



# **GOVERNMENT GAZETTE**

OF THE

# **REPUBLIC OF NAMIBIA**

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R2,30

WINDHOEK — 25 August 1993

No. 697

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## **Government Notice**

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### **OFFICE OF THE PRIME MINISTER**

No. 90

1993

### **PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 14 of 1993: Transfer Duty Act, 1993.

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## ACT

**To consolidate and amend the laws relating to transfer duty.**

*(Signed by the President on 12 August 1993)*

### ARRANGEMENT OF SECTIONS

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## SCHEDULE

## Laws repealed

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows: -

## Definitions.

1. In this Act, unless the context otherwise indicates -

“date of acquisition” means -

- (a) in the case of the acquisition of property by way of a transaction, the date on which the transaction was entered into, irrespective of whether the transaction was conditional or not or was entered into on behalf of a company already registered or still to be registered; and
- (b) in the case of the acquisition of property otherwise than by way of a transaction, the date upon which the person who so acquired the property became entitled thereto:

Provided that where property has been acquired by the exercise of an option to purchase or a right of pre-emption, the date of acquisition shall be the date upon which the option or right of pre-emption was exercised;

“declared value” in relation to property means the value of the property as declared in the declaration completed in terms of section 14 by the person who has acquired the property;

“deeds registry” includes -

- (a) the deeds registry established by section 2 of the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976);
- (b) the office of the mining commissioner in relation to transactions required to be registered in the claims register referred to in section 29(1) of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968); and

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- (c) the Mining Titles Office established by section 1 of Proclamation R.90 of 1969 in relation to transactions required to be registered in a register kept at that office in terms of the provisions of the Mines, Works and Minerals Ordinance, 1968;

“fair value”, in relation to property, means the market value of that property as at the date of acquisition thereof, but where property has been acquired by the exercise of an option to purchase or a right of pre-emption, the fair value in relation to that property shall be the market value thereof as at the date upon which the option or right of pre-emption was acquired by the person who exercised the option or right of pre-emption;

“High Court” means the High Court of Namibia;

“local authority council” means a municipal council, town council or village council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);

“Permanent Secretary” means the Permanent Secretary: Finance;

“property” means land and any fixtures thereon, and includes -

- (a) any real right in land, but not any right under a mortgage bond or a lease of property other than a lease referred to in paragraph (b);
- (b) any right to mine for minerals and a lease or sub-lease of such a right;

“registration officer” means the person who is in charge of a deeds registry;

“the duty” means the duty leviable in terms of section 2;

“transaction” means an agreement whereby one party thereto agrees to sell, grant, donate, cede, exchange, lease or otherwise dispose of property to another, or any act whereby any person renounces any interest in or restriction in his or her favour upon the use or disposal of property;

“value”, in relation to property, means the value thereof as determined in accordance with the provisions of sections 5, 6, 7 and 8.

Imposition of transfer  
duty.

2. (1) Subject to the provisions of section 9, there shall be levied for the benefit of the State Revenue Fund a transfer duty on the value of any property acquired by any person on or after the date of commencement of this Act by way of a transaction or in any other manner, or on the amount by which the value of any property is enhanced by the renunciation, on or after the said date, of an interest in or a restriction upon the use or disposal of that property, at the rate of -

(a) one per cent of so much of the said value or the said amount, as the case may be, as -

(i) in the case of unimproved land, does not exceed R24 000; or

(ii) in the case of improved land, does not exceed R60 000;

(b) five per cent of so much of the said value or the said amount, as the case may be, as -

(i) in the case of unimproved land, exceeds R24 000 but not R250 000; or

(ii) in the case of improved land, exceeds R60 000 but not R250 000; and

(c) eight per cent of so much of the said value or the said amount, as the case may be, as exceeds R250 000, whether such land is improved or unimproved land: Provided that in the case of the acquisition of agricultural land by a person to whom an advance, for the purposes of such acquisition, is made by the Agricultural Bank of Namibia in accordance with the provisions of section 46(1)(a) of the Agricultural Bank Act, 1944 (Act 13 of 1944), the rate at which transfer duty shall be levied on the value of such property shall be -

(a) one per cent of so much of the said value as does not exceed R30 000; and

(b) three per cent of so much of the said value as exceeds R30 000.

