated commercial transactions" means the custody of investment instruments, the establishment or holding of real or personal security interests (including hypothecs, privileges, pledges and guarantees), and any other commercial transaction which may be prescribed, while "commercial transaction" shall have the meaning assigned to it in article 2 of the [Trusts and Trustees Act](#).

Cap. 331.

(2) Where a beneficiary under a trust for immovable property assigns or otherwise transfers *inter vivos* to a third party his beneficial interest in such trust, such a transfer shall be deemed to constitute a transfer for the purposes of this Act, and the transfer

value shall be deemed to be the amount limited to that part of the value of the immovable property which is proportionate to the value of the beneficial interest transferred by such beneficiary.

(3) The provisions of subarticle (2) shall apply *mutatis mutandis* in those cases when there is any change in beneficiary, including a disclaimer or renunciation whether in full or in part of a beneficiary's entitlement under a trust:

Provided that where the Commissioner is satisfied that an irrevocable disclaimer of a beneficial interest was not effected with the sole or main purpose of avoiding, reducing or postponing liability to duty, he may at his discretion order in writing that the provisions of this subarticle shall not apply to such a disclaimer and that no duty shall be chargeable.

32C. Notwithstanding any other provision of this Act, in the case of transfers by a gratuitous title by a person to his descendants in the direct line who acquire immovable property for the purpose of establishing therein or constructing thereon their sole, ordinary residence, the duty otherwise chargeable in terms of the said Act shall be chargeable on the value thereof at the rate of three euro and fifty cents per one hundred euro or part thereof, provided that this is the first transfer by such a person to such a descendant for this purpose and in this manner and provided that the notary who receives any deed of such a transfer shall record in the deed a written declaration by the person so transferring and the person so acquiring that the property is being acquired for the said purpose for the first time and the notary shall warn the said person and descendant of the importance of the truthfulness of such declaration.

Transfers by a gratuitous title.
Added by:
XXXII. 2007.71.
Amended by:
L.N. 105 of 2008.

32D.* (1) The administrators of a foundation may elect that the foundation be treated as a trust in so far as relates to transactions of the same type as those referred to in article 32B between the founder and the foundation and between the foundation and any beneficiaries. In such case the provisions of this Act relating to trusts shall apply to foundations *mutatis mutandis*.

Foundations treated as trusts.
Added by:
XIII. 2007.17.

(2) The Minister may make regulations generally for the carrying out of the provisions of this article including the application of the provisions of this Act relating to trusts to a foundation as aforesaid as well as to any persons who are donors of property to such foundation or are beneficiaries under or administrators of such foundation.

32E.† The Minister may make regulations in relation to the application of this Act to any transfers required for or incidental to any conversion of a legal person of one form into another legal form or into a trust as is referred to in article 21 of the Second Schedule to the [Civil Code](#).

Regulations in relation to transfers.
Added by:
XIII. 2007.17.
Cap. 16.

*this article was originally added as article 32C.

†this article was originally added as article 32D.

Declaration of transfers *causa mortis*.
Amended by:
XIII. 2004.73.

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.

(2) The public deed referred to in subarticle (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.

Cap. 55.

(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).

(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 subarticle (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 and trustees shall be responsible to make the declaration referred to in subarticle (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.
Amended by:
XIII. 2004.74.

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.

For the purpose of determining the applicability of the benefits of this article whenever the immovable property or real rights thereon are held on trust, reference shall be made to the beneficiaries of the trust as indicated in the declaration, and the trustee shall be ignored for such purpose.

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:

Special rules applicable to declarations.

Amended by:

XVI. 1994.8;

XIII. 2004.75;

IV. 2007.19;

L.N. 425 of 2007;

XXXII. 2007.72;

II. 2009.27.

- (a) (i) The first thirty-five thousand euro (35,000) 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 thirty-five thousand euro (35,000) 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 subarticle refers, relief has also been granted in terms of article 6 of the [Home Ownership \(Encouragement\) Act](#), the relief granted under this subarticle and under the said article 6 of the said Act, shall not be compounded, but the person otherwise liable to 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.

Cap. 328.

