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Transfer Duty Act, 1902

Act 8 of 1902

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eSwatini

Transfer Duty Act, 1902

Act 8 of 1902

Commenced on 5 February 1902

[This is the version of this document at 1 December 1998.]

An Act to provide for the payment of transfer duty on the sale and alienation of fixed property and of leases of fixed property.

1. Short title

This Act may be cited as the Transfer Duty Act, 1902.

2. Interpretation

In this Act unless the context otherwise requires—

“**fixed property**” includes—

- (a) land and any fixtures thereon, any servitude or the usufruct thereof or any other limited interest therein other than a lease;

[Amended K.O-I-C. 29/1973]

- (b) mynpachts, claims and stands;
- (c) any rights to minerals or precious stones on any land;
- (d) any right held under any concession or grant under Part II of the Concessions Act [No. 3 of 1904](#);

Provided that no transfer, lease, hypothecation or any other encumbrance of any such right shall be registered unless a receipt be produced showing that all rents and other moneys payable under such concession or grant in respect of such right have been paid;

“**lease**” includes “sub-lease”;

“**registration office**” includes any public office where title to fixed property is registered according to law;

“**sale**” includes “cession”;

“**transfer duty**” means the duty payable in terms of [section 3](#).

3. Levy of duty

Save as in this Act excepted, a duty of—

- (i) two per cent on the first E40,000;
- (ii) four per cent on any amount exceeding E40,000, but not exceeding E60,000; and
- (iii) six per cent on any amount exceeding E60,000 of the value of any fixed property and of the value of any lease as is hereinafter described shall be payable and paid by the person—

[Amended A.8/1985]

- (a) acquiring or becoming entitled to any such property or lease by way of purchase, cession, exchange, donation or in any manner otherwise than by way of legacy testamentary or other inheritance;

- (b) entering into a lease of any fixed property (other than of a mynpacht, claim or right to minerals or precious stones) where the lease is for not less than twenty-five years or for the term of the natural life of any person mentioned therein or is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period of the lease amount in all to not less than twenty-five years;
- (c) entering into a lease of any mynpacht, claim or right to minerals or precious stones for any period.

Provided that in the case of any mining or prospecting right the duty payable shall be an amount equal to 27½% on the first twenty thousand emalangeneni and 37½% on any amount above twenty thousand emalangeneni of the value of the mining or prospecting right, as the case may be.

[Added K.O-I-C. 34/1973]

4. Valuation for payment of transfer duty (Schedule)

For the purpose of ascertaining the value of fixed property or a lease thereof chargeable with transfer duty —

- (a) in the case of a sale or purchase of such property or lease the full and true consideration shall be set forth by the seller and purchaser respectively in the Forms A and B of the Schedule and transfer duty shall be charged on the amount of such consideration;
- (b) in the case of such property or lease changing proprietors otherwise than through the medium or by means of purchase and sale it shall be the duty of the revenue officer authorised to receive transfer duty in respect of such property or lease to require the parties concerned to set forth the value of such property or lease in as nearly as possible the Forms E, F and G of the Schedule;
- (c) in the case of a person entering into a lease of fixed property mentioned in [section 3\(b\)](#) transfer duty shall be paid on the full value of the property leased and such value shall be declared to by the lessor and lessee respectively;
- (d) in the case of a person entering into a lease of any mynpacht, claim or right to minerals or precious stones the total amount of rent for the whole period for which the lease has been entered into including the periods for which the lessee has the right of renewal (if any) and in addition any other consideration which may be given for such lease shall be deemed and taken to be the value on which transfer duty shall be paid in respect thereof and such rent or other consideration (if any) shall be fully set out by the lessor and lessee in Forms C and D of the Schedule:

Provided that if any such lease is for a period exceeding twenty-five years or is renewable at the will of the lessee from time to time for periods which together with the first period thereof exceeds twenty-five years in all or indefinitely such lease shall for the purposes of estimating the amount of transfer duty thereon be deemed to be a lease for twenty-five years reckoned from the date thereof at a rent equal to the average rent payable during the whole period thereof and if such lease lapses or expires by non-renewal within a period of twenty-five years from the date thereof the lessee shall upon such lapse or expiry be entitled to claim from the Accountant-General the difference between the amount of transfer duty paid in respect of such lease and the amount which would have been payable if the period of the same had been the period for which it was actually in force:

Provided further that such claim shall be made within six months after such lapse or expiry and there be transmitted with such claim a copy attested by the registration officer of the registered entry or document relative to such lapse or expiry;

- (e) if the whole or any part of the purchase price or other consideration, for such property or lease is in the form of shares in or other securities of a company, whether already registered or still to be registered, or is in the form of rights to acquire such shares or securities or rights thereto for the payment of the duty shall—
 - (i) in the case of shares or securities or any rights thereto which are quoted on any recognised stock exchange on the date of the transaction, be their middle market price on such date;

- (ii) in the case of other shares or securities or rights thereto, a value which the Accountant-General of Swaziland considers fair in the circumstances.

