

**SUBSIDIARY LEGISLATION 364.06****DUTY ON DOCUMENTS AND TRANSFERS RULES**

25th November, 1992

*LEGAL NOTICE 98 of 1993, as amended by Legal Notices 57 of 1994, 75 of 1997, 350 of 2002, 7, 112, 348 and 352 of 2004, 113 of 2006, 425 of 2007, 189 and 350 of 2009, 310 and 452 of 2010, and 426 of 2012; Act XXXIV of 2014; and Legal Notices 465 of 2014, 147 of 2015, 205 of 2016, 36 of 2017 and 202 of 2018 117 of 2019 and 68 and 168 of 2020.*

1. The title of these rules is the Duty on Documents and Transfers Rules. Citation.

2. (1) The duty in respect of any document or transfer executed in Malta shall be made at the Office of the Commissioner within fifteen working days following that on which the document or transfer is completed. Manner of payment of duty etc.  
*Amended by:  
L.N. 350 of 2002;  
L.N. 68 of 2020.*

(2) *Deleted by Legal Notice 68 of 2020.*

(3) Payment of duty in respect of documents executed outside Malta which are liable to duty by reason of their use in Malta shall be effected at the Office of the Commissioner before use thereof is made in Malta.

(4) Payment of duty in respect of a schedule of redemption of ground-rent to be filed in court shall be noted by the Commissioner and it shall not be lawful to file any such schedule in Court before payment thereof has been made.

(5) The duty chargeable on any transfer referred to in articles 32, 33 and 40 of the Duty on Documents and Transfers Act, hereinafter referred to as "the Act", shall be paid by means of a bank draft or a cheque drawn by the Notary who published the transfer deed and a copy of the notice mentioned in article 51 of the Act and in a format as provided by the Commissioner for these purposes, duly stamped by the Commissioner, shall be annexed to the deed relating to the transfer by the notary publishing such deed: Cap. 364.

Provided that where payment is effected by means of a bank draft within the time in which such duty is payable in accordance with these rules, no liability shall attach on the notary or the parties to the deed if the bank draft is subsequently not honoured by the bank issuing the draft.

(6) The receipt for the duty paid on any transfer referred to in articles 36, 37, 39 and 42 of the Act shall be annexed to the document relating to such transfer.

3. (1) (a) The value of any property subject to duty under the Duty on Documents and Transfers Act, transferred *inter vivos* or transmitted *causa mortis*, shall be the value of such property on the date of the said transfer *inter vivos* or on the date of death of the person from whom the transfer *causa mortis* originates, as the case may be, (hereinafter referred to as "the relevant date") and such Value of property.  
Cap. 364.  
*Amended by:  
L.N. 57 of 1994;  
L.N. 75 of 1997;  
L.N. 350 of 2002;  
L.N. 205 of 2016;  
L.N. 68 of 2020.*

value shall be established in accordance with the following provisions:

Provided that where a notice of a promise of sale is given according to article 3(6) of the Duty on Documents and Transfers Act, and the promise of sale is made for a period not exceeding one (1) year, or three (3) years in the case of a property consisting of a unit in a project acquired on plan, the relevant date shall be the date of the promise of sale:

Provided further that where improvements are made between the date of the promise of sale and the date of transfer, the relevant date shall be the date of transfer;

(b) The provisions of this sub-rule shall apply from the 15th October 2019.

(2) The value of the full ownership of any property on the relevant date shall be the average price which such property would fetch if sold on the open market on that date, in the state it is in as on that date, including any improvements existing on that date, whether made or paid for by the transferor, the transferee or any other person:

Provided that in the case of a transfer by a gratuitous title by a person to his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers or sisters and their descendants, who acquire such property for the purpose of establishing therein or constructing thereon their sole, ordinary residence, the value thereof shall be deemed to be eighty *per centum* of the market value of the property so transferred on the date of transfer.