- (2) Saving the exemptions granted in subarticle (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 euro and fifty cents for every one hundred euro 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 thirty-five thousand euro (35,000) but not seventy thousand euro (70,000), 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 thirty-five thousand euro (35,000) or that part of its value which exceeds thirty-five thousand euro (35,000) but not seventy thousand euro (70,000) 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;
- (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 euro and fifty cents for every one hundred euro 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 seventy thousand euro (70,000) 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 seventy thousand euro (70,000) 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;

- (iii) where such property consists of a dwelling house, being the ordinary residence of the person from whom the transfer originates, and the beneficiary of such residence is the surviving spouse, no duty shall be levied at the time of the transfer, provided that if such residence is transferred by the surviving spouse during the first ten years from the date of death of the person from whom the transfer originates, the duty which would have been payable on the death of the predeceased spouse shall be levied at the time of the transfer by the surviving spouse; and
- (iv) where all the following conditions are satisfied, that is -
 - (a) the property transferred *causa mortis* consists of a dwelling house or a part thereof, or of any real right over a dwelling house;
 - (b) the transferee *causa mortis* is a person who is on the Register of Persons with Disability kept by the National Commission Persons with Disability set up in terms of the [Equal Opportunities \(Persons with Disability\) Act](#), and identifies himself as such on the declaration of the relative transfer *causa mortis* by means of an identity card issued by the said Commission;
 - (c) the person from whom the transfer *causa mortis* originates is the parent or the legal guardian of the said transferee *causa mortis*;
 - (d) the said dwelling house was, at the time of the transfer, the ordinary residence of the person from whom the transfer originates and also the ordinary residence of the said transferee *causa mortis*,

Cap. 413.

no duty shall be levied at the time of the transfer *causa mortis* of that property:

Provided that if such property or part thereof is transferred *inter vivos* by the said transferee *causa mortis* during the first ten years from the date of the transfer *causa mortis* in question, the duty which would have been payable on the transfer *causa mortis* of the property, or part thereof, that is so transferred shall be levied at the time of the said transfer *inter vivos*.

- (3) For the purpose of determining the applicability of the

benefits referred to in subarticles (1)(a) and (2) whenever the dwelling house is transferred *causa mortis* to a trustee, reference shall be made to the beneficiaries of the trust as indicated in the declaration, and the trustee shall be ignored for such purpose. No reference to the beneficiaries of a trust shall be made for the purpose of subarticle (1)(b).

(4) 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.

(5) 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.

(6) 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 or of a transfer *causa mortis* upon trust:

- (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.

(7) When the contingency referred to in subarticle (6) 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 subarticle; 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 subarticle (6) hereof the duty so paid, and shall where the duty payable pursuant to this subarticle is more than the duty paid pursuant to subarticle (6) 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 two hundred and thirty euro (230) 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 euro and sixty cents for every one hundred euro or part thereof of the price payable by such purchaser.

Duty on transfers in auction sales.
Amended by:
X. 1994.25;
L.N. 425 of 2007.
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 twenty-three euro (23) but not exceeding two hundred and thirty euro (230) 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;
L.N. 425 of 2007;
XXXII. 2007.73;
L.N. 105 of 2008..

- if the term does not exceed
twenty five years twelve euro per one hundred euro or part thereof
- where the term exceeds twenty-five years but does not exceed fifty years..... sixty euro per one hundred euro or part thereof
- where the term exceeds fifty years but does not exceed seventy-five years eighty euro per one hundred euro or part thereof

where the term exceeds seventy

five years one hundred euro per one
hundred euro 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 five thousand eight hundred and twenty-three euro and forty-three cents (5,823.43) 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 subarticle (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.

41A. No duty shall be chargeable upon a division of a company where the ultimate individual beneficial shareholders in the recipient companies remain the same shareholders of the company to be divided and each such shareholder shall have the same proportion of shares in each of the recipient companies as he held in the company to be divided.

Exemption on certain company divisions.
Added by:
II. 2005.28.

41B. The succession to all assets, rights, liabilities and obligations of the commercial partnership that has been converted, by the commercial partnership resulting from the conversion referred to in article 335(1) of the [Companies Act](#), shall not give rise to any liability to the payment of any duty under this Act.

Conversion of a commercial partnership.
Added by:
XIX. 2010.55.
Cap. 386.

42. (1) A duty of two euro for every one hundred euro 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;
II. 2004.41;
II. 2005.29;
II. 2006.13;
L.N. 425 of 2007;
I. 2010.38;
IV. 2011.35.
Cap. 123.