[Amended K.O-I-C. 29/1973]

- (f) except in the case of a *bona fide* purchase and sale, if a revenue officer authorised to receive transfer duty is satisfied that any consideration or value so declared is considerably less than what is just and fair he shall assess the amount on which it appears to him that transfer duty should be paid and if the person chargeable with the duty refuses to accept such assessment the amount on which transfer duty shall be paid shall be submitted to and decided by arbitration in manner provided by the Arbitration Act, [No. 24 of 1904](#);
- (g) pending any submission to arbitration under paragraph (f) the person chargeable with transfer duty may pay the amount assessed by the revenue officer under protest who shall give a receipt for such payment and such receipt shall be an authority to any registration officer to pass transfer of the property or lease in respect of which transfer duty is payable.

5. Any additional consideration passing to be taken into account in ascertaining value of property

If in any case some additional valuable consideration is given or promised or agreed to be given by the party to any sale or exchange or lease who is chargeable with the payment of transfer duty to the other party to the contract, or to any third person for or in respect of or in connection with such sale, exchange or lease, such additional consideration, if in money, shall be taken into account in estimating the amount on which transfer duty is to be paid, and if such additional consideration be other than money, the said party may by way of solemn declaration put a value in money upon such additional consideration, and such value shall be taken into account in estimating the amount on which transfer duty is to be paid:

Provided that [section 4\(a\)](#), (b) and (g) shall apply to the value so put if it appears to the revenue officer to be considerably less than the just and fair value of such additional consideration, or if the said party has not put a value thereon.

6. Costs and charges not forming part of valuation on which duty is payable

For the purpose of the payment of transfer duty the following shall not be deemed to form part of the consideration given in respect of the acquisition of any fixed property or lease—

- (a) the cost of any survey of the property made prior to and for the purposes of the said acquisition and of any survey of such property which may be made thereafter, and the cost of all diagrams and subdivisions, of the plan of the property exhibited at the time of the acquisition;
- (b) the charge made by an auctioneer for conditions of sale;
- (c) the commission (if any) paid by the person acquiring the property or lease to any auctioneer, broker, or agent by or through whom the transaction has been effected, not exceeding five emalangeni *per centum* upon the amount of the consideration;
- (d) the auction duty payable upon any sale;
- (e) the transfer duty payable thereon;
- (f) the cost of all deeds necessary for effecting transfer of such property or lease, and of the mortgage deed (if any), and of all necessary stamps;
- (g) the charges of conveyancers and agents incurred in effecting the transfer of the said property or lease;
- (h) the rent or tax (if any) payable to the Government upon the property.

7. When duty is payable

The transfer duty upon or in respect of every sale, lease, exchange or donation shall be payable within six months from the date of such sale, lease, exchange, or donation as the case may be, and from and after the expiry of the six months and until payment or deposit of the amount of such duty, interest thereon at the rate of twelve emalangeni *per centum* per annum shall be payable and shall be recoverable as part of the duty.

8. When payable in cases of deferred possession

If a contract of sale, lease, exchange or donation is entered into, by which it is stipulated that possession of such property shall not be given, or that the said sale, lease, exchange or donation shall not take effect until some future date, the date at which the contract was entered into, and not such future date, shall be the date from which the period of six months mentioned in [section 7](#) shall be reckoned.

9. When duty payable in cases of conditional sale, etc.

If a sale, lease, exchange or donation of fixed property is conditional, the period of six months mentioned in [section 7](#) shall be reckoned from the day on which the contract became binding upon the parties thereto:

Provided that if such contract is dissolved by reason of the happening of any resolutive condition after the payment of transfer duty, then upon proof given of such dissolution such duty shall be returned.

10. Liability to duty in cases of joint ownership

If any fixed property or lease is registered in the name of more persons than one as joint owners, all such persons shall be deemed for the purposes of the payment of duty upon or in respect of any sale, alienation, or lease, by any of them to any other or others of them, to have equal shares and interest in the said property or lease, unless the particular share or interest is set out in the title deed or other instrument recorded in the deeds or other registration office.

11. Remission of duty

No transfer duty shall be remitted upon any transaction on which duty is payable under this Act, except as herein provided and except upon transactions with regard to which the transfer duty, if paid, would be paid directly from Government revenue.

[Consolidated with P.12/1962]

12. Return of duty if sale, etc., declared void

If a contract of sale, lease, exchange, or donation, upon which transfer duty is payable is set aside, or cancelled, or declared or made void by the judgment of any competent court, the transfer duty upon such sale, lease, exchange, or donation, if unpaid shall not be payable, and if paid shall be returned.

13. Exemptions from obligation to pay duty (Schedule)

- (1) Exemptions from transfer duty shall be allowed in the cases and to the extent provided for in this section.
- (2) Transfer duty shall not be payable by the Ngwenyama in respect of the disposal of property held, or the acquisition of property to be held in trust by him for the Swazi nation.

