



TURKS AND CAICOS ISLANDS

CHAPTER 158
LAND HOLDING COMPANIES
(TRANSFER DUTY) ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 15 May 1998

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

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CHAPTER 158

**LAND HOLDING COMPANIES
(TRANSFER DUTY) ORDINANCE**

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CHAPTER 158

**LAND HOLDING COMPANIES
(TRANSFER DUTY) ORDINANCE**

(Ordinances 14 of 1992, 34 of 1994 and Legal Notice 41 of 1994)

AN ORDINANCE TO PROVIDE FOR PAYMENT OF DUTY BY COMPANIES HOLDING LAND IN THE TURKS AND CAICOS ISLANDS UPON TRANSFERS OF THEIR EQUITY CAPITAL.

[15 November 1992]

Commencement

1. This Ordinance may be cited as the Land Holding Companies (Transfer Duty) Ordinance.

Short title

2. (1) In this Ordinance, unless the context otherwise requires—

Interpretation

“charitable corporation” means a corporation certified by the Permanent Secretary, Finance to be one whose objects are solely charitable;

“corporation” includes a partnership, a limited partnership (other than an exempt limited partnership) established under the Limited Partnerships Ordinance, a foreign corporation, a chartered corporation and a company incorporated under the Companies Ordinance, but does not include a corporation sole or a charitable corporation; *(Amended by Ord. 34 of 1994)*

Cap. 126

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“equity capital” with respect to a corporation includes all shares, stock and scrip whether registered, inscribed, or issued to bearer which, other than by way of a fixed and predetermined right to interest and repayment of subscribed capital at par, entitles the owner to any variable participation in the profits of the corporation, whether by way of dividend, bonus, conversion or distribution upon winding-up;

“immovable property” means immovable property situated in, upon, over or under land in the Turks and Caicos Islands including all structures built into or adhering to such land but does not include tenant’s fixtures or removable fixtures or power plants installed for the purpose of trade, industry, agriculture or animal husbandry;

“land holding” means every species of landed property other than such property when held by a legal or equitable mortgagee or chargee by way of a *bona fide* security for the payment of money or money’s worth;

“land holding corporation” means a corporation which is either the legal or beneficial owner of any land holding or is the legal or beneficial owner of any equity capital of another land holding corporation;

“landed property” means every legal or beneficial interest over immovable property whether freehold or leasehold, save and except a leasehold interest where the original lease was for a term not exceeding thirty years;

“share” includes stock and all other subdivisions of equity capital;

“transfer” includes, in addition to a transfer of shares, every dealing or transaction, whether by the issue or placement of shares, the grant or take-up of any rights, the exchange or conversion of shares, the exercise of an option or other means howsoever, whereby equity capital undergoes a change of beneficial ownership or apportionment of ownership or a change occurs in the entitlement or potential entitlement of any person to a share in the distribution of the profit or capital of a corporation.

(2) A reference in this Ordinance to an “interest” in relation to—

- (a) the interest of a member of a land holding corporation limited by guarantee, means the maximum contribution which the member is liable to make under the memorandum of association of the corporation towards its assets in the event that it is wound up;
- (b) the interest of a member of a land holding corporation the liability of the members of which is unlimited and the capital of which is not divided into shares, means the proportion of the dividends or profits of the corporation to which the member is entitled under the memorandum of association or regulations of the corporation;
- (c) the interest of a partner in a partnership or limited partnership deemed by virtue of this Ordinance to be a land holding corporation, means the proportion of the profits of the partnership to which the partner is entitled under the partnership agreement.

(Inserted by Ord. 34 of 1994)

3. (1) Subject to the provisions of section 4, every land holding corporation shall deliver to the Permanent Secretary, Finance within thirty-one days of the occurrence of a transfer of an interest or a transfer of any of its equity capital—

Returns etc, of
transfer to be
delivered and
duty to be paid

- (a) the instrument, if any, whereby such transfer was effected;
- (b) a return in the prescribed form containing the prescribed particulars relating to the corporation, its landed property, the transfer and connected matters; and
- (c) a sum for the benefit of the Revenue of the Islands equivalent to eight *per centum* of the dutiable value of such transfer calculated in accordance with subsection (2).

(2) For the purposes of this section, the dutiable value of a transfer shall be a sum calculated in accordance with the following formula—

$$\frac{A}{B} \times C$$

in which—

A represents—

- (a) in the case of a land holding corporation having its equity capital divided into shares of fixed amounts, the nominal value of the shares being transferred;
- (b) in the case of a land holding corporation having its equity capital divided into shares of no par value, the number of shares being transferred;
- (c) in the case of a land holding corporation limited by guarantee, the value of the interest being transferred;
- (d) in the case of a land holding corporation the liability of the members of which is unlimited and the capital of which is not divided into shares, the proportion of the dividends or profits of the corporation to which the interest being transferred entitles the transferee; or
- (e) in the case of a partnership or limited partnership, the proportion of the profits of the partnership to which the interest being transferred entitles the transferee;