- (a) on every transfer *inter vivos*, whether executed in Malta or outside Malta, of foreign marketable securities held in a property company as defined in article 2(1) of the [Income Tax Act](#) made to, or by any person resident in Malta and on every document whereby any foreign marketable security is transferred *inter vivos* to, or by any person resident in Malta:

Cap. 123. Provided that where the marketable securities in question are not held in a property company as defined in article 2(1) of the [Income Tax Act](#), 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](#). For the purpose of this proviso, the provisos to the said definition of "property company" in article 2(1) shall not apply;

Cap. 370.

- (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:

Provided further that where any company referred to in the immediately preceding proviso is a "property company", the immediately preceding proviso shall only apply where the individual, direct or indirect, beneficial owners of the companies referred to in the said proviso are the same and each such individual holds, directly or indirectly, substantially the same percentage interest in the nominal share capital and voting rights in each of the said companies both before and after the transfer or exchange, as the case may be. The provisions of article 32(6)(b) shall apply *mutatis mutandis* for the purpose of making such determination.

Cap. 123.

For the purpose of this proviso "property company" shall have the same meaning assigned to it in article 2(1) of the Income Tax Act but the provisos to the said definition shall not apply:

Cap. 345.

Provided also that the immediately preceding proviso shall not apply, where the said companies are, directly or indirectly, owned as to eighty percent or more by a company whose securities are listed on a stock exchange recognised under the [Financial Markets Act](#).

- (c) on every notice of the transfer *causa mortis* of company shares made in accordance with article 45;
- (d) on a transfer of real value in marketable securities as provided for in article 42B.

In this subarticle, "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:

Provided that the Minister may by rules prescribe another definition of "group of companies" and that definition shall apply to transfers made after such date as may be prescribed by those rules.

- (2) (a) Where it results that seventy-five percent or more of the assets, excluding all current assets other than immovable property, of the company referred to in article 42B or 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 1st January 2000, consists of any immovable property or any right over an immovable, the duty chargeable in virtue of subarticle (1) shall be increased by three euro for every one hundred euro or part thereof of the amount or value of the consideration or the real value of the marketable security, whichever is the higher.
- (b) Where the company referred to in article 42B, or whose marketable securities are transferred holds, directly or indirectly, shares in a company having seventy-five percent or more of its assets, excluding all current assets other than immovable property, consisting of any immovable property or any right over an immovable, hereinafter referred to as the "property company", the duty chargeable in virtue of subarticle (1) shall be increased by three euro for every one hundred euro or part thereof of the amount or value of the consideration or the real value of the marketable security, whichever is the higher:

Provided that paragraph (b) shall only apply where the aggregate value of:

- (i) immovable property or any right over an immovable owned by a property company or companies (as represented by the percentage interest held in such company or companies), and
- (ii) immovable property or any right over an immovable owned by the company referred to in article 42B or whose marketable securities are transferred,

is equal to or exceeds seventy-five percent of the total

non-current assets of the property company or companies (as represented by the percentage interest held in such company or companies) and of the company referred to in article 42B or whose marketable securities are transferred, disregarding the book value of shares held, directly or indirectly, in the property company or companies and taking into account total current assets consisting of immovable property:

Provided further that paragraph (b) shall not apply where the duty chargeable in virtue of subarticle (1) has been increased by three euro for every one hundred euro or part thereof in accordance with paragraph (a).

- (c) For the determining of the amount or value of the consideration or the real value of the marketable security or of the real value of the company referred to in article 42B, there shall not be deducted any liability in excess of the value of all assets excluding the value of any such immovable property or any real right thereon other than -
- (i) a bank loan relating to the cost of acquisition and improvements of the immovable property or real right thereon; or
 - (ii) a debt registered at the Public Registry relating to the acquisition cost of the aforesaid immovable, where such debt is registered within three months from the date of acquisition of the said immovable,

proved in each case by the production of such documents to the satisfaction of the Commissioner, as the Commissioner may require.

(3) The real value of shares in a company is a percentage of the real value of the company corresponding to the higher of -

- (a) the percentage of the issued share capital represented by the nominal value of those shares, and
- (b) the percentage of the total voting rights in the company represented by the total voting rights attached to those shares.