[Consolidated with A.18/67]

- (3) If any person who is or appears upon the records of the deeds or other registration office to be a joint owner of any fixed property or lease, purchases or acquires that property, or lease, or any

portion thereof, he shall not be charged with transfer duty upon that proportion of the value of such property or lease which represents his individual share or interest.

- (4) Upon a voluntary or compulsory partition between joint owners of fixed property, or any lease, all changes in the records of the deeds or other registration office required for the due registration of the separate shares to be held by each severally, shall be made without payment of transfer duty, if the person claiming exemption from such payment makes a solemn declaration in the Form H in the Schedule, that he has not given, nor is to give any money or other valuable consideration to his late co-proprietors or any of them for or in regard to the share assigned to him, and which he desires to have registered in his name and deposits it with the officer authorised to receive transfer duty, or with the registration officer:

Provided that if for the equalising of partition, or for any other reason, such person gives, or agreed to give to his late co-proprietors or any of them any money or other valuable consideration for the share so assigned to him, he shall by solemn declaration as aforesaid state the amount or value given or to be given by him, and transfer duty shall be payable upon such value or amount:

Provided further that [section 4\(a\)](#), (b) and (g) shall apply to the amount or value so stated if it appears to the revenue officer who is to receive the transfer duty that such amount or value is considerably less than the just and fair difference in value of the separate shares.

- (5) The preceding subsections shall apply *mutatis mutandis* to a division of fixed property, or lease between spouses married in community, whether such division arises in consequence of the death of one of the spouses, of divorce, or of an order of court.
- (6) The husband of a woman to whom he is married in community of property may have any property or lease standing in the deeds or other registration office in her name removed into his own name without the payment of transfer duty.
- (7) If the trustee of an insolvent estate, in the exercise of the powers conferred on him by law as such, refuses to fulfil any contract for the sale, lease, exchange or donation of fixed property belonging to the estate made by the insolvent before sequestration, no transfer duty upon such sale, lease, exchange or donation shall be payable, and such duty if paid before the sequestration shall be returned; and if there is subsequent sale, lease or exchange of such property by the trustee of the insolvent estate, the declaration of the said trustee may be altered so as to set forth the fact of the previous sale, lease, exchange or donation, and his repudiation thereof.
- (8) If the trustee of an insolvent estate elects to abandon an agreement which has been entered into by the insolvent for the purchase, lease or exchange of any fixed property, no transfer duty shall be payable upon such sale, lease or exchange:

Provided that such duty, if it has been paid by the insolvent shall not be returned; and

Provided further that the solemn declaration to be made in case of any second or subsequent sale, lease or exchange shall be in the form marked "J" in the Schedule.

- (9) If an insolvent by agreement with his creditors is permitted to retain or take over any of the fixed property or any lease which belonged to him at the date of the order for sequestration and still remaining unregistered in his name, no transfer duty shall be payable upon such transaction.
- (10) The Minister may, upon proof made to his satisfaction that a person acting *bona fide* has made a mistake in regard to the enregisterment of any transfer, permit such transfers as may be necessary for the correction in the deeds or other registration office of the mistake, to be passed free of transfer duty.
- (11) If any person who, having become surety for the payment by the purchaser of the purchase money of a property or lease, has paid the purchase money, and by reason of insolvency, absence from Swaziland or other cause, such surety is unable to recover the money so paid, and is willing or desirous of taking transfer of the property or lease into his own name, the Minister may, if he sees fit, upon proof by solemn declaration of the facts, authorise the passing of transfer of the property or lease direct from the vendor to such surety upon payment of single duty, whether paid by the purchaser or by the surety, as if the sale had been made *ab initio* to such surety:

Provided that this subsection shall not affect the respective rights and remedies of the vendor and purchaser in regard to the first or original sale.

- (12) If a person appears in the records of the deeds or other registration office to be merely a trustee for any other person, the property so held in trust may be removed from the name of the trustee to that of some other trustee or that of such other person entitled to have it so removed, without the payment of transfer duty.

- (13) No duty shall be payable in respect of the acquisition of any fixed property by—

- (a) the King, the Ngwenyama or the Ndlovukati, both in their personal as well as official capacities, the Government, the Swaziland Railway Board, the Swaziland Electricity Board, the Royal Swaziland Sugar Corporation, a local authority and such other statutory body as the Minister may, by notice in the *Gazette*, designate;
- (b) any ecclesiastical, charitable or educational institution of a public character, whether or not supported wholly or in part from grants from the public revenue, in respect of property acquired by it for ecclesiastical, charitable or educational purposes exclusively:

Provided that if any such property or any portion thereof is subsequent to the acquisition thereof used for some other purpose, 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 thereof was first used for such other purpose shall for the purposes of [section 7](#) be deemed to be the date of the sale, lease, exchange or donation, as the case may be, and the value of such property for the purposes of determining the amount of duty payable shall be its value as at the date of such change of purpose;

- (c) any institution or body in respect of property acquired for the purpose of a public hospital, subject *mutatis mutandis* to the proviso to paragraph (b).

