



BERMUDA

STAMP DUTIES ACT 1976

1976 : 14

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PART I

Interpretation

1 In this Act, unless the context otherwise requires—

“accident or health policy” means a policy of insurance against the risk of the happening of personal accident, whether fatal or not, disease or sickness, or any class of personal accident, disease or sickness;

“Bermuda property”, in relation to an instrument, means property answering the description in section 47(2)(b), (3) and (4), but subject—

- (a) to the substitution, for the references there to the death of the deceased, of references to the date of execution of the instrument; and
- (b) to the deletion of the words “belonging to the deceased” in section 47(2)(b)(ii);

“Bermudian status” has the meaning which is assigned to that expression under section 4 of the Bermuda Immigration and Protection Act 1956;

“bill of exchange” shall have the meaning assigned to it in the Bills of Exchange Act 1934 [*title 17 item 21*];

“binder” means a cover note or other instrument—

- (a) issued by or on behalf of an insurer to an insured person or some other person;
- (b) confirming that a contract of insurance has been made between the insurer and the insured person; and
- (c) intended to be followed and superseded, and in fact followed and superseded, by a policy of insurance;

“charter party” means any instrument for the charter or hiring of any vessel or aircraft or of some principal part thereof, and any memorandum, letter or other writing (other than a bill of lading) between the master or owner of any vessel or aircraft and any other person for or relating to the freight or con-veyance of any money, goods or effects on board any vessel or aircraft;

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“cheque” means a bill of exchange drawn on a bank or banker in Bermuda and payable on demand;

“conveyance on sale” includes every instrument, and every decree or order of any court, whereby any real or personal property or any estate or interest in any such property upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction;

“debenture” includes a debenture, debenture stock and unsecured loan stock;

“deceased person” means person dying after 31 March 1976 ;

“duly stamped” as applied to an instrument means that the instrument bears a stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in Bermuda;

“duty” means stamp duty;

“endorsement”, in relation to a policy of insurance, means an instrument—

- (a) made by an insurer and attached, or intended to be attached, to the policy; and
- (b) calculated to modify the effect of the policy in some way;

“equitable mortgage,” means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any property whatever, or creating a charge on such property;

“estate representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“executed” and “execution” used with reference to instruments not under seal mean signed and signature respectively;

“exempt policy” means—

- (a) a policy of insurance written in Bermuda where the risk insured against is situated outside Bermuda including—
  - (i) real property outside Bermuda;
  - (ii) personal property ordinarily situated outside Bermuda including vessels or aircraft registered in Bermuda if so situated;
  - (iii) the life or health of a person ordinarily resident outside Bermuda;
- (b) a policy of reinsurance;

“exempt undertaking” means an exempt undertaking for the purposes of section 9 of the Miscellaneous Taxes Act 1976 [*title 14 item 46*];

“foreign currency security” means a security, not being a share, denominated in a currency other than Bermuda area currency or on which capital moneys, dividends or interest are payable in a currency other than Bermuda area

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currency, or as respects which the holder has an option to require payment of any capital moneys, dividends or interest in a currency other than Bermuda area currency, and includes the documents commonly known as Eurobonds and analogous securities;

“Head” means head of stamp duty specified in the Schedule;

“instrument” includes every written document;

“insurance” includes “assurance”;

“insurance premium receipt” means a receipt for premiums payable under a policy of insurance and where an annuity is taxed as a policy of insurance includes a receipt for premiums payable under an agreement for the grant of an annuity;

“lease” includes a sub-lease;

“legacy” means—

- (a) every gift by will or testamentary instrument out of the estate of the testator or of property of which he had power to dispose;
- (b) the residue or any share of the residue of estate under a partial or total intestacy;
- (c) every gift having the effect of a donatio mortis causa;

“life policy” means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident;

“marketable security” means a security of such a description as to be capable of being sold in the stock market in Bermuda and such other markets as may be recognized by the Bermuda Monetary Authority for the purposes of this definition by notice published in the Gazette;

“material” includes every sort of material upon which words or figures can be inscribed;

“Minister” means the Minister of Finance;

“mortgage” means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; and includes—

- (a) any conveyance of any property in trust to be sold or otherwise converted into money intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise;

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- (b) any instrument in writing for defeating or making redeemable, or explaining or qualifying any conveyance of property, apparently absolute, but intended only as a security;
- (c) any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract or bond accompanied with a deposit of title deeds or with other instruments evidencing a right to property, for making a mortgage or any other security or conveyance as aforesaid of any property comprised in the title deeds or other instruments or for pledging or charging the same as a security; and
- (d) any deed operating as a mortgage of any stock or marketable security;

“mutual fund” shall have the meaning assigned to it in Part XIIA of the Companies Act 1981 [*title 17 item 5*];

“new share”, in relation to a mutual fund, means a share whose issue causes the number of shares in issue immediately after the issue of the share to exceed the largest number of shares that had ever at any one time been in issue before the share was issued; and “new unit”, in relation to a unit trust scheme, shall have a corresponding meaning:

Provided that for the purposes of this definition—

- (a) the issue of a new share or new unit to a person shall be deemed to include the registration of his entitlement to the share or unit in a register of shares or unit-holders respectively; and
- (b) where shares in a mutual fund or units in a unit trust scheme are subdivided or consolidated into shares or units of an amount different from that fixed by the memorandum of association of the fund or by the trust instrument respectively, the subdivision or consolidation shall be disregarded;

“open space” means land open to the sky and wholly or substantially preserved in its natural state, including arable or farm land, woodland, marshland, beach land and land used as recreational grounds or gardens, which is accessible to members of the public;

“partnership instrument” includes every agreement relating to the formation, continuance, reorganization or dissolution of any partnership, and every agreement relating to the alteration of any of the terms of any partnership;

“policy of insurance” includes every instrument, except a binder or an endorsement, whereby any contract of insurance is evidenced;

“power of attorney” means any instrument, except a warrant to act as an attorney in any judicial proceedings, empowering a specified person to act in the stead of the person executing it;

“premium”, in relation to an insurance premium receipt, includes any consideration for an annuity;

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“prescribed” means prescribed by regulations;

“primary family homestead” means the property designated under section 47A as a primary family homestead;

“promissory note” shall have the meaning assigned to it in the Bills of Exchange Act 1934 [*title 17 item 21*];

“receipt” means any instrument, note, memorandum or writing whereby any money, or any bill of exchange or promissory note for money, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand or any part of a debt or demand is acknowledged to have been settled, satisfied or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person;

“Registrar” means the Registrar of the Supreme Court;

“residential property” means real property in Bermuda which consists of a house or a condominium or other unit which is used wholly or mainly as a private dwelling;

“regulations” means regulations under section 77;

“security” (except in sections 32 and 62 or Head 31 or otherwise where reference is intended merely to a document securing an obligation) means—

- (a) any document, instrument or writing commonly known as a security;
- (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;
- (c) any document constituting evidence of an option, subscription or other interest in or to a security;
- (d) any bond, debenture, share, stock, note, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate or subscription;
- (e) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interest at the option of the recipient or of any person or company;
- (f) any certificate of share or interest in a trust, estate or association;
- (g) any profit-sharing agreement or certificate;
- (h) any income or annuity contract not issued by a company whose ordinary business consists wholly or mainly of the carrying on of assurance or insurance business;

“settlement” means any non-testamentary disposition in writing whether made voluntarily or upon a good and valuable consideration other than a bona fide

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pecuniary consideration whereby any definite and certain property is settled or agreed to be settled in any manner for any purpose whatsoever;

“share” means any share or debenture in the capital stock or funded debt of any corporation, company or society wherever incorporated and includes stock;

“stamp” means any adhesive or impressed stamp for the time being available for the payment of stamp duty in Bermuda;

“stamped”, with reference to material and instruments, applies as well to material and instruments impressed with stamps by means of dies as to material and instruments having adhesive stamps affixed thereto;

“stamp duty” means any duty or tax payable under this Act by affixing or impressing a stamp on the instrument liable to such duty or tax;

“Tax Commissioner” means the person appointed as Tax Commissioner under section 2 of the Employment Tax Act 1973;

“testator” includes the donor of a donatio mortis causa;

“trust instrument” means, in relation to a unit trust scheme, the trust deed or other instrument (whether under seal or not) creating or recording the trusts under which persons are to participate in the scheme;

“unit” means, in relation to a unit trust scheme, a right or interest (whether described as a unit, as a sub-unit, or otherwise) of a beneficiary under the trust instrument;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

*["Tax Commissioner" inserted by 1999:35 s.2 effective 23 August 1999; "Bermudian status", "primary family homestead", "Registrar" and "residential property" inserted by 2005:6 s.2 effective 1 April 2005; "open space" inserted by 2006:4 s.2 effective 22 March 2006]*

## PART II

### LIABILITY TO STAMP DUTY

#### Instruments chargeable to stamp duty

2 Subject to this Act and to the exemptions contained in this Act or other statutory provision, the following instruments shall be chargeable with stamp duty in the amount specified in the Schedule as the proper stamp duty therefor—

- (a) every instrument specified in the Schedule as an instrument chargeable with stamp duty which, not having been previously executed by any person, is executed in Bermuda after 31 March 1976;

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- (b) every bill of exchange or promissory note drawn or made out of Bermuda after 31 March 1976 and accepted or paid, presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in Bermuda;
- (c) every instrument (other than a bill of exchange or promissory note) specified in the Schedule as an instrument chargeable with stamp duty which is executed out of Bermuda after 31 March 1976, and is brought into Bermuda after 31 March 1976 and which requires stamping under section 3.

### Instruments executed outside Bermuda

3 (1) Where an instrument is executed outside Bermuda which would be chargeable with stamp duty under section 2(a) if it were executed in Bermuda, it shall not be valid for any purpose in Bermuda, and in particular it shall not be registered in any register kept pursuant to any statutory provision in Bermuda, unless it is duly stamped under this Act (except that section 5 (1) shall not apply):

Provided that the provisions of a settlement executed outside Bermuda conferring on any person a power to appoint a trustee of the settlement and any powers supplementary thereto including the power to convey the settled property to such a trustee, shall be valid for the purpose of appointing any such trustee and exercising such supplementary powers notwithstanding that the settlement has not been stamped in accordance with this subsection.

(2) For the purposes of this section a person who uses a copy of an instrument in lieu of the original of such instrument shall be deemed to use the original thereof.

### Exemptions

4 No stamp duty shall be payable by the Crown or any agency thereof or chargeable in respect of—

- (a) any grant or lease of land where the Crown or any agency thereof is a party;
- (b) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any vessel, aircraft or aircraft engine (including a vessel, aircraft or aircraft engine under construction) or the rights of any person under an agreement for the construction of a vessel, aircraft or aircraft engine;
- (c) any instrument for the sale, transfer, lease or other disposition, either absolutely or by way of mortgage or otherwise, of land situate out of Bermuda or any share, estate or interest in land situate out of Bermuda;
- (d) any instrument (not being a policy of insurance) which relates exclusively to things to be done out of Bermuda;
- (e) any instrument for the transfer on sale of any stock or marketable security issued by or on behalf of any Government or State, including the Government of Bermuda, or of any share or marketable security issued by or on behalf of any corporation, company or body of persons incorporated,

formed or established out of Bermuda, except shares registered in a register kept in Bermuda in conformity with any statutory provision;

- (f) conveyances or transfers on sale of any personal property situated out of Bermuda by instrument in writing made between parties none of whom is domiciled, resident or incorporated in Bermuda or regularly engaged in any gainful occupation, trade or business in Bermuda;
- (g) a bill of exchange drawn on any bank or banker outside Bermuda.

*[Section 4 amended by 2009:43 s.2 effective 19 July 2009; Section 4(b) amended by 2013 : 24 s. 5 effective 23 July 2013]*

### PART III

#### PROVISIONS APPLICABLE TO INSTRUMENTS GENERALLY

##### Time and liability to stamping

5 (1) Subject to sections 3 and 10 and Part VI the points of time before which and the periods of time within which the respective instruments must be stamped shall be those specified in the Schedule, and where it is provided in the Schedule that an instrument is to be stamped within a certain period of time after execution, that period of time shall, unless otherwise stated in the Schedule, be reckoned as commencing on the day after the execution of the instrument in question by the person who last executes it.

(2) Where in the Schedule it is specified that an instrument is to be stamped before execution, such instrument must be stamped before execution by any party thereto.

(3) If any instrument which is chargeable with stamp duty is not duly stamped, the person or persons respectively specified in the Schedule as liable for stamping shall be liable, or jointly or severally liable, as the case may be, civilly to the Crown.

(4) In addition to the person or persons liable under subsection (3) for stamping an instrument chargeable with stamp duty any person who relies on or presents for registration an instrument drawn, made or executed out of Bermuda which is chargeable with stamp duty shall be liable for stamping such instrument.

(5) Where under this Act more than one person is liable for stamping an instrument chargeable with stamp duty under section 2, the liability shall be joint and several.

##### Method of stamping

6 (1) Subject to this Act instruments chargeable with stamp duty shall be stamped—

- (a) by means of an adhesive stamp in accordance with section 7;
- (b) by means of a stamp impressed by a franking machine licensed under section 8;

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- (c) where the instrument is stamped under subsection (2), by means of mechanically printed figures denoting the amount of stamp duty combined with a stamp impressed upon such figures; or
- (d) in such other manner as may be prescribed.

(2) The public officer authorized by the Tax Commissioner shall, on the presentation to him at his office of any instrument for the purposes of being stamped, and subject to section 9, affix thereto a stamp denoting the amount of duty paid.

*[Section 6 amended by 1999:35 s.3 effective 23 August 1999]*

### Adhesive stamps

7 (1) Stamp duty in an amount not exceeding one dollar may be paid by any adhesive stamp for the time being available for the payment of postage in Bermuda and in amounts greater than one dollar may be paid by any adhesive stamp for the time being available exclusively for payment of revenue in Bermuda or in a combination of such postage stamps (in an amount not exceeding one dollar) and such revenue stamps.