(3) The value of the usufruct of any property on the relevant date shall be established as follows:

- (a) where the duration of the usufruct is for the life of the usufructuary or for any other indefinite period, the value of the usufruct shall be the percentage of the value of the full ownership set out in the Schedule reckoned according to the age of the usufructuary on that date: so however that where a usufruct devolves on several persons jointly or successively, or jointly and successively, and the provisions of the Act apply, the value of the usufruct shall be determined according to the age of the youngest of such persons on the relevant date;
- (b) subject to the provisions of paragraph (c), where the duration of the usufruct is limited to a definite period, the value of the usufruct shall be one and a half per cent of the value of the full ownership of the property multiplied by the number of years, or the remaining number of years, (in all cases a fraction of a year being taken as one whole year), of the duration of such usufruct;
- (c) the provisions referred to in paragraph (b) are:

- (i) where, having regard to the age of the person, or if the usufruct devolves jointly or successively, or jointly and successively, on more than one person, the age of the youngest of such persons, upon whom the usufruct devolves on the relevant date, the value of such usufruct established in accordance with the provisions of paragraph (a) is less than the value established in accordance with the provisions of paragraph (b), the value of the usufruct shall be that established in accordance with the provisions of the said paragraph (a);
  - (ii) where it is provided that the usufruct is to terminate on the death of a stated person even if such death happens before the expiration of the definite period, the value of the usufruct shall also be that established in accordance with the provisions of paragraph (a) or of paragraph (b), whichever value is the less, having regard to the age of the said person on the relevant date;
  - (iii) in no case shall the value of the usufruct established in accordance with the provisions of paragraph (b) hereof exceed the value of the full ownership of the property;
- (d) where a usufruct devolves on several persons jointly or successively, or jointly and successively, and the provisions of the Act apply -
- (i) where the usufruct devolves jointly, or jointly and successively to the same persons, each person shall be deemed to have received a portion of the value of the usufruct calculated in terms of the said provisions as is equal to the proportion obtained by taking as denominator the sum of the percentages appearing in the Second Schedule as are appropriate to the age of each beneficiary on the relevant date, and as numerator the percentage appropriate to the said person;
  - (ii) where the usufruct devolves successively, the first beneficiary thereof shall be deemed to be the sole beneficiary:

Provided that if any other beneficiary is of a younger age than the first beneficiary on the relevant date, both the beneficiaries and any other beneficiary who is younger than him, shall be treated as beneficiaries, and the portion of the value of the usufruct received by the first beneficiary shall be the value attributable to him under the Schedule, and the portion of the value of the usufruct received by any other beneficiary shall be deemed to be that portion of the value of the usufruct as is equivalent to the value attributable to him under the said Schedule, less

any part so attributable to any other beneficiary of an older age also benefiting from the said usufruct.

(4) The value of the *nuda proprietas* on the relevant date shall be the difference between the value of the full ownership of the property on that date and the value on the same date of the usufruct encumbering it established in accordance with the provisions of sub-rule (3).

(5) The value of the *dominium utile* of any property on the relevant date shall be established as follows:

- (a) where the *dominium utile* is perpetual, or where its remaining period is not less than fifty years, the value of the *dominium utile* shall be the difference between the value of the full ownership of the property established in accordance with the provisions of sub-rule (2) and the value of the *dominium directum* established in accordance with the provisions of sub-rule(7)(a);
- (b) where the remaining period of the *dominium utile* is less than fifty years, the value of the *dominium utile* shall be such portion of the value of the *dominium utile* of the same property, established as if it were perpetual in accordance with the provisions of paragraph (a), as takes fairly and adequately into account the duration of the remaining period and all other relevant circumstances.

(6) The value of the *dominium directum* of any property on the relevant date shall be established as follows:

- (a) where the *dominium utile* of the property is perpetual, or where its remaining period is not less than fifty years, the value of the *dominium directum* of that property shall be:
  - (i) in respect of a transfer *causa mortis*, the value resulting from the capitalization of the annual ground rent at the rate of eight per cent;
  - (ii) in respect of any document whereby a schedule of redemption of ground rent is filed in Court, the value resulting from the capitalisation of the annual ground rent as established in any law governing such redemption; and
  - (iii) in any other case, the value or the amount of the consideration, whichever is the higher, which the annual ground rent would fetch if redeemed or transferred on the open market;
- (b) where the remaining period of the *dominium utile* of the property is less than fifty years, the value of the *dominium directum* of that property shall be the difference between the value of the full ownership of that property and the value of its *dominium utile* on the same date established in accordance with the

provisions of sub-rule (5)(b).