[Amended K.O-I-C. 29/1973; K.O-I-C. 14/1978]

- (14) If an exchange of portion of adjoining properties held under claim licence, mynpacht or other mining title is made, and in addition to the prescribed declarations a certificate signed by or on behalf of the mining commissioner is produced, stating that it has been shown to his satisfaction that such exchange is made solely and *bona fide* for mining purposes, and is necessary or instrumental to the proper or more economic working of the minerals, no duty shall be chargeable, except in respect of any consideration passing in connection with such exchange:

Provided that—

- (a) the certificate of the mining commissioner shall not be given except where the properties concerned are actually being worked or about to be worked for minerals;
- (b) the portion of property given or taken in exchange shall not exceed an area equal to ten claims respectively in extent; and
- (c) where the property to be exchanged exceeds the area mentioned, duty shall be paid in respect of the excess area.

- (15) If in the administration of the estate of a deceased person a redistribution of the fixed property takes place amongst the children or descendants of the deceased, or between such children or descendants and the surviving spouse, transfer duty shall be payable in respect of such redistribution only on the value of any fixed property belonging to the estate taken over by any of the persons aforesaid in excess of the share or portion of the fixed property to which any such person was entitled *ab intestato* or by testamentary inheritance, or by virtue of a right of community of property.

14. Remission of duty when transaction cancelled

If a transaction upon which transfer duty is payable is cancelled and rescinded by mutual consent of the parties thereto before transfer made, without any part of the consideration therefor having been paid, or any valuable consideration given or promised for the purpose of obtaining the consent to such cancellation, the transfer duty upon such transaction shall be remitted:

Provided that—

- (a) the parties thereto make solemn declarations in reference to such cancellation in the forms marked “K” and “L” in the Schedule with any necessary alterations in respect to each class of transaction; and
- (b) if any such party is from any cause unable to make such declaration, the Minister may dispense with his declaration and, should he see fit, require or accept the declaration of any agent or person acquainted with the circumstances.

15. Partial remission when transaction cancelled after part consideration paid

If a transaction upon which transfer duty is payable is by mutual consent of the parties thereto cancelled and rescinded before transfer is made, then if any part of the consideration has been paid or any valuable consideration has been given or promised by either party to the other for or in respect of such cancellation, transfer duty shall be payable only upon the sum so paid, or the value of any consideration other than money so given, such value to be ascertained in the manner provided in [section 4\(b\)](#); and the owner may on a second alienation of the property amend the declaration to be made by him by setting forth the circumstances of such previous transaction and of the cancellation thereof.

16. Enquiry by registration officer when exemption sought

If a person requiring to have any transfer or change of name effected in the deeds or other registration office claims to be exempted from the payment of transfer duty by virtue of any of the exemptions mentioned in this Act, the registration officer shall require due proof by solemn declaration if need be of all facts and circumstances by reason of which such exemption is demanded, and he may also require the production of any deeds or instruments connected with the case which tend to show whether or not such exemption ought by law to be allowed.

17. Hearing by High Court of dispute between registration officer and claimant for exemption

If a question arises between a registration officer and any person claiming to be entitled to any such exemption, regarding the right to such exemption or the extent of that right, the High Court or any judge may hear the registration officer and the said person (or any person or persons representing each respectively) as to the matter in question, and examine the proofs (if any) which shall have been offered in support of the claim to exemption, and call for such further proofs as may be necessary, and in a summary manner make such order as in the premises shall be just.

18. Power of registration officer to refer claims for exemption to the Accountant-General

If a claim for exemption is made to a registration officer under sections [16](#) or [17](#), he may notwithstanding such sections refer the claim to the Accountant-General, and such claim shall be determinable between the Accountant-General and the claimant as though the Accountant-General had been substituted for the registration officer in [section 17](#).

19. To whom duty payable

- (1) All duties and interest under this Act shall be paid to the revenue officer for the district in which the fixed property to be transferred or leased is situate, or to the revenue officer at the place where the title to such fixed property or lease is registered.
- (2) The revenue officer shall give a receipt for such duties and interest, and no transfer of such property, and no registration of a lease or cession thereof in respect of which duty is payable shall be made unless such receipt has been produced to and deposited with the registration officer.

20. Solemn declaration of sale, etc. (Schedule)

- (1) No revenue officer shall grant a receipt for any duty referred to in [section 19](#) payable upon or in respect of any sale and purchase, lease, exchange, or donation, until the parties have taken and subscribed appropriate forms of solemn declaration set out in the Schedule.
- (2) The revenue officer may require the production of any deeds or instruments connected with the case, and which tend to show what amount of transfer duty is payable.

21. Solemn declaration by agent or broker

If it appears to the revenue officer that any agent, auctioneer, broker, or other person acting for or on behalf of any party to a transaction in respect of which transfer duty is payable has himself in his said capacity made and entered into such transaction, such revenue officer shall demand and receive the solemn declaration of such agent, auctioneer, broker, or other person either in lieu of or in addition to that of his principal as such revenue officer deems fit; and the solemn declaration taken as aforesaid shall be in the form I in the Schedule.

