

Commencement: 20 January 1971



## CHAPTER 68

### STAMP DUTIES

QR 2 of 1971	QR 13 of 1976	Act 34 of 1982
QR 12 of 1971	QR 4 of 1977	Act 22 of 1984
QR 9 of 1972	QR 10 of 1978	Act 26 of 1988
QR 9 of 1974	QR 4 of 1978	Act 32 of 1989
QR 5 of 1975	QR 2 of 1979	Act 40 of 2006
		Act 2 of 2007
		Act 3 of 2009
		Act 36 of 2009
		Act 5 of 2016

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## STAMP DUTIES

**To provide for the imposition of stamp duties payable in respect of certain classes of instruments.**

### PART 1 – INTERPRETATION

#### 1. Interpretation

In this Act and in the Schedule thereto, unless the context otherwise requires –

Commission means the Vanuatu Financial Services Commission established by the Financial Services Commission Act [CAP 229];

Company” means:

- (a) a body corporate that is incorporated, formed or constituted under the Companies Act No. 25 of 2012 or by other laws of Vanuatu or another country; or
- (b) an international company incorporated or continued under the International Companies Act [CAP 222];

“Controller” means the Controller of Stamp Duties appointed under section 2(1);

“duty” means the stamp duty for the time being chargeable by law;

easement has the same meaning as in the Land leases Act [CAP 163];

“executed” means signed by any one or more of the parties thereto or, with reference to instruments under seal, means signed and sealed;

“execution” means signature by any one or more of the parties thereto or, with reference to instruments under seal, means signature and sealing;

“instrument” includes every written document;

“Minister” means the Minister responsible for finance;

mortgage includes a charge on property for securing money or money’s worth;

mutual fund has the same meaning as in the Mutual Funds Act No. 38 of 2005.

“person primarily liable” in respect of any instrument or matter means the person who comes within the description specified in the column of the Schedule to this Act headed “persons primarily liable” in respect of such instrument or matter;

has the same meaning as in the Land Leases Act [CAP 163];

property includes all property whether real or personal;

restrictive agreement has the same meaning as in the Land Leases Act [CAP 163].

“seal” means, for the purposes of section 3, a seal of any description which has been approved by the Minister;

“settlement” means any instrument, whether voluntary or upon any good and valuable consideration, other than a bona fide pecuniary consideration, whereby any property

whatsoever is settled or agreed to be settled, and includes the trust instrument of a unit trust scheme;

“transfer on sale includes every document and every decree, certificate or order of any court or of any judge whereby any property or any estate or interest in any property upon the sale thereof is transferred to or vested in a purchaser or any other person on his behalf or by his direction;

unit has the same meaning as in the Unit Trust Act No.36 of 2005.”

unit trust scheme has the same meaning as the Unit Trust Act No. 36 of 2005.

## **PART 2 – ADMINISTRATION AND GENERAL PROVISIONS**

### **2. Controller of Stamp Duties and other officers**

- (1) There shall be a Controller of Stamp Duties who shall be charged with the administration of this Act and the chief control of all matters relating to the duties imposed by this Act.
- (2) There shall be deputy controllers, official valuers and such other officers as may be found necessary for the administration of this Act.

### **3. Controller’s seal and its effect**

There shall be a seal called the Controller’s seal which may be impressed on any instrument to denote that all duty and penalty duty to which any such instrument is liable has been paid and any instrument which is so impressed with the Controller’s seal shall be deemed to have been duly stamped for all purposes whatsoever.

### **4. Instruments on which duty shall be charged, persons liable for payment of duty and recovery thereof**

- (1) Subject to the exemptions contained in the Schedule, there shall be raised, levied, collected and paid to the Controller for the revenue of the Commission upon and in respect of the several instruments specified in the said Schedule, the several duties specified therein, the payment of such duties being denoted in the manner provided in section 3
- (2) All duty and penalty duty payable under this Act shall from and after the day on which the same become due and payable be deemed to be debts due to the Commission from every person liable to the payment of the same and may be recovered in any court of competent jurisdiction.
- (3) Every person to whom this Act applies who with respect to any instrument of the nature mentioned in the Schedule comes within the description specified in the column thereof headed "persons primarily liable" shall be personally liable to the Commission for the payment of the duty so chargeable on such instrument immediately upon the execution thereof and of any penalty duty which may become due and payable under the provisions of section 6
- (4) Where in the case of any instrument, two or more persons are liable for the payment of duty chargeable thereon, by virtue of the provisions of subsection (3), their liabilities shall be joint and several.

### **5. Duty and penalty duty recoverable by action**

All duty and penalty duty payable under this Act may, from and after the day upon which it shall become due and payable, be recovered in a court of competent jurisdiction at the suit of the Controller and upon judgment in favour of the Controller for payment of any duty or penalty duty, interest at the rate of 9 per cent per annum from the date upon which the duty and penalty duty first became due and payable down to the date of judgment may be ordered together with costs.

