# Tax Administration Jamaica

# Practice Note

# Transfer Tax and the 'Developer's Rebate'

# Transfer Tax (Exemption) Order 1974

This Practice Note is intended only as a general guide and will support users to understand the relevant legislation using plain English, identifying the most relevant sections and using appropriate examples. This guide must be read in conjunction with the relevant legislation. It contains the Authority's interpretation of the law as it stood at the date of this publication along with any associated practices, procedures and instructions.

Under Section 12 (2) of the Tax Administration Jamaica Act, 2013 a Practice Note is binding on the Commissioner General and all officers of the Authority until it is revoked. However, taxpayers are reminded that the publication of a Practice Note does not affect their right of objection and appeal or their right of access to the Revenue Court on points concerning their own tax liability.

Comments and suggestions for the improvement of issued Practice Notes and suggestions for future Practice Notes are always welcome.

Ainsley Powell
Commissioner General

May 16, 2022

PN-TT-01-2022

# Developer's Rebate

**DATE LAST MODIFIED:** **N/A**

**ISSUE DATE:** **May 16, 2022**

**LEGISLATIVE REFERENCE:** **Transfer Tax Act and Transfer Tax (Exemption) Order 1974**

**CODING SYSTEM FILE NUMBER:** **PN-TT-01-2022**

**EFFECTIVE DATE:** **May 16, 2022**

*This Practice Note provides guidance and clarity with respect to the application of an exemption popularly known as a Developer's Rebate when assessing Transfer Tax on the sale of units within an approved housing scheme. Developers' Rebate was introduced by way of the Transfer Tax (Exemption) Order 1974 made on the 4th day of September 1974.*

*The examples in this Practice Note are strictly for purposes of illustrating the application of the provisions of the Act.*

*All references herein are to the Transfer Tax Act and the Transfer Tax (Exemption) Order 1974 unless otherwise indicated.*

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# Glossary of Terms and Abbreviations

1. The following list defines various terms and abbreviations used in this Practice Note.

| | |
|---|---|
| **Approved Housing Scheme** | 1. A housing scheme, a slum clearance scheme, an improvement scheme, an emergency housing scheme, a scheme done by a housing association or a scheme varying or revoking an existing scheme, or<br>2. Any housing scheme approved by a local authority pursuant to the powers under the Local Improvement Act. |
| **CG** | Commissioner General, Tax Administration Jamaica |
| **Connected persons/connectivity between persons** | Refers to any relationship between persons as addressed in Section 4(3) of the TT Act, and includes relatives, partners and companies under the control of the same person/s. |
| **Developer** | As stated in the Transfer Tax Act and Transfer Tax (Exemption) Order 1974 this is "any person responsible for the development, or sale, or both of a housing scheme". **This person is also defined in Section 2 and Section 35 (1) of The Real Estate (Dealers and Developers) Act (See Exhibit 1)** |
| **Development** | Section 2 of The Real Estate (Dealers and Developers) Act defines this as *"the carrying out of building, engineering, or other operations in, on, over or under any land, or the making of any material*<br>*change in its use or in the use of any buildings or other land for the purpose of disposal of such land or any part thereof in a development scheme"* |
| **Development Scheme** | Section 2 of The Real Estate (Dealers and Developers) Act defines this as *"a scheme or intended scheme for the development of land the sub-division or proposed sub-division of which is subject to the provisions of the Local Improvements Act or the Town and Country Planning Act*"; |
| **Dwelling house** | As stated in the Transfer Tax Act and Transfer Tax (Exemption) Order 1974 this is 'any premises used as a separate dwelling house, or of a type suitable for such use". |
| **Execution/Executed** | To perform what is required to give validity to an instrument. (an executed instrument is one which has the required signature and/or seal to make it valid.) |