- (7) (a) Where the consideration for a transfer or the value upon which the duty is to be assessed consists of a periodical payment in perpetuity, or for a period of twenty years or more, or for an indefinite period, an *ad valorem* duty shall be charged on the total amount payable during the period of twenty years.
- (b) Where the periodical payment is to continue for a definite period of less than twenty years, an *ad valorem* duty shall be charged on the total amount payable during such period.
- (c) Where the periodical payment is to continue during any life or lives, an *ad valorem* duty shall be charged on the total amount payable during the period of twelve years.
- (d) Where a document is chargeable with *ad valorem* duty in respect of an amount expressed in foreign currency, the duty shall be calculated on such amount converted into Maltese currency at the rate of exchange current on the day of the date of the document.

**3A.** (1) The transferee in a transfer *inter vivos* of any immovable or any real right over an immovable, where the transfer is effected by public deed or in the case of a declaration made in terms of article 33 of the Act, and where such transfer takes place on or after the 15th November 2014, may produce to the notary publishing the relative deed, a professional valuation consisting of a report as provided in sub-rule (2) drawn up by an architect in possession of a warrant issued under article 5 of the Periti Act. The architect's report shall be annexed to the deed relating to the transfer by the notary publishing such deed.

Professional valuation.  
Added by:  
L.N. 465 of 2014.

Cap. 390.

(2) The architect's report shall contain a clear explanation of the conclusions of the valuation, setting out the basis of the valuation including the type of valuation undertaken and the definition of value and shall include the following information:

- (a) the date of the report, addressed to the transferee;
- (b) a description of the physical attributes of the immovable property, including a site plan, type of property and access, footprint, locality including description of the surrounding area, approximate age of premises, status of property, standards of finishing, description of surrounding view, other structural characteristics and amenities;
- (c) a description of the legal attributes of the immovable property, including reference to the compatibility of the property with the development permit;
- (d) a description of the rights/interest in the property which are the subject of the valuation;
- (e) the date as of which the valuation applies and the date of inspection of the immovable property;

- (f) a description of the extent and scope of the work undertaken to determine the valuation including the description of all assumptions and any limiting factors on which the valuation is based as well as any special, unusual or extraordinary assumptions including the probability that such will occur;
- (g) an explanation of the rationale that supports the valuation conclusion in the report including a description of the relevant information and data examined;
- (h) a market analysis and the valuation approaches and procedures followed, where applicable;
- (i) the name, professional qualifications, and signature of the expert responsible for drawing up the report and carrying out the valuation:

Provided that a professional valuation of the immovable or any real right over an immovable shall not be valid if the date on which the architect's report is drawn up is earlier than forty days preceding the date on which the relative deed is published or is later than twelve months from the date of death of the person from whom the transfer *causa mortis* originates, as the case may be:

Provided further that, if from the date on which the architect's report was drawn up until the date of the deed, any changes and, or alterations are carried out on the property, the transferee shall be required to inform the architect who has drawn up the report of such changes and, or alterations and the architect shall update the report accordingly.

(3) Where the notary publishing the relative deed submits, together with the notice referred to in article 51 of the Act, the architect's report referred to in this rule, the Commissioner may at his absolute discretion accept such valuation and in such case the real value of the immovable property shall be such amount as determined by the architect. The Commissioner shall, for the purpose of determining whether the immovable property has been undervalued for the purposes of the application of this Act in accordance with article 19(2) of the Act, take into account the said report.

(4) Subject to the Commissioner's right not to accept a valuation made by an architect, at the time of publication of the deed or declaration, it shall be deemed that the valuation of the architect is a determination of value made by the Commissioner for the purpose of article 52 of the Act and accordingly where the price or consideration, or the value as declared in the deed of transfer or declaration *causa mortis* made in accordance with article 33 of the Act is not less than eighty-five *per centum* of the value provided by the architect, the duty payable, as applicable, shall be computed and paid on the price or consideration, or the value as declared in the deed of transfer, whichever is the higher, or the value as declared in the declaration *causa mortis*.

