

Bill No. 3 of 1966

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LEGISLATURE,
Public Buildings,
Georgetown.
10th January, 1966.

The following Bill which will be introduced in the House of Assembly is published for general information.

E. V. VIAPREE,
Clerk of the Legislature.

Bill No. 3 of 1966.

CAPITAL GAINS TAX BILL, 1966.

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FIRST SCHEDULE**SECOND SCHEDULE****A BILL**

Intituled

An Ordinance to provide for the Levy of taxes computed by reference to capital gains.

A.D. 1966. Enacted by the Legislature of British Guiana:—

PART I — PRELIMINARY

Short title and commencement.

1.(1) This Ordinance may be cited as the Capital Gains Tax Ordinance, 1966.

(2) This Ordinance shall be deemed to have come into operation with respect to and from the year of assessment commencing on the 1st January, 1965.

Interpretation.

2. In this Ordinance, unless the context otherwise requires —
“acquisition” with reference to property, means obtained by purchase, gift, inheritance, or exchange, or in any other manner whatsoever and the word “acquired” shall be construed accordingly;

“body of persons”, “Commissioner”, “company”, “local authority”, “Minister”, “person”, prescribed”, “resident in British Guiana” have the meanings respectively assigned to those expressions by the Income Tax Ordinance;

Cap. 299.

“capital gain” —

(i) with reference to the capital gain of any person arising from any change of ownership of property means the amount by which the value of that property at the time when such change of ownership occurs exceeds the cost of acquisition or its value at the time when it was acquired by that person;

(ii) with reference to the capital gain of any person arising from the surrender or relinquishment of any right or the

transfer of some of the rights in any property, means, the value of the consideration for such surrender, relinquishment or transfer;

- (iii) with reference to the capital gain of any person arising from the redemption of any shares, debentures, or other obligations, means, the amount by which the value of all property received by him in consequence of such redemption exceeds the cost of acquisition or its value at the time when it was acquired by that person;
- (iv) with reference to the capital gain of any person arising from the dissolution of a business or the liquidation of a company, means, the amount by which the value of all property received by him in consequence of such dissolution or liquidation exceeds the cost to him of his share of the capital in such business or company;
- (v) with reference to the capital gain arising from the amalgamation or merger of two or more companies, means, in the case of a shareholder of any of those companies, any money received by such shareholder in consequence of such amalgamation or merger, and in the case of any other person, the value of the consideration received by such other person for any transaction in connection with such amalgamation or merger;
- (vi) with reference to the capital gain of any person arising from the formation of a company means the value of the consideration received by him for any transaction in connection with the formation of such company; and
- (vii) with reference to the capital gain of any person arising from a transaction promoted by him without being a party to it, means, the sum received by him as a commission or reward:

Provided that in the case of any property in respect of which an allowance was granted for initial, annual or wear and tear allowance or for obsolescence under the provisions of the Income Tax (In Aid of Industry) Ordinance or the Income Tax Ordinance, the capital gain in each case shall be the amount by which the value of the consideration received exceeds the cost of acquisition or the value upon acquisition, as the case may be, of that property less any initial, annual, wear and tear or obsolescence allowance granted in respect of that property;

Cap. 300

“capital loss” —

- (i) with reference to the capital loss of any person arising from the change of ownership of any property, means, the amount by which the value of that property at the time when such change of ownership occurs is less than the cost of acquisition of that property by that person;
- (ii) with reference to the capital loss of any person arising from the redemption of any shares, debentures or other obligations, means, the amount by which the value of all property received by him in consequence of such redemption is less than the cost to him of that which is redeemed;
- (iii) with reference to the capital loss of any person arising from the dissolution of a business or the liquidation of a company, means the amount by which the value of all property received by him in consequence of such dissolution or liquidation is less than the cost to him of his share of the capital in such business or company;
- (iv) includes the amount of any irrecoverable debt which is secured by a mortgage or a promissory note which is not treated as an allowable deduction under the provisions of the Income Tax Ordinance:

Provided that in the case of any property in respect of which an allowance was granted for initial, annual or wear and tear allowance or for obsolescence under the provisions

of the Income Tax (In Aid of Industry) Ordinance or the Income Tax Ordinance, the capital loss in each case shall be the amount by which the value of the consideration received is less than the cost of acquisition of that property reduced by the amount of the allowance granted in respect of initial, annual, wear and tear or obsolescence allowance on this property;

“change of ownership” in the context of the definition of “capital gain” or “capital loss” does not include —