22. Solemn declaration in case of death, etc., of one of the parties

If in any case it appears that one of the parties to any transaction in respect of which transfer duty is payable has died or has become mentally incapacitated or has departed from Swaziland without having taken and subscribed the necessary solemn declaration, the revenue officer may either dispense with such solemn declaration or receive in lieu thereof the solemn declaration of any other person who may be in a position to testify to the particular matters to be set forth in such declaration.

23. Person bidding as agent to disclose name of principal

If any fixed property or lease is sold by public sale the auctioneer shall before or at or forthwith after the closing of the bidding ascertain from the bidder for whom he purchases, and if such bidder professes to purchase for some person other than himself then the auctioneer or his assistant shall, if the purchaser so disclosed is approved of, take down in writing the name of such bidder and of the principal for whom he purchases, and until the name of the purchaser, whether the bidder himself or someone else for whom he purchases, has been taken down in writing there shall be no sale to any person and the property or lease may be again put up to competition:

Provided that it shall not be necessary that the name of the person for whom any bidder is purchasing shall be announced publicly to the bystanders if it is made known to the auctioneer and shall be taken down in writing as aforesaid by him or his assistant.

24. Proceeding where bidder refuses to disclose name of principal

If any bidder whose bid has been accepted by the auctioneer refuses to declare when called upon to do so by the auctioneer for whom such bidder purchases the auctioneer may either treat and consider such bidder as being himself the purchaser, and such bidder shall thereupon be deemed to be the purchaser, or the auctioneer at his election may treat such bidding as null and void and proceed afresh as if it had never been made:

Provided that the auctioneer having once made his election either to treat such bidder as the purchase or to proceed to sell afresh may not afterwards alter such election.

25. Proceeding where principal repudiates purchase

If any bidder should as aforesaid declare the name of some person as his principal and such name is taken down as the purchaser and such named person afterwards refuses to accept the property purchased in his name, then unless the bidder produces a sufficient authority in writing from his alleged principal authorising him to make the purchase for such principal the bidder shall himself (without prejudice to other questions between the parties) be liable to pay transfer duty:

Provided that such bidder shall be entitled to recover the transfer duty from his principal, if he proves that the principal did in fact give him authority to make the purchase in dispute.

26. Provisions to apply to private sale and to leases, etc., by agent

Section 25 in so far as it relates to agents bidding at public sales shall apply *mutatis mutandis* to persons purchasing fixed property or leases as agents for alleged principals otherwise than a public auction; and also to persons acquiring fixed property by way of lease for alleged principals where such lease falls under section 3(2) and (3).

27. Auctioneer, broker, etc., forbidden to sell, etc., to undisclosed principal

- (1) No auctioneer, broker or agent shall take down or receive in regard to any purchase or lease or fixed property on which transfer duty is payable the name of any person as purchasing or leasing such property in the manner commonly called and written "q.q." or receive in any other form the name of any person as purchasing or leasing such property for an unnamed principal.
- (2) An auctioneer, broker, or agent who contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeneni.
- (3) This section shall apply to the purchase of any lease where transfer duty is payable in such purchase.

28. Payment of duty when sale or lease taken over by agent (Schedule)

In any case of purchase or lease of fixed property if the person whose name has been declared and taken down as purchaser or lessee of such property denies that he gave authority for the making of such purchase or lease, or if for any other reason such person declines to accept the purchase, lease or exchange, and the agent or alleged agent is willing to take such property for his own individual account, and the vendor or lessor consents thereto, no transfer duty shall be payable upon the sale or lease or alleged sale or lease to the alleged principal; but only a single transfer duty as if the sale or lease had been made *ab initio* to the alleged agent in his individual capacity, and the solemn declarations by law required to be made shall be altered in the manner indicated in the forms marked M and N in the Schedule.

29. Private sales and leases to undisclosed principals declared null and void

Every sale of fixed property made otherwise than by auction, and every lease falling under section 3(2) and 3 in regard to which the purchaser or lessee does not profess to purchase or lease for himself in his individual capacity, shall be wholly null and void unless at the time of making and completion thereof the name of the principal for whom the purchase or lease is made is disclosed and inserted in the contract which may be made in regard to such sale or lease.

30. Lease of land for ten years and more to be notarial

- (1) No lease of any mynpacht, claim or right to minerals, and no lease of any land or any stand for a period not less than ten years or for the natural life of any person mentioned therein, or which is renewable from time to time at the will of the lessee indefinitely, or for periods which together

with the first period thereof amount in all to not less than ten years, shall be of any force or effect if executed after the taking effect of this Act unless executed before a notary public, nor shall it be of any force or effect against creditors or any subsequent *bona fide* purchaser or lessee of the property leased or any portion thereof unless it be registered against the title deeds of such property.