(2) An instrument is not to be deemed duly stamped with an adhesive stamp unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(3) Where two or more adhesive stamps are used to denote the stamp duty upon an instrument, each or every stamp is to be cancelled in the manner mentioned in subsection (2).

(4) Where an instrument, the stamp duty on which is to be paid by an adhesive stamp, is to be stamped within a certain period after any event, the person affixing the adhesive stamp shall cancel it forthwith before he parts with the instrument.

(5) Subject to section 9 and Part VI an instrument, the stamp duty on which is denoted by an adhesive stamp, shall not be deemed to have been duly stamped unless such stamp has been cancelled as required by this section.

(6) Any person who being required by law to cancel an adhesive stamp neglects or refuses duly and effectually to do so in the manner prescribed by subsection (2) commits an offence.

### Licensing of stamping machines

8 (1) The Tax Commissioner may license any person to use a machine approved of by him for the purposes of impressing stamps on documents chargeable with stamp duty.

(2) Any such licence may be granted subject to such terms and conditions as the Tax Commissioner may think fit and the Tax Commissioner may revoke any such licence and vary any terms and conditions thereof at any time without giving any reason therefor.

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(3) The Tax Commissioner may require any person to whom he grants a licence under this section to give such security as he thinks fit for the payment to him of the stamp duty chargeable, on the instruments stamped by any such machine, and may from time to time as he sees fit require further security to be given by that person and may, either in the alternative to requiring the giving of security or in addition thereto, require such person to deposit with him from time to time such sums of money as he thinks fit to the credit of that person.

*[Section 8 amended by 1999:35 s.3 effective 23 August 1999]*

### Non-admissibility of unstamped instruments

9 (1) Subject to subsection (3) and section 10 no instrument chargeable with stamp duty shall be received in evidence in any proceedings whatsoever, except—

- (a) in criminal proceedings; and
- (b) in civil proceedings on behalf of the Government to recover stamp duty,

unless such instrument is duly stamped, whether the point of time before which or the period of time within which such an instrument should be stamped has or has not arrived or expired as the case may be.

(2) No instrument chargeable with stamp duty shall be acted upon, filed or registered by any public officer or by any company unless such instrument is duly stamped, whether the point of time before which or the period of time within which such instrument should be stamped has or has not arrived or expired as the case may be.

(3) Upon the production to any court (other than a criminal court), arbitrator, referee, or public officer, of any instrument which is chargeable with stamp duty and which is not duly stamped, it shall be the duty of such court, arbitrator, referee or public officer to take notice of the omission or insufficiency of the stamp on such instrument and thereupon to take action in accordance with the following rules—

- (a) if the point of time before which or the period of time within which the instrument should have been stamped has arrived or expired, as the case may be, and the instrument is one in respect of which a person is specified in the Schedule as being liable for the stamping thereof, the instrument shall be impounded and, unless the instrument has been produced to the Tax Commissioner, shall be forwarded to the Tax Commissioner;
- (b) whether or not the instrument is so impounded, before the exclusion or rejection of the instrument the person tendering such instrument shall, if he desires, be given a reasonable opportunity to stamp the instrument and, if such instrument may not be stamped save with the special permission of the Tax Commissioner under section 10, to apply to the Tax Commissioner for such permission.

(4) If a public officer is empowered or required by law to act upon, file, record or register, a duplicate or copy of any instrument, and if the original of such instrument would require to be duly stamped if acted upon, filed, recorded or registered by such public officer, he may call for the production of the original instrument or for evidence to his satisfaction

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that it was duly stamped, and no public officer shall act upon, file, record or register any such duplicate or copy without production of the original instrument duly stamped or of evidence to his satisfaction that it was duly stamped.

(5) If any person whose office it is to enrol, register, or enter in or upon any rolls, books or records any instruments chargeable with duty enrolls, registers, or enters any such instrument not being duly stamped or if such person fails to comply with subsection (3) he commits an offence.

*[Section 9 amended by 1999:35 s.3 effective 23 August 1999]*

### Stamping by special permission

10 (1) Where an instrument is chargeable with stamp duty and should have been stamped before a certain event or before the expiration of a certain period but has not been so stamped, the Tax Commissioner may give his special permission for the stamping of such instrument if he is satisfied—

- (a) that the omission or neglect to stamp duty did not arise from any intention to evade payment of stamp duty or otherwise to defraud; and
- (b) that either—
  - (i) such omission or neglect arose solely from urgent necessity or unavoidable accident and the instrument has been brought to be stamped without delay; or
  - (ii) that the circumstances of the case are otherwise such as to justify special permission being given.

(2) If the Tax Commissioner grants special permission under subsection (1) for the stamping of any instrument, such instrument may be stamped on payment of the following penalties in addition to the stamp duty—

- (a) if the instrument is stamped within three months of the point of time before which, or the expiration of the period of time within which, it should have been stamped, the penalty shall be double the amount of the deficient duty or \$10, whichever is the greater amount;
- (b) if after three months, four times the amount of the deficient duty or \$25, whichever penalty is the greater:

Provided that—

- (i) the Tax Commissioner may remit the whole or any part of the penalty provided by this subsection;
- (ii) the maximum penalty under this subsection shall be \$500.

(3) Where an instrument has been duly stamped by special permission under this section, such instrument shall, subject to subsection (4), be deemed to have been duly stamped for the purposes of section 9.

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(4) No instrument in respect of which a penalty is payable under this section shall be deemed to be duly stamped unless it bears an endorsement by the Tax Commissioner indicating—

- (a) that the penalty has been paid in whole or in part and the amount thereof;  
or
- (b) that the whole of the penalty has been remitted.

*[Section 10 amended by 1999:35 s.3 effective 23 August 1999]*

### Instruments by or in favour of the Crown

11 (1) Where any instrument is executed by or on behalf of the Government or by any public officer in his official capacity and for an official purpose in a case where but for this section the Government or public officer would be liable to pay the stamp duty chargeable in respect of such instrument, the Government and the public officer shall be exempt from paying such stamp duty.

(2) In a case where the Government or the public officer acting in his official capacity is the only person liable for stamp duty on the instrument, the Tax Commissioner may, notwithstanding subsection (1), stamp such instrument with the stamp denoting that it is not chargeable with any duty.

*[Section 11 amended by 1999:35 s.3 effective 23 August 1999]*

### Appropriated stamps

12 (1) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or, if used, is not to be available, for an instrument of any other description.

(2) An instrument falling under the particular description to which any stamp is so appropriated as mentioned in subsection (1) is not to be deemed duly stamped, unless it is stamped with the stamp so appropriated.

### Denoting stamps

13 Where the stamp duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last-mentioned duty shall, upon application to the Tax Commissioner and production of both the instruments, be denoted upon the first-mentioned instrument in such manner as the Tax Commissioner thinks fit.

*[Section 13 amended by 1999:35 s.3 effective 23 August 1999]*

### Duplicates and counterparts

14 The duplicate or counterpart of an instrument chargeable with stamp duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor) is not to be deemed duly stamped unless it is stamped as an original instrument, or unless it appears by some stamp impressed thereon, or by some endorsement made by the Tax Commissioner thereon, or by some other

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sufficient evidence, that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

*[Section 14 amended by 1999:35 s.3 effective 23 August 1999]*

### Value of property

15 (1) Whenever any stamp duty is payable in respect of a conveyance or transfer of property, the Tax Commissioner may ascertain the value of such property in such manner as he thinks fit.

(2) Where an instrument is chargeable with ad valorem duty in respect of—

- (a) any money in any currency other than Bermuda area currency as defined for the purposes of the Exchange Control Act 1972 [*title 16 item 1*];
- (b) any stock or marketable security,

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in Bermuda area currency according to the current middle market rate of exchange, or of the stock or security according to the average price thereof.

(3) Where an instrument contains a statement of the current rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject matter of that statement, to be deemed to be truly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

(4) For the purposes of this section the current middle market rate of exchange is the mid point between the buying and selling rates of Bermuda banks for foreign currencies rounded to three decimal places where there are such rates.

*[Section 15(1) amended by 1999:35 s.3 effective 23 August 1999]*

### How instruments are to be written and stamped

16 (1) Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument written upon the same piece of material.

(2) If more than one instrument has been written upon the same piece of material, every one of the instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

### Instruments to be separately charged with duty in certain cases

17 Except where express provision to the contrary is made by this Act—

- (a) an instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters;

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- (b) an instrument made for any consideration in respect whereof it is chargeable with ad valorem duty, and also for any further or other valuable consideration is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

### Instruments chargeable under more than one Head

18 An instrument which is chargeable under more than one Head shall be charged under the Head which imposes the highest duty.

### Facts and circumstances affecting duty to be set forth

19 (1) All facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which an instrument is chargeable, are to be fully and truly set forth in the instrument.

(2) Any person who with intent to evade the payment of duty—

- (a) executes any instrument in which all the facts and circumstances are not truly and fully set forth as required by subsection (1); or
- (b) being employed or concerned in or about the preparation of any instrument neglects or omits fully and truly to set forth therein all the said facts and circumstances,

commits an offence.

### Splitting

20 (1) Where any minimum amount is prescribed below which stamp duty shall not be payable, no person shall execute more instruments than would ordinarily be necessary for the transaction in question, in order to evade stamp duty by such splitting.

(2) Where a scale is prescribed under which the rate of stamp duty is increased after passing certain limits, no person shall execute more instruments than would ordinarily be necessary for the transaction in question, in order to evade stamp duty by such splitting.

(3) In any question whatsoever arising under this section the onus of proof shall lie upon the person who asserts that there has been no splitting in order to evade stamp duty.

(4) Any person who contravenes this section commits an offence.

### Periodic stamping of instruments

21 (1) Where it appears to the Tax Commissioner that an instrument specified in the Schedule will become chargeable to further stamp duty from time to time after its execution, he may authorize the person liable to pay such further duty to pay it at such periodical intervals as he considers appropriate and not immediately upon the occurrence of the event by reason of which it becomes payable.

(2) The Tax Commissioner in granting such authorization as specified in subsection (1) may impose any conditions or restrictions in relation thereto (including the

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provision of security by the person so authorized) as he considers appropriate for the securing of the payment of any such stamp duty, and the Tax Commissioner may revoke any such authorization at any time and upon the revocation of any such authorization all stamp duties which but for such authorization would otherwise have been payable shall thereupon become immediately payable.

*[Section 21 amended by 1999:35 s.3 effective 23 August 1999]*

### PART IV

#### ADJUDICATION WITH RESPECT TO LIABILITY TO STAMP DUTY

Adjudication by Tax Commissioner with respect to liability of instrument to stamp duty

22 (1) The Tax Commissioner may be required by any person, upon payment of such fee therefor as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*], to express his opinion upon any of the following questions with reference to any executed instrument or any instrument intended to be executed—

- (a) whether the instrument is chargeable with any stamp duty;
- (b) with what amount of stamp duty the instrument is chargeable.

(2) The Tax Commissioner may require the production of the instrument, and also to be furnished with such evidence as he may deem necessary in order to satisfy himself of all the facts and circumstances affecting the liability of the instrument to stamp duty, or the amount of the stamp duty chargeable thereon.

(3) If the Tax Commissioner is satisfied that the instrument is not chargeable with any stamp duty he shall inscribe on the instrument a written note to that effect and shall sign the note accordingly.

(4) If the Tax Commissioner is satisfied that the instrument is chargeable with stamp duty he shall inscribe on the instrument a written note of the amount of duty which in his opinion is chargeable thereon and shall sign the note accordingly.

(5) Every instrument inscribed in the manner prescribed by subsection (3), or on which the amount of duty inscribed in the manner prescribed by subsection (4) has been paid, shall be admissible in evidence and shall be available for all purposes notwithstanding any objections relating to the duty payable thereon.

(6) This subsection shall have effect with respect to subsections (1) to (5)—

- (a) an instrument upon which the stamp duty has been assessed by the Tax Commissioner shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment;
- (b) nothing in this section shall authorize the late stamping of any instrument.

*[Section 22 amended by 1999:35 s.3 effective 23 August 1999]*

Appeal to Supreme Court against assessment of Tax Commissioner

23 (1) Any person who is dissatisfied with any assessment made by the Tax Commissioner in pursuance of section 22 with respect to the amount of stamp duty chargeable upon an instrument may, within fourteen days after receiving from the Tax Commissioner the instrument duly inscribed in accordance with section 22(4) and on payment of the stamp duty in conformity therewith, appeal to the Supreme Court against the assessment; and for that purpose may by notice served upon the Tax Commissioner require the Tax Commissioner to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him.

(2) The Tax Commissioner shall, within fourteen days of the service of such notice upon him, state and sign a case and shall deliver a copy of the case to the person by whom the case is required and a further copy of the case to the Registrar; and the case may within seven days thereafter be set down by such person for hearing by the Supreme Court.

(3) Upon the hearing of the case the Supreme Court shall determine the question submitted, and, if the instrument in question is, in the opinion of the Supreme Court, chargeable with any stamp duty, then the Supreme Court shall assess the amount of the stamp duty with which it is chargeable.

(4) If the Supreme Court determines that the assessment made by the Tax Commissioner was erroneous, then any excess of stamp duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the Supreme Court to be repaid to the appellant.

(5) The provisions of the Crown Causes Act 1951 [*title 8 item 101*] which relate to costs in Crown actions shall have effect in relation to an appeal under this section as though such appeal were a Crown action within the meaning of that Act.