- (i) the sale to a customer of any property held by the vendor primarily for sale to customers in the ordinary course of his trade or business;
- (ii) the passing of any property subject to a trust from the trustee to any beneficiary under the trust;
- (iii) the passing of any property belonging to the estate of a deceased person from the executor or administrator of the estate, as the case may be, to any beneficiary of the deceased;
- (iv) the sale of household furniture, jewellery and works of art of the vendor where the value of such property in the aggregate is less than five thousand dollars in any one year; and
- (v) the realisation by a liquidator of the assets of a company in liquidation for the purpose of the dissolution of the company and return of the proceeds of the realisation to the shareholders of the company;

“market value” means, the price which, in the opinion of the Commissioner, could reasonably have been obtained for that property in the open market on the date on which it was acquired;

“net capital gain”, in respect of any year of assessment, means the excess of the total capital gains in the year of assessment over the total capital losses in that year;

“net capital loss” in respect of any year of assessment, means, the excess of the total capital losses in the year of assessment over the total capital gains in that year;

“net chargeable capital gain” means the net capital gain in any year of assessment reduced by the amount of any net capital loss of previous years which is to be allowed as a set off under this Ordinance;

“property” includes immovable and movable property, rights of any kind, whether absolute, conditional or contingent and effects of any kind, situate or having their seat in British Guiana or elsewhere;

“value” with reference to any property or consideration in the context of the definition of “capital gain” or “capital loss” shall be the market value at the time when the event took place;

“year of assessment” means the period of twelve months commencing on the 1st January, 1965, and each subsequent period of twelve months;

“year preceding the year of assessment” means the period of twelve months ending on the 31st December immediately prior to such year of assessment.

PART II

ADMINISTRATION

Administra-
tion of the
Ordinance.

3.(1) This Ordinance shall be administered by the Commissioner and the officers and persons appointed for the due administration of the Income Tax Ordinance.

(2) Any function conferred by this Ordinance on the Commissioner shall be exercised, as may be necessary, by any officer authorised by him, according as the Commissioner may direct and references in this Ordinance to the Commissioner shall be construed accordingly.

Official
secrecy.

4.(1) Every person who has any official duty or is employed in the administration of this Ordinance shall regard and deal with all docu-

ments, information, returns, assessment lists and copies of those lists, relating to the income or items of the income of any person, as secret and confidential, and shall make and subscribe before a magistrate a declaration in the form prescribed in the first schedule to this Ordinance:

Provided that any such person who has any official duty or is employed in the administration of the Income Tax Ordinance and has taken and subscribed a declaration in accordance with the provisions of subsection (1) of section 4 of that Ordinance, shall be deemed to have taken and subscribed the declaration as required by the foregoing provisions of this subsection. First Schedule

(2) Every person having possession of or control over any documents, information, returns, or assessment lists or copies of those lists, relating to the income or items of income of anyone who at any time communicates or attempts to communicate that information, or anything contained in the documents, returns, lists, or copies, to any person —

(a) other than a person to whom he is authorised by the Minister to communicate it; or

(b) otherwise than for the purposes of this Ordinance, shall be guilty of an offence against this Ordinance.

PART III

PERSONS TO WHOM THIS ORDINANCE SHALL NOT APPLY

5. This Ordinance shall not apply to any of the persons exempt from the operation of the Property Tax Ordinance, 1962, by virtue of section 6 of that Ordinance.

Persons to whom this Ordinance shall not apply. No. 19 of 1962.

PART IV

BASIS OF ASSESSMENT AND IMPOSITION OF CAPITAL GAINS TAX

6. Subject to the provisions of this Ordinance, there shall be charged, levied and collected for each year of assessment a tax (to be called "the capital gains tax") upon the net chargeable capital gain of any person for the year immediately preceding the year of assessment:

Basis of assessment.

Provided that where in any year preceding the year of assessment the net chargeable capital gain of any person does not exceed one thousand dollars no tax shall be charged, levied or collected for that year of assessment.

7. Where the Commissioner has permitted any person under the provisions of section 9 of the Income Tax Ordinance to compute the gains or profits from his trade or business for the purposes of the Income Tax Ordinance upon the income of a year terminating on some day other than that immediately preceding any year of assessment, the Commissioner may permit the net capital gain of that person to be computed for the purposes of this Ordinance upon the capital gains of the year terminating on that day in the year immediately preceding the year of assessment:

Special period of assessment.

Provided that where permission has been given for any year of assessment, capital gains tax shall be charged, levied and collected for each subsequent year upon the net capital gain for the full year terminating on the like date in the year immediately preceding the year of assessment subject to any such adjustment as in the opinion of the Commissioner may be just and reasonable.