(2) Where a person acquires any property consisting of or including an undivided share in any property (hereafter in this subsection referred to as the joint property), the duty payable in respect of such acquisition shall be calculated in accordance with the formula -

$$y = \frac{a}{b} \times c,$$

in which formula -

- (a) "y" represents the duty payable;
- (b) "a" represents the value on which the duty is leviable in terms of subsection (1);
- (c) "b" represents an amount equal to the sum of -
  - (i) the amount represented by "a"; and
  - (ii) the value of the remainder of the joint property (being the share or shares in the joint property remaining after excluding the aforesaid undivided share), assuming such value to be an amount which bears to the value of the said undivided share (being the value thereof represented by or included in "a") the same ratio as the said remainder (expressed as a percentage of the full ownership of the joint property without regard to the value of that property or any share therein) bears to the said undivided share (expressed as a percentage of the full ownership of the joint property without regard to the value of that property or any share therein); and
- (d) "c" represents the duty which would have been leviable at the rate prescribed in subsection (1) on the amount represented by the symbol "b" if that amount had been the value on which the duty was leviable under subsection (1).

(3) The provisions of subsection (2) shall not apply in respect of the acquisition of an undivided share in common property which is in terms of the provisions of the Sectional Titles Act, 1971 (Act 66 of 1971), apportioned to a section as defined in section 1 of that Act and forms part

of a unit as so defined but shall apply in respect of the acquisition of an undivided share in such unit.

Payment of duty.

3. (1) The duty shall become payable on the date of acquisition by the person who has acquired the property or in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced, and shall be paid within a period of six months of that date.

(2) Pending the completion of the declarations referred to in section 14, or the determination of the amount of the duty payable under this Act, a deposit on account of the duty payable may be made to the Permanent Secretary.

(3) The duty and any penalty payable under section 4 shall be paid to the Permanent Secretary.

Penalty on late payments of duty.

4. (1) If any duty remains unpaid after the date of the expiration of the period referred to in section 3, there shall, subject to the provisions of subsection (3), in addition to the unpaid duty, be payable a penalty, at the rate of ten per cent per annum on the amount of the unpaid duty, calculated in respect of each completed month in the period from that date to the date of payment.

(2) For the purpose of subsection (1) a deposit on account of the duty shall be deemed to be a payment of duty.

(3) Whenever the Permanent Secretary is satisfied that the delay in the determination of the value on which the duty is payable cannot be ascribed to the person liable to pay the duty, he or she may allow a reasonable extension of time within which the duty may be paid without penalty if, within six months of the date of acquisition of the property -

- (a) a deposit on account of the duty payable is made to the Permanent Secretary of an amount equal to the duty calculated on the amount of the consideration paid or payable or on the declared value, as the case may be; and
- (b) application is made in writing to the Permanent Secretary for such extension of time.

Value of property on which duty is payable.

5. (1) The value on which the duty shall be payable shall, subject to the provisions of this section -

- (a) where consideration is payable by the person who has acquired the property, be the amount of that consideration; and
- (b) where no consideration is payable, be the declared value of the property.

(2) If a transaction whereby property has been acquired is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolute condition, the duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by either party to the transaction for or in respect of the cancellation thereof.

(3) Upon the subsequent disposal of property referred to in subsection (2), the person so disposing of it shall, in the declaration to be made by him or her in terms of section 14, set forth the circumstances of such previous transaction and of the cancellation thereof and shall furnish particulars relating to the payment of the duty in connection therewith, and any duty payable in connection with such previous transaction but still unpaid shall be paid by the person so disposing of the property, who may thereupon recover the duty so paid from the person liable for the payment thereof in terms of section 3.

(4) Where a transaction provides for the payment of the whole or any part of the consideration by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash, the value of such consideration shall be determined in accordance with the provisions of section 8.

(5) In the case of a transaction whereby one property is exchanged for another, and -

- (a) no additional consideration is payable by either party to the transaction, the value on which the duty shall be payable in respect of the acquisition of each property shall, subject to the provisions of subsections (7), (8) and (9), be the declared value of each property, but if the properties exchanged are not of equal value, the duty shall be paid in

respect of the acquisition of each property on the declared value of the property which has the greater value;

(b) additional consideration is payable by either party to the transaction, the value on which the duty shall be payable, shall, subject to the provisions of subsections (7), (8) and (9), be -

(i) in respect of the acquisition of the property for which the additional consideration is payable, the declared value of that property or, the declared value of the property given in exchange for that property plus the additional consideration payable, whichever is the greater; and

(ii) in respect of the acquisition of the other property, the declared value thereof, or the declared value of the property given in exchange for that property less the additional consideration payable, whichever is the greater.

