

PUBLISHED 28TH NOVEMBER, 1970



GUYANA.

BILL NO. 28 of 1970.

CAPITAL GAINS TAX (AMENDMENT) BILL, 1970.

Arrangement of Sections.

~~Section~~

1. Short title and commencement.
2. Amendment of section 2 of the Principal Ordinance.
3. Insertion of section 7A in the Principal Ordinance.

4. Amendment of section 8 of the Principal Ordinance.
5. Repeal and re-enactment of section 12 of the Principal Ordinance.

A BILL

Intituled

A. D. 1970

AN ACT to amend the Capital Gains Tax Ordinance, 1966.

Enacted by the Parliament of Guyana :—

Short title
and com-
mencement.
No. 13 of
1966.

1. (1) This Act may be cited as the Capital Gains Tax (Amendment) Act, 1970, and amends the Capital Gains Tax Ordinance, hereinafter referred to as the Principal Ordinance.

(2) This Act shall be deemed to have come into operation with respect to and from the year of assessment commencing 1st January, 1970.

Amendment
of section 2
of the Prin-
cipal Ordinance

2. Section 2 of the Principal Ordinance is hereby amended by the deletion of the words "or a promissory note" from paragraph (iv) of the definition of the expression "capital loss".

Insertion of
section 7A in
the Principal
Ordinance.

3. The Principal Ordinance is hereby amended by the insertion of the following section immediately after section 7 —

"Special pro-
visions regard-
ing capital
gains and
capital losses

7A.(1) Where a capital gain or a capital loss arises from the change of ownership of any property occurring on a donation of that property by its owner to any other person such capital gain or capital loss shall be deemed to be a capital gain or a capital loss, as the case may be, of the donor.

(2) On the death of an individual all the property of which he was competent to dispose shall for the purposes of this Ordinance be deemed to be disposed of by him at the date of death, and acquired by the personal representatives or other person on whom the property devolves, for a consideration equal to the market value of the property at that date.

(3) A person's acquisition of property and the disposal of it to him shall for the purposes of this Ordinance be deemed to be for a consideration equal to the market value of the property where he acquires the property otherwise than by way of a bargain made at arm's length and in particular where he acquires it by way of gift or by way of distribution from a company in respect of shares in the company.

(4) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Ordinance be treated as being a single and continuing body of persons (distinct from the persons who may, from time to time, be the personal representatives), and that body shall be treated as having the residence and domicile of the deceased at the date of death.

(5) In this section, reference to property of which a deceased person was competent to dispose is a reference to property of the deceased which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will, assuming that the property was situated in Guyana and, if he was not domiciled in Guyana, that he was domiciled in Guyana.

(6) On a person acquiring any property as a beneficiary of a deceased person's estate he shall be treated as if the personal representatives' acquisition of the asset has been his acquisition of it.

(7) In determining the value of an estate for the purposes of estate duty, allowance shall be made for capital gains tax chargeable on net chargeable gains accruing on death in pursuance of the provisions of this section (as well as of any amount of capital gains tax owed by the deceased).

(8) Capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of any one or more of those personal representatives, but where an assessment is made in pursuance of this subsection otherwise than on all the personal representatives the persons assessed shall not include a person who is not resident or ordinarily resident in Guyana.

(9) Chargeable gains accruing to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such personal representatives, shall not be regarded for the purposes of this Ordinance as accruing to, or chargeable on, any other person.

(10) Chargeable gains which accrue to an individual on the disposal of assets deemed to be made by him on his death shall be regarded for the purposes of this Ordinance as accruing to an individual notwithstanding that capital gains tax in respect of the gains is chargeable and assessable on his personal representatives."

4. Section 8 of the Principal Ordinance is hereby amended in the following respects —

Amendment
of section 8
of the Principal
Ordinance.

- (a) by the deletion of the words "but does not include the change of ownership of property occurring by way of gift" appearing in paragraph (a);
- (b) by the substitution of semi-colon for the full stop at the end of the proviso thereto and the addition of the following paragraph —

"(d) net chargeable capital gains arising to any person within a period of twelve months after the change of ownership occurs and upon which capital gains tax would, but for this paragraph, have been charged, shall, unless the contrary is established by that person to the satisfaction of the Commissioner, be deemed to be part of the chargeable income for the year of assessment of that person arising out of gains or profits from any trade, business, profession or vocation, and chargeable with tax recoverable under the provisions of the Income Tax Ordinance."

Repeal and re-enactment of section 12 of the Principal Ordinance.

5. Section 12 of the Principal Ordinance is hereby repealed and the following section substituted therefor —

"Rate of Tax. 12. Subject to section 8, capital gains tax shall be charged upon the net chargeable capital gain of any person for each year of assessment at the rate of twenty per cent."

EXPLANATORY MEMORANDUM

This Bill seeks to implement, with modification, the proposals in the Budget for 1970 in so far as they relate to tax on capital gains. **Clauses 3 and 4** seek to ensure that a gift of property will be regarded as a change of ownership for the purposes of the Capital Gains Tax Ordinance, 1966. Where a capital gain or a capital loss occurs when property has been donated by its owner to another person, the capital gain or capital loss shall be regarded as the capital gain or capital loss of the donor. Provision is made for the donee of property to be regarded as having acquired it for a consideration equal to the value of the property at the time of acquisition.

Clause 4 also contains provisions for capital gains arising within twelve months after acquisition of the property to be deemed to be income arising from gains or profits from any trade, business, profession or vocation, unless the contrary is proved to the satisfaction of the Commissioner of Inland Revenue, and chargeable with tax under the Income Tax Ordinance. **Clause 5** seeks to make provision for the new rate of tax (20 per cent) on capital gains arising on a change of ownership of property not more than twenty-five years after the date of acquisition of the property.

P. A. REID,
Minister of Finance.

(Bill No. 28/1970)
(1/2)