**3B.** (1) Where the Commissioner is of the opinion that any document which has been produced to or obtained by him for any purpose of Duty on Documents and Transfers Act, constitutes or contains evidence of any act or omission on the part of a warrant holder, and that such act or omission is an act or omission mentioned in article 15(a)(i) to (iv) of the Periti Act, he shall, subject to the other provisions of this rule, send a copy of that document to the Chamber of Architects.

Evidence of any act or omission on the part of a warrant holder.  
*Added by;*  
*L.N. 465 of 2014.*  
Cap. 364.  
Cap. 390.

(2) The Commissioner shall certify any document he sends to the Chamber of Architects in accordance with sub-rule (1) as a true copy of the original and shall send to the Chamber of Architects together with any such document a statement giving the reasons for which he has formed his opinion.

(3) The Chamber of Architects may use any document received in accordance with the provisions of this rule for the purpose of an enquiry which it may conduct under the said Act but not for any other purpose.

(4) A document sent to the Chamber of Architects and certified as a true copy of the original in accordance with this rule shall be admissible as evidence as if it were the original and the production of such document shall not empower any court or authority to request the Commissioner to produce the original of such document or to give evidence on such document except as may be allowed under the other provisions of the Act:

Provided that the Commissioner may be required to produce the original of any such document in any case where it is necessary to prove the handwriting or the signature or the identity of the warrant holder in question, but only for the purpose of such proof and provided that the said original shall be returned to the Commissioner as soon as it is no longer required for the purpose for which it has been produced.

(5) Within a reasonable time from the receipt of any document sent to it in accordance with this rule, the Chamber of Architects shall inform the Commissioner in writing whether it proposes to use the said document for the purpose referred to in sub-rule (3) or not, and, in the latter case, the Chamber of Architects shall state the reason for its decision not to make such a use and shall return the document to the Commissioner.

(6) Within a reasonable time from the conclusion of any enquiry in which any documents referred to the Chamber of Architects in accordance with this rule have been used, the Chamber of Architects shall deliver to the Commissioner a copy of its decision on that enquiry.

(7) Nothing in this rule shall be construed as -

- (a) empowering the Chamber of Architects to request any information or documents from the Commissioner or to otherwise have access to documents or other information held by the Commissioner;
- (b) binding the Commissioner to give evidence or explanations in respect of any documents sent by him

to the Chamber of Architects;

- (c) binding the Commissioner to conduct any investigation or make reports on the conduct of any warrant holder.

(8) The documents to which this rule refers are:

- (a) any report signed by a warrant holder;
- (b) any information, records, or computations, or any extract thereof, in respect of which a report referred to in paragraph (a) has been made.

Declaration of transfers *causa mortis*.

4. (1) The declaration of a transfer *causa mortis* to be made in terms of article 33 of the Act shall be made within six months of the relative transfer *causa mortis*.

(2) The declaration shall contain:

Cap. 55.

- (a) the particulars referred to in article 28(1)(c) of the Notarial Profession and Notarial Archives Act in respect of the transferee *causa mortis* and of the person from whom the transfer *causa mortis* originates;
- (b) the precise description of all the immovable property or rights thereon transferred to the transferee *causa mortis* including the requirements listed in article 28(1)(f)(ii) of the Notarial Profession and Notarial Archives Act; and
- (c) an indication of whether the transfer *causa mortis* devolved on intestacy or otherwise, as well as a reference to any will or any decree or judgement of any court whereby the succession was declared open in favour of the transferee *causa mortis*.

Rebate of duty.  
Amended by:  
L.N. 425 of 2007.

5. (1) Where the total duty payable at the rates specified in article 32 of the Act on the value of any property contained in a declaration made by a transferee *causa mortis* in accordance with article 33 of the said Act is less than two thousand and three hundred euro (2,300) such duty shall, for the purposes of article 34 of the Act, be rebated by an amount of €250 and where such rebate exceeds the amount of duty chargeable the rebate shall be reduced to the amount of duty so chargeable.