**6. Documents to be lodged with controller within 1 month after execution or receipt in Vanuatu**

- (1) Every instrument which by the provisions of this Act and the Schedule thereto is chargeable with duty shall, within 1 calendar month of its being executed within Vanuatu by any party thereto or in the case of its being executed outside Vanuatu within 1 calendar month after it has been first received in Vanuatu, be lodged with the Controller for assessment of duty and stamping.
- (2) Every instrument which by virtue of the provisions of subsection (1) should have been lodged with the Controller within 1 month of its execution in Vanuatu but has not been so lodged shall be liable in addition to the duty chargeable in accordance with the Schedule to this Act to penalty duty as follows –
  - a. where such document or instrument is lodged more than 1 month and not more than 3 months after execution or receipt in Vanuatu, as provided by subsection (1), as the case may be, penalty duty of 25 per cent on the amount of duty payable but in no case shall the penalty duty be less than VT3,000;
  - b. where such instrument is lodged later than 3 months after execution or receipt in Vanuatu, as provided by subsection (1), as the case may be, penalty duty of 50 per cent of the amount of the duty payable but in no case shall the penalty duty be less than VT5,000; and such penalty duty shall be denoted on the instrument in the same manner as the duty payable thereon:

Provided that the Controller may on good cause shown at any time waive remit or reduce any penalty duty payable under this section.

- (3) The penalty duty provided for by paragraph (a) of subsection (2) shall become due on the presentation of the instrument for stamping and the penalty duty provided for by paragraph (b) of subsection (2) shall, whether the instrument is presented for stamping or not, become due on the expiration of 3 months after the execution of the instrument or, in the case of an instrument first executed out of Vanuatu, on the expiration of 3 months after it has been first received in Vanuatu.

**7 Controller to assess duty**

- (1) If an instrument is lodged with the Controller for assessment of duty, the Controller is to state whether it is liable to duty and if he or she is of the opinion that:
  - (a) it is not liable to duty, he or she is to have the Controller's seal and the particular stamp on the instrument, denoting that it is not so liable; or
  - (b) it is liable to duty or penalty duty, he or she is to assess the duty or penalty duty with which it is in his or her opinion chargeable and, on payment of the amount so assessed, is to have the Controller's seal and a particular stamp on the instrument, denoting the amount of duty or penalty duty so paid.
- (2) In the case of a transfer of:

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- (a) a lease instrument - a valuation must be made by the Principal Valuation Officer or his or her delegate and submitted to the Controller to assist the Controller in assessing the duty;
  - (b) shares in a company which has interest in land in Vanuatu - a valuation must be made by the Principal Valuation Officer or his or her delegate and submitted to the Controller to assist the Controller in assessing the duty.
- (3) The Principal Valuation Officer or his or her delegate in providing a valuation under subsection (2) is to provide any other documents as may be requested by the Controller.
  - (4) The cost of valuation is to be paid by the purchaser unless otherwise agreed by both parties.
  - (5) For the purpose of this section "Principal Valuation Officer" means the person employed by the Public Service Commission as the Principal Valuation Officer.
  - (6) The Controller's assessment of duty under this section is considered as final despite any other provisions in any other Act.

**8. Instruments to be separately charged with duty in certain cases**

- (1) Except where express provision is made to the contrary by any law, an instrument containing or relating to several distinct matters is to be separately and distinctly charged with duty in respect of each of such matters as if each matter were expressed in a separate instrument.
- (2) An instrument made for more than one consideration is to be charged with duty in respect of each such consideration according to the rate with which each is chargeable as though each consideration were expressed in a separate instrument.

**9. Circumstances affecting duty to be set forth in instruments**

- (1) All the facts and circumstances affecting the liability of any instrument to *ad valorem* duty or the amount of the *ad valorem* duty with which it is chargeable are to be fully and truly set forth in such instrument.
- (2) The provisions of subsection (1) shall not prevent the Controller exercising the powers conferred upon him by section 10 and, if the facts justify it, charging or assessing a greater amount of duty than would appear to be chargeable or assessable by reference to the language and contents of such instrument.

**10. Controller may call for evidence**

- (1) The Controller may, with reference to any instrument, require to be furnished with evidence on oath or otherwise as he deems necessary in order to show to his satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty or the amount of the duty chargeable thereon are fully and truly set forth therein, and may refuse to proceed with any assessment of duty until such evidence has been furnished accordingly.
- (2) No oath, affidavit or statutory declaration made in pursuance of this section shall be used against any person making the same in any proceeding whatsoever except in an enquiry as to the duty with which the instrument to which it relates is chargeable and, except as provided by section 11, every person by whom any such oath, affidavit or statutory declaration is made shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any fine, forfeiture or disability he

may have incurred by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

**11. Penalty for not fully setting forth the facts**

Every person who with intent to defraud the revenue –

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; 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;

shall, in addition to his liability for the amount of duty short-paid by reason of any such fraudulent act as aforesaid, commit an offence punishable upon conviction by a fine not exceeding VT1 million or by imprisonment for a term not exceeding VT2 years, or by both such fine and imprisonment.

**12. Money in foreign currency to be valued**

Where an instrument is chargeable with *ad valorem* duty in respect of any money in any currency other than Vatu such duty shall be calculated on the value of such money in Vatu according to the Reserve Bank rate of exchange on the day of the date of the instrument.

**13. Marketable securities to be valued**

Where an instrument is chargeable with *ad valorem* duty in respect of any marketable security such duty shall be calculated on the average value according to the best evidence which can be obtained of the security on the day of the date of the instrument.

**14. Effect of statement of value**

- (1) Where an instrument contains a statement of current rate of exchange or quoted price or average value and is stamped in accordance with such statement it is, so far as regards the subject matter of such statement, to be deemed duly stamped.
- (2) If such statement is proved to be untrue, the deficient duty and penalty duty may be recovered.

**15. Duty to be capable of assessment and paid when instrument lodged; provision for cases of dispute**

- (1) No instrument shall be deemed lodged with the Controller for assessment of duty unless the duty payable on it is capable of being at once assessed and until the amount of duty so assessed is paid.
- (2) Subject to section 3 of the Limitations Act [CAP 212], the Controller may take action to recover a deficient duty and penalty duty.