| | |
|---|---|
| **Governing legislation** | The Transfer Tax Act and The Transfer Tax (Exemption) Order 1974. |
| **Flat** | As stated in the Transfer Tax Act and Transfer Tax (Exemption) Order 1974 this is "a separate and self-contained set of premises constructed for use for the purpose of a dwelling and forming part of a building from some other part from which it is divided". |
| **Head of charge** | Refers to the alphabetical headings in the schedule of the Stamp Duty Act, used to identify and describe document types and the charge attached thereto. |
| **Housing Scheme** | As stated in the Transfer Tax Act and Transfer Tax (Exemption) Order 1974 this is "a scheme for the sub-division of land and the construction of dwelling houses or flats thereon". |
| **Installation Agreement** | An agreement for the installation of certain fixtures and fittings such as doors, windows, cupboards, tiles, toilets, sinks, basins, etc. to a building. |
| **Instrument** | A formal legal document (such as a deed, bond, or agreement). |
| **Land** | As stated in Section 2 of the Transfer Tax Act, this includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and messuages, houses, buildings and other constructions, … but does not include land outside Jamaica. Section 2 of the Real Estate Dealers and Developers Act also provides a related definition for 'land'. **(see Exhibit 1)** |
| **Market Value** | As stated in Section 2 of the Transfer Tax Act, "market value in relation to any property, means (except as otherwise provided by this Act or any regulations thereunder) the price which such property might reasonably be expected to fetch on a sale in the open market". It is the price as determined by TAJ assessors as the open market which the CG agrees on. |
| **Multiple Contracts/Split Contracts** | The use of multiple contracts/agreements for the purpose of construction and/or sale of one unit. |
| **Property** | Includes Land and interest in land as per Sections 2 and 3(4) of the TT Act. |
| **SD & TT** | Stamp Duty and Transfer Tax respectively. |
| **TAJ** | Tax Administration Jamaica |
| **Transfer** | Any legal or equitable transfer by way of sale, gift, exchange, grant, assignment, surrender, release, or other disposal, and |

| | |
|---|---|
| | includes a transfer by or at the order or direction of a court of competent jurisdiction or by way of compulsory acquisition |
| **Transferee** | The person to whom the unit is transferred. |
| **Transferor** | The person from whom the unit is transferred |
| **Under hand** | Used in reference to a 'simple contract' that is just signed by the parties. |
| **Under seal** | Used in reference to a contract that requires a seal in addition to signatures of the parties. |
| **Unit** | A strata lot as defined in section 2 of the Registration (Strata Titles) Act, or any other parcel of land in the housing scheme, capable of being transferred separately. |

# Purpose

2. The purpose of this document is to provide guidance to TAJ's staff members, other government departments/ministries and public bodies, tax practitioners/preparers, professional accounting bodies, attorneys, and the general public on the interpretation of the provisions of the Transfer Tax Act and the Transfer Tax (Exemption) Order 1974 ***(Exhibit 2).*** as it relates to the transfer of units in a Housing Development.

# Objective

This Practice Note is:

3. To provide guidance to persons affected by the law including the officers of TAJ. In accordance with Section 12 of the Tax Administration Jamaica Act, 2013, the CG may issue Practice Notes setting out the interpretation and procedures for the application of the Law.
4. To promote and achieve consistency in the administration of the laws relating to domestic tax.
5. To provide taxpayers with certainty regarding the operation of the governing legislation in relation to the transactions outlined herein.

## Scope & Background

6. In administering the law relating to the assessment and collection of Transfer Tax as it relates to the transfer of units in an approved housing scheme, this Practice Note provides the interpretation of the law and the policy of the CG in reference to the governing legislation.
7. Transfer Tax was introduced by the Transfer Tax Act of August 4, 1971. The effective rate of Transfer Tax on property as of April 1, 2019, is 2% applied to the market value of the property. ***(Exhibit 3).***
8. Where the criteria for the Developers' Rebate have been satisfied, Transfer Tax is usually effectively applied to 25% of the value of the unit being transferred.

## Need for Policy Guidelines & Interpretation

This Practice Note is written to bring clarity to the uncertainties:

9. Relating to the circumstances in which the 'Developers Rebate' becomes applicable,
10. Concerning the effective rate of tax after the rebate is applied and
11. Concerning the correct approach to apply when computing TT for housing units sold using multiple contracts.

## What is a Developer's Rebate?

12. This is the exemption from TT granted by section 3 (1) of the Transfer Tax Exemption Order (1974) which became popularly known as Developer's Rebate. This Order introduced an incentive to encourage the development of housing solutions. It is an exemption from TT on a portion of the market value (subject to a maximum of 75%), of a dwelling unit in an approved housing scheme.
13. As an incentive for the development of housing solutions, the Transfer Tax Exemption Order 1974 allows for the transfer of property meeting certain criteria to be assessed for TT on a minimum of 25% of assessed market value. Consequently, as of April 1, 2019, the effective rate of TT on transfers benefiting from this exemption is 0.5% (i.e. 2% of 25%)

applicable on the market value of the property/unit being transferred, (subject to the CG's discretion to determine otherwise).