(2) Where a transferee *causa mortis* omits to make in a declaration a full statement of all the property transferred to him comprised in the transfer *causa mortis*, any subsequent declaration making a statement of such property shall be deemed as one with the first declaration and the said rebate shall apply to all the declarations made by a transferee *causa mortis* in respect of any one transfer *causa mortis* cumulatively.

(3) Such rebate shall not apply to such part of the duty in respect of any property transferred to a transferee *causa mortis* and contained in any declaration made more than six months after the happening of the relative transfer *causa mortis*.



6. Deleted by Legal Notice 202 of 2018.

Memorandum of auction sales.

7. (1) For the purposes of article 46 of the Act, a person to whom shares in a limited liability company registered in Malta are transmitted *causa mortis* shall not later than six months after the happening of the transfer *causa mortis* give notice thereof to the Registrar of Companies.

Transfers *causa mortis* of company shares.

(2) The notice shall contain:

- (a) the name and last address of the person from whom the transfer *causa mortis* originates;
- (b) the name and address of the transferee *causa mortis*;
- (c) the number of the official document produced for ascertaining the identity of the transferee *causa mortis* and of the person from whom the transfer *causa mortis* originates;
- (d) a complete list of the shares included in the transfer, irrespective of whether the company to which the transfer refers is registered with the Registrar of Companies or otherwise; and
- (e) the manner in which the shares devolved on the transferee *causa mortis* giving all the details as are referred to in rule 4(2)(c).

(3) The Registrar of Companies shall register and index the said notice by reference to the name of the transferee, the name of the person from whom the transfer *causa mortis* originates, and the name of the company to which the shares refer.

(4) The payment of duty shall be indicated by the Commissioner on the notice aforesaid, and no such notice shall be accepted by the Registrar of Companies unless the payment of the relative duty is so indicated thereon.

8. (1) For the purposes of article 51 of the Act, the notary shall give notice of the relative deed to the Commissioner and it shall not be lawful to deliver a note of enrolment for registration in the Public Registry of such deed before it has been ascertained that such notice has been filed with the Commissioner.

Notice to be given by Notary on deeds of transfer.  
Amended by:  
L.N. 75 of 1997;  
L.N. 7 of 2004;  
L.N. 147 of 2015;  
L.N. 36 of 2017;  
L.N. 68 of 2020.

(2) The notice shall be made on the forms or means as supplied by the Commissioner for this purpose and shall contain the information required in respect of a deed of transfer of any immovable property and in respect of a deed containing a declaration made in connection with article 33 of the Duty on Documents and Transfers Act.

Cap.634.

(3) The Commissioner shall not accept payment of the relative duty before the said notice has been filed.

Information to be given by transferee on transfer of residential property.  
*Substituted by:*  
*L.N. 68 of 2020.*  
*Cap. 390.*

Cap. 364.

Refund of duty.  
*Amended by:*  
*L.N. 117 of 2019;*  
*L.N. 168 of 2020.*

(4) The transferee in any transfer of residential property shall submit to the Commissioner the information required on the forms or means as supplied by the Commissioner, duly filled and certified by a perit in possession of a warrant issued under article 5 of the Periti Act, and this information shall be attached to the notice supplied by the Commissioner for this purpose as mentioned in article 51 of the Duty on Documents and Transfers Act.

9. (1) Claims for the refund of any duty under article 62 of the Act shall be made in writing and shall not be considered by the Commissioner if made after four years from the payment of the duty:

Provided that in the case of claims for refund of duty made under article 62(1)(b) of the Act, the period of four years, or any other established period, shall start to run from the date on which the court judgment becomes a *res judicata*.

(2) In the case of an assessment served under article 54 of the Act -

- (a) no claim for refund or adjustment shall be made after the lapse of four years from the date on which the assessment to which the claim refers becomes final and conclusive in accordance with the provisions of the Act; and
- (b) in cases where no duty is chargeable, the claim may be made within ten years of the date of the *inter vivos* or *causa mortis* transfer.

(3) Documents, other than notarial acts, in respect of which a refund is claimed shall be surrendered to the Commissioner.

(4) Any duty determined as refundable to a person for the purpose of article 62 of the Act shall be considered as having become due on the day of such determination, and shall be refunded by not later than six (6) months from the day when it becomes due.