*[Section 23 amended by 1999:35 s.3 effective 23 August 1999]*

PART V

ALLOWANCES

Procedure for obtaining allowance for spoiled stamps

24 Subject to the regulations and to the production of such evidence by affidavit or otherwise as the Tax Commissioner may require, allowance shall be made by the Tax Commissioner for stamps spoiled in the following cases—

- (a) the stamp on any material inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before the material bears the signature of any person or any instrument written thereon is executed by any party;
- (b) any adhesive stamp which has been inadvertently and undesignedly spoiled or rendered unfit for use and has not in the opinion of the Tax Commissioner been affixed to any material;

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- (c) any adhesive stamp representing a fee capable of being collected by means of such stamp which has been affixed to material;
- (d) *[deleted by 1992:4 effective 19 February 1992]*
- (e) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;
- (f) the stamp on any promissory note which from any omission or error has been spoiled or rendered useless, although the promissory note may have been delivered to the payee, provided that another completed and duly stamped promissory note is produced identical in every particular, except in the correction of the error or omission, with the spoiled note;  
*[subparagraph (f) deleted and replaced by 1992:4 effective 19 February 1992]*
- (g) the stamp used for any instrument executed by any party thereto—
  - (i) but afterwards found to be absolutely void from the beginning; or
  - (ii) but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;
  - (iii) which has not been made use of for any purpose whatever and which, by reason of the inability or refusal of some necessary party to sign the same or to complete the transaction according to the instrument, is incomplete and insufficient for the purpose for which it was intended;
  - (iv) which by reason of the refusal of any person to act under the same, or for want of enrolment or registration within the time required by law, fails of its intended purpose or becomes void;
  - (v) which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped, or which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped:

Provided that—

- (a) the application for relief is made within six months after the stamp has been spoiled or become useless or, in the case of an executed instrument after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, or within such further time as the regulations may prescribe in the case of any instrument sent abroad for execution, or when from unavoidable circumstances any instrument for which another has been substituted cannot be produced within the said period;

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- (b) in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence, and that the instrument is given up to be cancelled.

*[Section 24 amended by 1999:35 s.3 effective 23 August 1999]*

### Allowance for misused stamps

25 When any person has inadvertently used for an instrument liable to duty a stamp of greater value than was necessary, or has inadvertently used a stamp for an instrument not liable to any duty, the Tax Commissioner may, on application made within two years after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if liable to duty, being stamped with the proper duty, cancel and allow as spoiled the stamp so misused.

*[Section 25 amended by 1999:35 s.3 effective 23 August 1999]*

### Allowance, how to be made

26 In any case in which allowance is made for spoiled or misused stamps the Tax Commissioner may give in lieu thereof money to the value of the spoiled or misused stamps or other stamps of the same denomination and value or, if required and he thinks proper, stamps of any other denomination to the same amount in value.

*[Section 26 amended by 1999:35 s.3 effective 23 August 1999]*

### Stamps not wanted may be repurchased

27 When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for, which he has not immediate use, the Tax Commissioner shall repay to him the value of the stamp in money, upon his delivering up the stamp to be cancelled and proving to the satisfaction of the Tax Commissioner that it was lawfully purchased by him from the Government within the period of two years next preceding the application and with a bona fide intention to use it.

*[Section 27 amended by 1999:35 s.3 effective 23 August 1999]*

## PART VI

### PROMISSORY NOTES

28 *Section 28 repealed by 1991:8 effective 1 April 1991*

29 *Section 29 repealed by 1992:4 effective 19 February 1992*

### Foreign notes

30 (1) Where a promissory note drawn or made outside Bermuda comes into the hands of a person in Bermuda before it is stamped he shall, before he presents for payment, or endorses, transfers or in any manner negotiates or pays the note, affix thereto a proper

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adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto:

Provided as follows—

- (a) if at the time when any such note comes into the hands of any bona fide holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as relates to the holder, be deemed to be duly cancelled, although it may not appear to have been affixed or cancelled by the proper person; and
- (b) if at the time when any such note comes into the hands of any bona fide holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the note shall be deemed duly stamped and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.

(2) Neither of the provisos to subsection (1) is to relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

*[Section 30 amended by 1992:4 effective 19 February 1992]*

31 *Repealed by 1992:4 effective 19 February 1992*

Unstamped note

32 (1) The person who takes or receives from any other person any promissory note chargeable with duty and not being duly stamped either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon or to rely upon the same for any purpose.

*[Subsections (2) and (3) deleted by 1992:4 effective 19 February 1992]*

Offence: unstamped note

33 Any person who draws, makes, issues, endorses or transfers or signs otherwise than as a witness, or presents for acceptance or payment or accepts, pays or receives payment of or in any manner negotiates any promissory note without the same being duly stamped commits an offence.

*[Section 33 amended by 1992:4 effective 19 February 1992]*

## PART VII CONVEYANCES

Calculation of stamp duty chargeable on conveyance on sale

34 (1) Where the consideration for a conveyance on sale consists, wholly or in part, of any shares or marketable security, ad valorem duty upon such conveyance shall, in respect of such shares or security, be charged upon the current value thereof.

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(2) Where the consideration consists, wholly or in part, of any security not being a marketable security, ad valorem duty upon such conveyance shall, in respect of such security, be charged upon the amount due at the date of the conveyance for principal and interest upon the security.

How consideration on periodical payments to be charged

35 (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance is to be charged in respect of that consideration with ad valorem duty on such total amount.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with ad valorem duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.

(3) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with ad valorem duty on the amount which will or may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4) No conveyance on sale chargeable with ad valorem duty in respect of any periodical payments, and containing also provision for securing the payments, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than \$25.

*[Section 35 subsection (4) amended by 2005:6 s. 7(1) & Sch 1 effective 1 April 2005]*

Provisions where property conveyed in consideration of debt

36 Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or shares, whether being or constituting a charge or incumbrance on the property or not, the debt, money or shares is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with ad valorem duty.

*[Section 36 amended by 1995:13 effective 27 February 1995]*

Special considerations affecting amount of stamp duty chargeable on conveyance on sale

37 (1) Where the property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parcels by different instruments, the consideration is to be apportioned as the parties think fit, so that a distinct consideration for each separate parcel is set forth in the conveyance relating thereto, which shall be charged with ad valorem duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parcels by different instruments to the persons by or from whom the same was purchased for distinct parts of the consideration, the conveyance of each separate parcel is to be charged with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3) Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only is to be charged with ad valorem duty, and the other instruments are to be charged with such other duty as they are respectively liable to, but the lastmentioned duty shall not exceed the ad valorem duty payable in respect of the principal instrument.

(4) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the property to any other person, to whom the property is conveyed immediately, then the conveyance is to be charged in respect of the consideration paid by the sub-purchaser.

(5) Where a person having contracted for the purchase of any property but not having obtained a conveyance thereof contracts to sell the whole, or any part thereof, to any person, and the property is in consequence conveyed by the original seller to different persons in parcels, the conveyance of each parcel is to be charged with ad valorem duty in respect only of the consideration paid by the sub-purchaser, without regard to the amount or value of the original consideration.

(6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with ad valorem duty in respect of the consideration paid by him, and is duly stamped accordingly, then any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable only with such other duty as it may be liable to, but not exceeding the ad valorem duty.

Certain contracts to be chargeable with conveyance duty

38 (1) Any contract or agreement for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any personal property shall be charged with the same ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold:

Provided that nothing in this subsection shall have the effect of charging ad valorem duty upon an instrument chargeable to duty under Head 4.

(2) Where the purchaser has paid the said ad valorem duty, and, before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the property, then such contract or agreement shall, if the consideration for that sale is in excess of that for the original sale, be charged with the ad valorem duty in respect of such excess consideration, and in any other case with the fixed duty of \$25.

(3) Where duty has been duly paid ad valorem in conformity with subsections (1) and (2), the conveyance or transfer to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty; and the Tax Commissioner, upon application, shall either denote the payment of the ad valorem duty

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upon the conveyance or transfer, or shall transfer the ad valorem duty thereto upon production of the contract or agreement duly stamped.

(4) Where any such contract or agreement is stamped with the fixed duty of \$25 as mentioned in subsection (2) such contract or agreement shall be regarded as duly stamped for the mere purpose of proceedings to enforce specific performance or to recover damages for the breach thereof.

(5) Where any such contract or agreement is stamped with the fixed duty of \$25 mentioned in subsection (2), and a conveyance or transfer made in conformity with the contract or agreement is presented to the Tax Commissioner for stamping with the ad valorem duty chargeable thereon within the period of six months after the first execution of the contract or agreement, or within such longer period as the Tax Commissioner may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and such contract or agreement, shall be deemed to be duly stamped.

(6) The ad valorem duty paid upon any such contract or agreement shall be returned by the Tax Commissioner in case the contract or agreement is afterwards rescinded or annulled, or for any other reason is not substantially performed or carried into effect, so as to operate as, or be followed by, a conveyance or transfer.

*[Section 38 amended by 1999:35 s.3 effective 23 August 1999; subsections (2), (4) and (5) amended by 2005:6 s.7(1) & Sch 1 effective 1 April 2005]*

Transfers in connection with divorce etc.

38A (1) Stamp duty under Head 14 or 15 or 17 is not chargeable on an instrument by which property is conveyed or transferred from one party to a marriage to the other if the instrument—

- (a) is executed in pursuance of an order of a court made on granting in respect of the parties a decree of divorce, nullity of marriage or judicial separation; or
- (b) is executed in pursuance of an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree; or
- (c) is executed at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation.

(2) An instrument in respect of which stamp duty is not chargeable under Head 14 or 15 or 17 by virtue only of subsection (1) is chargeable under this subsection with stamp duty of \$200.

*[Section 38A inserted by 1992:4 effective 19 February 1992; subsection (2) amended by 2000:8 s.3 effective 18 February 2000]*

38B *[Section 38B repealed by 1995:43 effective 21 December 1995]*

Voluntary conveyance inter vivos

39 (1) The Tax Commissioner may be required to express his opinion under section 22 on any conveyance or transfer operating as a voluntary disposition inter vivos, and no such conveyance or transfer shall be deemed to be duly stamped unless the Tax Commissioner has expressed his opinion thereon in accordance with that section.

(2) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos, and the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Tax Commissioner is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

(3) A conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, shall not be charged with duty as a voluntary conveyance inter vivos.

*[Section 39 amended by 1999:35 s.3 effective 23 August 1999]*

PART VIII

SETTLEMENTS, MUTUAL FUNDS AND UNIT TRUST SCHEMES

Duty on settlement of money etc

40 Where any money which may become due or payable upon any life insurance policy, or upon any security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made shall be charged with ad valorem duty as a settlement in respect of that money:

Provided that where in the case of a policy no provision is made for keeping up the policy, the ad valorem duty shall be charged only on the value of the policy at the date of the instrument.

Calculation of duty where several instruments of settlement

41 Where several instruments are executed for effecting the settlement of the same property, and the ad valorem duty chargeable in respect of the settlement of the property exceeds \$25, one only of the instruments shall be charged with the ad valorem duty and the instruments not charged with ad valorem duty shall be charged with a duty of \$25.

*[Section 41 amended by 2005:6 s.7(1) & Sch 1 effective 1 April 2005]*

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### Additions to settlements to be made by stamped instrument

42 Every addition of property to a settlement inter vivos, being an addition made on or after 1 January 1986, shall be evidenced by an instrument of addition chargeable with duty under Head 40.

### Notification of issue of new shares

43 The secretary of a mutual fund shall, within sixty days of the issue of a new share in the fund, supply to the Tax Commissioner by notice in writing such particulars of the issue as the latter may require for the purpose of calculating stamp duty.

*[Section 43 amended by 1999:35 s.3 effective 23 August 1999]*

### Notification of issue of new units

44 The trustees of the trust instrument of a unit trust scheme ("the trustees") shall, within sixty days of the issue of a new unit under the scheme, supply to the Tax Commissioner by notice in writing such particulars of the issue as he may require for the purpose of calculating stamp duty.

*[Section 44 amended by 1999:35 s.3 effective 23 August 1999]*

### Enforcement of sections 42, 43 and 44

45 (1) Subject to subsection (4), if section 42 is contravened each of the trustees of the settlement commits an offence.

(2) Subject to subsection (4), if section 43 is contravened the secretary of the fund commits an offence.

(3) Subject to subsection (4), if section 44 is contravened each of the trustees commits an offence.

(4) It shall be a defence—

- (a) for a person charged with an offence under subsection (2) to prove that he took all reasonable steps to avoid; and
- (b) for a person charged with an offence under subsection (1) or (3) to prove that he took all reasonable steps to avoid or prevent,

the commission of the offence.

### Stamp duty on unit trusts

46 The trust instrument of a unit trust scheme shall be chargeable with duty under Head 21.

### Exemption for pension trusts

46A Subject to section 17, stamp duty under Head 15, 17 or 40 is not chargeable on any instrument in respect of property (other than Bermuda property) contained in, or added to, the corpus of a pension trust, and for this purpose "pension trust" means a trust created

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on or after the date of commencement of the Stamp Duties Amendment (No. 2) Act 1992 and of which the main purpose is either—

- (a) the provision of superannuation allowances on retirement to persons who have been employed in an undertaking or a combination of undertakings in connection with whose purposes the trust was established (“employees”); or
- (b) the provision of pensions during widowhood or widowedness to the widowers or widows of employees, and of periodical allowances to or in respect of children of employees; or
- (c) the assurance of capital sums on the death of employees.

*[Section 46A inserted by 1992:70 effective 1 August 1992]*

### Exemption for registered pension trust funds

46B (1) Subject to section 17, stamp duty under Head 15, 17 or 40 is not chargeable on any instrument (not being an instrument disposing of land in Bermuda) in respect of property contained in, or added to, the corpus of a registered pension trust fund.

(2) The expression “registered pension trust fund” in subsection (1) means a registered fund as defined in section 1 of the Pension Trust Funds Act 1966 .