(4) The Minister responsible for finance may make rules under this Act or the [Income Tax Act](#) for the implementation of the provisions of this article and article 42B and, without prejudice to the generality of the foregoing, such rules may provide for:

- (a) the manner in which the real value of a company is to be determined;
- (b) the manner in which the real value of marketable securities is to be determined;
- (c) the manner in which a transfer of real value in marketable securities as provided for in article 42B is

to be determined; and

(d) any matter that may be prescribed under this article.

42A. The provisions of article 32B shall apply *mutatis mutandis* to any transfers of marketable securities, and references to "immovable property" in article 32B shall be construed as references to "marketable securities" for the purposes of this article.

Special rules
applicable to trusts.
Added by:
XIII. 2004.76.

42B. Where the real value of shares held by a person (hereinafter referred to as the "transferor") in a company, has been reduced as a result of a change in the issued share capital of such company, or a change in voting rights attached to such shares, and such value so reduced passes into other shares in or rights over the company, held by any other person (hereinafter referred to as the "transferee"), the transferor shall be deemed to have made a transfer of such value so reduced to the transferee, calculated by taking into account the difference between the real value of the shares held immediately before and after the said change and duty shall be chargeable in accordance with article 42:

"Reduction of real
value of shares.
Added by:
I. 2010.39.
Amended by:
IV. 2011.36.

Provided that this article shall not apply where:

- (i) the change in the issued share capital or change in voting rights does not produce any change in the individual, direct or indirect, beneficial owners of the said company and in the proportion in the real value of the said company represented by the shares owned beneficially, directly or indirectly, by each such individual; or
- (ii) the change in the issued share capital consists of an allotment of shares in a company, as a result of an exchange of shares from one company to another exempt from duty under the provisions of article 42(1); or
- (iii) the transfer of value is the result of a change in voting rights and such transfer is made by the transferor to a person referred to in paragraph (i) of article 5(2)(e) of the [Income Tax Act](#); or
- (iv) the said company is a company whose securities are listed on a stock exchange recognised under the [Financial Markets Act](#); or
- (v) the said company is not a "property company" and it can be shown to the satisfaction of the Commissioner that the said change is effected for *bona fide* commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes is avoidance of liability to duty. For the purpose of this paragraph "property company" shall have the same meaning assigned to it in article 2(1) of the [Income Tax Act](#) but the provisos to the said definition shall not apply.

Cap. 123.

Cap. 345.

Cap. 123.

Duty on transfer of an interest in a partnership.
Added by:
IV. 2011.37.

42C. (1) A duty of two euro for every one hundred euro or part thereof of the amount or value of the consideration or the real value, whichever is the higher, of an interest in a partnership shall be charged:

- (a) on every document whereby an interest in a partnership, other than in a foreign partnership, is transferred to or by any person in Malta;
- (b) on a deemed transfer of an interest in a partnership referred to in subarticle (3), other than in a foreign partnership;
- (c) on every notice of the transfer *causa mortis* of an interest in a partnership made in accordance with article 45.

For the purpose of this article a transfer of an interest in a partnership shall include a transfer of a full or partial interest and any alienation of any such full or partial interest in a partnership and the term "foreign partnership" shall mean a partnership, which satisfies all of the following conditions:

- (i) it is not a "property partnership";
- (ii) it does not hold marketable securities in a company registered in Malta as defined in article 2 of the [Income Tax Act](#);
- (iii) it is not constituted, incorporated or registered under the [Companies Act](#) or under the [Commercial Partnerships Ordinance](#) or under any other law in force in Malta.

Cap. 123.

Cap. 386.

Cap. 168.

For the purpose of this paragraph "property partnership" shall have the same meaning assigned to it in article 2(1) of the [Income Tax Act](#) but the provisos to the said definition shall not apply.

Cap. 123.

(2) The provisions of article 42(2) shall apply *mutatis mutandis* to this article and references to the term "company", where applicable, shall be deemed to be references to a "partnership" and references to "subarticle (1)" shall be deemed to be references to "subarticle (1) of article 42C".

(3) Where a person acquires or increases a partnership share, there shall be a deemed transfer of an interest in the partnership (to that partner and from the other partners). "Partnership share" means the share to which a person is entitled in the income of the partnership and to the assets available for distribution on the winding up of the partnership:

Provided that this subarticle shall only apply where the partnership in question is a commercial partnership *en nom collectif* or commercial partnership *en commandite* the capital of which is not divided into shares.