14. Developer's rebate can only be applied once to a unit (paragraph 3(2) (a) *Transfer Tax (Exemption) Order 1974)*

## Who can apply for a Developer's Rebate?

15. The rebate is intended for registered developers of an approved housing scheme only (development approved by the Parish Council in collaboration with the Real Estate's Board) and is to be applied to the value of the dwelling house only. Developers who enter into contracts for the sale of residential land only, cannot benefit from the exemption. (**See Exhibit 2-** *Section 3 (1) of the Transfer Tax Exemption Order*).

16. The Real Estate (Dealers and Developers) Act defines the developer as a person who carries on, whether in whole or in part, the business of development of land. Section 35 (1) of that Act adds that in order for a development to get approval as a development scheme the developer must first be duly registered with the Real Estate Dealers Board and will not be registered as a developer if any of the incidences as laid out in Section 35(4) of The Real Estate (Dealers and Developers) Act is present. (**See Exhibit 1**)

17. Upon receipt of the application and payment of the required fees, subject to subsection 4 of that Act, the name and address of the applicant will be entered in a register known as the 'Register of Developers' and the person so registered shall be a registered developer for the purposes of that Act. Consequently, a registered developer, in order to maintain his approved status must in every year, on or before the 1st day of April after the date of registration, pay to the Board the prescribed fee if he wants to continue to hold this registered status.

## How to apply for a Developer's Rebate?

18. Submit the agreements/contracts for assessment accompanied by:
    - Completed Stamping Requisition Form and
    - Real Estate's Board Letter of Approval for the development (if available) or the Parish Council's approval letter.

to any of TAJ’s three (3) Stamp Office locations within 30 days of execution (signing and dating) of the contract/agreement. (Penalty becomes applicable if documents are submitted late).

**Stamp Office Locations:**

- 111 Harbour Street, Kingston
- May Pen Revenue Service Centre
  7 Windsor Avenue, May Pen, Clarendon
- Montego Bay Revenue Service Centre
  18B Howard Cooke Boulevard, Montego Bay, St James

# How should the Developer’s Rebate be applied?

19. The rebate is tied to both the ‘Developer’ and ‘Development’. To be entitled to claim the relief the scheme (the development) must be approved and should only be undertaken by a registered developer. The developments must be approved by the local authorities (i.e. Kingston & St. Andrew Municipal Corporation and other municipal corporations) and the developer must be approved by the Real Estate Dealers Board. (see paragraphs 16-17). It is the units in the development to which the relief attach and the relief can only be granted once to any unit that is approved.

## *Single Contracts*

20. Where a single contract, such as an Agreement for Sale representing the total consideration for the sale of the unit is presented for stamping, the rebate will be applied to the value of the building (subject to Section 4 (a) & (b) of the TT Act) ***(Exhibit 2)***. The exemption granted will not exceed 75% of the total consideration. Therefore, TT will be calculated on the remaining 25% of consideration for the unit **(see Illustrations 1 & 3**).

## *Multiple Contracts*

21. Some developers choose (for varying reasons) to facilitate the development and disposal of residential units via multiple contracts, otherwise called split contracts. In this arrangement the construction and/or sale of one unit is facilitated by more than one contract, and may include an Agreement for Sale of Land (in this instance, land only) and a Construction Agreement for example. Some arrangements may also include an Installation Agreement.

22. It should be noted that whenever multiple contracts are used, and there is connectivity of any form between the vendors/transferors/builders/installers of the contracts, the CG reserves the right, in accordance with section 4(2) (a) & (b) of the TT Act, to merge the contracts.

23. Where the CG merges all the contracts for tax purposes, the rebate will be applied to the sum of the consideration of all the contracts (subject to Section 4 (a) & (b) of the TT Act), and will not exceed 75% of the total sum of the considerations. Therefore, TT will be calculated on 25% of the total sum of the considerations. (**see illustration- Scenarios 5 & 6**). The TT will be attached to the agreement/contract concerning the land.

24. The other contracts (such as the Construction Agreement or Installation Agreement) will not be subject to any further TT, but will however be subject to SD. (**see paragraphs 26 - 28**).