8. Capital gains tax shall, subject to the provisions of this Ordinance, be payable at the rate specified in section 12 of this Ordinance upon the capital gains of any person accruing in or derived from British Guiana or elsewhere and whether received in British Guiana or not in respect of the capital gains arising from —

Charge of capital gains tax.

- (a) the change of ownership of any property occurring by sale, disposal, transfer, realisation or exchange, or in any other manner whatsoever but does not include the change of ownership of property occurring by way of gift;
- (b) the surrender or relinquishment of any right in any property other than the surrender of a life insurance policy;
- (c) the transfer of some of the rights in any property other than the transfer of the rights of a trustee in any property subject to a trust;

- (d) the redemption of any shares, debentures, or other obligations;
- (e) the dissolution of a business or the liquidation of a company;
- (f) the amalgamation or merger of two or more businesses or companies;
- (g) the formation of a company; or
- (h) any transaction in connection with which a person who promotes that transaction without being a party to it receives any commission or reward:

Provided that —

- (a) where any such gains are treated as profits or income under the provisions of the Income Tax Ordinance no capital gains tax shall be payable on any such gains;
- (b) in the case of capital gains accruing outside of British Guiana which accrue to a person who is not ordinarily resident or is not domiciled in British Guiana capital gains tax shall be payable on the amount of capital gains received in British Guiana;
- (c) the capital gains tax shall not be payable on capital gains arising from the several sources listed in paragraphs (a) to (h) of this section where such change of ownership, surrender or relinquishment or transfer of rights, redemption, dissolution, liquidation, amalgamation, merger, formation or transaction was effected more than seven years after the date of acquisition by a person of such rights, shares, debentures or obligations, or business, or other property from which the capital gains arose.

PART V

ASCERTAINMENT OF CAPITAL GAINS AND LOSSES

Deductible
expenditure.

9. The amount of a capital gain or capital loss arising from the change of ownership of any property shall be computed after making the following deductions —

- (a) the expenditure (other than the purchase price, if any) incurred solely in connection with the acquisition of that property by the person who is the owner of that property immediately before the occurrence of such change of ownership;
- (b) the expenditure incurred by the aforesaid owner in making improvements, additions or alterations to that property; and
- (c) the expenditure incurred by the aforesaid owner solely in connection with the transaction which results in such change of ownership:

Provided that if any amount of the aforesaid expenditure was allowed as a deduction for the purposes of income tax under the provisions of the Income Tax Ordinance or the Income Tax (In Aid of Industry) Ordinance, such amount shall not be allowed in computing a capital gain or capital loss under this Ordinance.

Net capital
loss carried
forward.

10. Where in any year preceding the year of assessment a net capital loss is incurred by any person the amount of the net capital loss shall be carried forward and, subject as hereinafter provided, shall be set off against his net capital gain in the next six years in succession:

Provided that —

- (a) the amount of any such net capital loss allowed to be set off in computing the net chargeable capital gain of any year shall not be set off in computing the net chargeable capital gain of any other year; and

- (b) where in any year preceding the year of assessment the net capital loss of any person does not exceed one thousand dollars such amount of his net capital loss shall not be allowed to be carried forward as a set off against his net capital gains of future years.

11. The net capital gain of a married woman living with her husband shall be deemed for the purpose of this Ordinance to be the net capital gain of the husband and shall be charged in the name of the husband and not in her name or in that of her trustee: Wife's capital gains.

Provided that that part of the total amount of capital gains tax charged upon the husband which bears the same proportion to that total amount as the amount of the net capital gain of the wife bears to the amount of the total amount of the net capital gain of the husband and wife may, if necessary be collected from the wife, notwithstanding that no assessment has been made upon her.

**PART VI
RATE OF CAPITAL GAINS TAX**

12. Capital gains tax shall be charged upon the net chargeable capital gain of any person for each year of assessment at the rate of ten per centum. Rate of tax.

13. Notwithstanding anything to the contrary contained in the Income Tax Ordinance or the Income Tax (In Aid of Industry) Ordinance, a company shall not be entitled to deduct income tax or capital gains tax from any dividend paid to a shareholder out of net capital gains. Companies not entitled to deduct tax from dividends paid out of capital gains.

**PART VII
RETURNS, ASSESSMENTS, APPEALS, PAYMENT, RECOVERY
AND PAYMENT AND OFFENCES**

14.(1) Capital gains tax shall be assessed and collected by the Commissioner. Assessments, collection, appeals.

(2) Every person chargeable with capital gains tax shall on or before the prescribed day in every year deliver to the Commissioner a true and correct return of his capital gains from every source whatsoever for the year immediately preceding the year of assessment and shall, if absent from British Guiana, give the name and address of an agent residing therein.

