

CHAPTER 137

LAND SALES

ARRANGEMENT OF SECTIONS

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LAND SALES

Act No. 1 of 1974

AN ACT TO PROVIDE FOR THE REGULATION OF CERTAIN
SPECULATIVE AND OTHER DEALINGS IN LAND AND THE TAXATION
OF PROFITS THEREON

[22nd February, 1974]

Short title

1. This Act may be cited as the Land Sales Act.

Interpretation

2. In this Act, unless the context otherwise requires—
“agricultural development” means the development of any land used or

proposed to be used predominantly for the growing of crops, dairy farming, fruit farming, forestry, horticulture, bee-keeping, poultry keeping or breeding, or the breeding, rearing or keeping of livestock; "agricultural land" shall have the same meaning as in the Agricultural Landlord and Tenant Act; (Cap. 270.)

"appropriate form" means a form approved by the Minister responsible for land matters for use in any particular case;

"Commissioner" means the Commissioner of Inland Revenue;

"controlling interest" means an interest by which a shareholder or shareholders is or are able to control a company, and a company shall be deemed to be under the control of persons where the provisions of paragraph (a) of subsection (2) of section 12 of the Income Tax Act are satisfied; (Cap. 201.)

"dealing" means any transaction of whatsoever nature, including an option to purchase, by which land is affected under the provisions of the Land Transfer Act and shall include an agreement to enter into any such transaction, but shall not include the original grant of any lease or licence by the Native Land Trust Board; (Cap. 131.)

"development" means—

(a) substantial building operations on any land or the laying out of plots, roads, yards, drains, sewers, parks, gardens, lawns, orchards or the like;

(b) re-building operations, material alterations or additions to or major structural repairs to any building or structure;

(c) subdivision of any land by dividing the same and the laying out of plots, roads, yards, drains, sewers, parks, gardens, lawns, orchards or the like,

and shall include any development of land used or proposed to be used for agricultural development;

"historic cost" means the cost calculated in accordance with the provisions of the First or Second Schedule as may be appropriate;

"land" includes land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description in Fiji together with all buildings and other fixtures, liberties, privileges, easements, plantations, gardens and quarries, and all trees and timber lying or being thereon or thereunder unless any such are specially excepted, and any estate or interest therein but does not include a mortgage;

"non-resident" means an individual or a company not a resident as hereinafter defined;

"resident" in the case of an individual means an individual who is a Fiji citizen or an individual whose home is in Fiji and who has been resident in Fiji for not less than seven years at the date of the dealing or in the case of a company means a company, the controlling interest in which is held by a resident or residents as hereinbefore defined;

"sale" includes—

(a) the granting or surrender of a lease other than a lease of native land;

(b) any dealing for which the consideration is—

(i) money or money's worth;

(ii) any sum received in return for forfeiture or surrender of

- rights or for refraining from exercising rights;
 (iii) any sum received as consideration for use or exploitation of land;

“seller” means the person from whom the land, or any estate or interest therein, passes under or by virtue of any sale or other dealing.

Land sales tax to be charged

3.—(1) A tax known as land sales tax shall be charged on any profits arising from all dealings (unless exempted by the provisions of section 5)—

- (a) where the profits do not exceed \$9,500 at the rate of 6.25 cents increased by $\frac{2.5}{1000}$ on every dollar of such profits;
 (b) where the profits exceed \$9,500 at the rate of 30 cents on every dollar thereof,

which profits shall be computed by deducting from the sale price the historic cost together with any other expenses which the Commissioner, in his discretion, shall consider reasonable.

(2) Unless otherwise provided in this Act land sales tax shall be chargeable on the seller of the land.

Exemption from income tax

4.—(1) Any profits in respect of any dealing which would be liable to tax under the provisions of the Income Tax Act shall be assessed under the provisions of that Act and not under the provisions of section 3. (Cap. 201.)

(2) Any profits on which land sales tax has been charged shall be exempt from tax due under the provisions of the Income Tax Act. (Cap. 201.)

Exemptions

Start from here. 5. Notwithstanding the provisions of section 3, no land sales tax shall be charged on any profits arising in any of the following transactions or cases:—

- (a) any dealing involving land that has been in continuous ownership of a resident seller, which expression in the case of an individual shall for the purposes of this paragraph include his spouse, or any parent or grand-parent, for a period of not less than twelve years before the date of such dealing;
 (b) on land on which there has been substantial development by the seller or any predecessor in title;
 (c) land acquired by the Government or other acquiring authority for any public purpose either by private treaty or compulsorily under the provisions of the Crown Acquisition of Lands Act; (Cap. 135.)
 (d) any dealing involving agricultural land which has been in the seller's ownership for not less than twelve years immediately preceding the sale;
 (e) on the sale of land which was acquired by an individual in his capacity as a beneficiary under the estate of a deceased person;
 (f) any dealing where the Minister considers that undue hardship will arise;
 (g) any dealing for a charitable purpose, as defined in the Charitable Trusts Act; (Cap. 67.)

(h) any other dealing which may be prescribed by the Minister by order.

Purchase of land by non-resident

6.—(1) No non-resident or any person acting as his agent shall without the prior consent in writing of the Minister responsible for land matters make any contract to purchase or to take on lease any land:

Provided that nothing contained in this subsection shall operate to require such consent or prevent a non-resident from making any such contract if the land together with any other land in Fiji of such non-resident does not exceed in the aggregate an area of one acre.

(2) The Minister responsible for land matters may require any application for his consent mentioned in subsection (1) to be in the appropriate form and may refuse his consent without assigning any reason, or may specify terms whether by way of imposition of bond or otherwise upon which such consent is conditional.

(3) No appeal shall lie against a decision by the Minister responsible for land matters made under this section.