*[Section 46B inserted by 1993:10 effective 17 February 1993]*

### Exemption for local trustees

46C Stamp duty under Head 6, 15, 17 or 40 is not chargeable on any instrument executed by a local trustee, not being an instrument disposing of Bermuda property but being an instrument to which that local trustee is properly a party, whether or not the instrument has also been executed by some other person; and for this purpose “local trustee” means a trustee who is not an international business as defined in section 2 of the Stamp Duties (International Businesses Relief) Act 1990 *[title 14 item 25]*.

*[Section 46C inserted by 1993:10 effective 17 February 1993]*

## PART IX

### AFFIDAVIT OF VALUE OF DECEASED ESTATE

Supreme Court not to grant probate or letters of administration in absence of affidavit as to value of estate

47 (1) The Supreme Court shall not grant probate of the will or letters of administration of the estate of a deceased person nor shall it direct the resealing of a foreign grant (within the meaning of section 18 of the Administration of Estates Act 1974 *[title 26 item 12]*) without first requiring and receiving from the person applying for the probate, letters of administration or resealing or from some other competent person an affidavit that the estate of the deceased for or in respect of which the probate or letters of administration is or are to be granted or in respect of which a foreign grant is to be resealed, exclusive of what the deceased had been possessed of or entitled to as trustee for any other person and

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not beneficially, is of the value of a certain sum to be therein specified to the best of the deponent's knowledge, information and belief, in order that the proper stamp duty may be paid on such affidavit.

(1A) A certified copy of the primary family homestead certificate (if any) issued by the Tax Commissioner under section 47A(6)(c) shall be submitted to the Supreme Court on an application for probate or letters of administration.

(2) For the purposes of this section—

(a) the estate of a deceased person shall include—

- (i) all the property of the deceased at the time of his death and all property of which the deceased was at the time of his death competent to dispose;
- (ii) property in which the deceased had an interest ceasing at his death, to the extent to which a benefit arises for someone else by reason of the cesser:

Provided that for the purposes of this provision—

- (aa) where the deceased's interest in the property was that of a joint tenant, a benefit shall be deemed to arise as aforesaid upon his death, and the value of that benefit shall be deemed to be the value of the interests of all the joint tenants divided by their number; and
- (bb) there shall be disregarded any interest that the deceased had in the property as the holder of an office or as the recipient of the benefits of a charity or as a corporation sole;
- (iii) money payable to the deceased's estate under any policy of insurance:

Provided that in the case of a deceased person who is not domiciled in Bermuda such money shall only be deemed to form part of his estate if such money is payable in Bermuda or in Bermuda area currency;

(iv) property taken as a donatio mortis causa made by the deceased;

(b) the term "property" means—

- (i) real and personal property of any kind situated or being in Bermuda, and the proceeds of the sale thereof and any investment for the time being representing the same;
- (ii) the value of any vessel or aircraft or any share of a vessel or aircraft belonging to the deceased which is registered in Bermuda, notwithstanding such vessel or aircraft, at the time of the death of the deceased, may have been at sea or elsewhere out of Bermuda.

(3) The term "property" in subsection (2) shall not include—

- (a) any moneys in an institution licensed as a bank or a deposit company under the Banks and Deposit Companies Act 1999, being moneys denominated in a currency other than Bermuda area currency; or
  - (b) any security held in an exempted undertaking as defined in section 1 of the Exempted Undertakings Tax Protection Act 1966 [*title 17 item 12*]; or
  - (c) any security evidencing participation in a mutual fund business or unit trust scheme in either case carried on by a company formed in Bermuda, provided the security is denominated in a currency other than Bermuda area currency; or
  - (d) any security to the extent that it represents foreign currency securities (including any shares in any company formed outside Bermuda or in any exempt undertaking) or land that is situate outside Bermuda, being securities or land that are wholly owned by a company formed in Bermuda, provided the latter company is a company as to which the Registrar is satisfied—
    - (i) that at the time of the deceased's death the company was wholly owned beneficially by individuals not exceeding five in number; and
    - (ii) that throughout the company's last complete year of business immediately preceding the deceased's death both—
      - (aa) not less than seventy-five per cent of the assets of the company was in the form of securities, or consisted of land that is situate outside Bermuda, (or partly the one and partly the other); and
      - (bb) not less than eighty-five per cent of the net income of the company was derived from securities or land such as are described in division (aa) above, (or partly the one and partly the other).
- (4) For the purposes of subsection (2) shares, stock or marketable securities which qualify for exemption from duty on transfer under section 4(e) shall be deemed not to be property situated or being in Bermuda.
- (5) For the purposes of this section a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power, whether exercisable by instrument inter vivos or by will, or both, as would (or would if he were of full age and capacity), enable him to dispose of the property for his own benefit.
- (6) For the purposes of this section the value of the property of the deceased at the time of his death shall be deemed to be its value at that time.
- (7) In this Part the value of the estate of a deceased person means the value as calculated in accordance with this section as read with section 48.

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(8) An affidavit lodged pursuant to subsection (1) may not be inspected by any person except in pursuance of an order made by the Chief Justice upon application by summons for the purpose.

*[Section 47 subsection (3)(a) amended by BR81/1999 effective 1 January 2000; subsection (1A) inserted by 2005:6 s.4 effective 1 April 2005]*

### Designation of primary family homestead by owner

47A (1) Stamp duty shall not be charged in respect of the value of any residential property passing on a death (occurring on or after 1 April 2005) of an individual to whom this section applies if his property is designated under this section as his primary family homestead.

(2) This section applies to an individual who owns, or otherwise has an interest in, residential property which is situated in Bermuda and who has Bermudian status.

(3) An individual to whom this section applies (hereinafter the "individual") may make an application to the Tax Commissioner to designate his residential property as his primary family homestead.

(4) An application to the Tax Commissioner shall be in writing in such form as the Tax Commissioner may determine and contain the following information—

- (a) the applicant's name, current address and date of birth;
- (b) the name of the owner or owners of the residential property in respect of which the application is made;
- (c) a description of the applicant's interest in the property and of any other person's interest therein;
- (d) the date when the applicant's interest was acquired;
- (e) a description of the property sufficient to identify the property; and
- (f) every assessment number relating to the property.

(5) An application under subsection (2) shall be submitted together with such information as the Tax Commissioner shall reasonably require to make a decision including, in particular—

- (a) documentary proof of ownership; and
  - (b) documentary proof of Bermudian status of the applicant.
- (6) On receipt of an application under this section, the Tax Commissioner—
- (a) shall consider the application and approve it if the Tax Commissioner is satisfied that the applicant owns, or otherwise has an interest in, the property which is the subject of the application;
  - (b) shall give notice to the applicant in writing of the decision in respect of the application; and

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- (c) where she approves the application, shall issue a certificate in the prescribed form certifying the designation of the property as the primary family homestead.

(7) Only one designation may be held at any time by an individual under this section; such designation may be changed by application in writing to the Tax Commissioner for this purpose.

*[Section 47A inserted by 2005:6 s.5 effective 1 April 2005]*

### Designation of primary family homestead by estate representative

47B (1) Subject to subsection (2), where an individual dies without designating a residential property as his primary family homestead, his estate representative may, at any time before he submits an affidavit of value under section 47, designate the deceased individual's property as the primary family homestead under section 47A.

(2) For the purposes of subsection (1), where the deceased individual's estate consists of more than one residential property, the estate representative—

- (a) shall designate the residential property where the estate owner resided at the time of his death as the primary family homestead, provided that property forms part of the estate; or
- (b) shall designate the property of least value as the primary family homestead, where the estate owner did not reside in any of his residential properties at the time of his death.

*[Section 47B inserted by 2005:6 s.5 effective 1 April 2005]*

### Record of primary family homesteads

47C (1) The Tax Commissioner shall cause to be compiled and maintained a record, in such form as the Tax Commissioner may determine, of properties which have been designated as the primary family homestead under section 47A.

(2) The record shall be kept in the Tax Commissioner's Office and shall be available for inspection by the Registrar and estate representative.

*[Section 47C inserted by 2005:6 s.5 effective 1 April 2005]*

### Appeals

47D (1) Any person aggrieved by a decision of the Tax Commissioner under section 47A may, within fourteen days after receiving notice from the Tax Commissioner of the decision, appeal to the Supreme Court against that decision specifying the grounds thereof.

(2) On an appeal under this section, the Court may make such order as it sees fit.

*[Section 47D inserted by 2005:6 s.5 effective 1 April 2005]*

### Deductions

48 (1) In ascertaining the value of the estate for the purposes of section 47 the following deductions shall be made from the value of the estate—

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- (a) reasonable funeral expenses;
- (ab) the value of the property which is designated under section 47A as the primary family homestead:

Provided that, no person may claim in his affidavit of value a deduction under this paragraph if he has claimed a deduction for the value of that sum or property under paragraph (b), (c) or (d).

- (b) the value of any legacy or other benefit to a surviving spouse;
- (c) bequests to charities registered under the Charities Act 1978 [*title 13 item 10*] or to any body of persons for purposes which are, in the opinion of the Minister, charitable;
- (d) all debts and incumbrances incurred or created by the deceased bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit:

Provided that no debt shall be deducted in respect whereof there is a right to reimbursement from any other estate or person or more than once for the same debt or incumbrance charged on different portions of the estate;

- (e) the reasonable expenses of valuing any property for the purposes of this Part.

(2) Notwithstanding anything to the contrary in subsection (1), in the case of a deceased person who at the time of his death was not domiciled in Bermuda no deduction shall be made under that subsection for debts due from him to persons resident outside Bermuda unless contracted to be paid in Bermuda or charged on property situated within Bermuda, or unless and to the extent to which it is shown to the satisfaction of the Registrar that the personal property of the deceased person situated in the country in which the person to whom such debts are due resides is insufficient for their payment.

*[Section 48 amended by 2005:6 s.6 effective 1 April 2005]*

### Provision for return of duty overpaid

49 If at any time after the grant of probate or letters of administration, and during the administration of the estate, the value of the estate as set out in the affidavit furnished in accordance with section 47 is found to exceed the true value of the estate of the deceased, or if at any time within three years after the grant, or such further period as the Tax Commissioner may allow, it appears that no amount or an insufficient amount was deducted on account of debts and funeral expenses, the Tax Commissioner, upon proof of the facts to his satisfaction, may return the amount of stamp duty which has been overpaid.

*[Section 49 amended by 1999:35 s.3 effective 23 August 1999]*

### Provision for payment of further duty

50 If at any time it is discovered that the estate of the deceased was of greater value than the value set out in the affidavit furnished in accordance with section 47 or that any

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deduction for debts or funeral expenses was made erroneously, the estate representative shall, within six months after the discovery, deliver a further affidavit setting out the true value of the estate to the Registrar, duly stamped for the amount which, with the duty (if any) previously paid on the affidavit in respect of such estate, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the Registrar interest upon such amount at the rate of ten per centum per annum from the date of such further affidavit, or from such previous date as the Registrar may in the circumstances think proper.

*[Section 50 amended by 1992:4 effective 19 February 1992]*

### Small estates

51 Section 47 shall not operate so as to require an affidavit made for the purposes of that section to be furnished prior to the issue of a certificate under section 21 of the Administration of Estates Act 1974 [*title 26 item 12*], but where such a certificate has been issued without the furnishing of such an affidavit and it is subsequently discovered that the value of the estate exceeds \$50,000, section 50 shall apply as though the reference in that section to the value of the estate as set out in the affidavit exceeding the true value of the estate were construed as a reference to the value of the estate exceeding \$50,000 and the reference in such section to the estate representative were construed as a reference to the person to whom the certificate under section 21 of the Administration of Estates Act 1974 [*title 26 item 12*] is issued.

*[Section 51 amended by 1993:10 effective 17 February 1993; and by 1995:13 effective 15 February 1995]*

### Liability of estate representative

52 (1) The estate representative of every deceased person shall have the power to pay the stamp duty imposed by section 47 as read with Head 2 out of any money for the time being in his hands or to raise the amount of such duty and any interest and expenses properly paid or incurred in respect thereof by the sale or mortgage of the assets of the estate.

(2) The estate representative shall be liable to pay the stamp duty imposed by section 47 as read with Head 2 but his liability shall not exceed the assets which he has received as representative or might but for his own neglect or default have received.

### Power of Registrar to require explanation and proof in support of valuation, and to reassess value

53 (1) The Registrar may, at any time and from time to time within three years from the furnishing of an affidavit under section 47 or section 50 require the estate representative of the deceased person or other person required by this Part to lodge such affidavit to furnish such information and explanations and to produce such documentary or other evidence respecting the contents or the particulars verified by the affidavit as the case may seem to him to require.

(2) The Registrar shall, if he is dissatisfied with a declaration of value in an affidavit furnished for the purposes of section 47 or section 50 refer the matter to the Supreme Court.

(3) On a reference to it under subsection (2) the Supreme Court shall ascertain the value of the estate and the stamp duty payable in respect thereof in such manner and by such means as it may think fit, and may, if it thinks fit, as respects any property accept the valuation of any person appointed by the Court for the purposes of this section or so approved for the purpose of making the valuation.

(4) If the stamp duty so assessed exceeds the duty previously paid the Supreme Court, having regard to the merits of the case and the conduct of the estate representative, may direct that the whole or any part of the expenses incident to the making of such assessment shall be paid by the estate representative and any such payment required to be made by the estate representative shall be deemed to be a debt owing to the Consolidated Fund.

(5) The power to make rules of the Supreme Court provided by section 62 of the Supreme Court Act 1905 [*title 8 item 1*], shall include power to make rules for regulating, subject to and for the purposes of giving effect to this section, the practice and procedure on all matters relating to a reference to it under this section.

(6) For the purposes of the Court of Appeal Act 1964 [*title 8 item 4*] an assessment by the Supreme Court under this section shall be deemed to be a judgment by it in a civil cause or matter.

