

Volume

1

STAMP DUTY & TRANSFER TAX

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Introduction:

The Stamp Duty & Transfer Tax Division of the Taxpayer Audit & Assessment Department (TAAD), is popularly but misleadingly known as the “Stamp Office”. Some people have misinterpreted this title and have been surprised to recognize that postage stamps are not sold at any of three offices island wide, and that one is also unable to send telegrams from the offices – as persons have tried to do!.

We are committed to providing an excellent service that meet your needs and expectations. From us, you can expect -

Professionalism
Accountability
Respect
Teamwork
Integrity
Excellence
Service oriented staff.

SERVICE STANDARDS

- ✓ Telephone calls will be answered within **5 rings**.
- ✓ Letters will be answered within **3 weeks of receipt**.
- ✓ In office visits - you will receive attention within **15 minutes**.
- ✓ Refunds, with complete documentation within **90 days**.

We recognize your desire for excellent service. To help us deliver this level of service, we need your cooperation. **How?**

- ✓ Give us accurate & complete information
- ✓ Provide prompt replies to correspondence
- ✓ Pay your tax on time
- ✓ Quote the Reference number which is on the Document Receipt(s) at all times.
- ✓ Comply with all the requirements of the tax laws.

Main Functions of the Division:

Assess & Collect -

1. Stamp Duty on a range of legal and commercial documents
2. Transfer Tax involving the transfer of real properties and shares
3. Transfer Tax on Death

Stamping Documents:

Documents are stamped as proof of the payment of Stamp Duty & Transfer Taxes, to make them legal and binding under the Law.

Deadlines:

Most legal documents must be stamped within a specified time. The general rules outlined below apply.

1. Documents with a fixed rate of duty must be stamped within 7 or 14 days after the date of signing (execution).
 2. Documents subjected to an ad valorem rate of duty (based on the value of the transaction) – within 30 days after the date of execution.
 3. Other documents subject to ad valorem rate - within 7 – 14 days e.g. Promissory notes; Life insurance Policies.
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Documents normally stamped:

- **Agreements:**

These include Sale Agreements for the transfer of property. These agreements attract an ad valorem duty known as “Conveyance Duty”, as well as Transfer Tax.

- ✓ Transfer Tax is borne by the Vendor.
- ✓ In the case where the portion of a property (gift or sale) is being transferred, Transfer Tax is chargeable on the market value of the property being transferred.
- ✓ Properties cannot be legally transferred unless the Transfer Tax & Stamp Duty has been paid.

There are provisions in Law for the exemptions of certain transactions e.g. a church site, or documents on behalf of a Co-operative Society.

- **Addendum :**

This is a form which provides additional information for the Department’s valuers when valuing a deceased’s estate.

- **Bills of Sale:**

Documents which are prepared by Financial Institutions issuing a loan to purchase goods

- **Bills of Lading:**

Document relating to the importation or exportation of goods

- **Cheque Leaves:**

These are pre-stamped in most instances.

- **Composition Agreements/Pre-stamped Documents:**

Companies /Institutions requiring large numbers of documents to be stamped on regular basis may enter into a Composition Agreement with the Commissioner. This would enable to Companies to print the “Stamp Duty Paid Medallion” on the document and make periodic returns, as specified by the Commissioner.

- **Deed Poll:**

These are documents formalizing a change of name other than through marriage.

- **Hire purchase Agreements:**

Contracts entered into between purchaser and seller for the payment for goods over a specific period.

- **Insurance Policies:**

These include life, home, health, accident, marine, motor vehicle etc.

- **Intestate:**

Where a person passes (dies), without leaving a Will, and the administration of the disposal of his/her assets are done through the Courts, this is known as “**intestate**”. (See explanation of “**Testate**” on page 4, for additional information).

- **Land Title Application:**

Where the owner of unregistered land applies to bring the property under the Registration of Title Act to be registered in his name, no transfer tax is payable and only one-third (1/3) Conveyance Duty is payable.

- **Leases:**

These include the leasing of equipment as well as property (land a dwelling house or a place of business). Equipment leases attract a fixed duty. Leases for real property attract an *ad valorem* duty, depending on the lease. Transfer of a Lease is treated similarly to the transfer of property.

- **Loan Agreements:**

Agreements made regarding the repayment of a sum of money at a particular rate of interest, over a specified period of time.

- **Memoranda & Articles of Association:**

These are documents relating to the formation of a Company.

These documents must be stamped before being lodged at the Registrar of Companies.

Articles of Association attract a fixed duty, but Memoranda of Associations attracts an *ad valorem* rate, depending on the share capital of the Company.

- **Mortgages:**

Whenever a loan agreement is entered into for the purchase of property which is in turn given as security, it attracts an *ad valorem* duty called “Mortgage Duty”, based on the amount of the loan.

- **Power of Attorney:**

These are legal documents giving an individual authority to transact business on behalf of another person. Documents must be registered at the Records Office in Spanish Town, after being stamped.

- **Promissory Notes:**

A promise in writing made by one person to another to pay at a fixed time, a fixed sum of money owed.