25. Where the unit is being disposed of via split contracts and TAJ takes the decision not to merge the contracts, the Agreement for Sale of Land will be charged to SD and TT based on the consideration/market value provided and the related Construction Agreement will be stamped for Stamp Duty only, on the consideration therein.

    Where there are other agreements, concerning the construction and/or sale of the same unit, each will be assessed as discussed in **paragraphs 29 -30.**

## Relationship with Stamp Duty Act

26. While this Practice Note is developed to specifically address Transfer Tax, it is useful to note, that as of April 1, 2019 the Stamp Duty Act has been altered for most documents that formerly attracted ad valorem duty, including Conveyances and Building Contracts. These documents are now being charged a Stamp Duty of $100 on documents where the consideration is below $500,000.00 and $5,000.00 where the consideration is $500,000.00 or greater.

27. The ‘Developer’s Rebate’ is a Transfer Tax exemption and does not affect Stamp Duty.

28. Where TAJ decides not to merge split contracts then the charge to SD may differ on each applicable instrument submitted for assessment.

29. In the case of split contracts, the SD charge indicated in paragraph 25 will attach to the main contract/agreement concerning the land as well as any Building Contract. The other documents (if any), will be charged in accordance with the head of charge under which

they fall, (usually as an agreement for $10, if under hand only, and $20 if under seal, or possibly as a deed not otherwise charged for $500).

30. Since SD is a tax on consideration (without reference to market value), the consideration stated in the agreement will be used to determine the SD payable, unless there is evidence that it was incorrectly stated/represented.

## Penalty to be applied

31. The legislation dictates that a document is to be submitted within 30 days after its execution while payment is to be made within 14 days of issuance or service of the Notice of Assessment.

32. If a contract/agreement is submitted after 30 days of execution and/or paid after 14 days of the issuance or service of the Notice of Assessment, a penalty of 100% of the taxes payable becomes applicable.

33. Penalty can only be applied once.

# Illustrations

## Condition 1

*John and Mary Development, having acquired the necessary approvals have constructed 10 dwelling houses and now wishes to sell them at a price of $15,000,000.00 each and would like to have the Agreement for Sale stamped.*

*Note: As of April 1 2019, TT on transactions bearing that date or later will be assessed at a rate of 2%.*

Tax Administration Jamaica's Valuation Officers have accepted the stated selling price as market value for the property.

Transfer Tax (on each unit), with and without the rebate, would be calculated as follows:

| ***Scenario 1: (With the Developer's Rebate at the Sales price stated)*** | | ***Scenario 2: (Without the Developer's Rebate at the Sales price stated)*** | |
|---|---|---|---|
| Market consideration | $15,000,000.00 | Market consideration | $15,000,000.00 |
| Less Developer's Rebate (75%) granted | ($11,250,000.00) | No Developer's Rebate granted. | 0.00 |
| Amount chargeable to TT | $3,750,000.00 | Amount chargeable to TT | $15,000,000.00 |
| ***Transfer Tax* due and payable ($3,750,000 × 2%[1])** | **$75,000.00** | ***Transfer Tax* due and payable ($15,000,000 × 2%)** | **$300,000.00** |
| *Since the Consideration is over $500,000.00* | | | |
| Stamp Duty due and payable | $5,000.00 | Stamp Duty due and payable | $5,000.00 |
| **Total duty payable on transaction** | **$80,000.00** | **Total duty payable on transaction** | **$305,000.00** |

[1] ***Rate of tax for transactions/documents dated April 1, 2019 or later***

Tax Administration Jamaica's Valuation Officers have **not** accepted the stated selling price as market value for the property. Instead they have valued the property at $20,000,000.00.

Transfer Tax (on each unit), with and without the rebate, would be calculated as follows:

| ***Scenario 3: (With the Developer's Rebate but using the market value determined TAJ)*** | | ***Scenario 4: (Without the Developer's Rebate but using the market value determined TAJ)*** | |
|---|---|---|---|
| Market consideration | $20,000,000.00 | Market consideration | $20,000,000.00 |
| Less Developer's Rebate (75%) granted | ($15,000,000.00) | No Developer's Rebate granted. | 0.00 |
| Amount chargeable to TT | $5,000,000.00 | Amount chargeable to TT | $20,000,000.00 |
| ***Transfer Tax* due and payable ($5,000,000 × 2%[2])** | **$100,000.00** | ***Transfer Tax* due and payable ($20,000,000 × 2%)** | **$400,000.00** |
| *Since the Consideration is over $500,000.00* | | | |
| Stamp Duty due and payable | $5,000.00 | Stamp Duty due and payable | $5,000.00 |
| **Total duty payable on transaction** | **$105,000.00** | **Total duty payable on transaction** | **$405,000.00** |