- (2) No cession of any lease mentioned in subsection (1) made after the taking effect of this Act shall be of any force or effect against creditors or against any subsequent *bona fide* purchasers thereof unless such cession be registered in the registration office in which such lease is registered.
- (3) No owner or lessee shall cause a cession of any lease of a lot to be registered or entered in any of his books or registers unless such cession bears an endorsement upon it showing that it has already been registered at the proper registration office.
- (4) Any person contravening subsection (3) shall be guilty of an offence and liable on conviction to a fine of two hundred emalangeni for each such contravention.
- (5) For the proper carrying out of the provisions of this section the Minister may make regulations prescribing the manner in which leases and sales or cessions thereof shall be registered, and such regulations shall be published in the *Gazette*.

31. Contract of sale to be in writing

No contract of sale of fixed property shall be of any force or effect unless it is in writing and signed by the parties thereto or by their agents duly authorised in writing.

32. Resale when vendor unable to enforce contract of purchase

If any person who has sold any fixed property upon which sale transfer duty is payable satisfies the Minister that the purchaser of such property cannot be discovered within Swaziland, or has left Swaziland without taking transfer and without paying any part of the purchase money, and that such vendor is unable to obtain or enforce the fulfilment of the contract, the Minister may permit the vendor aforesaid, in case he sells the property again, to make the necessary alteration in the form of solemn declaration to be made by him in reference to such second sale:

Provided that nothing herein contained shall alter or effect the law in reference to the respective rights or remedies of such vendor and purchaser in regard to such first sale.

33. Penalties

- (1) Any person who makes any declaration which contains any misstatement, or which conceals or fails to disclose any material or necessary fact relative to the nature of the transaction or the consideration passing or the value or amount on which duty is payable, shall incur a penalty not exceeding one thousand emalangeni, to be fixed by the Accountant-General whose decision shall be final.
- (2) If by reason of any such misstatement, concealment or non-disclosure, a lesser sum for duty has been paid than should have been paid, the person liable for payment shall be liable to make good to the Treasury the difference between the sum paid and the sum which should have been paid, together with interest thereon at the rate of twelve per cent per annum and all costs of recovery.
- (3) Any person who, with intent that the payment of any amount payable as transfer duty may be evaded by himself or any other person, knowingly and corruptly makes a declaration which is untrue in any material particular, or from which is wilfully omitted any fact material for the purpose of enabling the amount of duty to be correctly assessed, shall be guilty of an offence and liable on conviction to the penalties prescribed in law for perjury.

[Amended P.2/1962]

34. Recovery of duty

Transfer duty and any interest, valuation fees, fines, penalties or other sums payable to the Accountant-General under this Act shall be a debt due to the Government, and may be recovered by action in any competent court.

35. Forms of declaration

- (1) The Minister may by notice in the *Gazette* prescribe forms of declaration either in addition to or in substitution for those set forth in the Schedule, and any form of declaration so prescribed shall be deemed to be the declaration in the form required by this Act.
- (2) All declarations, whether in the form set forth in the Schedule, or prescribed under the powers of this section, shall be made before such persons as are by law entitled to administer oaths.

36. Duty payable on transaction as a whole

If two or more fixed properties held under separate registered titles are included in one transaction, the declarations relative thereto shall disclose all the properties, and also the full consideration payable on the whole transaction, and transfer duty shall be payable in one sum in respect thereof, unless the Accountant-General consents to an apportionment of duty in respect of such several properties as they are severally transferred.

37. Notice of legal proceedings

No legal proceedings shall be brought by any person against the Accountant-General or any revenue officer in respect of any matter or dispute arising out of the administration of this Act, unless at least seven days' notice has been served on him at the office of the Accountant-General.

Schedule (Under section 4, 13, 14, 20, 28, 35 of the Act)

Form "A" – Declaration of seller

I, A.B., do solemnly and sincerely declare that on the _____ day of _____ 20 ____, and not before I sold to C.D. the property herein described, that is to say _____ [*here describe the property*] and that the full and true consideration passing to me for such sale is E _____ and I further declare that there is not any agreement, condition or understanding between me and the said C.D. whereby he has paid or is to pay to me or to any other person whomsoever for or in respect of or in connection with the purchase by him of the said property any sum of money over and above the said sum of E _____ save and except certain charges or payments which fall under or come within one or more of the heads or items of charge or payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive for my use or benefit or at my instance or request any valuable consideration besides the said sum of E _____ save and except in so far as any of the charges above mentioned and to be paid by the said C.D., might be held or taken to be payable for me or on my behalf.

And I further declare that the said C.D. is the only person who has ever purchased the said property from me, and I never sold the same to any other person. And I make this solemn declaration conscientiously believing the same to be true.

A.B.

Declared before me this _____ day of _____, 20 ____.