PART X  
INSURANCE

Duty to issue receipts

54 Any person who on his own behalf or on behalf of any other person receives or takes credit for any premium payable under a policy of insurance and who does not as soon as practicable after receiving or taking credit for such premium give a receipt in writing therefor, where such receipt is chargeable to tax, commits an offence.

Exempt policies may cease to be exempt

55 Where in exempt policy (not being a policy of reinsurance) has been issued and the risk insured against ceases to be situated outside Bermuda by reason of the risk insured against becoming situated in Bermuda then in respect of any premium paid or anything done under the policy after the occurrence of that event that policy shall no longer be deemed to be an exempt policy for the purposes of this Act.

Compounding of duty on insurance receipts

56 (1) The Tax Commissioner may authorize any person carrying on insurance business in Bermuda to compound for the payment of duty on policies of insurance or insurance premium receipts on the following conditions—

- (a) the policies and receipts bear an endorsement in such manner as the Tax Commissioner may approve to indicate that stamp duty has been paid;

- (b) the person so authorized submits within twenty days after the 31st March, the 30th June, the 30th September and the 1st January in each year accounts relating to the period of three months preceding each such date showing the amounts received as premiums during that period, being premiums chargeable to stamp duty;
- (c) every account shall be made in such form and shall contain all such particulars as the Tax Commissioner may require;
- (d) the duty shall be paid upon the delivery of the account.

(2) The agreement shall be in such form and contain such terms and conditions as the Tax Commissioner may think proper.

(3) In the case of wilful neglect to deliver such an account as is hereby required or to pay the duty in conformity with this section the person shall be liable to a penalty of \$10 per centum upon the amount of the duty payable for every month, or part of a month, during which the neglect continues.

*[Section 56 amended by 1999:35 s.3 effective 23 August 1999]*

#### Records of insurance companies to be open to inspection

57 Every person carrying on insurance business in Bermuda whether on his own account or on behalf of another person and the managers and any officer or servant of such person shall at all reasonable times permit any person authorized by the Tax Commissioner to inspect all books, records, papers, documents or proceedings in their custody relating to such business the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, and to take such notes and extracts as he may deem necessary, and in case of refusal commits an offence:

Provided that nothing in this section shall authorize the Tax Commissioner or person so authorized to inspect the books, records, papers, documents or proceedings of an exempt undertaking issuing only exempt policies.

*[Section 57 amended by 1999:35 s.3 effective 23 August 1999]*

### PART XI

#### MISCELLANEOUS INSTRUMENTS

##### Calculation of stamp duty on securities for future advances of money

58 (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current either with or without money previously due, shall be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2) Where such total amount is unlimited, the security shall be available for such an amount only as the ad valorem duty stamped thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for

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the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the date on which the advance or loan was made:

Provided that no money to be advanced for the insurance of any property comprised in the security against damage by fire or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life whereon the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with ad valorem duty.

### Special provisions as to leases

59 Where the consideration or any part of the consideration for which a lease or an agreement for a lease is granted or made consists of a covenant or other undertaking by, or a condition requiring, the lessee to erect a building or otherwise to expend money on the subject-matter of the lease, the amount or value of the consideration shall be deemed to be a premium in respect of which the lease or agreement for the lease is chargeable with ad valorem duty in accordance with Head 25(a) or (c).

### Certain mortgages of stock to be chargeable as agreements

60 (1) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign or commonwealth share certificate other than any share certificate of a local company, or any security for money transferable by delivery, by way of security for any loan or guarantee shall be deemed to be an agreement and shall be charged with duty accordingly.

(2) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer, intended as a security, of any marketable security, shall be deemed to be an agreement, and shall be charged with duty accordingly.

(3) A release or discharge of any such instrument shall not be chargeable with any ad valorem duty.

(4) In subsection (1), "local company" has the meaning assigned to it in section 2(1) of the Companies Act 1981.

*[Section 60 amended by 2008:15 s.2 effective 1 April 2008]*

### Ad valorem duty on exchange or partition of real property

61 Where on the exchange of any real property for any other real property, or upon the partition or division of any real property, any consideration exceeding in amount or value five hundred dollars is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition or division is effected is to be charged with the same ad valorem duty as a conveyance on sale for the same consideration, and where in any such case there are several instruments for completing the title of the parties or any of them, the principal instrument is to be ascertained, and the other instruments are to be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance.

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### Calculation of stamp duty on particular securities

62 A transfer of a duly stamped security, and a security by way of a further charge for money added to money previously secured by a duly stamped instrument, shall not be charged with any duty by reason of its containing any further or additional security for the money transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

### Special provision for companies without shares or capital stock

63 (1) Notwithstanding anything in any private Act to the contrary, where a company is formed under such an Act without shares or capital stock, stamp duty shall be charged upon the memorandum of association of the company as though references in the Schedule to the share capital of the company were construed as references to the statutory reserves thereof.

(2) In the event of the statutory reserves of such a company as is mentioned in subsection (1) being increased the company shall, within one calendar month thereof file with the Registrar of Companies written notification thereof.

(3) The notification filed under subsection (2) shall, for the purposes of the Schedule be regarded as a memorandum of increased capital and stamp duty shall be charged upon such notification, notwithstanding anything in any private Act to the contrary, at the rate prescribed in the Schedule for such a memorandum.

(4) A company which fails to file a written notification in accordance with subsection (2) commits an offence.

### Delivery in escrow

64 For the removal of doubt it is declared that an instrument delivered in escrow shall not be chargeable to stamp duty until the condition subject to which it has been delivered has been performed; and references in the Schedule to the time of execution of such an instrument shall be construed as references to the time of performance of such condition.

### Appraisement

65 Any person by whom an appraisement or valuation chargeable with stamp duty is made who—

- (a) within fourteen days after the making thereof neglects or omits to write out the same in words and figures showing the full amount thereof on duly stamped paper; or
- (b) in any other manner discloses the amount of the appraisement or valuation,

commits an offence.

### Annuities

66 (1) Subject to subsection (2), where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance,

but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments if there is more than one, is to be charged with the same duty as an actual grant or conveyance, and is for the purposes of this Act to be deemed an instrument of conveyance on sale.

(2) Where an annuity is sold by a person carrying on insurance business, the annuity shall be taxed as an insurance policy, and not as a conveyance, and receipts given for the premiums shall, for the purposes of this Act, be deemed to be insurance premium receipts.

## PART XII OFFENCES AND SUPPLEMENTARY

### Failure to stamp

67 If any instrument which is liable to stamp duty is not duly stamped, every person specified in the Schedule as being liable for stamping commits an offence:

Punishment on summary conviction: a fine of \$200 or four times the amount of the unpaid stamp duty, whichever is the greater.

### Punishment where none specified

68 Where this Act creates any offence and no penalty is specified therefor the person committing such offence shall be liable on summary conviction therefor to a fine of \$500 and, in addition, if the offence was committed with the intention of avoiding the payment of any stamp duty a fine not exceeding four times the amount of the duty avoided or sought to be avoided.

### Penalty for unauthorized dealing in stamps

69 (1) Any person, not duly appointed to sell and distribute stamps, who deals in any way in stamps, commits an offence:

Punishment on summary conviction: a fine of \$200:

Provided that nothing in this section shall prevent the sale or exchange of stamps for philatelic purposes.

(2) In this section "stamps" means adhesive stamps available exclusively for payment of revenue in Bermuda.

### Fraud in relation to duty

70 Any person who practises or is concerned in any fraudulent act, contrivance or device, with intent to defraud the Government of any stamp duty, commits an offence:

Punishment on summary conviction: a fine of \$1,000.

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### Institution and conduct of prosecutions

71 (1) No prosecution in respect of any offence punishable under this Act shall be instituted without the sanction of the Tax Commissioner.

(2) The imposition of a fine upon the conviction of any person for a contravention of any provision of this Act shall not relieve such person of the obligation of paying any unpaid duty, including any penalty for late payment under section 10.

(3) Notwithstanding section 80 of the Criminal Jurisdiction and Procedure Act 2015 a summary offence constituted by this Act may be instituted [*sic*] within a period of three months of the date when facts sufficient in the opinion of the Tax Commissioner to justify such a prosecution first come to his notice and, in any prosecution commenced after the expiration of the period specified in section 81 of the Criminal Jurisdiction and Procedure Act 2015, a certificate purporting to be under the hand of the Tax Commissioner and specifying the date upon which such facts first came to his notice shall be evidence that such facts first came to his notice upon such date.

*[Section 71 amended by 1999:35 s.3 effective 23 August 1999; subsection (3) amended by 2015 : 38 s. 91 effective 6 November 2015]*

### Offences by corporations

72 Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any default on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, he as well as the body corporate commits that offence and be liable to be proceeded against accordingly.

## PART XIII

### MISCELLANEOUS

#### Books, etc. in the custody of public officers may be inspected without fee

73 Every public officer having in his custody any registers, books, records, papers, documents or proceedings the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized in writing by the Tax Commissioner to inspect for such purposes the registers, books, records, papers, documents or proceedings and to take such notes and extracts as he may deem necessary.

*[Section 73 amended by 1999:35 s.3 effective 23 August 1999]*

#### Composition or consolidation of duties

74 The Minister of Finance may by order published in the Gazette provide for the composition or consolidation of duties in the case of issues by any company or other body corporate of debentures, bonds or other marketable securities.

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### Conditions and agreements as to stamp duty void

75 Every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after 22 September 1917, and every contract, arrangement, or undertaking for assuming liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency, shall be void.

### Ad valorem duty to be rounded up to nearest whole cent

76 Where the amount of stamp duty payable upon any instrument is to be calculated by reference to a percentage rate and the result of such calculation is that (but for this section) a fraction of a cent of duty would be payable, the amount of duty as so calculated shall be rounded up to the nearest whole cent.

### Regulations by Minister

77 (1) The Minister may by regulation—

- (a) prescribe any matter or thing which by this Act is required or permitted to be prescribed by regulation;
- (b) amend any provision of the Schedule:

Provided that no such amendment shall have the effect of increasing any stamp duty specified in the Schedule or of imposing any new or additional duty not specified therein;

- (c) require persons concerned in the management of mutual funds and unit trust schemes to keep such records as the Minister considers necessary or expedient to be kept for the purpose of ensuring that stamp duties that are due are paid;
- (d) prescribe the form of affidavit under section 47;
- (e) make provision for the better carrying out of the objects and purposes of this Act.

(2) The negative resolution procedure shall apply to regulations made under this section.

(3) Regulations made under subsection (1)(c) may create offences and provide that a person committing any such offence shall be liable on summary conviction to a fine of \$200.

### Repeals, savings etc

78 *[omitted]*

### Commencement

79 *[omitted]*

SCHEDULE

(Section 2)

HEAD 1.

Nature of instrument: AFFIDAVIT, STATUTORY DECLARATION OR DECLARATION IN WRITING ON OATH OR AFFIRMATION MADE BEFORE A PERSON AUTHORIZED BY LAW TO ADMINISTER AN OATH

Stamp Duty: \$25.

Time for Stamping: 30 days after making.

Person Liable: The person making.

Exemptions

- (a) Affidavit or declaration made for the immediate purpose of being filed, read, or used in any court, or before any judge or officer of any court.
- (b) Affidavit or declaration required to be made pursuant to any statutory provision relating to marriages.
- (c) Affidavit or declaration made before the Collector of Customs or any officer of the Customs Department under the Revenue Act 1898 or other provision of law.
- (d) Declaration for the purposes of the British Nationality Acts 1948 and 1981 of the United Kingdom.

*[Head 1 amended by 1992:4 effective 19 February 1992; and by 2005:6 s. 7(2) & Sch 2 effective 1 April 2005]*

Head 2.

Nature of instrument: AFFIDAVIT OF VALUE OF DECEASED ESTATE made for the purposes of this Act.

Stamp Duty:

- (i) on the first \$100,000 of the value of the estate, nil;
- (ii) on the next \$100,000, 5 per centum;
- (iii) on the next \$800,000, 10 per centum;
- (iv) on the next \$1,000,000, 15 per centum;
- (v) thereafter, 20 per centum.

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Time for Stamping: 90 days after the grant of probate or administration or, in the case of a foreign grant, the resealing thereof at the direction of the Supreme Court, or within such further period as the Registrar or a judge may, on application, allow.

Person Liable: Estate representative or other person acting in the administration of the estate.

AND see PART IX.

*[Head 2 amended by 1992:4 effective 19 February 1992]*

*[Head 2 schedule replaced by 1995:13 effective 15 February 1995 in relation to affidavits of value made in respect of deaths occurring on or after 15 February 1995]*

*[Head 2 schedule amended by 2010 : 15 s. 2 effective 1 April 2010]*

### Head 3.

Nature of instrument: AGREEMENT, OR ANY MEMORANDUM OF AGREEMENT made under hand only and not otherwise charged with duty, whether the same be the only evidence of a contract, or obligatory upon the parties from its being a written instrument.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All parties to the agreement.

#### Exemptions

- (a) Agreement or memorandum the subject matter whereof is of the value of less than \$50.
- (b) Agreement or memorandum for the hire of any labourer, artificer, mechanic or domestic servant.
- (c) Contract of service between the Government and a Government employee.
- (d) Instrument of apprenticeship.
- (e) Subject to Head 5, an agreement or memorandum relating to the sale of any goods, wares or merchandise.
- (f) A receipt.
- (g) Agreement or memorandum of agreement evidencing a transaction in respect of which a trading fee is charged by a contracts exchange.

For the purposes of this exemption—

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“contracts exchange” means a contracts exchange that is chargeable to contracts exchange tax under Part VIC of the Miscellaneous Taxes Act 1976;

“trading fee” has the meaning given to it in that Part; and

“transaction” means a transaction carried out on a contracts exchange, being the actual purchase or sale of a contract.

(See also section 38)

*[Head 3 amended by 1992:4 effective 19 February 1992; by 2000:8 s.4 & Sch effective 18 February 2000; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

### Head 4.

Nature of instrument: AGREEMENT, OR ANY MEMORANDUM OF AGREEMENT for the sale of land, being an executory agreement not having the effect of a conveyance.