[2] ***Rate of tax for transactions/documents dated April 1, 2019 or later***

## Condition 2

*Alternatively, John and Mary Development, having acquired the necessary approvals have subdivided lands for a housing scheme and have teamed up with builders for the sale of the unit to be accomplished through the signing of three separate contracts (split contracts) for the sale of the land, the construction of the dwelling house and the installation of the fixtures. They have agreed to sell the land for $2,500,000.00, the dwelling house (shell) for $8,000,000.00 and the installation of the fixtures for $4,500,000.00. The Building (i.e. dwelling house) contracts and the installation of the fixtures were signed under seal.*

Scenario 5 - TAJ has decided that the contracts are connected and merges the consideration in each contract to determine the taxes payable.

Scenario 6 - The total consideration from condition 2 above, which amounts to $15,000,000.00 is not accepted as market value of the unit. Instead market value is determined to be $20,000,000.00

| ***Scenario 5: (Multiple (Split) contracts MERGED- consideration accepted as market value, with Developer's Rebate)*** | | ***Scenario 6: (Multiple (Split) contracts MERGED and consideration not accepted as market value) with Developer's Rebate)*** | |
|---|---|---|---|
| Total consideration accepted as market value of the Unit<br>*($2,500,000.00 + $8,000,000.00 + $4,500,000.00)* | $15,000,000.00 | Total consideration assessed by TAJ Assessor | $20,000,000.00 |
| **Agreement for Sale of Land:**<br>Market consideration | $15,000,000.00 | **Agreement for Sale of Land:**<br>Market consideration | $20,000,000.00 |
| Less Developer's Rebate (75%) granted | ($11,250,000.00) | Less Developer's Rebate (75%) granted | ($15,000,000.00) |
| Amount chargeable to TT | $3,750,000.00 | Amount chargeable to TT | $5,000,000.00 |

| *Scenario 5: (Multiple (Split) contracts MERGED- consideration accepted as market value, with Developer's Rebate)* | | *Scenario 6: (Multiple (Split) contracts MERGED and consideration not accepted as market value) with Developer's Rebate)* | |
|---|---|---|---|
| ***Transfer Tax* due and payable ($5,000,000 × 2%)** | **$75,000.00** | ***Transfer Tax* due and payable ($5,000,000 × 2%)** | **$100,000.00** |
| *Since the Consideration is over $500,000.00* | | | |
| Stamp Duty due and payable on the main agreement (Land) | **$5,000.00** | Stamp Duty due and payable on the main agreement (Land) | **$5,000.00** |
| **Building Contract:** This is assessed under the head of agreement, signed under seal | **$20.00** | **Building Contract:** This is assessed under the head of agreement, signed under seal | **$20.00** |
| **Installation Agreement:** This is assessed under the head of agreement, signed under seal | **$20.00** | **Installation Agreement:** This is assessed under the head of agreement, signed under seal | **$20.00** |
| Other Stamp Duty due and payable ($20 + $20) | | Other Stamp Duty due and payable ($20 + $20) | |
| **Total duty payable on the merged contracts** | **$80,040.00** | **Total duty payable on transaction** | **$105,040.00** |

The contracts were not connected and were assessed individually as follows:

Scenario 7 – Using the information contained in Condition 2 the agreement for sale of land transactions carried out by John and Mary Development with the builder where the developer's rebate is NOT applicable since this agreement concerns land only.

Scenario 8 - The consideration of $2,500,000.00 (in condition 2 above) is not accepted as market value of the land. Instead market value is determined to be $3,500,000.00