(6) In the case of the cession of a lease or sublease referred to in paragraph (b) of the definition of "property" in section 1, the value on which the duty shall be payable shall be the amount of the consideration payable by the cessionary to the cedent in respect of the cession or, if no consideration is so payable, the declared value of the property acquired under the cession.

(7) If the Permanent Secretary is of the opinion that the consideration payable or the declared value is less than the fair value of the property in question he or she may, subject to subsection (8), determine the fair value of that property, and thereupon the duty payable in respect of the acquisition of that property shall be calculated in accordance with the fair value so determined or the consideration payable or the declared value, whichever is the greatest.

(8) Notwithstanding the provisions of subsection (7), the Permanent Secretary may at any time after a determination of the fair value of the property in question has been made by him or her under that subsection, but not later than two years from the date on which the duty was originally paid in respect of the relevant acquisition, revise such determination or make a further determination of the fair value of that property.

(9) In determining the fair value in terms of subsection (7) or (8), the Permanent Secretary shall have regard, according to the circumstances of the case, *inter alia* to -

- (a) the nature of the real right in land and the period for which it has been acquired or, where it has been acquired for an indefinite period or for the natural life of any person, the period for which it is likely to be enjoyed;
- (b) in the case of land situated in the area of a local authority council, the valuation of such land, including any fixtures thereon, as contained in the main valuation roll of the local authority council concerned which is in force in terms of section 72(2) of the Local Authorities Act, 1992 (Act 23 of 1992);
- (c) any sworn valuation of the property concerned furnished by or on behalf of the person liable to pay the duty;
- (d) any valuation made by any other competent and disinterested person appointed by the Permanent Secretary.

(10) If the fair value of property as determined by the Permanent Secretary under subsection (7) or (8) -

- (a) exceeds the amount of the consideration payable in respect of that property or the declared value, as the case may be, by not less than one-third of the consideration payable or the declared value, as the case may be, the costs of any valuation made by a person referred to in paragraph (d) of subsection (9) shall be paid by the person liable for the payment of the duty;
- (b) does not exceed the said consideration or declared value, as the case may be, to the extent set out in paragraph (a), the costs of the valuation shall be borne by the State.

(11) The provisions of subsections (7), (8) and (9) shall not apply in respect of the acquisition of property sold by public auction, unless the Permanent Secretary is

satisfied that the sale was not a *bona fide* sale by public auction, or that there was collusion between the seller and the purchaser or their agents.

Certain payments to be added to the consideration payable in respect of property.

6. There shall for the purpose of the payment of the duty be added to the consideration payable in respect of the acquisition of any property -

- (a) any commission or fees paid or payable by the person who acquired the property;
- (b) if property has been acquired by the exercise of an option to purchase or a right of pre-emption, any consideration paid or payable by the person who has acquired the property to any person in respect of such option or right of pre-emption;
- (c) any consideration which the person who has acquired property has paid or agreed to pay to any person whatsoever in respect of or in connection with the acquisition of the property, over and above the consideration payable to the person from whom the property was acquired, other than any rent payable under a lease or sublease by the cessionary thereof.

Certain payments excluded from the consideration payable in respect of property.

7. There shall for the purpose of the payment of the duty be excluded from the consideration payable in respect of the acquisition of any property -

- (a) transfer duty or any other duty or tax payable in respect of the acquisition of the property; and
- (b) the costs or fees payable in connection with the registration of the acquisition of the property.

Valuation of consideration payable by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash.

8. Where the whole or any part of the consideration in respect of the acquisition of any property, including any commission, fees or consideration referred to in section 6 which is to be added in terms of that section, is payable by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash, the value of the consideration so payable shall, for the purpose of the payment of the duty, be -

- (a) where such consideration is in the form of rent, royalty, share of profits, or any other periodical payment -