B represents—

- (a) in the case of a land holding corporation having its equity capital divided in shares of fixed amounts, the total nominal value of the issued share capital of the corporation;
- (b) in the case of a land holding corporation having its equity capital divided into shares of no par value, the total number of the issued shares of the corporation;
- (c) in the case of a land holding corporation limited by guarantee, the total value of the interests of all members of the corporation;
- (d) in the case of a land holding corporation the liability of the members of which is unlimited and the capital of which is not divided into shares, a factor expressing the total entitlement of all the members of the corporation to the dividends or profits of the corporation, of which the interest being transferred is a proportion; or
- (e) in the case of a partnership or limited partnership, a factor expressing the total entitlement of all the partners to the profits of the partnership, of which the interest being transferred is a proportion;

C represents the fair market value of all the landed property of the corporation in the Islands at the time of the transfer.

(Inserted by Ord. 34 of 1994)

(3) Where a transfer consists in the transfer of shares and the transfer of an interest in the same land holding corporation, the dutiable value of the transfer shall be a sum equivalent to the same proportion of the fair market value of all the landed property of the corporation in the Islands at the time of the transfer as the value of the shares and interest to which the transfer relates bears to the total value of the issued share capital and interests of the corporation. *(Inserted by Ord. 34 of 1994)*

(4) Where the Permanent Secretary, Finance is satisfied that there has been a transfer of equity capital in a land holding corporation and that the transfer is (as the case may be) from or to a person who is (or from or to persons who are in the aggregate) the beneficial owner of not less than forty-five *per centum* of the shares in that corporation, then he may in his absolute discretion abate the sum due and payable under paragraph (c) of subsection (1) by such percentage (not being greater than the percentage holding in that corporation of the aforementioned person or persons) as he shall in any such case think fit.

(5) The Second Schedule to the Stamp Duty Ordinance shall apply for the purpose of determining the person who is or persons who are the owners of the shares in a landholding corporation and subsection (4) shall be interpreted accordingly.

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(6) The obligations imposed by subsection (1) shall, in relation to any landholding corporation which is itself a company registered under Part II of the Companies Ordinance but which is wholly or in part, directly or indirectly, beneficially owned by one or more landholding corporations which are not so registered, extend to the transfer of any of the equity capital of each and every one of those landholding corporations.

4. The provisions of section 3 shall not apply in any of the following cases—

Exemptions from
section 3

- (a) transfers effected as a result of an order of a court, if the court so directs in any case;
- (b) transfers to effect the distribution of property by legal personal representatives acting in that capacity to beneficiaries properly entitled thereto either by will or upon an intestacy;
- (c) transfers to effect the distribution of the estate of a bankrupt or the assets of a company in liquidation;
- (d) transfers between trustees or nominees which effect no change in beneficial ownership of any part of the equity capital of the land holding corporation concerned;
- (e) transfers in consideration only of natural love and affection between parents and children or between spouses;
- (f) transfers in consideration only of natural love and affection between brothers and sisters and grandparents and grandchildren in cases where the Permanent Secretary, Finance certifies that the provisions of this section may properly be applied;
- (g) transfers made by the trustee of any settlement in or towards satisfaction of the interest of any beneficiary, not being an interest acquired for money or money's worth, in pursuance of the powers conferred upon the trustee by the terms of the settlement;
- (h) transfers made upon and in consideration only of marriage to a party to the marriage or to a trustee to be held upon the terms of a settlement made only in consideration of marriage;

- (i) transfers made in pursuance of a settlement made in the course of or in consequence of nullity, divorce or judicial separation proceedings and approved by an order of the court;
- (j) transfer of shares of a landholding corporation the shares of which are quoted on a stock exchange recognised by the Permanent Secretary, Finance for the purposes of this Ordinance.

Penal, neglect to
make return etc

5. Whoever being a director, manager or secretary of a land holding corporation wilfully fails to comply with any provision of section 3 is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or both and every land holding corporation in respect of which default under section 3 is made is guilty of an offence and liable on summary conviction to pay a fine not exceeding \$5,000 or three times the duty otherwise payable under this Ordinance, whichever is the greater. (*Amended by Ord. 34 of 1994*)

Penal, false
statements etc

6. Whoever makes any return under section 3 or any statement relevant to the liability of any person or corporation thereunder containing matter in the truth of which he does not believe (proof of his belief being upon him) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment not exceeding one year or both. (*Amended by Ord. 34 of 1994*)

Compounding of
offences

7. The Permanent Secretary, Finance, may, before the institution of criminal proceedings for any offence against sections 5 or 6, compound that offence for the payment to the Treasury of any duty outstanding and a penalty not exceeding \$5,000. (*Inserted by Ord. 34 of 1994*)

Valuation
disputes

8. If any dispute should arise as to the market value of any property for the purpose of compliance with section 3, it shall be settled in the same manner as an adjudication of stamp duty under the Stamp Duty Ordinance, and sections 12 and 13 of that Ordinance shall apply accordingly, *mutatis mutandis*.