Stamp Duty:

- (i) The original, \$25.
- (ii) each executed counterpart, \$1.

Time for Stamping: 30 days after execution.

Person Liable: All parties to the agreement.

*[Head 4 amended by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

### Head 5.

Nature of instrument: AGREEMENT OF INSTALMENT-PURCHASE OR HIRE PURCHASE.

Stamp Duty: nil.

*[Head 5 amended by 1992:4 effective 19 February 1992]*

AGREEMENT OR CONTRACT accompanied by a deposit:

(See Mortgage etc).

AGREEMENT for lease: (See Lease).

AGREEMENT for sale: (See Conveyance on Sale and Head 4).

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ANNUITY

Conveyance in consideration of, and instrument creating by way of sale: (See Conveyance on Sale, Policy of Insurance).

Instrument creating by way of security: (See Mortgage etc.)

Premiums for: (See Insurance Premium Receipt.)

(See also section 66)

Head 6

Nature of instrument: APPOINTMENT OF NEW TRUSTEE OF A TRUST OR SETTLEMENT (including the case where the instrument effecting the appointment is the instrument by which the trust or settlement itself was created (“the original instrument”)) not falling within Head 16—

- (i) where the original instrument has been duly stamped under this Act, or where duty has ever previously been paid under and in accordance with paragraph (ii) or (iii) of this Head in respect of the appointment of a new trustee of the trust or settlement.

Stamp Duty: \$100.

Time for Stamping: 30 days after execution.

Person Liable: The new trustee.<sup>1</sup>

(ii) where—

- (a) the original instrument was not liable to stamping under this Act; but
- (b) the instrument effecting the appointment, whether it is or is not the original instrument, (“the new instrument”) is so liable; and
- (c) the original instrument was executed two years or more before the date on which the appointment takes effect:

Stamp Duty: \$250.

Time for Stamping: 30 days after execution.

Person Liable: The new trustee.<sup>2</sup>

(iii) where—

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<sup>1</sup> [but where more than one new trustee is being appointed at the same time, the stamp duty payable shall be the same as if one trustee only were being appointed].

## STAMP DUTIES ACT 1976

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- (a) the original instrument was not liable to stamping under this Act; and
- (b) the new instrument is so liable; but
- (c) the original instrument was executed less than two years before the date on which the appointment takes effect:

Stamp Duty: \$250 plus—

- (i) in respect of Bermuda property in the trust or settlement—
  - (aa) on the first \$50,000 of the amount or value, nil;
  - (bb) on the next \$150,000 of the amount or value, 5 per centum;
  - (cc) on the next \$500,000 of the amount or value, 10 per centum;
  - (dd) thereafter, 15 per centum; and
- (ii) 1/10 per centum of the amount or value of other property in the trust or settlement or \$10,000, whichever is less.

Time for Stamping: 30 days after execution.

Person Liable: The new trustee.\*

(See also Head 16)

*[Head 6 amended by 1991:8 effective 20 February 1991; 1992:4 effective 19 February 1992; 1995:13 effective 15 February 1995; and by 2001:4 Sch effective 16 February 2001]*

### Head 7.

Nature of instrument: APPOINTMENT on execution of a power of any property by any instrument not being a will or other testamentary disposition.

Stamp Duty: \$100.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

*[Head 7 amended by 1992:4 effective 19 February 1992; and by 2005:6 s. 7(2) & Sch 2 effective 1 April 2005]*

### Head 8.

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<sup>2</sup> [but where more than one new trustee is being appointed at the same time, the stamp duty payable shall be the same as if one trustee only were being appointed].

## STAMP DUTIES ACT 1976

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Nature of instrument: APPRAISEMENT or VALUATION of any property, or of any interest therein, or of the annual value thereof.

Stamp Duty:

- (i) Where the appraisalment or valuation does not exceed \$10,000—1/4 per centum of the appraisalment or valuation;
- (ii) in all other cases, \$25.

Time for Stamping: (See section 65.)

Person Liable: The appraiser.

Exemptions

- (a) Appraisalment or valuation made for the information of one party only, and not being obligatory between the parties either by agreement or by operation of law.
- (b) Appraisalment or valuation made under any statutory provision or in pursuance of an order of court.
- (c) Appraisalment or valuation of the assets of a company incorporated in Bermuda with power to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a shareholder, where the purpose of such appraisalment or valuation is to determine the market or asset value of the shares.

(See also section 65)

### ASSIGNMENT

By way of security, or of any security: (See Mortgage etc. Upon a sale or otherwise: See Conveyance.)

ATTESTED COPY: (See Copy.)

ATTORNEY, LETTER OR POWER OF: (See Power of Attorney.)

### Head 9.

Nature of instrument: AWARD on an arbitration.

Stamp Duty: 1/4 per centum of the amount or value awarded but not exceeding a maximum of \$25.

Time for Stamping: 30 days after execution.

## STAMP DUTIES ACT 1976

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Person Liable: The parties to the submission.

### Exemptions

- (a) Where the amount or value awarded does not exceed \$1,000.
- (b) Awards made by the official arbitrators under the Acquisition of Land Act 1970.

### Head 10.

Nature of instrument: BILL OF EXCHANGE.

- (a) nil.

*[Head 10 amended by 1992:4 effective 19 February 1992]*

### BILL OF SALE

Absolute: (See Conveyance)

By way of Security: (See Mortgage etc.)

*[Head 10 amended by 1991:8 effective 1 April 1991]*

### Head 11.

Nature of instrument: BOND

- (i) Given in pursuance of the Revenue Act 1898 or any other statutory provision.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

- (ii) On obtaining letters of administration.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

- (iii) For securing the payment or repayment of money or the transfer or retransfer of stock. (See Mortgage etc.) Marketable Security.

## STAMP DUTIES ACT 1976

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(iv) Of any other kind not specifically charged with any duty.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

Exemption

Guarantee, surety and personal performance bond on Government building contracts.

*[Head 11 amended by 1992:4 effective 19 February 1992; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

Head 12.

Nature of instrument: CHARTER PARTY

Stamp duty: nil

*[Head 12 amended by 1992:4 effective 19 February 1992]*

CHEQUE: (See Bill of Exchange)

CONTRACT: (See Agreement)

Head 13.

*[deleted by 1979:5]*

Head 14.

Nature of instrument: CONVEYANCE or TRANSFER on sale of land (not being a conveyance or transfer expressly provided for in Head 15) the duty to be calculated on the amount or value of the consideration on the day of the date of the instrument. (See also Part VII and section 4)

Stamp Duty:

- (i) on the first \$100,000 of that amount or value, or any part thereof, 2 per centum;
- (ii) on the next \$400,000 of that amount or value, or any part thereof, 3 per centum;
- (iii) on the next \$500,000 of that amount or value, or any part thereof, 4 per centum;

STAMP DUTIES ACT 1976

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- (iv) on the next \$500,000 of that amount or value (over \$1,000,000 but not exceeding \$1,500,000), or any part thereof, 6 per centum;
- (v) thereafter, 7 per centum.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

Exemptions

(a) Conveyance of real or personal property to a charity registered as such under the Charities Act 1978 or to any body of persons whose purposes are in the opinion of the Minister, charitable or non-profit, provided it is specified in the instrument of conveyance that it is being conveyed for the purpose of being maintained as open space.

Where there is doubt as to whether the land is open space or that the conveyance is for charitable or non-profitable purposes, the Minister may, where he thinks that by virtue of—

- (i) its connection with Bermuda (being a connection mentioned in the instrument); and
- (ii) its benefit to Bermuda;

it warrants exemption from duty, in his discretion, declare it to be an open space for a charitable or non-profitable purpose.

(b) Conveyance to a first time homeowner described in condition (B) of this paragraph, for consideration of \$750,000 or less, of the entire freehold or leasehold interest in—

- (i) a residential property consisting of a house or a condominium, other than a fractionally owned unit, traditional hotel room or condominium hotel unit that does not have a separate land valuation assessment number assigned to it under the Land Valuation and Tax Act 1967; or
- (ii) a parcel of land on which a residential property referred to in subparagraph (i) is to be built;

provided that all of the following conditions are met—

(A) the Conveyance takes place on or after April 1, 2009;

(B) the purchasers are—

(aa) all individuals with Bermudian status who individually have never held a legal or beneficial interest in any residential property or land in Bermuda (other than the interest being acquired by the Conveyance) greater than 25% of its market value; or

STAMP DUTIES ACT 1976

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(bb) an individual with Bermudian status and his or her spouse who does not have Bermudian status, who individually have never held a legal or beneficial interest in any residential property or land in Bermuda (other than the interest being acquired by the Conveyance) greater than 25% of its market value;

(C) the purchasers will—

(aa) live in the residential property being conveyed for a period of three years or more, or

(bb) complete construction on the parcel of land being conveyed of a residential property described in paragraph (b)(i) within three years after the Conveyance,

as the case may be;

(D) the consideration for the Conveyance of the property is equal to the property's fair market value and is entirely in the form of money, money advanced by way of mortgage on the property, or both;

(E) the Tax Commissioner will be required to express his or her opinion on whether the Conveyance is chargeable with stamp duty and if so, the amount of the duty under section 22 of the Act; and

(F) all facts and circumstances affecting the duty are set forth in the Conveyance, including a declaration signed by the purchasers and the vendors of the property as follows—

DECLARATIONS UNDER STAMP DUTIES ACT 1976

I/We \_\_\_\_\_ and \_\_\_\_\_ [name of purchaser(s)]; and

I/We \_\_\_\_\_ and \_\_\_\_\_ [name of vendor(s)] declare—

1. That conditions (A), (D), (E) and (F) in paragraph (b) of Head 14 of the Schedule to the Stamp Duties Act 1976 are met in respect of this Conveyance, and

I/We, the purchaser(s) declare that conditions (B) and (C) are met;

2. That the total consideration for the residential property or parcel of land being conveyed does not exceed \$750,000; and

3. That this Conveyance is not part of a larger transaction, the consideration for which exceeds \$750,000.

*[Head 14 amended by 1991:8 effective 20 February 1991; 1995:13 effective 15 February 1995; 2000:8 s.4 & Sch effective 18 February 2000; by 2001:4 Sch effective 16 February 2001; by 2006:4 s.3(a) effective 22 March 2006; by 2008:15 s.3(a) effective 1 April 2008; by BR 20/2009 reg.2 effective 1 April 2009; by BR 43/2009 reg.2 effective 3 July 2009]*

Head 15.

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Nature of instrument: CONVEYANCE OR TRANSFER on sale other than a conveyance or transfer to which Head 14 or 16 applies (the duty to be calculated on the amount or value of the consideration on the day of the date of the instrument).

### Stamp Duty:

- (i) in respect of Bermuda property—
  - (aa) on the first \$100,000 of that amount or value, or any part thereof, 2 per centum;
  - (bb) on the next \$400,000 of that amount or value, or any part thereof, 3 per centum;
  - (cc) on the next \$500,000 of that amount or value, or any part thereof, 4 per centum;
  - (dd) on the next \$500,000 of that amount or value (over \$1,000,000 but not exceeding \$1,500,000), or any part thereof, 6 per centum;
  - (ee) thereafter, 7 per centum.
- (ii) in respect of property that is not Bermuda property, 1 per centum of that amount or value.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

### Exemptions

Any conveyance or transfer of, or any contract or agreement for the conveyance or transfer of, any estate or interest in—

- (a) Goods, wares or merchandise in the ordinary course of trade.
- (b) A trade mark and the proportion of goodwill created thereby.
- (c) Shares of a company incorporated in Bermuda with power to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a shareholder, where the conveyance or transfer, or the contract of agreement for the conveyance or transfer, of the shares is effected at the instance of a shareholder who is not resident in Bermuda for the purposes of the Exchange Control Regulations 1973.
- (d) Shares in an exempted company (not being a company within the benefit of paragraph (c)), where at the time of the conveyance or transfer, or the contract or agreement for the conveyance or transfer, (“the transaction”),—

STAMP DUTIES ACT 1976

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- (i) the shares are quoted on a stock exchange that is an appointed stock exchange within the meaning assigned to that expression in section 25(1) of the Companies Act 1981; and
  - (ii) none of the parties to the transaction is resident in Bermuda for the purposes of the Exchange Control Regulations 1973.
- (e) Real or personal property between two bodies corporate—
- (i) each of which has a share capital; and
  - (ii) as to which the Tax Commissioner has certified in writing either—
- (aa) that one body corporate owns 90% or more of the issued share capital of the other body corporate or;
- (bb) that a third person or body of persons owns 90% or more of the issued share capital of each body corporate.
- (f) Any marketable security which is a foreign currency security issued by a local company in respect of a debt obligation of the company, being a security, or one of an issue or series of securities, approved by the Bermuda Monetary Authority for the purposes of this exemption by notice published in the Gazette.

(See also Part VII and section 4)

*[Head 15 amended by 1991:8 effective 20 February 1991; BR 47/91 effective 11 October 1991; 1995:13 effective 15 February 1995; 1999:35 s.3 effective 23 August 1999; 2000:8 s.4 & Sch effective 18 February 2000; by 2001:4 Sch effective 16 February 2001; by 2008:15 s.3(b) effective 1 April 2008]*

Head 16.

Nature of instrument: CONVEYANCE made for the purpose of effectuating the appointment of a new trustee, if such conveyance is made by some instrument other than the instrument by which the new trustee is appointed.

Stamp Duty: \$200.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(See also Part VII)

*[Head 16 amended by 1992:4 effective 19 February 1992; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

Head 17.

## STAMP DUTIES ACT 1976

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Nature of instrument: CONVEYANCE or TRANSFER to effect or having the effect of a voluntary disposition inter vivos.