- (i) if the actual amounts of the periodical payments are fixed, the aggregate of the said amounts payable over the period (including renewal periods) for which the property has been acquired by the person liable to pay the duty or, where the property acquired is a lease or sublease and the said aggregate amount exceeds the fair value, as determined by the Permanent Secretary in accordance with the provisions of subsection (9) of section 5, of the property which is the subject of the lease or sublease, such fair value;
  - (ii) if the actual amounts of the periodical payments are not fixed or if the property has been acquired for an indefinite or unlimited period or for the natural life of any person, a value which the Permanent Secretary considers fair in the circumstances;
- (b) where the consideration is in the form of goods, services, rights or privileges, the current market value of such goods, services, rights or privileges at the date of the transaction or, where the market value of such goods, services, rights or privileges as at the date of the transaction is not ascertainable, a value which the Permanent Secretary considers fair in the circumstances;
- (c) where the consideration is in the form of shares in or other securities of a company, including a company still to be registered, or is in the form of rights to acquire such shares or securities, the value of such shares or securities or rights thereto, which value shall -
  - (i) in the case of shares or securities which are quoted on any recognized stock exchange on the date of the transaction, be their middle market price on that date; or
  - (ii) in the case of other shares or securities or rights thereto, be a value which the Permanent Secretary considers fair in the circumstances.

Exemptions from duty.

9. (1) No duty shall be payable in respect of the acquisition of property by -

- (a) the State;
- (b) a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);
- (c) any local authority council;
- (d) a religious or educational institution of a public character or a charitable institution as defined in section (1) of the Sales Tax Act, 1992 (Act 5 of 1992) in respect of property acquired for religious, educational or charitable purposes exclusively: Provided that if any such property or any portion thereof is subsequent to the acquisition thereof used for some purpose other than exclusively for religious, charitable or educational purposes, the duty shall become payable in respect of the acquisition of such property or such portion thereof, and the date upon which such property or such portion was first used for such other purpose shall for the purposes of section 3(1) and section 4 be deemed to be the date of acquisition thereof;
- (e) any institution or body in respect of property acquired for the purpose of a public hospital, but subject *mutatis mutandis* to the proviso to paragraph (d);
- (f) an heir or legatee in respect of -
  - (i) property acquired by virtue of any testamentary disposition or intestate succession or as a result of a redistribution of the assets of a deceased estate in the process of liquidation of such estate; or
  - (ii) the amount by which the value of property so acquired is enhanced by the renunciation of an interest in or restriction upon the use or disposal of such property;
- (g) a surviving spouse in respect of property acquired in any manner from the estate of the deceased spouse;

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- (h) a joint owner of property in respect of the acquisition and registration in his or her name of a defined portion of the property allotted to him or her upon partition of the property, but not in respect of any consideration payable by him or her in order to equalize the partition or for any other reason;
- (i) a joint owner of property who acquires the sole ownership in the whole or a portion of the property, in respect of so much of the value of the property in which sole ownership is acquired as represents his or her share in the joint ownership of that property;
- (j) a surviving or divorced spouse who acquires the sole ownership in the whole or any portion of property registered in the name of his or her deceased or divorced spouse to whom he or she was married in community of property, in respect of so much of the value of the property in which sole ownership is acquired as represents his or her share in that property by virtue of the marriage in community of property.

(2) No duty shall be payable by a person who requires his or her ownership in property to be registered in his or her name in a deeds registry where there has been an error in the registration of the acquisition of the property, provided the duty payable in respect of that acquisition has been duly paid.

(3) No duty shall be payable in respect of the registration jointly in the names of partners of any property which is registered in the name of the partnership carried on by such partners.

(4) No duty shall be payable -

- (a) in respect of a change in the registration of property required as a result of the termination of the appointment of an administrator of a trust under a will or other written instrument or of a trustee of an insolvent estate;
- (b) where trust property is transferred by the administrator of a trust to the persons entitled thereto

under the will or other written instrument in pursuance of which the administrator was appointed: Provided that if any consideration is paid directly or indirectly by such beneficiary in respect of the acquisition of such trust property the duty shall be payable on the value of the consideration so paid;

- (c) where property is restored by a trustee of an insolvent estate to the insolvent.

(5) No duty shall be payable in respect of the acquisition by any person from the State, under the provisions of any law relating to the mining of minerals, of any real right in land or any right to mine for minerals.

(6) No duty shall be payable by a person who, as surety for the payment of the consideration payable under a transaction, pays the consideration and seeks transfer of the property in question into his or her own name, provided -

- (a) the duty has been paid in respect of the acquisition of the property under the transaction; and
- (b) no further consideration is payable by the surety to either party to the transaction,

but if further consideration is payable by such surety to either party to the transaction, the duty shall be payable by him or her on the value of that further consideration.