Form “B” – Declaration of purchaser

I, C.D., do solemnly and sincerely declare that on the _____ day of _____, 20__, and not before I bought from A.B. the property herein described _____ [here describe the property] and that the full and true consideration given by me for such property whether to the said A.B. or any other person in connection with such sale is E _____ and I further declare that I have not nor has any person to my knowledge on my account given nor is there by me or on my behalf to be given any other valuable consideration for or in respect of or in connection with the alienation to me of the said property save and except certain charges or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I make this solemn declaration conscientiously believing the same to be true.

C.D.

Declared before me this _____ day of _____, 20__.

Form “C” – By lessor of fixed property

I, A.B., do solemnly and sincerely declare that on the _____ day _____ I leased to C.D. for a period ^{1*} of _____ the property herein described _____ [here set forth the property] and that the full consideration passing to me for such lease is:

- (a) A yearly rental of E _____
- (b) By way of further consideration E _____

I further declare that there is not any agreement, condition or understanding between me and the said C.D., whereby he has paid, or is to pay, to me or to any other person whomsoever for, or in respect of, or in connection with, the lease to him of the said property any sum of money or other valuable consideration over and above the said sum of R _____ save and except certain charges or payments which fall under or come within some one or more of the heads or items of charge or payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20__.

Form “D” – Declaration of lessee

I, C.D., do solemnly and sincerely declare that on the _____ day of _____ I hired from A.B. for a period of _____ the property herein described [here set forth the property] and that the full consideration given by me for the said lease is:

- (a) A yearly rental of E _____
- (b) By way of further consideration E _____

I further declare that there is not any agreement or understanding between me and the said A.B., whereby I have paid, or am to pay, to the said A.B., or to any other person whomsoever for, or in respect of, or in connection with, the lease to me of the said property any sum of money or other valuable consideration over and above the said sum of R _____ save and except certain charges or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20__.

^{1*}

The period of the lease including the periods of renewal if any should here be stated.

Form “E” – Declaration of Exchange

We, the undersigned _____ proprietors respectively of the following properties, that is to say:

I, the said _____ proprietor of _____ and I, the said _____ proprietor of _____ do severally, solemnly, and sincerely declare that we have mutually agreed with each other to the following exchange, namely:

[Particulars of the exchange and value of the properties exchanged.]^{2}*

And we declare that we have not, nor has any person to our knowledge on our account given or received, nor is there by us or on our behalf to be given or received by the one to or from the other of us any money or other valuable consideration other than as above stated, for, or in respect of, the exchange and the mutual transfer of the aforesaid properties.

And we make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

Form “F” – Declaration of donor

I, A.B., declare solemnly that in consideration of the special affection and love which I feel and cherish for C.D., and by reason of the good and valid consideration which specially prompts me thereto, I, by way of donatio *inter vivos* or gift between living persons have irrevocably presented, given and bestowed on, and for the benefit of, the said C.D. certain property.

[Here describe the property]

And I declare that the value of the said property is to the best of my knowledge and belief R _____.

And I, the said A.B., do further declare that I presented the said property as a gift to the said C.D., on the _____ day of _____ 20 ____, and not before that date, and I neither have nor shall receive any valuable consideration for, or on account of, the alienation of the said property.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

Form “G” – Declaration of donee

I, C.D., declare solemnly that I accept the present by way of *donatio inter vivos* or gift between living persons made and given to me by A.B. of certain property.

[Here describe the property]

And I, the said C.D., declare that the value of the said property is _____ and that the said A.B. made the gift on the _____ day of _____ 20 __ and not before that date; and that neither I nor anyone else on my behalf, or for my account, has given, or promised, or intends to give, or pay any valuable consideration whatever for, or on account of, the alienation of the said property.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

Form “H” – Declaration on partition of fixed property

We, the undersigned _____, joint proprietors of the farm (or erf) called _____, in extent _____ morgen and _____ square roods No. _____ situated in the district of _____, do severally, solemnly, and sincerely declare

2*

If any money or other valuable consideration is given in respect of the exchange it should be stated here.

that we have mutually agreed with each other to the following partition of the said land, so as to give to each party a defined portion as his separate and exclusive property, namely:

[Here set out partition of sub-division.]

And we declare that we have not, nor has any person to our knowledge on our account given or received, nor is there by us, or on our behalf, to be given or received by the one to or from the other of us any money or other valuable consideration, for, or in respect of, the partition and mutual transfer of the aforesaid land.

And we make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

Form “I” – Declaration of sale by an agent

I, _____, do solemnly and sincerely declare that I have acted as the agent (auctioneer or broker as the case may be) in making the sale^{3*} (or purchase) of certain _____ sold by _____ to _____ and that I know of my own knowledge the amount of the consideration given therefor; and I do further declare that the said sale was made on the _____ and not before; and that the sum of _____ is to the best of my knowledge and belief the full and entire consideration to be given in regard to the alienation of the said property, and that to the best of my knowledge and belief no further or other valuable consideration has been given or is to be given by or on behalf of the said _____ for or in respect of the said property, save and except certain charges and payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me _____ this day of _____, 20 ____.