Transfer Tax (on each unit) would be calculated as follows:

| ***Scenario 7: (Multiple (Split) contracts NOT MERGED and consideration accepted as market value)*** | | ***Scenario 8 (Multiple (Split) contracts NOT MERGED and consideration not accepted as market value)*** | |
|---|---|---|---|
| Market consideration & Amount chargeable to TT | $2,500,000.00 | Total consideration assessed by TAJ Assessor& Amount chargeable to TT | $3,500,000.00 |
| ***Transfer Tax*** **due and payable ($2,500,000 × 2%)** | **$50,000.00** | ***Transfer Tax*** **due and payable ($3,500,000 × 2%)** | **$70,000.00** |
| *Since the Consideration is over $500,000.00* | | | |
| **Stamp Duty due and payable on the Land contracts** | **$5,000.00** | **Stamp Duty due and payable on the Land contracts** | **$5,000.00** |
| **Construction/Building Agreement:** **Stamp Duty due and payable on the Building contracts** | **$5,000.00** | **Construction/Building Agreement:** **Stamp Duty due and payable on the Building contracts** | **$5,000.00** |
| **Installation Agreement:** This is assessed under the head of | **$20.00** | **Installation Agreement:** This is assessed under the head of | **$20.00** |

| *Scenario 7: (Multiple (Split) contracts NOT MERGED and consideration accepted as market value)* | | *Scenario 8 (Multiple (Split) contracts NOT MERGED and consideration not accepted as market value)* | |
|---|---|---|---|
| agreement, signed under seal | | agreement, signed under seal | |
| **Total duty payable on all transactions** | **$60,020.00** | **Total duty payable on all transactions** | **$80,020.00** |

## Condition 3

### *Scenario 9 (Sale of land: sub-divided and developed)*

*John and Mary Development, having acquired the necessary approvals have sub-divided and developed land to include infrastructure such as road, electricity, water and sewage. The business now contracts to sell each lot at a price of $2,500,000.00 and would like to have the Agreements for Sale stamped.*

*Developer's Rebate is NOT applicable since this agreement concerns land only*

*Transfer Tax (on each unit) would be calculated at 2% on the market value of the unit, which in this case is land only.*

## Condition 4

*John and Mary Development, having acquired the necessary approvals have sub-divided and developed land to include infrastructure such as road, electricity, water and sewage. The business sold lots to EZ development who has constructed houses on them and now contracts to sell each unit at a price of $15,000,000.00 and would like to have the contracts stamped.*

*EZ Development would be able to access the benefit of the Developer's Rebate and the contracts would be treated similarly to Scenarios 1 and 3 in the illustrations above.*

Should Tax Administration Jamaica's Valuation Officers accept the stated selling price for each unit as the market value.

Transfer Tax (on each unit) would be calculated as follows:

| ***Scenario 10 (Sale of sub-divided and developed land (inc. infrastructure) to developer)*** | |
|---|---|
| Market consideration | $15,000,000.00 |
| Less Developer's Rebate (75%) | ($11,250,000.00) |
| Amount chargeable to TT | $3,750,000.00 |
| ***Transfer Tax*** **due and payable ($3,750,000 × 2%[3])** | **$75,000.00** |
| *Since the Consideration is over $500,000.00* | |
| **Stamp Duty due and payable by EZ Development** | **$5,000.00** |
| **Total duty payable on transaction** | **$80,000.00** |

[3] ***Rate of tax for transactions/documents dated April 1, 2019 or later***

# EXHIBITS

*Exhibit 1: Extracts from The Real Estate (Dealers and Developers) Act*

**Section 2**

“Board” means the Real Estate Board established under section 4;

“developer” means a person who carries on, whether in whole or in part, the business of development of land;

"land" includes- (a) all estates and interest, whether freehold or leasehold, in real property including (where appropriate) an estate or interest comprised in a strata title under the Registration (Strata Titles) Act;

(b) any building and any part of a building; and

(c) in relation to any transaction relating to land that also relates to any goods, chattels or other property, those goods, chattels or other property;

**Section 35**

35.-(1) Every person who proposes to carry out any development under a development scheme to which this section applies shall before commencing such development apply to the Board, in such form and manner as may be prescribed, for registration as a developer and lodge with the Board a statement showing his name, his address for the purposes of the development scheme, the location and area of the land to be used for the development scheme and such other particulars as may be prescribed and, in the case of a company, the address of its registered office and the names and addresses of all its directors.

(2) Every application to the Board under subsection (1) shall be accompanied by the prescribed fee.

(3) Upon receipt of such application and fee the Board, subject to subsection (4), shall cause the name and address of the applicant to be entered in a register to be known as the Register of Developers and the person so registered shall be a registered developer for the purposes of this Act.