**16. Terms on which unstamped or insufficiently stamped instruments may be received in evidence**

On the production of an instrument chargeable with stamp duty, which is unstamped or insufficiently stamped, as evidence in any civil proceedings in any court, the instrument may upon payment to the court or the registrar thereof of the amount of the unpaid duty and the penalty duty (if any) payable by law, be received in evidence saving all just exceptions on other grounds.

**17. Instrument to be transmitted to controller for stamping**

Upon payment of any duty or penalty duty under the provisions of section 16, the court or the registrar shall detain and immediately transmit to the Controller the instrument together with the duty and penalty duty so paid thereon and the payment thereof shall be denoted on such instrument accordingly.

**18. When evidence of contents of lost unstamped documents may be given**

- (1) If any instrument chargeable with duty and which may legally be stamped after execution is lost before the same is stamped, secondary evidence may be given of such instrument and of the contents thereof in any court, but the person adducing such evidence shall first pay to the court or the registrar thereof such unpaid duty and penalty duty as the judge or magistrate shall assess to be the duty and penalty duty which would be payable on such instrument were the instrument itself tendered in evidence.
- (2) If such duty and penalty duty are not paid on assessment being made as aforesaid the evidence shall be rejected.

**19. Instruments not duly stamped inadmissible**

Except as aforesaid, no instrument executed in Vanuatu or, wherever executed, relating to any property situate or to any matter or thing done or to be done in any part of Vanuatu shall in any civil proceedings be pleaded or given in evidence or admitted to be good, useful or available in law or equity unless it is duly stamped in accordance with the law in force at the time when it was first executed.

**20. Provisions as to instruments executed out of Vanuatu**

- (1) No instrument executed out of Vanuatu and which by the law of the country in which it was executed is inadmissible in evidence in such country by reason of not having been stamped shall be for such reason inadmissible in evidence in Vanuatu unless it is proved that such instrument is by the statute law of such country expressly made void if made or executed without being stamped.
- (2) Nothing herein shall be deemed to render valid in Vanuatu any instrument executed out of Vanuatu which is void by the law of the place where the same was executed for any other reason than that the same was not duly stamped.

**21. Instruments may be impounded until duty paid**

Any instrument lodged with the Controller for assessment of duty or otherwise may be impounded and detained until the duty or penalty duty or both have been paid in respect thereof.

**22. Procedure to be followed in cases of doubt or dispute**

- (1) If the Controller is in any doubt as to the liability of any instrument to duty of the amount to be assessed thereon, or if the person lodging the instrument shall give notice in writing to the Controller within 1 month of being informed of the duty assessed that he objects to the assessment and giving shortly the grounds of his objection, the question shall, upon payment of the duty so assessed, be summarily referred to the Supreme Court and that court may for the purpose require the Controller to state and sign a case setting forth the question or questions upon which the opinion of the court is required and the assessment made by him

Provided that the Controller may in his discretion extend the time for giving notice of objection to an assessment.

- (2) The Controller shall thereupon state and sign a case accordingly and deliver the same to the appellant by whom it is required and on application such case may be set down for hearing in the Supreme Court, whose decision thereon shall, except upon questions of law or questions of mixed fact and law, be final.
- (3) Upon the hearing of such case, due notice of which is to be given to the Controller, the court shall determine the question or questions submitted and if the instrument in question is in the opinion of the court –
  - (a) chargeable with any duty the court shall state the duty with which it is chargeable and shall order the payment thereof and may order the payment of interest thereon and costs if it shall think fit; or
  - (b) not chargeable with any duty or chargeable with less duty than the duty assessed by the Controller, the court shall state the duty, if any, payable and shall order the refund of the duty wrongly paid together with interest thereon and may if it shall think fit order the payment of costs by the Controller.
- (4) Notwithstanding the provisions of subsection (1) the Controller may in his discretion waive payment of duty assessed in whole or in part pending the determination by the court of the question in doubt or dispute.
- (5) In the hearing of appeals against assessments of duty by the Controller, the onus of proving that the assessment is excessive shall lie upon the person objecting to the assessment.
- (6) The Judicial Committee may make rules governing the procedure to be followed on the making of objections and the hearing of appeals against assessments generally.

#### **22A Refund of duty on lease title**

A person who has paid duty on the transfer of a lease title that has been registered may not request a refund of monies paid for that duty.

#### **23. Deficient duty may be recovered**

- (1) If it appears to the Controller that an instrument has been erroneously assessed with an insufficient amount of duty or penalty duty, he may at any time within 3 years after the payment of duty call upon the person who lodged the same to pay the remaining part of the amount with which in his opinion such document or instrument was properly chargeable at the time it was lodged and assessed for duty.
- (2) Subject to subsection (3), the amount of duty required to be paid by the Controller under the provisions of subsection (1) shall be a debt due to the Government and shall be recoverable from such person and in such manner as provided by section 4 and section 5, respectively.
- (3) Every person who is dissatisfied with a supplementary assessment of duty by the Controller as provided by subsection (1) may object to the same and the provisions of section 22 and of any rules made thereunder shall apply *mutatis mutandis*.
- (4) Any instrument so alleged by the Controller to be insufficiently charged with duty shall, pending payment of the supplementary duty or the determination of an objection to the assessment, be as good and available for all purposes as though full duty and penalty duty had been paid thereon.

#### **23A Controller to refund the monies paid in excess**

If it is proved to the satisfaction of the Controller that a person has paid duty or penalty duty in excess of the amount of the duty or penalty duty payable by that person, the Controller must subject to section 51 refund to that person the amount so paid in excess.