Rules

9. The Governor in Council may make rules—

- (a) prescribing the form of return to be used for the purpose of section 3(1); and
- (b) generally for the better carrying into effect of the provisions of this Ordinance.

LAND HOLDING COMPANIES (TRANSFER DUTY)
(PRESCRIBED RETURN) RULES – SECTION 9

(Legal Notice 17 of 1995)

Made by the Governor in Council.

[1 May 1995] Commencement

1. These Rules may be cited as the Land Holding Companies (Transfer Duty) (Prescribed Return) Rules.

Short title

2. (1) The form appearing in the Schedule is prescribed as the return to be delivered to the Permanent Secretary, Finance, for the purposes of section 3(1) (b) of the Ordinance.

Prescribed return
and payment of
transfer duty

(2) The return shall be completed, signed and delivered by any one or more of the following persons—

- (a) a director of the corporation or partner of the partnership;
- (b) the secretary or other officer authorised by the corporation or partnership;
- (c) an attorney acting on behalf of and with the authority of the corporation or partnership;

who shall tender payment of a sum for the benefit of the Revenue of the Islands equivalent to the duty payable under section 3(1)(c) of the Ordinance.

SCHEDULE

**RETURN UNDER SECTION 3 (1) (b) OF THE
LAND HOLDING COMPANIES (TRANSFER DUTY) ORDINANCE**

1. Name of corporation or partnership

(Attach a copy of the certificate of incorporation, the certificate of registration as a limited partnership, or the partnership agreement, as the case may be)

2. Attach to this return a copy of the instrument of transfer of the shares or interest or, if no such instrument was executed, state below the name of the transferee, the date of the transfer, the consideration paid for the transfer, the number and, if applicable, the nominal value of the shares transferred, and/or the nature and value of the interest transferred—

.....
.....
.....
.....
.....
.....

3. State below—

(a) the total number of members of the corporation or partners of the partnership at the date of transfer (including the transferee):

.....

(b) the total number and, if applicable, the total nominal value of the shares issued by the corporation at the date of transfer and/or the total value of the interests held by all members of the corporation or partners of the partnership at that date—

.....
.....
.....
.....

(In the case of a corporation, attach extracts of the register of members of the corporation or of the memorandum and articles of association of the corporation in support of the statements here given)

4. In the columns below state the title numbers, location (by Island only), acreages, brief details of any structure upon and estimated fair market

value (at the date of the transfer of shares or interest to which this return relates) of all the landed property of the corporation—

Title Number	Location	Acreage	Structures	Estimated Fair Market Value
.....
.....
.....
.....

(Attach annexures if necessary)

Signed:
*(Director/Partner/Secretary/Officer/Attorney)**

Date:

* *Delete inapplicable*

**LAND HOLDING COMPANIES (TRANSFER DUTY)
(COMPOUNDING OF OFFENCES) RULES – SECTION 9**

(Legal Notice 25 of 1995)

MADE by the Governor in Council

[12 May 1995] Commencement

1. These Rules may be cited as the Land Holding Companies (Transfer Duty) (Compounding of Offences) Rules.

Short title

2. (1) If a person has, in the opinion of the Permanent Secretary, Finance, committed an offence under sections 5 or 6 of the Ordinance, the Permanent Secretary, Finance may, after such enquiry as he deems necessary and without legal proceedings, make an offer to the person in writing to compound the offence for the payment of such monetary penalty, not exceeding \$5,000, as the Permanent Secretary, Finance, thinks fit.

Procedure for
compounding
offences under
Ordinance

(2) If the person concerned accepts the offer within seven days or such longer period as the Permanent Secretary, Finance, may have specified in his offer, that person, the Permanent Secretary, Finance, and the Attorney General (if he concurs) shall complete the form set out in the Schedule.

SCHEDULE

(Rule 2(2))

**AGREEMENT TO COMPOUND OFFENCE
UNDER SECTIONS 5 OR 6 OF THE
LAND HOLDING COMPANIES (TRANSFER DUTY) ORDINANCE**

To be completed in duplicate

*(Paragraph 1 only to be filled by person
agreeing to compound the offence with
the Permanent Secretary, Finance)*

- 1. I/We..... agree to pay the sum of in consideration for the Permanent Secretary, Finance, compounding the offence found to have been committed under section 5/section 6 (*Delete inapplicable*) of the Land Holding Companies (Transfer Duty) Ordinance. I so agree on the understanding that payment of this sum shall not be regarded as a conviction for the offence, and that no prosecution for the offence shall hereafter be competent.

*Signature Date:

** If you are signing on behalf of a landholding corporation or partnership, state in what capacity (director, partner, secretary, attorney, etc) you are signing.*

- 2. Description of offence found by Permanent Secretary, Finance, to have been committed

- 3. Details of payment.

Amount:

Receipt No:

..... Date:
for Permanent Secretary, Finance

..... Date:
for Attorney General

Company	Land transfer duty	7
Land	Transfer duty payable by company	7
Transfer	of land, duty payable by company	7