(4) The Board shall not register an applicant under this section if the applicant-

(a) in the case of an individual-

(i) has been convicted at any time of any offence involving fraud or dishonesty in relation to real estate matters; or

(ii) has had an order in bankruptcy made against him which remains undischarged or

(b) in the case of a body corporate if-

(i) a resolution has been passed or an order made by a court of competent jurisdiction for its winding-up;

(ii) any proceeding has been taken whereby its property may be distributed among its creditors;

(iii) a receiver has been appointed for any of its property; or

(iv) any of its directors is an individual referred to in paragraph (a).

(5) A registered developer shall in every year, on or before the 1st day of April after the date of registration, pay to the Board a prescribed fee unless the Board is satisfied that such registered developer is no longer engaged in the business of carrying out any development scheme.

(6) This section applies to all development schemes where the number of lots into which the land is, or is intended to be, subdivided exceeds five, or where the number of strata lots comprising building units constructed or intended to be constructed in the development scheme exceeds five, or where the person carrying out or proposing to carry out the development scheme is also carrying out, or has within the preceding twenty-four months carried out, another development scheme of whatever size.

(7) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate’s Court to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year.

***Exhibit 2: Transfer Tax Exemption Order 1974***

1. *This Order may be cited as the Transfer Tax (Exemption) Order. 1974.*
2. *In this Order-*

*"approved housing scheme" means-*

*(a) any "scheme" within the meaning ascribed to that expression in section 2 of the Housing Act;*

*(b) any housing scheme approved by a local authority pursuant to powers under the Local Improvements Act;*

*"developer" means any person responsible for the development or sale or both of a housing scheme;*

*"dwelling-house" means any premises used as a separate dwelling or of a type suitable for such use;*

*"flat" means a separate and self-contained set of premises constructed for use for the purpose of a dwelling and forming part of a building from some other part from which it is divided;*

*"housing scheme" means a scheme for the sub-division of land and the construction of dwelling-houses or flats thereon;*

*"local authority" means-*

*(a) in relation to the Corporate Area as defined in the Kingston and St. Andrew Corporation Act, the Council of the Kingston and St. Andrew Corporation; and*

*(b) in relation to the parishes not within the Corporate Area, the Parish Council of such parishes in their respective parishes;*

*"unit" in relation to any approved housing scheme, means a strata lot as defined in section 2 of the Registration (Strata Titles) Act, or any other parcel of land comprised in the housing scheme capable of being transferred separate from other parcels of land in that housing scheme.*

3. *-(1) Subject to sub-paragraph (2), no tax shall be charged in respect of so much of the consideration for the transfer by a developer of a unit in an approved housing scheme as the Commissioner is satisfied represents the value of any dwelling-house or flat on that unit.*

   *(2) The exemption granted pursuant to sub-paragraph (1) shall be subject to the following conditions-*

   *(a) once the exemption is granted in relation to any unit, no further or other exemption shall be granted under this Order in relation to that unit;*

*(b) the value of a dwelling-house or flat on a unit shall be deemed not to exceed 75 per centum of the amount of the consideration for the transfer of the unit, so, however, that nothing in this condition shall be construed as relieving a developer from the duty to satisfy the Commissioner of the value of any dwelling-house or flat on a unit, or as derogating from the powers of the Commissioner to determine that the value of such dwelling-house or flat is less than 75 per centum of the consideration for the transfer of the unit.*

*Exhibit 3: Extracts from Transfer Tax Act*

**Section 3(1)**

imposes a charge on transferors as follows "Subject to and in conformity with the provisions of this Act, tax shall be charged at the rate of two per centum of the amount or value of such money or money's worth as is, or may be treated under this Act as being, the consideration for each transfer after the 1st day of April, 2019, of any property; and tax charged in respect of any such transfer shall be borne by the transferor.

**Section 4(1)**

requires the tax to be charged on market value of the property being transferred and provides:

> "Subject to the provisions and for the purposes of this Act, the transfer of property shall be deemed to be for a consideration equal to the market value of the property where the transferee acquires such property-
>
> (a) otherwise than by way of a bargain made at arm's length and in particular where he acquires it by way of gift;…."

**Section 4(2)**

further provides for the situations in which the Commissioner may deem a transfer to have taken place at market value:

> (a) "in the case of a transfer after the 17th November, 1970, where the transferor to him of such property is connected with him;
>
> (b) in the case of a transfer after the 7th day of November, 1988, where in the opinion of the Commissioner the amount or value of the consideration is substantially less than the market value of the property"