### **PART 3 – SPECIAL PROVISIONS**

#### **Exchange**

##### **25. Instruments of exchange to be deemed transfers on sale**

- (1) Any instrument by which any property is legally or equitably transferred to or vested in any other person by way of exchange shall be deemed to be a transfer on sale of that property and stamp duty shall be assessed and paid thereon accordingly.
- (1A) Any property equitably transferred or vested for a trust or an international company or a local company to any other person under subsection (1), is to include the interests of beneficiaries of a trust and shares of beneficial owners of an international company or a local company.
- (1B) For the purpose of subsection (1A), “beneficial owner” means an individual recognized in equity as the owner of something because the use and title belongs to that person, even though legal title may belong to someone else.”
- (2) In all the provisions of this Act relating to transfer on sale every reference to sale or purchase shall be construed as extending to exchanges accordingly.
- (3) Whenever land or any interest in land constitutes the consideration or part of the consideration for a transfer on sale, the value of that land or interest shall be deemed and taken to be the capital value thereof or any other value which may be stated as the value thereof in the transfer or in any agreement or other instrument executed by any party to the transfer as preliminary thereto or otherwise in relation thereto, whichever value is the greatest.
- (4) If the value so stated in any such transfer, agreement or instrument includes without apportionment the value of any property other than the said land or interest therein, the Controller shall apportion the said value in such manner as he shall think fit between such land or interest and such other property, and stamp duty shall be assessed and payable accordingly.
- (5) The Controller may require any party to any such transfer on sale to produce to him any such agreement or instrument as is referred to in subsection (3) or to make a statutory declaration disclosing the existence and contents of any such agreement or instrument, and until such requirement is complied with to the satisfaction of the Controller he may impound the transfer on sale.
- (6) Whenever any land or interest in land constituting the consideration or part of the consideration for a transfer on sale is not separately valued, the Controller may cause a valuation of that land or interest to be made for the purposes of this section and stamp duty shall be assessed and payable by reference to the valuation so made.

#### **Leases**

##### **26. Leases – how to be charged in respect of produce, etc.**

Where the consideration or any part of the consideration for which any lease is granted or agreed to be granted does not consist of money but of any produce or other goods, the duty is to be calculated on the value of such produce or goods at the average market price thereof on the day of the date of the instrument.

**27. Duty not to be charged on penal rents**

A lease is not to be charged with duty in respect of any penal rent or increased rent in the nature of a penal rent thereby reserved or by reason of being made in consideration of the surrender or abandonment of any existing lease of or relating to the same subject matter.

**28. Leases – how to be charged in respect of royalty or varying rentals**

- (1) Where the consideration for a lease is wholly or partly a royalty payable either in money, produce or goods or any other consideration whatsoever other than a fixed sum of money, then, if it is stipulated that the amount of such money or the value of such produce or goods is to amount at least to or not to exceed a given sum or where the lessee is specially charged with or has the option of paying after any permanent rate of conversion, the yearly amount of such money and value of such produce or goods is to be estimated at such given sum or according to such given rate.
- (2) In the case of a lease at a specified rental for a specified period or series of periods with provision for the rent subsequent to the last such period being fixed by valuation or otherwise, the duty shall be assessed on the highest fixed rental specified in such lease, and, if the new rental when fixed by valuation or otherwise as aforesaid exceeds the rental upon which the duty was originally assessed, duty on the excess shall then be payable and the instrument of lease shall then be presented for assessment accordingly in like manner and subject to the like provisions as to fine and otherwise as in the case of the original assessment.
- (3) Where there is no possible means of discovering what is the maximum value of the consideration dealt with under a lease then, subject to the provisions of subsection (2), the duty payable in respect of such lease shall be a fixed sum of VT20,000.

**29. Duty not to be charged on improvements**

No lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty and in further consideration either of an agreement by the lessee to make or of his having previously made any substantial improvement of or any addition to the property leased to him or of any covenant relating to the matter of the lease is to be charged with any duty in respect of such further consideration.

***Mortgages***

**30. Duty payable on transfers of mortgages, on appointment of trustees and in other cases**

- (1) The following provisions shall apply in assessing the amount of stamp duty payable in respect of the transfer of mortgages in the cases hereinafter mentioned –
  - a. where any transfer of a mortgage or of mortgages is made pursuant to the appointment of a trustee or of trustees under any will, settlement or other instrument or by order of the court or a judge thereof, the duty on such transfer shall be VT5,000 unless the substantive duty on such transfer would be less than VT5,000 in which case the substantive duty only shall be payable;
  - b. where any transfer of a mortgage or of mortgages discloses that such transfer is made or executed only by way of completion or confirmation of title and for no other reason or where such transfer discloses that no benefit accrues to the person in whose favour such transfer is made or executed or that no greater benefit accrues than such person had or was entitled to have by law or by virtue of some other instrument, the duty on such transfer shall be VT5,000 unless the

substantive duty on such transfer would be less than-VT5,000 in which case the substantive duty only shall be payable

- (2) Nothing in this section shall be deemed to exempt any transfer of a mortgage from liability to any other duty to which it is or may be liable under this Act or any other law relating to stamp duties.

### **Settlements**

#### **31. Duty on settlements of security**

- (1) Where any money which may become due or payable on any security not being a marketable security is or agreed to be settled, the instrument whereby such settlement is made or agreed to be made shall be charged with *ad valorem* duty in respect of such money.
- (2) Where any money which may become due or payable on any security being a marketable security is settled or agreed to be settled, the instrument whereby such settlement is made or agreed to be made shall be charged with *ad valorem* duty on the value of such security.