- **Property:**

Section 3(4) defines property as follows:

- ✓ Land
- ✓ Lease of land
- ✓ Securities
- ✓ Beneficial Interest under any settlement of -
 - Property on any class mentioned above
 - Beneficial interest derived by way of settlement for property in any such class, whether through one or more settlements
 - Properties owned locally or overseas, depending on the domicile of the deceased.

- **Releases of Assignment/ Discharge of Mortgage:**

Documents releasing interest in asset held as security/collateral for loan given on repayment of the said loan by person(s) who borrowed the money.

- **Revenue Affidavit:**

This is a prescribed form to be completed and submitted by the personal representative of the deceased (**Executor**), along with accounts annexed thereto particulars of all property of which the deceased was competent to dispose of at his death and value thereof, in respect of which tax is payable. This, in addition to other specific document depending on whether or not the deceased died leaving a Will, is the principal

document required by the Stamp Duty & Transfer Tax division. (**Paragraph 17(1) of the 1st Schedule offers guidelines on completing the Revenue Affidavit**).

- **Testate:**

When an individual dies leaving a Will, this is described as “**testate**” which aids in the determination of how property is to be shared. The person given responsibility for administering the deceased’s wishes is known as the “**Executor**”. (See explanation of “**Intestate**” on page 3).

- **Transfer Tax:**

This is the amount payable on a deceased person’s estate. The amount due is to be paid to the Government from the transfer of the property from the estate to the beneficiaries. On the death of an individual domiciled (permanently residing) in Jamaica, all property including those owned overseas, is subject to tax in Jamaica.

Section 5(1) of the Transfer Tax Act states that “*on the death of any individual after 31st May 1974, all property of which he was at his death competent to dispose shall, for the purpose of taxation in conformity with Subsections (2) & Section (3) of Section 12, be deemed to be, for a consideration equal to the market value at the date of his death to the persons to whom such property passé on his death*”.

- **Valuation of Property:**

Property should be valued at Market Value at the date of death. Section 5(1) of the Transfer Tax states: “*be deemed to be for a consideration equal to its market value at the date of his death , transferred by him at the death of the persons to whom such property passes on his death*”.

ESTATE MATTERS:

The Holding of Property:

Persons may hold property as:

1. Sole Proprietors
2. Joint Ownership (the law of Survivorship obtains where property fails to the surviving Joint Tenant).
3. Tenancy in Common – where the owner owns his /her portion independent of the other.

The manner in which any Estate is administered/ processed will depend on how the deceased held property.

1. Sole Proprietorship/Tenants in Common:

Where all the beneficiaries are adults, then the Courts may allow them to nominate someone to administer the Estate.

Where minors are involved, the Administrator General has the responsibility to administer the Estate. In this instance, the estate will be administered in accordance with the “**Intestate Estate & Property Charge Act**”. (See the Definitions section of this Guide for meaning of **Intestate** and **Testate**.)

Where the Sole Proprietor or Tenant in Common dies **Testate**, the following documents are required:

- a) Copies of
 - I. Will & Probate
 - II. Inventory filed in the Courts
 - III. Land Title
 - IV. Share Certificates
- b) Securities
- c) Financial Statements (nearest to the date of death)
- d) Death Certificates
- e) Receipts for funeral Expenses/Mortician bills
- f) Declaration of principal place of residence (Voluntary Declaration Act)

Where the Sole Proprietor or Tenant in Common dies **intestate**, the following documents are required:

- a) Copy of
 - I. Inventory filed in the Courts
 - II. Land title
 - III. Death Certificate
 - b) Share Certificates
 - c) Financial Statements (Private Companies)
 - d) Receipts for funeral expenses/Mortician bills
 - e) Letters of Administration
 - f) Declaration of Principal place of Residence.
-

2. Joint Tenants:

On the death of a Joint tenant, the following information is required:

- a) Death Certificate
- b) Copy of Title
- c) Share Certificate
- d) Declaration of Principal place of business

Allowances, the Calculation of Tax & Exemptions under the Stamp Duty & Transfer Tax Acts.

1) Allowances: (under Paragraph 13 of the 1st Schedule)

Following are allowances under Paragraph 13 1st Schedule -

- a) Funeral expenses (must be reasonable)
- b) Just debts and encumbrances (must be reasonable)
- c) Mortgage Debts
- d) Trust Deed

Note carefully:

- I. These expenses will be allowed provided the deceased did not make specific provisions, or the debts will not be reimbursed from any other person or his Estate (eg Insurance proceeds). The Commissioner must be satisfied that such expenses cannot be discharged out of such of the deceased's assets, as are not included in the property aggregated as aforesaid.
- II. No allowance will be given for debts incurred outside of Jamaica, except out of value of property held abroad.
- III. Where any property passing on death is situated outside of Jamaica and the Commissioner is satisfied that by reason of death, any tax duty or other imposed in respect of that property is payable in the country wherein assessed, in allowance will be made for such tax.
- IV. If there is an expense for administering or in realizing property which is abroad, an allowance may be granted but not exceeding 5% of the value of the property.