(5) Interest at the rate as prescribed by the Minister shall be payable by the Commissioner on any refund after the expiration of the period of six (6) months mentioned in sub-rule (4).

**10.** (1) Any transferor or transferee to a promise of sale or of a transfer of immovable property or of any real right thereon shall be bound to give the notice referred to in article 3(6) of the Act, and shall for this purpose engage a notary public or advocate to give the said notice, provided that such notary or advocate is given all the information required for notification:

Provided that where the notary or advocate is engaged to pay the provisional duty, if any is due, the transferee shall provide such notary or advocate with the necessary funds to pay such provisional duty:

Provided further that no notice shall be given, and no payment of provisional duty shall be made where the Housing Authority or the Government of Malta is the transferor or where the Water Services Corporation or Lands Authority or the Housing Authority is the transferee.

(2) The notice shall be made by electronic submission, through the web portal established for the purpose by the Commissioner, within twenty-one (21) days from the date on which the promise of sale or promise of transfer is made and the relative payment of provisional duty shall be made within ten (10) days from the date on which approval is given by the Office of the Commissioner or twenty-one (21) days from the date on which the promise of sale or promise of transfer is made, whichever date is latest:

Provided that where the notice of a promise of sale or transfer or notice of the extension mentioned in sub-regulation (5) cannot be made through the web portal due to a technical issue resulting from the portal itself, and such technical issue is acknowledged by the Commissioner, notice shall be given within three (3) working days from when the said technical issue is resolved, unless any other form of notification is accepted and acknowledged by the Commissioner.

(3) The Commissioner shall not accept payment of the relative provisional duty, if any is due, before the said notice has been submitted in accordance with sub-regulation (2). In the case of notification of a promise of sale or a promise of transfer where no provisional duty is due, notification shall be deemed to have been made within the prescribed time-frame if a correct submission is made within the prescribed time-frame, notwithstanding that the notice would not yet have been approved by the Commissioner. In the case of a notification of a promise of sale or a promise of transfer where provisional duty is due, notification shall be deemed to have been made within the prescribed time-frame if both the notification and the payment are made within the prescribed time-frames, notwithstanding that the receipt for payment would not yet have been issued by the Commissioner.

Notice to be given of a promise of sale or promise of transfer of immovable property or any real right thereon.  
*Added by:*  
*L.N. 7 of 2004.*  
*Amended by:*  
*L.N. 112 of 2004;*  
*L.N. 348 of 2004;*  
*L.N. 352 of 2004;*  
*L.N. 350 of 2009;*  
*XXXIV. 2014.34.*  
*Substituted:*  
*L.N. 117 of 2019.*

(4) The Commissioner shall not accept such notice if not submitted at the Office of the Commissioner within twenty-one (21) days following that on which the promise of a sale or promise of a transfer of immovable property or any real right thereon is made:

Cap. 252.      Provided that where the last day permitted for submission falls on a Saturday or a public holiday as established in the National Holidays and other Public Holidays Act, that day shall be deemed to fall on the first working day, other than a Saturday, following the said Saturday or public holiday.

(5) An extension of the validity period of a promise of sale or promise of a transfer of an immovable property or a real right thereon shall also be notified by the transferor or transferee to the Commissioner within twenty-one (21) days following the date thereof by electronic submission through the web portal established for the purpose by the Commissioner, and such transferor or transferee shall engage a notary public or advocate to give notice of the said extension, provided that such notary or advocate is given all the information required for notification.

(6) The provisional payment of duty relating to the promise of a sale or of a transfer of immovable property or any real right thereon shall be set off against the duty chargeable in terms of articles 32 and 40 of the Act:

Provided that any obligation to attach a receipt of provisional payment to the subsequent notarial deed of sale or transfer of immovable property or any real right thereon is deemed to no longer be applicable and to have never been applicable in all cases of notifications of promises of sale or promises of transfer made through the established web portal.

(7) The Commissioner shall be authorized to request additional information or the production of supporting documents he may deem necessary from time to time.

(8) Claims for refund of any duty paid provisionally in terms of article 3(6) of the Act shall be made in writing by a transferee, or his representative, and shall not be considered by the Commissioner unless he is satisfied that such promise of a sale or promise of a transfer of immovable property or any real right thereon has lapsed or that both parties have rescinded same.