#### **32. One only of several instruments to be charged with *ad valorem* duty**

- (1) Where several instruments are executed for effecting the settlement of the same property one only of such instruments is to be charged with *ad valorem* duty and the remaining instrument or instruments may be impressed with the Controller's seal to denote that it is or they are not liable to duty.
- (2) A settlement made in pursuance of any previous agreement or instrument upon which any *ad valorem* duty has been paid in respect of the same property shall not be charged with any *ad valorem* duty but may be impressed with the Controller's seal denoting that the instrument of settlement is not liable to duty.

#### **33. Mortgage debt or charge to be deducted when assessing duty or value of property settled**

- (1) Where the property comprised in any deed of settlement is subject to any mortgage debt or certain charge annual or otherwise created prior to the execution of the deed of settlement such deed shall be liable to the duty payable on the amount or value of such property after a deduction has been made of the amount of such mortgage debt or charge.
- (2) No such deduction shall be made unless the deed of settlement is expressly made subject to such mortgage debt or charge and the amount or nature thereof is stated in such deed of settlement or in a schedule thereto.
- (3) Where such charge consists of money payable periodically for a definite period or periodically in perpetuity or for an indefinite period or periodically during any life or lives, the amount of such charge in respect of which such deduction shall be made shall be calculated in the same manner as provided by section 39 in the case of the consideration on conveyances on sale payable periodically.

### **Transfers of Shares**

#### **34. Transfers of shares not to be registered unless duly stamped**

- (1) No transfer of any share or shares of or in the stock or funds or debentures of any corporation, company or society whatsoever shall be registered, recorded or entered

in the books of such corporation, company or society in Vanuatu unless such transfer is duly stamped.

- (2) No such transfer shall be valid unless and until it is duly stamped.
- (3) Every person who registers or causes to be registered any such transfer contrary to this section shall commit an offence punishable upon conviction by a fine not exceeding VT5 million or by imprisonment for a term not exceeding 5 years, or by both such fine and imprisonment.
- (4) A transfer of shares or equitable interest or beneficial ownership in an International Company incorporated under the International Companies Act [CAP 222] or any other Act that is a shareholder in a Vanuatu local company that has:
  - (a) a dealing in Land; or
  - (b) a leasehold title; or
  - (c) a property,

in Vanuatu, cannot be registered, recorded or entered in the books of such corporation, company or society in Vanuatu unless the transfer is duly stamped.

### **35. Exchange of shares to be dutiable as if sale of shares**

A transfer of shares by way of exchange for shares or for any other property shall be chargeable with the same *ad valorem* duty in respect of the consideration for the transfer as if the transfer were by way of sale.

### ***Unit Trust Schemes***

### **36. Provisions when property becomes trust property after execution of trust instrument of unit trust scheme**

Upon every occasion after the execution of the trust instrument of a trust scheme on which any property becomes trust property represented by units under the scheme, the trustee shall, not later than 1 month after the property so becomes trust property, furnish to the Controller a statement of the property and lodge with the Controller therewith the trust instrument to be duly stamped with *ad valorem* duty or additional *ad valorem* duty as if it were a new and separate instrument whereby that property was made trust property, bearing date on the day on which the property was made trust property:

Provided that this section shall not apply where the property is or results from the investment of, proceeds of the sale, exchange or redemption of, or is bonus capital distributed in respect of, other trust property represented by units under the scheme.

### **37 Duty not chargeable on certain instruments of a unit trust scheme**

Duty is not chargeable on an instrument of transfer of a unit under a unit trust scheme if the scheme:

- (a) has no leasehold interest in a land in Vanuatu; and
- (b) does not carry on business with any person resident in Vanuatu other than with a company incorporated under the International Companies Act [CAP 222].

### **37A Duty not chargeable on certain instruments of unit trust scheme**

Despite anything in this Act, duty is not chargeable on an instrument of transfer of a unit under a unit trust scheme if that scheme:

- (a) has no leasehold interest in a land in Vanuatu; and
- (b) does not carry on business with any person resident in Vanuatu other than with a company incorporated under the International Companies Act [CAP 222].”

### ***Transfer on Sale***

#### **39. How *ad valorem* duty to be calculated**

- (1) Where the consideration or any part of the consideration for a transfer on sale consists of –
  - (a) any marketable security, such conveyance is to be charged with *ad valorem* duty in respect of the value of such security;
  - (b) any security not being a marketable security, such transfer is to be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest;
  - (c) money payable periodically for a definite period so that the total amount to be paid can be previously ascertained, such transfer is to be charged in respect of such condition with *ad valorem* duty on such total amount;
  - (d) money payable periodically in perpetuity or for any indefinite period not terminable with life, such transfer is to be charged in respect of such 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 15 years next after the day of the date of such instrument;
  - (e) money payable periodically during any life or lives, such transfer is to be charged in respect of such consideration with *ad valorem* duty on the amount which will or may according to the terms of sale be payable during the period of 9 years next after the day of the date of such document or instrument.
- (2) No transfer on sale chargeable with *ad valorem* duty in respect of periodical payments and containing also provision for securing such periodical payments is to be charged with any duty whatsoever in respect of such provision and no separate document or instrument made in any such case for securing such periodical payments is to be charged with any higher duty than VT3,000.