(7) No duty shall be payable in respect of the acquisition of property by way of a transaction, if the transaction -

- (a) is declared void by a competent court;
- (b) in terms of which the property is acquired from a person whose estate is sequestrated subsequent to the date of the transaction, becomes void by reason of the sequestration;
- (c) in terms of which property is acquired by a person whose estate is sequestrated prior to the registration of the acquisition by him or her of the property, is abandoned by the trustee of his or her insolvent estate;

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(d) is a transaction whereby portions of adjoining properties which are being worked or about to be worked for minerals and are held under claim licence, or other mining title, are exchanged, provided the Mining Commissioner issues a certificate stating that the exchange is made solely and *bona fide* for mining purposes and is necessary or instrumental to proper or more economic working; Provided that if any additional consideration is payable by either party to the exchange, the duty shall be payable on the value of the additional consideration.

(8) No duty shall be payable in respect of the acquisition of property by any company (hereinafter referred to as the subsidiary company) which has been incorporated, and is managed and controlled, in Namibia from any other company (hereinafter referred to as the foreign company) which has been incorporated, and is managed and controlled, outside Namibia if it is proved to the satisfaction of the Permanent Secretary -

(a) that at the time of such acquisition all the issued shares of the subsidiary company were held, for its own benefit, by the foreign company or a company which was incorporated, managed and controlled outside Namibia and was controlled by the foreign company or controlled the foreign company; and

(b) that the subsidiary company has under an arrangement with the foreign company acquired from the foreign company all the assets, including the said property, relating to any industrial or commercial or other business undertaking of the foreign company in Namibia.

(9) If any property has by expropriation or compulsory sale under any law been acquired by the State or any local authority council, or any board, body or institution of a public character established by law, and such property is, upon the cancellation or variation of such expropriation or sale, re-acquired by the person from whom such property was expropriated or by whom such property was sold under such compulsory sale, no duty shall be payable in respect of such re-acquisition.

(10) No duty shall be payable in respect of the acquisition of the full ownership in -

- (a) any property consisting of land and any dwelling-house thereon or of a residential apartment and an undivided share in common property held under a sectional title deed contemplated in the Sectional Titles Act, 1971 (Act 66 of 1971), if the value of such property does not exceed R60 000; or
- (b) any unimproved land acquired for the purpose of erecting a dwelling-house thereon, if the value of such land does not exceed R24 000.

Administration of Act.

**10. (1)** The Permanent Secretary shall be responsible for the administration of this Act.

(2) The powers conferred and the duties imposed upon the Permanent Secretary by this Act may be exercised or performed by the Permanent Secretary personally or by any officer acting under a delegation from or under the control or direction of the Permanent Secretary.

Powers of Permanent Secretary.

**11. (1)** The Permanent Secretary may -

- (a) call upon any person to furnish to him or her such information or to produce to him or her such documents as the Permanent Secretary considers necessary for the purpose of determining the amount of the duty payable in respect of the acquisition of any property;
- (b) require the person liable to pay the duty or any other person to appear before him or her for the purpose of clarifying any valuation made by any such person;
- (c) decline to accept any payment of duty otherwise than as a deposit on account of the duty until the appropriate declarations referred to in section 14 are submitted to him or her.

(2) If the Permanent Secretary is satisfied that the declaration required to be completed by any one of the parties to a transaction or by a person who has acquired property otherwise than by way of transaction, cannot be

obtained, he or she may, notwithstanding the provisions of subsection (1) of section 14, dispense with the production of such declaration or may accept in lieu thereof a declaration by some other person whom he or she considers able to furnish the particulars required to be given.

(3) Where in terms of subsection (2) of section 3 a deposit on account of the duty payable by any person is made pending the determination by the Permanent Secretary of the fair value of the property concerned, of an amount equal to the duty calculated on the consideration paid or payable in respect of the acquisition of the property or on the declared value thereof, as the case may be, and there is given to the Permanent Secretary security to his or her satisfaction for the payment of any balance of transfer duty or stamp duty which may still be payable, the Permanent Secretary may in his or her discretion issue to the person liable to pay the duty a certificate that such deposit has been made and that such security has been given.

(4) No fee shall be payable in respect of a certificate issued under subsection (3).

Registration of acquisition of property where duty not paid.