15. Any person who refuses, fails, or neglects to perform any act required by the provisions of section 40 or 41 of the Income Tax Ordinance as applied by this Ordinance for the purposes of the capital gains tax shall be guilty of an offence against this Ordinance. Offence for failure to furnish returns and particulars.

16. Every person who —

- (a) fails to give to the Commissioner any information required in accordance with the provisions of section 42 of the Income Tax Ordinance as applied by this Ordinance for the purposes of the capital gains tax; or
- (b) fails to produce for the inspection of the Commissioner or any person duly authorised by him as aforesaid any of the records specified in subsection (2) of the said section 42 which he may be required by the Commissioner or such duly authorised person to produce —

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

17. Any person who refuses to permit the Commissioner or any officer duly authorised in writing in that behalf by him after production of his authority, to enter any premises referred to in subsection (1) of section 43 of the Income Tax Ordinance as applied by this Ordinance for the purposes of the capital gains tax or obstructs the Commissioner or such an officer in the discharge of his functions under the said subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months. Offence to obstruct Commissioner.

18. Any person who refuses, fails or neglects to keep such records, books and accounts in the manner directed by the Commissioner under subsection (1) of section 44 of the Income Tax Ordinance, as applied Failure to keep records, books and accounts.

by this Ordinance for the purposes of the capital gains tax, shall be guilty of an offence against this Ordinance.

Offences in relation to partnerships.

19. Any person who refuses, fails or neglects to deliver any return required by section 45 of the Income Tax Ordinance as applied by this Ordinance for the purposes of the capital gains tax shall be guilty of an offence against this Ordinance.

Failure or neglect to perform certain acts.

20. Any person who refuses, fails or neglects to perform any act required by the Commissioner to be done in pursuance of the provisions of subsection (4) of section 56 of the Income Tax Ordinance, as applied by this Ordinance for the purposes of the capital gains tax, shall be guilty of an offence against this Ordinance.

Offence in relation to witnesses summoned before Board of Review.

21.(1) Any person who, being before the Board in pursuance of any summons, refuses to give evidence or refuses without lawful excuse to produce any book or document in his custody or control when required so to do by the Board shall be liable on summary conviction to a fine not exceeding forty-eight dollars:

Provided that no person giving evidence before the Board shall be compellable to answer any question if in the opinion of the Board the answer would tend to expose the witness, his wife, or her husband to any criminal charge or to any penalty or forfeiture other than civil proceedings at the instance of the Crown or of any other person.

(2) In this section "the Board" means the Board of Review established by section 56A of the Income Tax Ordinance.

Penalties for offences.

22. Anyone guilty of an offence against this Ordinance for which no special penalty is provided shall be liable on summary conviction to a fine not exceeding five hundred dollars.

Penalty for making incorrect return.

23.(1) Every person who without reasonable excuse —

- (a) makes an incorrect return by omitting or understating any capital gains of which he is required by virtue of this Ordinance to make a return whether on his own behalf or on behalf of another person; or
- (b) makes an incorrect statement in connection with a claim for deduction in estimating capital gains; or
- (c) gives any incorrect information in relation to any matter or thing affecting his own liability to capital gains tax or the liability of any other person;

shall notwithstanding anything to the contrary contained in this Ordinance be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars and double the amount of tax which has been undercharged in consequence of such incorrect return, statement or information, or would have been so undercharged if the return, statement or information had been accepted as correct.

(2) The Commissioner may compound any offence under this section, and may, before judgment, stay or compound any proceedings thereunder. When the Commissioner has compounded any such offence, the sum for which the offence is compounded shall be deemed to be capital gains tax assessed under the provisions of this Ordinance and all the powers of the Commissioner under this Ordinance to enforce payment and recovery of any assessment shall apply to the payment and recovery of the sum compounded as if it were capital gains tax assessed under this Ordinance:

Provided that the provisions of sections 56 and 57 of the Income Tax Ordinance, as applied by this Ordinance for the purposes of the capital gains tax, shall not apply to any composition deemed to be capital gains tax assessed under this subsection.

24.(1) Any person who —

- (a) (i) for the purpose of obtaining any deduction, rebate, reduction, or payment, in respect of capital gains tax for himself or for any other persons, or

False statements and returns.