#### **40. Duty on transfer in consideration of a debt or subject to future payment**

- (1) Where 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 marketable security, whether being or constituting a charge or encumbrance upon the property or not, such debt, money or marketable security 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.
- (2) Where there is more than one owner of property and one of such owners sells his share or interest therein in consideration of any such debt or subject as mentioned in subsection (1), then the duty shall be assessed and paid on or in respect of the share or interest of the vendor in such debt money or marketable security as aforesaid and any further or other consideration, if any, and not on the full amount or value of such debt, money or marketable security, as the case may be.

**41. Duty to be charged where property is transferred by separate instruments**

Where any property has been contracted to be sold for one consideration for the whole and is conveyed to the purchaser in separate parts or parcels by different instruments or transfers, the consideration is to be apportioned in such manner as the parties think fit so that a distinct consideration for each separate part or parcel is set forth in the transfer relating thereto and such transfer is to be charged with *ad valorem* duty in respect of such distinct consideration.

**42. Duty to be charged where property transferred separately on distinct parts of consideration**

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 parts or parcels by separate instruments or transfers to the persons by or for whom the same was purchased for distinct parts of the consideration, the transfer of each separate part or parcel is to be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

**43. Where property transferred direct to sub-purchaser or sub-purchasers**

Where a person having contracted for the purchase of any property, but not having obtained a transfer thereof, contracts to sell the same or any part or parts thereof to any other person or persons, and the property or any part or parts thereof is or are in consequence transferred directly from the first vendor of the property to a sub-purchaser or sub-purchasers, the transfer or transfers shall, for the purposes of this Act, be deemed to be a transfer or transfers on sale of the estate or interest in the property of each purchaser and sub-purchaser of the property, and shall be chargeable with *ad valorem* duty in respect of the consideration moving from the purchaser and each sub-purchaser, respectively. In any such case the original purchaser and each sub-purchaser shall respectively be liable to pay the *ad valorem* duty payable in respect of the consideration moving from him, and such duty may be recovered from him by the Controller or the last sub-purchaser who pays the same.

**44. Duty on transfer on sale when consideration cannot be determined**

When the value of the consideration or any part of the consideration for a transfer on sale of any property is in the opinion of the Controller incapable of estimation and there is no express provision in this Act applicable to the case, the Controller may assess the value of such consideration or such part thereof at such sum as he thinks fit but so that the duty or additional duty payable in respect of such valuation shall in no case exceed VT5,000 and, notwithstanding the provisions of section 22, the assessment so made by the Controller shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

**45. Certain agreements chargeable as transfers on sale**

- (1) Any contract or agreement –
- (a) for the sale of any equitable estate or interest in any property whatsoever; or
  - (b) for the sale of any estate or interest in any property except –
    - (i) property situated out of Vanuatu;
    - (ii) goods, livestock, wares or merchandise;
    - (iii) shares, stock or marketable securities;
    - (iv) any ship or vessel or any part, interest, share, or property of or in any ship or vessel;

shall be charged with the same *ad valorem* duty to be paid by the purchaser as if it were an actual transfer on sale of the estate, interest or property contracted or agreed to be sold.

- (2) Where duty has been paid in conformity with the provisions of subsection (1), the transfer made 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 Controller shall upon application denote upon the transfer the payment of *ad valorem* duty on the contract or agreement upon production thereof and that the transfer is accordingly not liable to duty.

#### **PART 4 – SUPPLEMENTARY PROVISIONS**

##### **46. Controller may inspect books, registers, etc.**

- (1) Any person having in his custody or possession any books, records, registers, papers or other documents the inspection whereof may, in the opinion of the Controller, tend to secure the payment of any duty under this Act or to the proof or discovery of any fraud or omission in relation to any duty, shall at all reasonable times, notwithstanding anything to the contrary in any other Act or in any law or rule of law, permit any person thereunto authorised by the Controller to inspect all such documents and to take such notes, copies or extracts thereof or therefrom as he may deem necessary, without fee or reward.
- (2) Any person who refuses to permit or obstructs such inspection or taking of notes, copies or extracts shall commit an offence punishable upon conviction by a fine not exceeding VT300,000 or by imprisonment for a term not exceeding 12 months, or by both such fine and imprisonment.
- (3) Where any instrument which ought to be but is not stamped or is insufficiently stamped is produced for inspection under this section, it may be impounded and delivered to the Controller, who may retain the instrument until the duty or penalty duty or both have been paid.
- (4) The Controller may impound any instrument which ought to be but is not stamped or which is insufficiently stamped and retain the same until the duty or penalty duty or both have been paid.

##### **47. Wilful evasion of duty**

Every person who wilfully and fraudulently evades or conspires to evade, or assists another person to evade, payment of duty to which any instrument is liable under this Act shall commit an offence punishable upon conviction by a fine not exceeding VT5 million or imprisonment for a term not exceeding 2 years, or by both such fine and imprisonment.

##### **48. Adhesive stamps not to be used**

For the avoidance of doubt, it is hereby declared that duty chargeable under this Act shall not be payable by the use of adhesive stamps.

##### **49. Rules**

The Minister may on the advice of the Commission from time to time make rules for the due administration of this Act and for the conduct of all persons concerned in such administration and generally for carrying this Act into effect.

##### **50. Regulations**

- (1) The Minister may make Regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

## 51 Commission to pay moneys due by Controller to persons under the Act

The Commission must pay to a person any moneys payable to that person by the Controller under the Act.