Stamp Duty:

- (i) in respect of Bermuda property—
  - (aa) on the first \$100,000 of that amount or value, or any part thereof, 2 per centum;
  - (bb) on the next \$400,000 of that amount or value, or any part thereof, 3 per centum;
  - (cc) on the next \$500,000 of that amount or value, or any part thereof, 4 per centum;
  - (dd) on the next \$500,000 of that amount or value (over \$1,000,000 but not exceeding \$1,500,000), or any part thereof, 6 per centum;
  - (ee) thereafter, 7 per centum.
- (ii) in respect of property that is not Bermuda property, 1 per centum of that amount or value.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

Exemptions

- (a) Conveyance of real or personal property to—
    - (i) a charity registered as such under the Charities Act 1978 or to any body of persons whose purposes are, in the opinion of the Minister, charitable; or
    - (ii) any body of persons whose purposes are in the opinion of the Minister non-profit, provided it is specified in the instrument of conveyance that it is being conveyed for the purpose of being maintained as open space,  

Provided that where there is doubt as to whether the land is open space or that the conveyance is for charitable or non-profitable purposes, the Minister may, where he thinks that by virtue of—
- (i) its connection with Bermuda (being a connection mentioned in the instrument); and
  - (ii) its benefit to Bermuda;  

it warrants exemption from duty, in his discretion, declare it to be an open space or for a charitable purpose or for a non-profitable purpose.
- (b) Conveyance of real or personal property between two bodies corporate—
    - (i) each of which has a share capital; and

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- (ii) as to which the Tax Commissioner has certified in writing either—
  - (aa) that one body corporate owns 90% or more of the issued share capital of the other body corporate; or
  - (bb) that a third person or body of persons owns 90% or more of the issued share capital of each body corporate.
- (c) Conveyance chargeable to duty as a settlement under Head 40.
- (d) Conveyance of shares in an exempted company where the conveyance is one made between persons none of whom is resident in Bermuda for the purposes of the Exchange Control Regulations 1973.
- (e) Conveyance of any marketable security which is a foreign currency issued by a local company in respect of a debt obligation of the company, being a security, or one of an issue or series of securities, approved by the Bermuda Monetary Authority for the purposes of this exemption by notice published in the Gazette.

*(See also section 39)*

*[Head 17 amended by 1991:8 effective 20 February 1991; BR 47/1991 effective 11 October 1991; 1995:13 effective 15 February 1995; 1999:35 s.3 effective 23 August 1999; 2000:8 s.4 & Sch effective 18 February 2000; by 2001:4 Sch effective 16 February 2001; by 2006:4 s.3(b) effective 22 March 2006; by 2008:15 s.3(c) effective 1 April 2008]*

Head 18.

Nature of instrument: CONVEYANCE or TRANSFER of any kind not herein specifically described.

Stamp Duty: \$200.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

Exemptions

Conveyance of a legacy by the estate representative to the beneficiary.

Conveyance of any marketable security which is a foreign currency security issued by a local company in respect of a debt obligation of the company, being a security, or one of an issue or series of securities, approved by the Bermuda Monetary Authority for the purposes of this exemption by notice published in the Gazette.

*(See also Part VII)*

## STAMP DUTIES ACT 1976

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*[Head 18 amended by BR 47/1991 effective 11 October 1991; 1992:4 effective 19 February 1992; and by 2000:8 s.4 & Sch effective 18 February 2000]*

### Head 19.

Nature of instrument: COVENANT. Any separate deed of covenant (not being an instrument chargeable with ad valorem duty as a conveyance or mortgage) made on the sale or mortgage of any property, and incidental thereto.

Stamp Duty: nil.

*[Head 19 amended by 1992:4 effective 19 February 1992]*

DEBENTURE: (See Mortgage)

### Head 20.

Nature of instrument: DECLARATION or revocation of any use or trust under seal of or concerning any property by any writing, not being a will, or an instrument chargeable with duty as a settlement.

Stamp Duty: \$100.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

Exemption

Declaration or revocation of a trust in respect of a director's qualifying share in an exempted company.

*[Head 20 amended by 1992:4 effective 19 February 1992; and by 2000:8 s.4 & Sch effective 18 February 2000]*

### Head 21.

Nature of instrument: DEED of any kind whatsoever, not described in this Schedule.

Stamp Duty: \$100.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

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*[Head 21 amended by 1992:4 effective 19 February 1992; and by 2000:8 s.4 & Sch effective 18 February 2000]*

DEPOSIT of title deeds: (See Mortgage etc)

Head 22.

Nature of instrument: DUPLICATE OR COUNTERPART of any instrument chargeable with any duty.

*(See also section 14)*

Stamp Duty: Where the duty on the original instrument does not exceed \$25, the same duty as on the original. In all other cases \$25.

Time for Stamping: 30 days after execution, or such longer period as may be allowed within which the original must be stamped.

*[Head 22 amended by 1992:4 effective 19 February 1992; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

EQUITABLE MORTGAGE: (See Mortgage etc)

Head 23.

Nature of instrument: EXCHANGE (excluding shares and marketable securities)

Stamp Duty: \$200 and ad valorem duty as on conveyance on sale on any sum paid or agreed to be paid for equality.

Time for Stamping: 30 days after execution.

Person liable: All persons executing.

*(See also section 61)*

*[Head 23 amended by 1992:4 effective 19 February 1992; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

GIFT: (See Head 17)

Head 24.

Nature of instrument: INSURANCE PREMIUM RECEIPT

Stamp Duty: 1 per centum of the amount for which the receipt is given rounded up to the nearest cent.

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Time for Stamping: Before execution.

Person Liable: The insurer.

Exemptions:

Receipts for premiums paid on—

- (a) Life policy.
- (b) Exempt policy.
- (c) Accident or health policy.
- (d) Annuity sold by a person carrying on insurance business.

NOTE: Duty is not payable under this Head in respect of any premium which has been taken into account in calculating duty for the purposes of Head 35.

(See also Part X and section 66)

Head 25.

Nature of instrument: LEASE AND AGREEMENT FOR LEASE, as beneath—

- (a) If granted in consideration of a premium or fine.

Stamp Duty: Ad valorem duty as on conveyance on sale on the amount or value of the premium or fine.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

- (b) if granted in consideration of a rent—Stamp Duty in accordance with the following Table—

	Amount or value of rent per month	Duty in \$
(i)	under 1,200	75.00
(ii)	1,200 or more but under 1,500	100.00
(iii)	1,500 or more but under 2,500	150.00
(iv)	2,500 or more but under 3,500	200.00

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(v) 3,500 or more but under 5,000	300.00
(vi) 5,000 or more	400.00

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(c) If the consideration includes both premium or fine and rent.

Stamp Duty: The total ascertained in (a) and (b) of this item.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(d) Surrender or agreement for surrender of—

(i) Lease.

(ii) Agreement for lease.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(e) Lease executed in pursuance of a duly stamped agreement for a lease.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(f) Renewal of lease or agreement for lease or extension of lease or agreement for lease.

Stamp Duty: \$25.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(g) Transfer or agreement for transfer of lease or agreement for lease.

## STAMP DUTIES ACT 1976

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Stamp Duty: Ad valorem duty as on conveyance on sale on the amount or value of the consideration.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(See also section 59)

- (h) If granted without consideration of a rent—
  - (i) calculate 1/12 of the annual rental value, as determined under the Land Valuation and Tax Act 1967, of the premises leased; and
  - (ii) treat the figure arrived at as a result of such calculation as if it were the amount or value of rent per month; and
  - (iii) apply the stamp duty appropriate to that amount or value of rent per month as specified in the Table to paragraph (b) to the figure arrived at as a result of such calculation.

Time for stamping: 30 days after execution

Person liable: All persons executing.

*[Head 25 amended by 1992:4 effective 19 February 1992; 1995:13 effective 15 February 1995; and by 2000:8 s.4 & Sch effective 18 February 2000]*

Head 26.

Nature of instrument: LETTER OF ALLOTMENT or any other document having the effect of a letter of allotment of shares in any company or proposed company incorporated in Bermuda or in respect of any loan raised or proposed to be raised by any such company or proposed company, and letter of renunciation.

Stamp Duty: nil

*[Head 26 amended by 1992:4 effective 19 February 1992]*

LETTER OF ATTORNEY: *(See Power of Attorney)*

Head 27.

Nature of instrument: MARKETABLE SECURITIES AND SHARES—

- (i) Transfer, assignment, disposition or assignation of a marketable security or share—
  - (a) upon a sale or the voluntary disposition thereof: (See Conveyance)

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- (b) upon a mortgage thereof—under hand only: (See Agreement and section 58)—by deed: (See Mortgage etc)
- (c) in any case other than sale, voluntary disposition or mortgage.

Stamp Duty: \$25.

Time for Stamping: Before execution.

Person Liable: The transferor and transferee.

Exemption:

Transfer, assignment, disposition or assignment [*sic*] of a marketable security which is a foreign currency security issued by a local company in respect of a debt obligation of the company, being a security, or one of an issue or series or securities, approved by the Bermuda Monetary Authority for the purposes of this exemption by notice in the Gazette.

- (ii) Share warrant to bearer, issued in Bermuda.

Stamp Duty: 1/2 per centum of the nominal value of the share.

Time for Stamping: Before issue.

Person Liable: The body issuing.

- (iii) Share certificate where the share is issued for the first time at a premium in excess of the par value thereof by a company incorporated in Bermuda other than a mutual fund.

Stamp Duty:

- (i) 1/2 per centum of the amount of the premium in the case of a local company;
- (ii) 1/4 per centum of the amount of the premium in the case of an exempted company:

Provided that, once duty under this provision, Head 28 and Head 29 amounting in the aggregate to \$25,000 has been paid in the case of an exempted company which—

- (aa) has, as an object specified in its memorandum of association, the object of carrying on insurance business as defined in the Insurance Act 1978; and
- (bb) is registered as an insurer under that Act within six months of the date of the company's incorporation; and
- (cc) at all times thereafter remains so registered,

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no further duty shall be payable;

*[transitional provision as to duty paid before 6 December 1985 omitted]*

Time for Stamping: Before issue.

Person Liable: The body issuing.

Exemption

Share certificate issued, in the circumstances specified above, by an exempted company incorporated on or after 28 February 1986—

(a) if the company's memorandum of association provides that the company's principal object is that of holding beneficially all the shares (apart from shares allotted to directors as qualifying shares) in another company ("the wholly-owned subsidiary"), being a company that qualifies for the benefits extended by the proviso to paragraph (a) (ii) above; but

(b) for so long only as the wholly-owned subsidiary continues so to qualify.

(iv) Notice under section 43 or section 44.

Stamp Duty: 1/10th per centum of the price of new shares or new units issued:

Provided that, once duty amounting in the aggregate to \$25,000 has been paid in the case of a mutual fund or a unit trust scheme, there shall, as respects that respective fund or scheme, be substituted for the above rate of 1/10th per centum the lower rate of 1/20th per centum; but so that any duty paid before 1st January, 1986—

(i) in respect of a mutual fund, under Head 27(iv), Head 28 or Head 29 (as then in force); or

(ii) in respect of a unit trust scheme, under Head 40 (as then in force), shall count as a credit towards the above amount of \$25,000 as respects that fund or scheme.

Time for Stamping: On delivery of the notice.

Person Liable: In relation to a new share, the mutual fund; in relation to a new unit, the trustees.

(v) Marketable security issued in Bermuda or made or issued by or on behalf of a corporate or unincorporate body incorporated or formed in Bermuda other than a share (not being a debenture).

Stamp Duty: 1/5th per centum of the money secured.

Time for Stamping: Before issue.

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Person Liable: The body issuing.

Exemption

Securities created, constituted or issued under a trust deed or other instrument dutiable under Head 41.

*[Head 27 amended by BR 47/1991 effective 11 October 1991; by 1992: 4 effective 19 February 1992; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

MARRIAGE SETTLEMENT: (See Settlement)

Head 28.

Nature of instrument: MEMORANDUM OF ASSOCIATION filed in the office of the Registrar of Companies for the incorporation of a company.

Stamp Duty:

- (i) 1/2 per centum of the authorized share capital in the case of a local company;
- (ii) 1/4 per centum of the authorized share capital in the case of an exempted company:

Provided that, once duty amounting in the aggregate to \$25,000 has been paid in the case of an exempted company which—

- (aa) has, as an object specified in its memorandum of association, the object of carrying on insurance business as defined in the Insurance Act 1978; and
- (bb) is registered as an insurer under that Act within six months of the date of the company's incorporation; and
- (cc) at all times thereafter remains so registered,

no further duty shall be payable.

*[transitional provision as to duty paid before 6 December 1985 omitted]*

- (iii) 1/2 per centum of the reserve fund in the case of a local mutual company;
- (iv) 1/4 per centum of the reserve fund in the case of a mutual company which is not a local mutual company.

Time for Stamping: Before filing.

Person Liable: The company.

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Exemption

- (a) the memorandum of association of a mutual fund;
- (b) memorandum of association of an exempted company incorporated on or after 28 February 1986—
  - (i) if the memorandum of association provides that the company's principal object is that of holding beneficially all the shares (apart from shares allotted to directors as qualifying shares) in another company ("the wholly-owned subsidiary"), being a company that qualifies for the benefits extended by the proviso to paragraph (a) (ii) above; but
  - (ii) for so long only as the wholly-owned subsidiary continues so to qualify.

(See also section 10 of the Exempted Partnerships Act 1958)

Head 29

Nature of instrument: MEMORANDUM OF INCREASED CAPITAL filed under section 45(3) of the Companies Act 1981.

Stamp Duty:

- (i) 1/2 per centum of the increased capital in the case of a local company;
- (ii) 1/4 per centum of the increased capital in the case of an exempted company:

Provided that, once duty under this provision, Head 27(iii) and Head 28 amounting in the aggregate to \$25,000 has been paid in the case of an exempted company which—

- (aa) has, as an object specified in its memorandum of association, the object of carrying on insurance business as defined in the Insurance Act 1978; and
- (bb) is registered as an insurer under that Act within six months of the date of the company's incorporation; and
- (cc) at all times thereafter remains so registered,

no further duty shall be payable.