- (ii) in any return, account, or particulars, made or furnished with reference to capital gains tax, knowingly makes any false statement or false representations, or
- (b) aids, abets, assists, counsels, incites, or induces another person —
 - (i) to make or deliver any false return or statement under this Ordinance; or
 - (ii) to keep or prepare any false accounts or particulars concerning any income on which capital gains tax is payable under this Ordinance, shall be liable on summary conviction to a fine not exceeding one thousand dollars and treble the amount of capital gains tax which has been undercharged in consequence of such false account, particulars, return, statement, information or representation, or would have been so undercharged if the account, particulars, return, statement, information or representation had been accepted as correct, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(2) The Commissioner may compound any offence under this section, and may, before judgment, stay or compound any proceedings thereunder. When the Commissioner has compounded any such offence, the sum for which the offence is compounded shall be deemed to be capital gains tax assessed under the provisions of this Ordinance and all the powers of the Commissioner under this Ordinance to enforce payment and recovery of any assessment shall apply to the payment and recovery of the sum compounded as if it were capital gains tax assessed under this Ordinance:

Provided that the provisions of sections 56 and 57 of the Income Tax Ordinance, as applied by this Ordinance for the purposes of the capital gains tax, shall not apply to any composition deemed to be capital gains tax assessed under this subsection.

- (3) For the purposes of this section a false statement or false representation must be presumed to have been knowingly made —
 - (a) whenever it reveals a degree of negligence on behalf of the person making it which is inconsistent with his obligation under the provisions of this Ordinance to make a true and correct return, account, statement, representation or declaration, or true and correct particulars; or
 - (b) whenever a person fails to notify the Commissioner without unreasonable delay of any error or omission in any return, statement, declaration or representation, account or particulars furnished, delivered, made, kept or prepared as the case may be, by him.

25. Any person who obstructs or impedes, or insults, or molests, a Commissioner, or other officer in the discharge of his duties, or in his official capacity, or in the exercise of his powers under this Ordinance, shall be guilty of an offence against this Ordinance. Impeding or obstructing the Commissioner or his officers.

26. Proceedings for an offence under this Ordinance may be instituted at any time within six years after the commission of the offence. Limitation for institution of proceedings.

27.(1) The provisions of the Income Tax Ordinance specified in the second schedule to this Ordinance shall, as the same apply to income tax, apply *mutatis mutandis* in relation to the capital gains tax. Application of provisions of the Income Tax Ordinance for the purposes of the capital gains tax. Second Schedule.

(2) Any reference in this Ordinance to the Income Tax Ordinance shall be construed as a reference to that Ordinance as amended by any subsequent Ordinance.

(3) Any reference to the income tax in section 69A of the Income Tax Ordinance shall be deemed to include a reference to the capital gains tax and the said section 69A and any regulations made for the purposes of that section shall apply accordingly.

Power to
make regu-
lations.

28. The Minister may, from time to time, make regulations generally for carrying out the provisions of this Ordinance and regulations may be made to take effect for the year of assessment commencing on the 1st January, 1965.

FIRST SCHEDULE S. 4 (1)

DECLARATION OF SECRECY

I,
do solemnly declare that I will truly, faithfully, impartially and honestly, according to the best of my skill and knowledge execute the powers and authorities vested in me by the Capital Gains Tax Ordinance, 1966, and that I will exercise the powers entrusted to me by the said Ordinance in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Ordinance, without favour, affection or malice; and that I will not disclose any particular contained in any schedule, statement, return or other document delivered with respect to any tax charged under the provisions of the said Ordinance, or any evidence or answer given by any person who shall be examined, in pursuance of the said Ordinance, excepting to such persons only as shall act in the execution of the said Ordinance, and where it shall be necessary to disclose the same to them for the purposes of the said Ordinance, or for the purposes of or in the course of a prosecution for perjury, or for an offence under the said Ordinance.

Declared before me, this
day of, 19.....

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Magistrate.

SECOND SCHEDULE S. 27

Sections 32, 33 (1), (2) and (5), 34, 36, 37, 37A, 38, 40 (1), (2), (3) and (4), 41 (1), 42 (1), and (2), 43 (1), 44 (1), 45, 47, 48, 49, 50, 52, 54, 56 (1), (2), (3), (4) and (5), 56A, 56B, 56C, 56D, 56E, 56F (1), 57, 58, 59, 67 (1), (2) and (4), 68, 69, 69B, 69C, 70, 71, 72, 73, 74, 81 and 82.

OBJECTS AND REASONS

This Bill seeks to provide for the imposition and collection of a capital gains tax outside the ambit of the Income Tax Ordinance, Chapter 299, under the provisions of which the tax was imposed and collected. Capital gains tax shall be charged at the rate of ten per centum of the rate chargeable capital gain of any person where the net chargeable capital gain exceeds one thousand dollars in any year of assessment.

P. S. D'AGUIAR,
Minister of Finance.

(Bill No. 3/1966).