### SCHEDULE

(section 4(l))

Nature of instrument	Amount of Duty	Persons primarily liable
<p><b>BEARER SECURITIES</b></p> <p>(to be stamped before issue) Share warrants, stock certificates, debentures or other securities of a company or society issued to bearer.</p>	<p>Duty of an amount equal to 3 times the amount of the <i>ad valorem</i> which would be chargeable on a deed or other document transferring the share or shares, stock, debenture or other security if the consideration for the transfer were the then value of such share or shares, stock, debentures or other security.</p>	<p>The company, corporation or society issuing the share warrant, stock certificate, debenture, or other securities to bearer, and the managing director, secretary and other principal officers of the company, corporation or society at the time of issue.</p>
<p><b>BILLS OF SALE</b></p>	<p>The like duty as in the case of a mortgage.</p>	<p>The grantor.</p>
<p><b>DECLARATION OF TRUST</b></p> <p>(1) Any instrument declaring that a person in whom property is vested as the apparent purchaser thereof is held by him in trust for the person or persons who have actually paid the purchase money therefor.</p> <p>(2) Any instrument declaring that the property vested in the person executing the same is or shall be held in trust for the person or persons mentioned therein – Upon the amount or value of such property –</p> <p>(a) where the property is marketable securities, for every VT10,000 and every part of VT10,000.</p> <p>(b) where the property is other than marketable securities, for every VT10,000 and every part of VT10,000.</p>	<p>VT5,000</p> <p>The person declaring the trust.</p> <p>VT25</p> <p>VT50</p> <p>The person declaring the trust.</p>	
<p><b>LEASES</b></p>		

Nature of instrument	Amount of Duty	Persons primarily liable
<p>Lease or agreement for a lease or any written document for the tenancy or occupancy of any lands –</p> <p>(1) Without any consideration by way of a premium –</p> <p>(a) where the term does not exceed 10 years, for every VT1,000 or part of VT1,000 of the yearly rental</p> <p>(b) where the term exceeds 10 years but does not exceed 21 years, for every VT1,000 or part of VT1,000 of the yearly rental</p> <p>(c) where the term exceeds 21 years for every VT1,000 or part of VT1,000 of the yearly rental</p> <p>(2) In consideration of a sum of money by way of premium without rent.</p> <p>(3) In consideration of a sum of money by way of premium and also of a yearly rent –</p> <p>(a) on the amount of the premium.</p> <p>(b) on the yearly rent.</p>	<p>VT10</p> <p>VT30</p> <p>VT20</p> <p>The like duty as on a transfer on sale.</p> <p>The like duty as on a transfer on sale.</p> <p>The like duty as on a lease.</p>	<p>The lessee or tenant.</p>
<p>Surrender of lease –</p> <p>(1) Without any consideration.</p> <p>(2) In consideration of a sum of money.</p>	<p>VT5,000</p> <p>The like duty on a transfer on sale.</p>	<p>The lessee.</p>
<p><i>Exception:</i> Any lease granted to a lessee in respect of any land of which the lessee was the registered owner on the 29th day of July, 1980 in the Register of Land Titles established by Joint Regulation No. 3 of 1930.</p>	<p>VT5,000</p>	
<p><b>MORTGAGE</b></p>		
<p>(1) Being the only or primary or principal security for the payment or repayment of money –</p> <p>(a) for every VT10,000 or part of VT10,000 principal moneys</p> <p>or</p> <p>(b) where such a mortgage secures further advances or moneys due on account current – for every VT10,000 or part of VT10,000 of the principal indebtedness at any time owing.</p>	<p>VT60</p> <p>VT60</p>	<p>The mortgagor.</p> <p>The mortgagor.</p>
<p>Where the principal indebtedness under such a mortgage at any time exceeds the amount covered by <i>ad valorem</i> duty already paid, the mortgage shall be liable to further duty as if it were a new instrument in respect of the amount of such excess.</p>		<p>The mortgagor.</p>
<p>Where the mortgagee or the mortgagor is an exempted bank or financial institution to which section 19(1) of the Banking Act, Cap. 63 applies a licensee under the International Banking Act [CAP 280] or a financial institution under the Financial Institutions Act [CAP 254], then stamp duty shall be charged upon the instrument at the</p>		<p>The mortgagor.</p>

Nature of instrument	Amount of Duty	Persons primarily liable
rate of VT5,000 in place of any <i>ad valorem</i> or other duty which would otherwise be chargeable.		
(2) Being a collateral, auxiliary or additional or substituted security or by way of further assurance where the principal or primary security is duly stamped.	VT5,000	The mortgagor.
(3) Transfer or assignment – for every VT10,000 or part of VT10,000 principal moneys owing.	VT10	The transferee.
(4) Reconveyance, release, or discharge of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured.	VT1,000	The mortgagor.
<i>Exemption:</i> The transfer of a mortgage or mortgages to or in trust for any corporation or body of persons associated solely for charitable purposes.		
<b>EASEMENT</b>	The like duty as on a transfer of immovable property on sale	The grantee
RESTRICTIVE AGREEMENT	VT3,000	The party of the agreement who is entitled to the benefit of it
PROFIT	VT3,000	The grantee
Release or discharge of an easement, restrictive Agreement, or profit		A person affected by the easement, restrictive agreement or profit as the case may be
<b>POWERS OF ATTORNEY</b>		
Upon every power or letter of attorney whether executed in or out of Vanuatu.	VT5,000	The person executing.
<b>TRANSFER OF PROPERTY</b> (other than any transfer otherwise specifically charged)		
(1) Transfer of movable property other than shares in or debentures of a company –		
(a) upon sale, for every VT10,000 or part of VT10,000 of the purchase or consideration money.	VT60	The transferee.
(b) otherwise than upon sale, for every VT10,000 or part of VT10,000 of the market value.	VT60	The transferee.
(1A) Transfer of shares in or debentures of a company		
(a) Transfer of a share in or debenture of a company having a leasehold interest in any land in Vanuatu –		
(i) upon sale, for every VT10,000 or part thereof of the purchase or consideration money	VT400	The transferee.
(ii) otherwise than upon sale, for every VT10,000 or part thereof of the market value of the share or debenture at the date of transfer	VT400	The transferee.