(4) Notwithstanding the provisions contained in this Act, the Minister may make rules determining the method of calculation of the amount or value chargeable to duty in relation to a transfer or deemed transfer of an interest in a partnership and to prescribe any

matter that may be prescribed in relation to such transfer.

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

Transfer of marketable securities and of interests in partnerships executed in Malta or abroad.
Amended by:
L.N. 274 of 2010.
Substituted by:
IV. 2011.38.

(2) Where the transfer of any foreign marketable security or of an interest in a partnership 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 a notice given as aforesaid may stipulate that it will apply also to other transfers of marketable securities and interests in partnerships executed outside Malta that may be made in the future by the same person, in which case that person will not be required to give notice of such further transfers:

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

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.

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

45. (1) A person to whom an interest in a partnership registered in Malta or shares in a 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 Companies.

Transferees *causa mortis* to give notice.
Substituted by:
IV. 2011.39.

(2) The notice referred to in subarticle (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 or interest being the object of the transfer and the manner in which the shares or interest devolved on the transferee *causa mortis*, as may be prescribed.

(3) The Registrar of Companies shall register the notice referred to in subarticle (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.

Exemptions for certain marketable securities.

Added by:
XVI.1994.12.
Amended by:
IX. 1999.15;
XIII. 2004.77;
XV. 2007.16;
XXXII. 2007.74;
I. 2010.41;
IV. 2011.40.

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

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

For the purpose of this article acquisitions or disposals of marketable securities shall include a transfer of real value in marketable securities as referred to in article 42(1)(d).

(3) The persons referred to in subarticles (1) and (2) are:

Cap. 370.

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

Cap. 370.

(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;

Cap. 123.

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

(d) companies falling within the scope of subarticle (4);

(e) a company which proves to the satisfaction of the Commissioner that it carries on, or intends to carry on, business or has, or intends to have, business interests to the extent of more than ninety percent outside Malta by demonstrating that it satisfies such conditions as to the Commissioner may appear appropriate.

Provided that the holding of marketable securities in, and the carrying on of business activities with, a company or companies referred to in paragraphs (c), (d) or (e) shall be deemed to constitute business interests outside Malta:

Cap. 386.

Provided further that for the purpose of determining whether a company referred to in article 384 of the [Companies Act](#) satisfies the provisions of this paragraph, only such company's operations in Malta shall be taken into consideration.

(4) A company is a company falling within subarticle (3)(d) if more than half the ordinary share capital, voting rights and rights to profits are held by persons who, or by a trustee of a trust the beneficiaries of which are all 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 subarticle (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 subarticle (7) or subarticle (8).

(7) The Commissioner shall determine that a company falls within subarticle (3)(d) if, in addition to satisfying the requirements of subarticle (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 subarticle (3)(c), (d) and (e) or any other assets in Malta held by the company for the purposes of carrying on its business.

Cap. 123.

(8) The Commissioner may, in his discretion, determine that a company falls within subarticle (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 provisions of this article shall only be applicable where the Commissioner has so determined and such determination and any determination made pursuant to subarticle (7) or subarticle (8) shall continue to be applicable as long as the relevant conditions and provisions are satisfied:

Provided that any such determination made in relation to a company which falls under subarticle (3)(c), shall, in so far as it is valid as at 31st December, 2010, be considered, as from 1st January, 2011, to be a determination made in relation to a company which falls under subarticle (3)(e).

(10) The provisions of this article shall not apply:

- (a) where the marketable securities in question are held in a "property company" as defined in article 2(1) of the [Income Tax Act](#); or
- (b) where the said exemption arises by virtue of subarticle (3)(d), the said marketable securities are acquired by an individual who is ordinarily resident and domiciled in Malta or by any other person (other than any person referred to in sub-article (3)) who is owned or controlled, or acts on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Cap. 123.

Penalty for
contravening
articles 32, 33, 39
to 43, 45 and 46.
Amended by:
II. 2002.40;
L.N. 425 of 2007.
Substituted by:
IV. 2011.41.

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, 42B, 42C, 43, 45 or 46 shall be liable to a penalty of not less than twenty-three euro (€23) but not exceeding one thousand, one hundred and sixty euro (€1,160) for each omission.

By whom duty on
transfers is due.
Amended by:
I. 2010.42.

49. (1) 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:
 - (i) the declarations made in terms of subarticle 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](#);

- (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.