2. Calculation of Tax:

Section 12(2) of the Transfer Tax Act states:

<i>“For every dollar of the first \$10,000 of value or such amounts as may for the time being be prescribed</i>	<i>NIL</i>
<i>For every dollar of the next \$10,000 of value</i>	<i>7.5 cents</i>
<i>For every dollar of the next \$40,000 of value</i>	<i>10 cents</i>
<i>For every dollar of the next \$50,000 of value</i>	<i>12.5 cents</i>
<i>For every dollar of the remaining value</i>	<i>15 cents”</i>

2a. Calculation of Interest:

Interest is calculated as per Paragraph 17(3) First Schedule of the Transfer Tax Act:

“6% per annum shall be paid upon any of the tax outstanding from and after the expiration of twelve (12) months of the date of death of the deceased, to the date of payment”.

NB: as per Paragraph 12(1) of the Transfer Tax Act, property must be aggregated.

3. Exemptions:

The law provides for exemption from the duty for the principal place of residence provided that it was occupied as such, by the deceased and spouse immediately prior to the death – provided that more than one residence of the deceased shall not be accepted as being his principal residence.

As of September 10, 1999, the law was amended to include the following persons, imposing on them the same conditions as those required for spouses –

- a. Mother/ Step –mother
- b. Father/ Step – father
- c. Son/ Step-son
- d. Daughter/Step-father
- e. Sister/Brother (whether of the whole or half blood)
- f. Grandfather/Grandmother
- g. Grandson/Grand – daughter.

I. Principal Place of residence (Paragraph 11(5) & (6) Amendment d/d 10/9/1997) –

The principal place of residence does not have to be the matrimonial home. The exemption for this is given when it is the principal residence of the deceased and his spouse and owned by the deceased, or the deceased and his spouse jointly, or a Tenants in common.

Prior to November 17, 1988, where the deceased was the sole owner of the property, exemptions were not given. The effect of the Amendment is that property – whether jointly or separately owned – are now exempted. Since September 1997, additional beneficiaries, who must all be resident on the subject property include:

- a. Mother
- b. Father
- c. Step – mother
- d. Step-father
- e. Children

(A marriage certificate and Statutory Declarations must be submitted as proof).

II. Life Interest (Section 6(4) –

a. Life Tenant:

A “life tenant” is a person who is left to occupy a property until his/her death. At his/her death, no tax is chargeable, provided the life interest was given by the person to whom the Life Tenant was married. In every other circumstance the Transfer Tax of 7.5% is chargeable.

b. Trust (where the deceased is a Trustee):

To value shares (Regulations d/d 30/07/1971)

- I. **Public Companies:** use the lower of the ASK or BID price added to $\frac{1}{4}$ of the difference of both.
 - II. Where there are special prices, average the price, and then use the lower of the two.
-

NB: Market value shall be ascertained by reference to the latest previous date, or earliest subsequent date on which the Stock Market was last opened and the prices are listed on the Stock Exchange – *whichever affords the lower market value.*

III. **Private Companies:** the Company's net asset is divided by the number of issued and paid up shares.

Obtaining a Stamp Commissioner's Certificate & "Up stamping" Documents

Obtaining a Stamp Commissioner's Certificate:

The Representative of the Estate – Executor, Administrator or surviving Joint Tenant – is required to present to the Commissioner the following documents:

1. A Revenue Affidavit
2. Addendum
3. Copy of Certificate(s) of Title, Indenture of Conveyance
4. Copy of probated Will
5. Copy of Inventory showing a list of personal and real properties
6. Copy of Death Certificate from the Registrar General's Department
7. Valuation Report of property (if available)
8. Declaration of surviving spouse.

It may be necessary that further enquiries are made by the Stamp Duty & Transfer Tax Division to verify the validity of the documents presented. For example, where a valuation report is not available, the division may dispatch a Valuator to inspect the property to determine its market value as at the date of death. Based on this valuation, the division determines the tax chargeable on the deceased's estate. After the tax has been paid by the personal representative of the estate, Transfer Tax & Stamp Commissioner's Certificates are issued to show that the tax has been paid. Please note that it is only after the relevant duties have been paid that the property may be transferred. This transfer may be to the Executors who will hold the Estate in trust for the beneficiary, or transfer the property directly to the Surviving Joint Tenant.

Please note the following carefully:

1. After a person dies the Affidavit must be filed within 12 months of a person's death
2. Interest accrues at the rate of 6% payable on the 1st Anniversary of the date of death
3. Valuation of property is at the date of death
4. It takes approximately 6 weeks for properly completed documents to be processed.

Documents to be "Upstamped" or stamped:

1. Probate/Letter of Administration*
2. Transfer Tax Certificate,
3. Transfer on transmission (for property to be passed to the Executor)*
4. Assent to Devise (for property to be passed to the Beneficiary)*
5. Application to note Death (Joint tenancy)*

*** All documents so indicated will be returned.**

On completion of the Assessment and where the tax has been paid, a Commissioner's & Transfer Tax Certificate will be issued.

Additional Information:

1. If you are the beneficiary of an Estate, the transfer process begins at the Stamp Duty & Transfer Tax Division.
2. Land, Buildings and Shares are liable for Transfer Tax.