(9) No notice shall be given, and no payment of provisional duty shall be made, in the case of a unilateral obligation to transfer immovable property or any real right thereon, commonly referred to as "a right of first refusal", or in the case of a right of renewal of a temporary emphyteutical concession:

Provided that if the parties enter into a promise of sale or

promise of a transfer of the said immovable property, or any real right thereon, notification in terms of article 3(6) of the Act shall be required for its validity.

(10) The provisions of this rule shall apply from the 1<sup>st</sup> January 2019.

**11.** (1) Subject to the provisions of article 42(2)(c) of the Act, the provisions of sub-rules (5), (6) and (7) of rule 5 of the Capital Gains Rules shall apply *mutatis mutandis* for the purpose of determining the real value of a company and the real value of shares in a company and references in the said sub-rules to "market value" shall be construed as references to "real value".

Transfer of company shares.  
Added by:  
L.N. 310 of 2010;  
L.N. 147 of 2015.  
S.L. 123.27.  
Amended by:  
L.N. 68 of 2020.

(2) Notwithstanding the provisions of sub-rule (1), the real value of marketable securities consisting of shares which do not participate in any way in the profits of a company other than by way of a fixed rate of return, shall be the book value of such shares as resulting from the company's financial statements or such other value as the commissioner may determine in accordance with article 10 of the Act.

(3) The transferee in any transfer of shares, other than a transfer of shares referred to in sub-rule (2), shall submit to the Commissioner a statement prepared by a certified public accountant holding a practicing certificate in auditing made on the forms or means as supplied by the Commissioner for this purpose including a computation of the real value of the shares as required by sub-rule (1), and shall be accompanied, where applicable, by an architect's valuation of the real value of the immovable property taken into account in determining the value of the shares.

(4) The statement referred to in sub-rule (3) shall be delivered in triplicate to the Commissioner together with the payment of duty due on the transfer and the Commissioner shall stamp one of the copies in acknowledgement of the receipt of same and return it to the person who submitted it. The Commissioner shall not consider that delivery or the notice of the transfer required in accordance with the Act as valid unless payment is made as aforesaid.

**12.(1)(i)** Where as a result of a change in the issued share capital of a company or a change in voting rights attached to such shares, (herein after referred to as the "change"), a transfer of value as provided for in article 42B of the Act is deemed to have taken place, the value transferred to the transferee, shall be determined in accordance with the following formula:

Transfer of value.  
Added by:  
L.N. 310 of 2010.  
Amended by:  
L.N.

$$Y = (A - B) + C - D \times -1$$

Where -

- (a) "Y" represents the amount to be determined;
- (b) "A" is the real value of the shares held by the transferee in the company immediately before the change;
- (c) "B" is the real value of the shares held by the transferee in the company immediately after the

change;

- (d) "C" is the consideration paid by the transferee for the acquisition of shares or additional shares issued by the company, where the change consists of an issue of share capital for consideration;
- (e) "D" is the amount paid by the company in respect of a cancellation of shares held by the transferee, where the change consists of a reduction of share capital:

Provided that where the result of the formula is a negative amount the value of "Y" shall be taken to be zero:

Provided further that where the transferee does not hold any shares in the company immediately before or after the change, the value of "A" or "B" in the said formula, as the case may be, shall be taken as zero:

Provided also that, where the change in the issued share capital consists of a conversion of securities, for the purpose of paragraphs (b) and (c) the real value of shares, which do not participate in any way in the profits of a company other than by way of a fixed rate of return, shall be taken as zero.