(4) The provisions of this section shall not apply to dealings in native land, as defined by the Native Land Trust Act, or to the original grant of any lease or licence by the Native Land Trust Board.

(Cap. 134.)

Disposition of land by non-resident

7.—(1) No non-resident or any person acting as his agent shall without the prior consent in writing of the Minister responsible for land matters make any contract for the disposition of any land in favour of another non-resident.

(2) The Minister responsible for land matters shall where necessary require any application for his consent mentioned in subsection (1) to be accompanied by a bond for such sum as he shall direct and to be in the appropriate form and may refuse his consent without assigning any reason, or may specify terms upon which such consent is conditional.

(3) No appeal shall lie against a decision by the Minister responsible for land matters made under this section.

(4) The provisions of this section shall not apply to dealings in native land, as defined by the Native Land Trust Act, or to the original grant of any lease or licence by the Native Land Trust Board.

(Cap. 134.)

Power of Commissioner of Stamp Duties to impound documents

8. The Commissioner of Stamp Duties may impound and detain any written document when he has reason to believe that a dealing may be liable to land sales tax until he is satisfied by enquiry from the Commissioner that land sales tax payable thereon has been satisfied or that no such tax is payable.

Losses

9. Losses shall be allowable against current or subsequent profits but shall be computed only by reference to actual receipts and capital outlay.

Date of payment of tax

10. Any land sales tax chargeable under section 3 shall be assessed by the Commissioner who shall state the date by which such sum shall be paid.

Power of Commissioner to substitute consideration

11. Where, in any dealing, the Commissioner is not satisfied that the stated consideration is reasonable or true he may substitute a figure which he considers to be the current market value and for the purposes of this Act such substituted figure shall be deemed to be the stated consideration:

Provided that the exercise of such discretion shall be deemed a matter specified in the Second Schedule to the Income Tax Act. (Cap. 201.)

Power of Commissioner to apportion

12. Where, in any dealing, any land is disposed of together with any other assets, the part of the consideration attributable to such land shall, for the purposes of this Act, be determined by the Commissioner and shall be deemed to be the price or consideration paid for such land.

Certain provisions of Income Tax Act to apply

13. Subject to the provisions of this Act, the provisions of the law for the time being in force contained in Part IX to Part XII of the Income Tax Act relating to objections and appeals and relating to the collection and recovery of income tax shall apply *mutatis mutandis*. (Cap. 201.)

Power of Commissioner to order production of letters, accounts, etc.

14. The Commissioner may require and demand the production of any letters, accounts, invoices, statements, books or other documents held by any person for the purpose of arriving at the land sales tax believed to be payable by any person and the same shall be produced within the time determined by such demand.

Agents, etc. for non-resident

15. Every agent or person who collects or receives or is in any way in possession of any moneys or other assets for or on behalf of a non-resident shall, on being so notified by the Commissioner of any land sales tax due from such non-residents, deduct the amount of such tax from the moneys or other assets of such non-resident in his hands or coming into his hands from time to time and thereupon pay the same to the Commissioner. Upon payment to the Commissioner, such agent or person shall be and is hereby indemnified against any person whatsoever for any payment made by him in pursuance of and by virtue of this Act. The agent of a non-resident shall be personally liable for the payment of such notified tax to the extent of any income or assets of such non-resident in his hands or from time to time coming into his hands.

Forms

16. All forms of application for consent to be issued in connection with the provisions of this Act or of any consents made thereunder shall be in the appropriate form.

Penalties

17. Any person who wilfully contravenes the provisions of this Act or of any terms of any consent thereunder shall be guilty of an offence and liable on conviction to—

- (a) a fine of one thousand dollars or of an amount equal to one-quarter of the purchase price or to total or partial forfeiture of any bond required by this Act or by any order made thereunder, whichever is the greater; or

- (b) imprisonment for a period not exceeding five years; or
(c) both such fine or forfeiture and imprisonment.

Clarification

18. For the avoidance of doubt, it is hereby declared that nothing in this Act—
(a) shall affect the powers of the Native Land Trust Board under the provisions of the Native Land Trust Act; (Cap. 134.)
(b) shall alter the provisions of the Rotuma Lands Act; (Cap. 138.)
(c) shall alter the provisions of the Banaban Lands Act. (Cap. 124.)

FIRST SCHEDULE

The historic cost of freehold land shall be computed by adding to the value of such land compound interest at the rate of five per cent for each completed year from the date of acquisition to the date of sale or disposition. The value shall be the value of the land at the time of acquisition by the seller including legal and survey costs in respect thereof, together with the cost of additional buildings and improvements, from the date such buildings and improvements are constructed and effected, respectively, but shall exclude any deductions made in respect of such additional buildings and improvements under Part IV of the Income Tax Act.

The historic cost of an option to purchase or to take an estate or interest in freehold land shall be the consideration for the option.

SECOND SCHEDULE

The historic cost of a leasehold interest shall be the value of such interest at the date of sale, transfer or disposition being the fraction represented by the number of years of the lease as the denominator and the number of years of the lease unexpired as the numerator of the original value of the leasehold interest including legal and survey costs in respect thereof together with the cost of additional buildings and improvements less any deductions made in respect of such additional buildings any improvements under Part IV of the Income Tax Act together with compound interest at the rate of five per cent for each completed year from the date of acquisition, or from the date such buildings and improvements were constructed or effected, respectively, to the date of sale or disposition.

The "number of years of the lease" means either the original terms of the lease or in the case of an existing lease which has partly expired the number of years unexpired at the date of acquisition.

The historic cost of an option to purchase or to take an estate or interest in a leasehold interest shall be the consideration for the option.

Controlled by Ministry of Finance