Nature of instrument	Amount of Duty	Persons primarily liable
<p>(b) Transfer of a share in or debenture of a company (other than a company referred to in subparagraph (a) of this paragraph) –</p> <p>(i) upon sale, for every VT10,000 or part thereof of the purchase or consideration money</p> <p>(ii) otherwise than upon sale, for every VT10,000 or part thereof of the market value of the share or debenture at the date of the transfer</p> <p>Exemption: An instrument transferring shares in a mutual fund, if that fund:</p> <p>(a) has no leasehold interest in any land in Vanuatu; and</p> <p>(b) does not carry on business with any person resident in Vanuatu other than a company registered under the International Companies Act[CAP 222].</p> <p>For the purpose of this paragraph – “land” includes any estate, any interest in or benefit to land, all things growing on land, houses, buildings, improvements and all other things on land, land beneath water, the seabed extending to the side of any offshore reef but no further and the subsoil thereof.</p>	<p>VT60</p> <p>VT60</p>	<p>The transferee</p> <p>The transferee</p>
<p>(2) Transfer of immoveable property –</p> <p>(a) upon sale otherwise than for a nominal consideration, for every VT10,000 or part of VT10,000 of the purchase or consideration money.</p> <p>(b) upon sale for a nominal consideration or upon transfer otherwise than by sale, for every VT10,000 or part of VT10,000 of the amount or value of the property transferred (as at the date of the execution of the instrument).</p>	<p>VT200</p> <p>VT200</p>	<p>The transferee</p> <p>The transferee</p>
<p>For the purpose of this paragraph “transfer of immovable property” includes the transfer upon sale or otherwise by any person of the rights vested in him in the capacity of alienator within the meaning of the Land Reform Act, Cap. 123 or a person substituted therefor.</p>	<p>VT5,000</p>	<p>The transferee.</p>
<p>(3) Transfer of property by which no change of the beneficial ownership thereof is effected –</p> <p><b>Provided that –</b></p> <p>(i) no instrument appointing any new trustee under any will, settlement or other instrument or any transfer to any devisee or any appointment under a deed or will not for valuable consideration or to any next-of-kin by any executor, administrator or trustee shall be liable to the duty hereby imposed for a transfer;</p> <p>(ii) nothing herein shall be deemed to exempt any instrument from liability to any other duty to which it is or may be liable under this Act or any other law relating to stamp duties.</p> <p><i>Exemption:</i></p>		

Nature of instrument	Amount of Duty	Persons primarily liable
<p>(a) Any instrument dedicating a road, street or free and perpetual right-of-way to the use of the public or dedicating or transferring to any municipality or other public authority land reserved as open space in a subdivision, and not containing any provision by which such instrument could otherwise become liable to duty.</p> <p>(b) Any transfer of property to or in trust for any corporation or body of persons associated solely for charitable purposes; and any instrument for declaring or defining the trust or for appointing new trustees in respect of such property</p> <p>(c) Any instrument transferring the property of a company formed or registered under French law as applicable to Vanuatu, to a company formed or registered under the Companies Act, Cap. 191 and where at the date of transfer the shareholders of both companies are identical.</p>		
<p><b>SETTLEMENTS</b></p> <p>Any instrument, whether voluntary or upon good or valuable consideration, other than a bona fide pecuniary consideration, whereby any property whatsoever is settled or agreed to be settled in any manner whatsoever –</p> <p>for every VT10,000 or part of VT10,000 of the amount or value of the property settled or agreed to be settled.</p> <p><i>Exemption:</i> Every 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 duly 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.</p>	<p>VT50 with a minimum payment of VT10,000</p>	<p>The person making the settlement.</p>

**GENERAL EXEMPTIONS FROM STAMP DUTY**

- 1 The following instruments are exempted from payment of stamp duty –
  - (a) any instrument relating to a sale, conveyance, hypothecation, charge, mortgage, assignment or discharge of mortgage, or Bill of Sale, of a vessel documented under the Maritime Act [CAP. 131];
  - (b) any instrument executed in relation to a transaction made under the Personal Property Securities Act No. 17 Of 2008.
  
2. The following persons are exempted from payment of stamp duty –
  - (a) the government of Vanuatu;
  - (b) any person executing or acting as a party to any instrument on behalf of the government of Vanuatu;
  - (c) any corporation established or body of persons associated solely for charitable purposes;
  - (cc) the National Housing Corporation; and
  - (d) any person exempted by virtue of any other Act or regulation.

**Minimum payment**

Unless otherwise specified in the Schedule there shall be a minimum amount of ~~VT2,500~~ VT3,000 payable in respect of instruments chargeable with stamp duty.

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**Maximum payment in respect of certain instruments**

Notwithstanding the provisions of the Schedule no instrument executed in Vanuatu relating to any property situate or to any matter or thing done or to be done outside Vanuatu shall be charged with duty in an amount exceeding VT20,000.

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**Table of Amendments (since the Revised Edition 1988)**

<i>Sched (General Exemptions, 2(cc))</i>	<i>Inserted by Act 26 of 1988</i>
<i>Sched (Transfer of Property, 1)</i>	<i>Amended by Act 32 of 1989</i>
<i>Sched (Transfer of Property, 1A)</i>	<i>Inserted by Act 32 of 1989</i>