Form “J” – Declaration of seller

[When there has been a former sale to a purchaser subsequently declared insolvent whose trustee has elected to abandon the sale.]

I, A.B., do solemnly and sincerely declare that the sum of E _____ is the full and entire consideration for which I have sold to C.D. the following property, that is to say:

[Here describe the property]

And I declare that I sold the same to the said C.D. on the _____ day of _____, 20 ____, and not before, and that there is not any agreement, condition, or understanding between me and the said C.D. whereby he has paid or is to pay to me or to any other person whomsoever for or in respect of or in connection with the purchase by him of the said property any sum of money over and above the said sum of E _____ save and except certain charges or payments which fall under or come within one or more of the heads or items of charge or payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request any valuable consideration besides the said sum of E _____ save and except in so far as any of the charges above specified, and to be paid by the said C.D., might be held or taken to be payable for me or on my behalf. And I further declare that the only person other than the said C.D. to whom I ever sold the said property, or who at any time purchased the said property from me, was E.F., to whom I sold the same on the _____ day of _____, 20 ____, for the sum of E _____.

And I further declare that since the said sale to the said E.F. he has become insolvent, and that the trustee of his insolvent estate has elected to abandon the said sale. And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

^{3*}

Where the transaction is a lease, exchange or donation, the form may be altered accordingly.

Form “K” – Declaration by seller of cancellation

I, A.B., do solemnly and sincerely declare that I sold to C.D. on the _____ day of _____, 20 ____, the property following namely:

[Here describe the property]

for the sum of E _____ and I declare that I have never received any sum of money or other valuable consideration on account of the said purchase other than _____.

And I further declare that I have consented and agreed with the said C.D. to cancel by mutual consent the said sale, which sale was on the _____ day of _____, 20 ____, cancelled accordingly.

And I further declare that I have not received, nor am I to receive from nor have I given, nor am I to give to the said C.D., or any other person, any money or other valuable consideration for or in reference to the cancellation of the said sale other than as above stated.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

Form “L” – Declaration by purchaser of cancellation

I, C.D., do solemnly and sincerely declare that I bought from A.B. on the _____ day of _____, 20 ____, the following property, namely:

[Here describe the property]

for the sum of E _____ and I declare that I have never given to the said A.B. any sum of money or other valuable consideration on account of the said purchase other than _____.

And I further declare that I have applied to the said A.B. to consent to cancel the sale, which sale has accordingly been cancelled by mutual consent.

And I further declare that I have not given or received, nor am I to give or receive, nor has any person on my behalf to my knowledge given or received, nor is any person to my knowledge to give or receive any money or other valuable consideration for or in reference to the cancellation of the said sale other than as above stated.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me this _____ day of _____, 20 ____.

Form “M” – Declaration of seller when agent accepts sale for himself

I, A.B., do solemnly and sincerely declare that I sold to C.D. as the agent or alleged agent of E.F. on the _____ day of _____, 20 ____, and not before, the property following namely:

[Here describe the property]

for the sum of E _____. And I declare that the said E.F. has declined to accept the property, and that the said C.D. has signified his willingness to take the same to and for his own individual account for the said sum of E _____ neither more nor less. And I further declare that there is not any agreement, condition, or understanding between me and the said C.D. whereby he has paid or is to pay to me, or to any other person whomsoever for, or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of E _____ save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments mentioned in section 6 of the Transfer Duty Act 8/1902.

And I further declare that I have not received and that I am not to receive, nor has any other person received, nor is any other person to receive for my use or benefit or at my instance, or request, any valuable consideration besides the said sum of E _____ save and except in so far as any of the charges above specified, and to be paid by

the said C.D., might be held or taken to be payable for me or in my behalf. And I further declare that the said C.D. as the agent or alleged agent of the said E.F. is the only person who has ever purchased the said property, and that I never sold the same to any other person than in manner aforesaid to the said C.D., who with my consent and by virtue of the Act in that behalf provided takes over the property aforesaid as his own.

And I make this solemn declaration conscientiously believing the same to be true.

A.B.

Declared before me this _____ day of _____, 20 ____.

Form “N” – Declaration of purchaser^{4*} by agent who accepts the sale for himself

I, C.D., do solemnly and sincerely declare that I did in the name of E.F. purchase from A.B. on the _____ day of _____, 20 ____, and not before, the property following namely:

[Here describe the property]

for the sum of E _____. And I further declare that the said E.F. has declined to accept the property, and that the said A.B. has consented and agreed that I shall take over the said property as the purchaser thereof for the sum of E. _____. And I further declare that I have not, nor has any person to my knowledge on my account, given nor is there, by me or on my behalf, to be given any valuable consideration of any kind whatever for or in respect of, the alienation to me of the said property, save and except certain charges or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section 6 of the Transfer Duty Act No. 8 of 1902.

And I make this solemn declaration conscientiously believing the same to be true.

C.D.

Declared before me this _____ day of _____, 20 ____.

^{4*}

Where the agent has accepted a lease the form may be altered accordingly.