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Ref.

LAWS OF KENYA



The Stamp Duty Act

CHAPTER 480



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50. (1) Where upon the sale of any annuity or other right not before in existence the annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract or otherwise, the bond or other instrument, or some one of the instruments if there are more than one, shall be charged with the same duty as an actual grant or conveyance and shall for the purposes of this Act be deemed to be an instrument of conveyance on sale.

As to sale of an annuity or right not before in existence.

(2) Notwithstanding the provisions of subsection (1), an instrument being a grant or contract for payment of a purchased life annuity shall be chargeable with stamp duty under paragraph (3) of the heading *Bond, Covenant or Instrument of any kind whatsoever* in the Schedule, whether or not the annuity is a superannuation annuity as defined in that paragraph.

(3) In this section, "purchased life annuity" means a life annuity granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

51. The parties may determine for themselves which of several instruments shall be deemed to be the principal instrument and may pay the *ad valorem* duty thereon accordingly:

Principal instrument how to be ascertained.

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of those instruments.

52. (1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with stamp duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale.

Duty on gifts *inter vivos*.

(2) Notwithstanding the provisions of subsection (1), a conveyance or transfer, or an agreement for a conveyance or transfer, operating as a voluntary disposition of property shall not be chargeable with any duty, if the conveyance or transfer is in favour of—

(a) any body of persons incorporated by special Act and that body is by its Act precluded from dividing any profit amongst its members and the property conveyed is to be held for the purposes of an open space or for the purposes of its preservation for the benefit of Kenya; or

(b) any body of persons established for charitable purposes only or the trustees of a trust so established.

(3) Notwithstanding anything contained in section 17, a collector shall be required without fee to express his opinion under that section on any conveyance, transfer or agreement mentioned in the foregoing provisions of this section, and no such conveyance, transfer or agreement shall be deemed to be duly stamped unless the Collector has expressed his opinion thereon in accordance with that section and the instrument has been stamped accordingly.

(4) Where any instrument is chargeable with duty both as a conveyance or transfer under this section and as a settlement under the heading *Settlement* in the Schedule, the instrument shall be charged with duty as a conveyance or transfer under this section and not as a settlement.

(5) Any conveyance or transfer (not being a disposition made in favour of a purchaser or encumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where a collector is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

(6) The foregoing provisions of this section shall not apply to a conveyance or transfer made for a nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether express or implied, and this subsection shall have effect notwithstanding that circumstances exempting the conveyance or transfer from charge under this section are not set forth in the conveyance or transfer.