**12. (1)** No registration officer shall make any record in his or her deeds registry of an acquisition of property unless there has been produced to him or her proof, other than a receipt for a deposit on account of the duty -

- (a) that any duty payable under this Act or any other law has been paid in respect of the acquisition in question; and
- (b) where the property is to be transferred from the registered owner direct to a person who acquired the property from an intermediary contemplated in the Sale of Land on Instalments Act, 1971 (Act 72 of 1971), that any duty payable under this Act or any other law has been paid in respect of the acquisition of the property by the intermediary who acquired the property from the registered owner, and in respect of each subsequent acquisition of the property by any person who is also an intermediary as contemplated in the said Act.

(2) The provisions of subsection (1) shall not apply with reference to an acquisition of property in respect of which there is lodged with the registration officer a certificate issued in terms of section 11(3).

(3) Any dispute as to any person's right to exemption from the payment of the duty shall be referred by the registration officer to the Permanent Secretary.

Permanent Secretary to recover amount of duty underpaid.

**13. (1)** Whenever the Permanent Secretary is satisfied that the duty payable under this Act in respect of the acquisition of any property has not been paid in full, he or she shall, notwithstanding that the acquisition has already been registered in a deeds registry, recover the difference between the amount of the duty payable and the amount paid.

(2) Any amount payable in terms of subsection (1) shall be payable in accordance with and subject to the provisions of sections 3 and 4.

Declarations to be furnished to Permanent Secretary.

**14. (1)** Declarations appropriate to the manner of the acquisition of property in any particular case shall, in substance as near as possible to the wording of the forms prescribed by the Permanent Secretary by notice in the *Gazette*, be completed by the parties to the transaction whereby the property has been acquired and, if the Permanent Secretary so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.

(2) The Permanent Secretary may direct that any declaration referred to in subsection (1), falling within any category which he or she determines, shall be used for the purpose of acknowledging by the use of a machine, the receipt of the duty and in such case he or she may prescribe the number of copies of such declaration to be completed, the form of such declaration or of any copy thereof, and the manner in which such declaration and copies shall be completed.

(3) Where no suitable form of declaration has been prescribed by the Permanent Secretary for any particular kind of acquisition of property, he or she may require from any person concerned in the acquisition a declaration setting forth the material facts of the case and containing such other information as he or she considers necessary.

Records of certain sales of property to be kept.

**15. (1)** Every auctioneer or other person who has effected a sale of property on behalf of some other person shall, for a period of five years from the date on which the

sale was effected, keep a record of the sale including a description of the property sold, the person by whom and the person to whom the property has been sold and the price paid for the property.

(2) Records kept in terms of subsection (1) shall at all reasonable times be produced to the Permanent Secretary on demand for his or her inspection.

(3) Any person who fails to comply with any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.

Disclosure of names of principals.

**16.** (1) Where property is sold to a person who is acting for some other person, the person so acting shall disclose to the seller or his or her agent the name and address of the principal for whom he or she acts -

(a) if the sale is by auction, immediately upon acceptance by the auctioneer of his or her offer; or

(b) if the sale is otherwise than by auction, immediately upon conclusion of the agreement of sale.

(2) Any person who fails to comply with the provisions of subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself.

Penalties.

**17.** (1) Any person who fails to comply with any requirement or demand by the Permanent Secretary under this Act or who knowingly submits or causes to be submitted to the Permanent Secretary a declaration referred to in section 14 which fails to disclose any material fact relevant to the nature of the transaction by which property has been acquired or to the consideration payable in respect of any property or to the value on which the duty is payable, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year.

(2) Any person who, in a declaration referred to in section 14, makes a false statement knowing it to be false shall be guilty of an offence and liable on conviction to the penalties prescribed for the crime of perjury.

Appeals against decisions  
of Permanent Secretary.

**18.** (1) Any person who considers himself or herself aggrieved by a decision of the Permanent Secretary under section 5(7) or (8) or section 8 may, within thirty days after the decision became known to him or her, appeal against that decision by way of application on notice of motion to the High Court on giving security to the satisfaction of the registrar of that court for any costs that may be incurred by the Permanent Secretary in connection with the appeal.

(2) The High Court shall inquire into and consider the matter and shall confirm, vary or set aside the decision of the Permanent Secretary or give such other decision as in its opinion the Permanent Secretary ought to have given, and may make such order as to costs as it may deem fit.

(3) Any judgement given or order made by the High Court in terms of subsection (2) shall be subject to appeal to the Supreme Court of Namibia in the same manner and on the same conditions as a judgement given or order made in any civil proceedings in the High Court.