*[transitional provision as to duty paid before 6 December 1985 omitted]*

Time for Stamping: Before filing.

Person Liable: The company.

Exemption

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- (a) Memorandum of increased capital of any commingled pension trust funds company (within the meaning of section 1 of the Pension Trust Funds Act 1966).
- (b) Memorandum of increased capital of a mutual fund;
- (c) memorandum of increased capital of an exempted company incorporated on or after 28 February 1986—
  - (i) if the memorandum of association provides that the company's principal object is that of holding beneficially all the shares (apart from shares allotted to directors as qualifying shares) in another company ("the wholly-owned subsidiary"), being a company that qualifies for the benefits extended by the proviso to paragraph (a) (ii) above; but
  - (ii) for so long only as the wholly-owned subsidiary continues so to qualify.

(See also section 10 of the Exempted Partnerships Act 1958 )

Head 30.  
*(deleted by 1984:36)*

Head 31.

Nature of instrument: MORTGAGE, BOND, DEBENTURE (except a marketable security otherwise specially charged with duty) and a WARRANT OF ATTORNEY to confess and enter up judgment—

- (i) Being the only or principal or primary security.

Stamp Duty:

- (1) being a mortgage of immovable property—
  - (a)  $\frac{1}{4}$  per centum of the principal sum secured, where the sum secured is \$400,000 or less;
  - (b)  $\frac{1}{2}$  per centum of the principal sum secured, where the sum secured is more than \$400,000;
- (2) being a mortgage of movable property—
  - (a)  $\frac{1}{4}$  per centum of the principal sum secured, where the sum secured is \$100,000 or less;
  - (b)  $\frac{1}{2}$  per centum of the principal sum secured, where the sum secured is more than \$100,000;
- (3)  $\frac{1}{4}$  per centum of the principal sum secured, where the instrument is a bond, debenture (except a marketable security otherwise specially charged with duty) or warrant of attorney.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

- (ii) Being a collateral or auxiliary or additional or substituted security (other than a mortgage executed in pursuance of a duly stamped

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agreement for a mortgage), or being a mortgage executed by way of further assurance, provided in every case that the principal security, where required to be stamped, was duly stamped under paragraph (i) of this Head.

Stamp Duty: 1/10th per centum of the principal sum secured.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(iii) Being an equitable mortgage.

Stamp Duty:

- (1) being an equitable mortgage of immovable property—
  - (a)  $\frac{1}{4}$  per centum of the principal sum secured, where the sum secured is \$400,000 or less;
  - (b)  $\frac{1}{2}$  per centum of the principal sum secured, where the sum secured is more than \$400,000;
- (2) being an equitable mortgage of movable property—
  - (a)  $\frac{1}{4}$  per centum of the principal sum secured, where the sum secured is \$100,000 or less;
  - (b)  $\frac{1}{2}$  per centum of the principal sum secured, where the sum secured is more than \$100,000.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(iv) Transfer or assignment of any bond, debenture or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment.

Stamp Duty: 1/10th per centum of the principal sum secured.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(v) Reconveyance, release, discharge, surrender, resurrender, or renunciation of any mortgage, bond, debenture or covenant or of any money by warrant of attorney to enter up judgment.

Stamp Duty: 1/20th per centum of the principal sum secured.

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Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(vi) Certificate of satisfaction.

Stamp Duty: 1/100th per centum of the principal sum secured.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(vii) Mortgage executed in pursuance of an agreement duly stamped under this Head.

Stamp Duty: \$10.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(viii) Where further money is added to the money already secured.

Stamp Duty: The same duty as a principal security for such further money.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

### Exemption

- (a) Securities, other than debentures, created, constituted or issued under a trust deed or other instrument dutiable under Head 41.
- (ab) Transfer or assignment of a mortgage for consideration equal to the amount outstanding or the market value of the debt.
- (b) Any charge—
  - (i) taken by either—
    - (aa) an individual resident outside Bermuda or a company, partnership or other body formed outside Bermuda; or
    - (bb) an exempted company; or
    - (cc) an institution licensed as a bank under the Banks and Deposit Companies Act 1999,

to secure financial accommodation:

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Provided that such accommodation was not granted for the purpose of, or in connection with, the acquisition by any person of land, or an interest in land, situate in Bermuda; and

(ii) registered under section 55 of the Companies Act 1981,

not being a charge taken on the assets of a local company as defined in the latter Act.

(See also sections 58 and 60)

*[Head 31 amended by 1992:4 effective 19 February 1992; para (b)(i)(cc) amended by BR81/1999 effective 1 January 2000; amended by 2005:6 s.7(3) & Sch 3 effective 1 April 2005; Head 31, paragraph (ab) inserted by 2012 : 11 s. 2 effective 1 April 2012]*

MUTUAL FUNDS: (See Part VIII and Head 27.)

### Head 32.

Nature of instrument: NOTARIAL ACT of any kind (except a protest on a bill of exchange or promissory note).

Stamp Duty: \$25.

Time for Stamping: Before execution.

Person Liable: The notary.

Exemption

The certificate or other act of a notary given or performed outside Bermuda.

*[Head 32 amended by 1992:4 effective 19 February 1992; by 2000:8 s.4 & Sch effective 18 February 2000; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

### Head 33.

Nature of instrument: PARTITION OR DIVISION—Instruments effecting.

Stamp Duty: \$100 together with ad valorem duty as on a conveyance on sale on any sum paid or agreed to be paid for equality.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(See also section 61)

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*[Head 33 amended by 2005:6 s. 7(2) & Sch 2 effective 1 April 2005]*

### Head 34.

Nature of instrument: PARTNERSHIP instrument.

Stamp Duty: \$100.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

Exemption

Articles of partnership stampable under section 10 of the Exempted Partnerships Act 1958 at the rate fixed under Head 28.

*[Head 34 amended by 1992:4 effective 19 February 1992]*

### Head 35.

Nature of instrument: POLICY OF INSURANCE or RE-INSURANCE.

(1) LIFE POLICY not being an exempt policy and ANNUITY sold by a person carrying on insurance business.

Stamp Duty:

- (i) where the amount insured does not exceed \$20,000 and premiums are collected weekly, \$10;
- (ii) in all other cases, \$25.

Time for Stamping: 90 days after execution.

Person Liable: The insurer.

(2) EXEMPT POLICY.

Stamp Duty: Nil.

(3) ACCIDENT OR HEALTH POLICY.

Stamp Duty:

- (i) where the policy is non-renewable, is written for a term less than ten days and insures more than four persons, \$25;

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- (ii) where the policy is non-renewable, is written for a term less than ten days and insures one person only, 1% of the amount for which the receipt is given rounded up to the nearest cent;
- (iii) in all other cases, \$10 for each person insured.

Time for Stamping: 90 days after execution.

Person Liable: The insurer.

- (4) POLICIES of any kind not being specifically described.

Stamp Duty: 1 per centum of the first premium rounded up to the nearest cent.

Time for Stamping: 90 days after execution.

Person Liable: The insurer.

Exemption

- (a) Letter of cover or engagement to issue a policy of insurance:

Provided that unless such letter of cover or engagement bears the stamp prescribed in paragraphs (1) to (4) above for such policy nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.

- (b) A policy of marine or air cargo insurance on a cargo in transit to Bermuda.

(See also Part X)

*[Head 35 amended by 1992:4 effective 19 February 1992]*

Head 36.

Nature of instrument: POWER OF ATTORNEY for any purpose whatever or revocation thereof.

Stamp Duty: \$25

Time for Stamping: 30 days after execution.

Person Liable: The person executing.

Exemption

Power of attorney for appointing a proxy to vote at a specified meeting or revocation thereof.

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*[Head 36 amended by 1992:4 effective 19 February 1992]*

Head 37.

Nature of instrument: PROMISSORY NOTE of any kind whatsoever (except a bank note), if drawn, or expressed to be payable, or actually paid or endorsed, or in any manner negotiated, within Bermuda.

Stamp Duty: 1/30th per centum of the amount promised.

Time for Stamping: If made within Bermuda, 7 days after execution. If made out of Bermuda, in accordance with section 30.

Person Liable: See Part VI.

Exemption

A promissory note—

- (a) issued by or in favour of an exempt undertaking or its nominees.
- (b) issued by or in favour of the trustees of a trust or settlement which is not resident in Bermuda for the purposes of the Exchange Control Regulations 1973.

*[Head 37 amended by 2000:8 s.4 & Sch effective 18 February 2000]*

Head 38.

Nature of instrument: PROTEST of any bill of exchange or promissory note.

Stamp Duty: nil.

*[Head 38 amended by 1992:4 effective 19 February 1992]*

PROXY: (See Power of Attorney)

Head 39.

Nature of instrument: RELEASE OR RENUNCIATION of any property or of any right or interest in any property—

- (i) Upon sale.  
(See conveyance on sale)
- (ii) By way of security.  
(See mortgage)
- (iii) By way of gift.

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(See Head 17)

- (iv) In any other case not otherwise specifically charged with duty.

Stamp Duty: \$200.

Time for Stamping: 30 days after execution.

Person Liable: Every person executing.

*[Head 39 amended by 1992:4 effective 19 February 1992; and by 2005:6 s.7(2) & Sch 2 effective 1 April 2005]*

Head 40.

Nature of instrument: SETTLEMENT.

- (1) INSTRUMENT OF SETTLEMENT OR AGREEMENT FOR SETTLEMENT.

Stamp Duty: \$250 plus—

- (i) in respect of Bermuda property (but so that in the valuation of that property there shall be deducted the value of any benefit conferred on a settlor's spouse and the cost of valuing any Bermuda property)—
- (aa) on the first \$50,000 of the amount or value, nil;
- (bb) on the next \$150,000 of the amount or value, 5 per centum;
- (cc) on the next \$800,000 of the amount or value, 10 per centum;
- (dd) thereafter, 15 per centum.

(For the purposes of this provision—

(1) an interest that a person has under a settlement by reason of being named as a discretionary object in that settlement (or any part of it) is not a benefit conferred on that person under that settlement; and

(2) the word "settlor", in relation to a settlement, includes any person by whom the settlement was made directly or indirectly, and in particular (but without prejudice to the generality of the preceding words) includes any person who has provided funds directly or indirectly for the purpose of or in connection with the settlement, or has made with any other person a reciprocal arrangement for that other person to make the settlement); and

- (ii) 1/10 per centum of the amount or value of other property.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

- (2) INSTRUMENT OF ADDITION to the corpus of any settlement.

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### Stamp Duty:

(i) (aa) up to the point at which the total amount of any duty paid on Bermuda property under this Head (whether in respect of an instrument of addition or otherwise) equals \$7,750 in the aggregate, 5 per centum of the amount or value of the Bermuda property added;

(bb) on the next \$500,000 of the amount or value of the Bermuda property added, 10 per centum;

(cc) thereafter, 15 per centum of the amount or value of the Bermuda property added; and

(ii) 1/10 per centum of the amount or value of other property added.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

### Exemptions

(a) Instrument settling real or personal property—

(i) on a charitable organization registered under the Charities Act 1978; or

(ii) in favour of charitable purposes which, in the Minister's opinion, by reason of—

(aa) their connection with Bermuda (being a connection mentioned in the instrument); and

(bb) their benefit to Bermuda,

warrant the instrument's exemption from duty.

(b) Any instrument within paragraph (1) or (2)—

(i) as respects only duty payable under this Head in relation to property (other than Bermuda property) settled in or added to a settlement on or after 22 July 1985;

(ii) as soon as duty amounting in the aggregate to \$7,500 has been so paid in relation to that settlement.

(c) Instrument of appointment relating to any property in favour of persons especially named or described as the objects of a power of appointment, where duty has been paid in respect of the same property upon the settlement creating the power or the grant of representation of any will or testamentary instrument creating the power.

(3) SETTLEMENT executed in pursuance of a duly stamped agreement for a settlement.

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Stamp Duty: \$2.

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

(See also Part VIII and, for Imported Settlements, see Head 6)

*[Head 40 amended by 1991:8 effective 20 February 1991; by 1995:13 effective 15 February 1995; by 1995:14 effective 27 February 1995; and by 2001:4 Sch effective 16 February 2001]*

SHARES: (See marketable securities)

UNIT TRUSTS: (See Part VIII and Head 27)

VALUATION: (See Appraisalment).

Head 41.

Nature of instrument: TRUST DEED or other instrument creating, constituting or providing for the issue of a foreign currency security.

Stamp Duty: \$1,000

Time for Stamping: 30 days after execution.

Person Liable: All persons executing.

*[Schedule amended by 2010 : 15 s. 2 effective 1 April 2010; amended by 2012 : 11 s. 2 effective 1 April 2012]*

[Assent Date: 5 March 1976]

[This Act was brought into operation on 1 April 1976 by GN 111/1976]

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*[Amended by:*

1976 : 17

1977 : 35

1979 : 5

1982 : 58

1982 : 79

1983 : 61

1984 : 36

1985 : 35

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SR&O 64 / 1976  
BR 61 / 1984  
BR 39 / 1985  
BR 42 / 1985  
BR 7 / 1986  
1988 : 14  
1990 : 15  
1991 : 8  
BR 47 / 1991  
1992 : 4  
1992 : 70  
1993 : 10  
1995 : 13  
1995 : 14  
1995 : 43  
1999 : 35  
BR 81 / 1999  
2000 : 8  
2001 : 4  
2005 : 6  
2006 : 4  
2008 : 15  
BR 20 / 2009  
BR 43 / 2009  
2009 : 43  
2010 : 15  
2012 : 11  
2013 : 24  
2015 : 38]