(2) Duty as provided in article 42B shall be paid to the Commissioner by the transferee acquiring value within fifteen working days from the date of the change referred to in the said article. Such shareholder shall submit together with the payment referred to above any other documents, forms and details as may be prescribed.

Cap. 16.

Liability of
notaries.
Amended by:
L.N. 425 of 2007.

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,

shall be guilty of an offence and shall be liable on conviction to a penalty of not less than eleven euro (11) but not exceeding four hundred and sixty-five euro (465); 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.
Amended by:
L.N. 425 of 2007.

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 eleven euro (11) and not more than four hundred and sixty-five euro (465).

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:

Commissioner to determine and assess the duty chargeable.
Amended by:
II. 2003.35;
IV. 2011.42.

Provided that where a declaration has not been made as aforesaid, nothing in this subarticle 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*.

*See subarticle (6) of article 69 of the Act as originally enacted, which subarticle has been omitted under the [Statute Law Revision Act, 1980](#).

(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 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 four years of the receipt of such notice.

TITLE III

Other Documents

52A. (*Deleted by Act I. 2010.43*).*

*Added by:
I. 1998.6.*

Banking credit cards.

*Added by:
I. 1998.6.*

*Amended by:
L.N. 425 of 2007.*

PART IV

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

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.

Duty on documents made outside 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

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.

Service of assessments.

*See article 43(2) of [Act I of 2010](#) for transitory provision.

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.
Amended by: IV. 2011.43. **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 subarticle (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 within three years from the date of receipt of the aforementioned notice of objection.

Applicability of Administrative Justice Act.
Amended by: XVI. 1994.13; VI. 2001.23.
Substituted by: L.N. 245 of 2009.
Cap. 490.

57. (1) The Administrative Review Tribunal shall be competent to hear and determine appeals in accordance with the provisions of article 58.

(2) The provisions of the [Administrative Justice Act](#), in so far as they apply to the Administrative Review Tribunal, shall apply to any proceedings before the said Tribunal and the words "public administration" in the said enactment shall be construed as a reference to the Commissioner of Inland Revenue.

Cap. 490. (3) The provisions of article 25 of the [Administrative Justice Act](#) shall apply to any proceedings pending before the Board of Special Commissioners for Duty on Documents and Transfers any such proceedings shall be assigned to the Administrative Review Tribunal in terms of the aforesaid article 25 with effect from 1st September, 2009.

(4) Any pending appeal before the Board of Special Commissioners for Duty on Documents and Transfers constituted under this Act prior to the abolition of the said Board shall continue to be heard before the Administrative Review Tribunal and any appeal which under this Act could be made before the Board of Special Commissioners for Duty on Documents and Transfers shall be made before the Tribunal.

(5) Any pending appeal before the Board of Special Commissioners for Duty on Documents constituted under the Duty on Documents Act* prior to the abolition of the said Board, shall

*Repealed by the [Duty on Documents and Transfers Act](#) (Cap. 364)

continue to be heard before the Tribunal and any appeal which under the Act could be made before the Board of Special Commissioners for Duty on Documents shall be made before the Tribunal.

(6) Any appeal pending on 1st September, 2009 before the Court of Appeal from a decision of the Board of Special Commissioners for Duty on Documents and Transfers and any appeal pending on 1st September 2009 before the Court of Appeal from a decision of the Board of Special Commissioners for Duty on Documents shall continue to be heard by that Court, provided that if the said Court were to annul a decision of any one of the Boards aforesaid and remit it back to any one of the said Boards, the remittance shall be made to the Administrative Review Tribunal which shall hear and decide that case accordingly.

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

(8) The Tribunal shall have power to summon any person to give evidence or to produce books or other documents before it, and the Chairperson shall have power to administer the oath to any person appearing before the Tribunal:

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

(9) The [Appeals \(Board of Special Commissioners for Duty on Documents\) Rules](#) shall, until repealed or substituted in terms of the [Administrative Justice Act](#), continue to apply to the Tribunal when hearing appeals previously lodged before the Board of Special Commissioners for Duty on Documents and Transfers.

S.L. 364.05

Cap. 490.

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 Tribunal 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.

Appeals to the
Tribunal.
Amended by:
L.N. 245 of 2009.

(2) Every person appealing shall appear before the Tribunal 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 subarticle (3), the Tribunal 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 Tribunal'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 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 Tribunal 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 Tribunal shall not be withdrawn or discontinued except with the consent of the Commissioner.