(4) Any decision by the High Court in terms of subsection (2) or the Supreme Court of Namibia in terms of subsection (3) relating to the fair value of any property or to the value of any consideration payable in respect of the acquisition of any property, shall, for the purposes of this Act, be deemed to be the decision of the Permanent Secretary.

Hearing by judge in  
chambers of disputes re-  
garding exemptions from  
duty.

**19.** Any dispute between the Permanent Secretary and any person who claims to be exempt from payment of the duty in respect of the acquisition of property may, on application by either party to the dispute, be determined by a judge of the High Court sitting in chambers after hearing the Permanent Secretary and such person or their respective representatives.

Refunds.

**20.** If it is proved to the satisfaction of the Permanent Secretary that the duty has been paid in respect of an acquisition of property by a person who is or has become, in terms of this Act or any other law in force on the date of the acquisition, exempt from the payment of the duty in respect of that acquisition, or that the amount which has been paid is in excess of the duty payable, the Permanent Secretary may authorize a refund of the duty paid or of so much of the duty as has been overpaid, as the case may be.

Payment of duty in respect of acquisition of property registrable in terms of Registration of Deeds in Rehoboth Act, 1976.

**21.** The provisions of this Act shall in respect of the acquisition of property of which the acquisition is registrable in terms of the Registration of Deeds in Rehoboth Act, 1976 (Act 93 of 1976), only apply if the date of acquisition falls on or after the date of commencement of this Act.

Repeal of laws and savings.

**22.** (1) Subject to the provisions of subsections (2) and (3), the laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any duty, including any penalty or interest on late payment of the duty -

(a) which has before the date of commencement of this Act become payable under a law repealed by subsection (1), but which has not at that date been paid; or

(b) which becomes payable where the Permanent Secretary under section 5(8) revises the fair value of any property determined by him or her under a law repealed by subsection (1) before the date of commencement of this Act,

shall be recovered in accordance with and subject to the provisions of that law as if this Act had not been passed.

(3) Notwithstanding the repeal of section 29 of the Revenue Laws Amendment Act, 1969 (Act 103 of 1969) by subsection (1) of this section, transfer duty in respect of the acquisition of property referred to in the second proviso to that section by way of a transaction contemplated in that proviso, shall be chargeable in accordance with the provisions of that proviso as if that section had not been so repealed.

Short title and commencement.

**23.** This Act shall be called the Transfer Duty Act, 1993 and shall come into operation on a date to be determined by the Minister of Finance by notice in the *Gazette*.

## SCHEDULE

LAWS REPEALED  
(Section 22(1))

No. and year of law	Title	Extent of repeal
Act 40 of 1949	Transfer Duty Act, 1949	The whole.
Act 59 of 1951	Transfer Duty Amendment Act, 1951	The whole.
Act 31 of 1953	Transfer Duty Amendment Act, 1953	The whole.
Act 32 of 1954	Transfer Duty Amendment Act, 1954	The whole.
Act 80 of 1959	Finance Act, 1959	Sections 11 and 12.
Act 70 of 1963	Revenue Laws Amendment Act, 1963	Sections 2, 3 and 4.
Act 77 of 1964	Revenue Laws Amendment Act, 1964	Sections 1, 2, 3, 4, 5 and 6.
Act 81 of 1965	Revenue Laws Amendment Act, 1965	Section 1.
Act 56 of 1966	Revenue Laws Amendment Act, 1966	Section 1.
Act 103 of 1969	Revenue Laws Amendment Act, 1969	Sections 5, 6, 7, 8, 9 and 29.
Act 72 of 1970	Revenue Laws Amendment Act, 1970	Sections 1, 2 and 3.
Act 92 of 1971	Revenue Laws Amendment Act, 1971	Section 2.
Act 89 of 1972	Revenue Laws Amendment Act, 1972	Section 2.
Act 66 of 1973	Revenue Laws Amendment Act, 1973	Sections 2, 3 and 4.
Act 88 of 1974	Revenue Laws Amendment Act, 1974	Sections 3, 4, 5 and 6.
Act 70 of 1975	Revenue Laws Amendment Act, 1975	Section 1.
Act 54 of 1976	Abattoir Industry Act, 1976	Section 77.
Act 17 of 1980	Transfer Duty Amendment Act, 1980	The whole.
Act 23 of 1981	Transfer Duty Amendment Act, 1981	The whole.
Act 2 of 1982	Transfer Duty Amendment Act, 1982	The whole.