- (ii) The amount determined in accordance with the said formula shall be deemed for the purpose of article 42B of the Act, to be the value transferred by the transferor to the transferee and such value shall be deemed to have passed into shares in or rights over the company held by the transferee on which duty is chargeable in accordance with the provisions of article 42 of the Act.
- (2) For the purpose of sub-rule (1):
- (i) the real value of shares held in a company is a percentage of the real value of the said company corresponding to the percentage of the issued share capital represented by the nominal value of those shares;
  - (ii) where the issued share capital of the company is made up of different classes of shares (whether before or after the change in the issued share capital) or where the change consists of an alteration of voting rights, the real value of shares held in the company shall, notwithstanding paragraph (i), be the percentage of the real value of the said company corresponding to the percentage of the total voting rights in the company represented by the total voting rights attached to those shares;
  - (iii) notwithstanding paragraph (ii), where the value of "Y" as determined by the application of sub-paragraph (i) is higher than the value of "Y" as determined by the application of sub-paragraph (ii), the value of "Y" is to be determined by the application of sub-paragraph (i).

(3) The real value of a company shall, for the purpose of sub-rule (2), be determined in accordance with rules 5(6) and (7) of the Capital Gains Rules, and references in the said sub-rules to "market value" shall be construed as references to "real value": S.L. 123.27

Provided that in determining the real value of the company, the total net asset value referred to in rule 5(6) of the said rules shall be that resulting from an accounting statement prepared by a certified public accountant holding a practicing certificate in auditing, to be drawn up as at the date of the deemed transfer of value. The accounting statement shall consist of two balance sheets showing the position of the company immediately before and after the change and shall be drawn up using the same methods and the same layout as used for its financial statements for the financial year preceding that in which the change takes place.

(4) On a subsequent transfer of the shares held by the transferee immediately after the change, made before the end of the financial year in which the change took place, the real value taken into account in determining the amount chargeable to duty shall, notwithstanding the provisions of rule 11(1), not be lower than the value of "B" referred to in subrule (1)(i)(c) of this rule, being the value taken into account in determining the value transferred.

(5) The transferee in any transfer of value referred to in this rule shall submit to the Commissioner a computation of the real value of the shares, made on the forms or means as supplied by the Commissioner for this purpose, accompanied by the accounting statement referred to in sub-rule (3) and by an architect's valuation of the real value of the immovable property taken into account in determining the value of the company.

(6) The form referred to in sub-rule (5) shall be delivered in triplicate to the Commissioner and the transferee shall, together with the delivery, pay to the Commissioner the amount of duty due on the transfer in accordance with article 49(2) of the Act.

(7) The Commissioner shall stamp one of the copies of the form submitted in accordance with sub-rule (5) in acknowledgement of the receipt of same and return it to the person who submitted it.

(8) Where a transfer of value is exempt from duty by virtue of the proviso to article 42B of the Act, other than sub-paragraph (iv) of the said proviso, the transferee shall submit to the Commissioner a statement made on the forms or means as supplied by the Commissioner for this purpose.

(9) For the purposes of this rule, the term "shares" or "share capital" shall exclude shares, which do not participate in any way in the profits of a company other than by way of a fixed rate of return.

**13.** Persons who are subject to duty in terms of the provisions of the Duty on Documents and Transfers Act shall be registered with the Commissioner.

Registration.  
Added by:  
L.N. 68 of 2020.

Cap. 364.





## SCHEDULE

Value of the usufruct as a percentage of the value  
of the full ownership

*Amended by:*  
*L.N. 57 of 1994;*  
*L.N. 75 of 1997.*  
*Substituted by:*  
*L.N. 7 of 2004.*  
*Amended by:*  
*L.N. 112 of 2004.*  
*Substituted by:*  
*L.N. 113 of 2006.*  
*Amended by:*  
*L.N. 425 of 2007.*  
*Substituted by:*  
*L.N. 452 of 2010.*  
*Amended by:*  
*L.N. 426 of 2012.*  
*Substituted by:*  
*L.N. 147 of 2015.*  
*Amended by:*  
*L.N. 68 of 2020*

Age of the usufructuary	Percentage of the value of full ownership
where the usufructuary has not completed twenty years of age:	seventy per cent
where the usufructuary has completed twenty years of age but not thirty years:	sixty per cent
where the usufructuary has completed thirty years of age but not forty years:	fifty per cent
where the usufructuary has completed forty years of age but not fifty years:	forty per cent
where the usufructuary has completed fifty years of age but not sixty years:	thirty per cent
where the usufructuary has completed sixty years of age but not seventy years:	twenty per cent
where the usufructuary has completed seventy years of age:	ten per cent.