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

Appeals to the
Court of Appeal.
Amended by:
VI. 2001.23.
Substituted by:
L.N. 245 of 2009.
Cap. 490.

59. (1) Appeals to the Court of Appeal from decisions of the Tribunal shall be lodged in terms of Part IV of the [Administrative Justice Act](#), subject to the following:

- (a) where the total amount of duty payable in dispute at the time when the appeal was lodged before the Tribunal is less than one million and one hundred and sixty-five thousand euro (€1,165,000) to the Court of Appeal (Inferior Competence); and
- (b) where the total amount of duty payable in dispute at the time when the appeal was lodged before the Tribunal is of one million and one hundred and sixty-five thousand euro (€1,165,000) or more, to the Court of Appeal (Superior Competence).

(2) The Court of Appeal shall give the parties seven clear days' notice of the date fixed for the hearing of the appeal.

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

(4) Notice of the amount of duty payable under the assessment as determined by the Court of Appeal shall be served by the Commissioner in the manner provided in article 61.

Cap. 12.

(5) The Board established under article 29 of the [Code of Organization and Civil Procedure](#) may make rules concerning appeals to the Court of Appeal from decisions of the Tribunal under this article.

(6) The powers vested under subarticle (5) shall also apply to the making of Rules relative to appeals made from the Board of Special Commissioners for Duty on Documents and the Board of Special Commissioners for Duty on Documents and Transfers.

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.

60A. (1) An assessment which is final and conclusive in accordance with article 60 shall be an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the [Code of Organization and Civil Procedure](#).

Executive title.
Added by:
IV: 2011.44.

Cap. 12.

(2) If duty and, or additional duty and, or interest is not paid as prescribed in this Act, the Commissioner shall serve a demand note upon the person liable for the payment, and if payment is not made within fifteen days from the date of the service of such demand note, the Commissioner may enforce payment in virtue of the executive title referred to in subarticle (1), after two days from the service of an intimation for payment made by means of a judicial act.

60B. (1) Save as otherwise expressly provided in this Act, no action for payment of duty and, or additional duty and, or interest may be taken after the lapse of five years from the date on which the relative assessment becomes final and conclusive.

Limitation of
action for payment
of duty.
Added by:
IV: 2011.44.

(2) The running period of prescription specified in this article shall be interrupted by any judicial act filed before the expiration of such period by the Commissioner whereby any payment of duty is claimed.

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:

Service of notices.
Amended by:
IV: 2011.45.

Provided that where such notice is not made because the taxpayer could not be found or for other reasons attributable to him and the Commissioner publishes a notice in the Gazette and in one or more daily newspapers stating that a notice has been made and inviting the taxpayer to call for it at the Department, then such notice shall also be deemed to have been duly notified.

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

64. (1) No person or authority shall, where a transfer is subject to duty under this Act, or where a transfer of value is exempt from duty by virtue of the proviso to article 42B, other than paragraph (iv) of the said proviso, register any transfer, reduction, or allotment of company shares whether in the name of a transferee or any other person claiming through or under him or otherwise, before ascertaining that such transfer, reduction or allotment has been notified to the Commissioner in accordance with this Act.

Registration of share transfers.
Amended by:
I. 2010.44;
XIX. 2010.56.

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

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 -

Duties of notaries in the execution of deeds concerning immovable property.
Amended by:
L.N. 425 of 2007.

- (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

*See article 71 of the Act as originally enacted, which has been omitted under the [Statute Law Revision Act](#), 1980.

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 subarticle shall not apply where the property is transferred by the Government.

(2) No deed referred to in subarticle (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 subarticle (1)(a) unless the relative declaration of the transfer *causa mortis* has been made.

(3) If a notary contravenes the provisions of subarticle (1), he shall be guilty of an offence and shall be liable, on conviction, to a fine (*ammenda*) of not less than twenty-three euro (23) and not exceeding two hundred and thirty euro (230) for each contravention, and the proviso to article 11 shall apply to this article.

(4) If a notary contravenes the provisions of subarticles (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 subarticle (4), the amount of any duty which may still be due in respect of the property or rights sold.

(2) Any interested party may oppose the remittance aforesaid by sworn application 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.

- (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

Immovable
property sold by
judicial auction.
Amended by:
L.N. 181 of 2006.

Cap. 12.

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 subarticle 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 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.

Indemnification granted.