

**JOINT /SELECT
COMMITTEE REPORTS OF
LEGISLATIVE ASSEMBLY -
1949**

**The Payment of Taxes
(Transfer of
Property) Bill, 1948**

List of Reports of Select Committees presented
to the Constituent Assembly of India
(Legislative) in 1949.

S. No.	Short title of the Bill.	Date of presen- tation.	Date of publica- tion.
1.	The Banking Companies Bill, 1948.	1.2.49.	26.2.49.
2.	The Payment of Taxes (Transfer of Property) Bill, 1948.	10.2.49.	26.2.49.
3.	The Public Companies (Limita- tion of Dividends) Bill, 1949.	21.2.49.	16.4.49.
4.	The Chartered Accountants Bill, 1948.	1.3.49.	12.3.49.
5.	The Central Tea Board Bill, 1949.	1.3.49.	12.3.49.
6.	The Indian Penal Code and the Code of Criminal Procedure (Amendment) Bill, 1947.	21.3.49.	16.4.49.
7.	The Ajmer-Merwara Tenancy and Land Records Bill, 1948.	21.3.49.	16.4.49.
8.	The Indian Finance Bill, 1949.	25.3.49.	2.4.49.
9.	The Hindu Marriages Validity Bill, 1948.	25.3.49.	2.4.49.
10.	The Child Marriage Restraint (Amendment) Bill, 1947.	25.3.49.	2.4.49.
11.	The Estate Duty Bill, 1948. (FINAL REPORT)	31.3.49.	16.4.49.
12.	The Indian Railways (Amendment) Bill, 1949.	28.11.49.	3.12.49.
13.	<i>The Indian Judicial Procedure Bill, 1948</i>	<i>28.11.49</i>	<i>3.12.49</i>
14.	The Delhi Road Transport Authority Bill, 1949.	12.12.49.	24.12.49.
15.	The Taxation Laws (Extension to Merged States and Amendment) Bill, 1949.	16.12.49.	24.12.49.

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

REPORT OF THE SELECT COMMITTEE ON THE PAYMENT OF TAXES (TRANSFER OF PROPERTY) BILL, 1948.

We, the undersigned members of the Select Committee to which the Bill to make provision for the payment of taxes before transfers of property are recognised in certain cases was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed hereto.

2. The object of the Bill, as described in the Statement of Objects and Reasons, is to safeguard the loss of revenue in the case of persons who dispose of their properties with the intention of leaving India and settling somewhere else. But the provisions of the Ordinance, which the present Bill seeks to replace, are so wide that they affect all transactions relating to the registration of any document relating to immovable property, and to this we take serious objection. In our opinion, the present Bill should be confined to persons who have left or leave India with the intention of settling elsewhere.

In this connection, some of us feel that a provision corresponding to section 44G of the Pakistan Income-tax Act requiring a tax-clearing certificate from every non-national leaving the country should be introduced into our law with immediate effect, but on further consideration we felt that such a provision should more appropriately be included in the Bill to amend the Indian Income-tax Act, 1922, which is said to be under the contemplation of the Government.

Old clause 1(3).—As the Ordinance has already been made applicable to all the Provinces of India, we have decided to delete sub-clause (3).

Clause 2.—This is new. We have now confined the scope of the Bill (1) to persons who are known as "evacuees" in other relevant laws, and (2) to persons who are about to leave India with the intention of settling elsewhere and in respect of whom a declaration in that behalf has been received from any Income-tax authority, Custodian of Evacuee Property or a Collector by the registering officer of the area where any property belonging to such person is situate.

Clause 3 (old clause 2).—References to the revenue officer and custodian have been deleted from this clause. Otherwise, this clause is a substantial reproduction of old clause 2. We, however, felt that the Income-tax officer should not have power to prevent a document from being registered, if the recovery of taxes will not thereby be prejudicially affected. We have recast clause (c) of sub-clause (1) accordingly. Further we have substituted the Income-tax Officer for the Inspecting Assistant Commissioner of Income-tax as the officer authorised to issue the certificate, because we feel that delay in the issue of certificates would thereby be avoided. Where such a certificate is refused, the Income-tax Officer has now to make an order in writing, so that it can be appealed from.

Clause 4 (old clause 3).—We think that clause 3 of the original Bill should be retained, but should be restricted in its operation to persons to whom this Act now applies. We have substituted the date 7th day of February, 1948, for the date 14th day of August, 1947, because the former date is the date

on which the Ordinance was first promulgated and, therefore, there can be no cause for complaint as respects the retrospective operation now being given to this provision.

Clause 5 (new).—We have provided a right of appeal in cases where the Income-tax Officer refuses to issue a certificate under sub-clause (3).

Clause 8 (new).—In our opinion, a rule-making clause in the Bill would be desirable.

Clause 9 (old clause 6).—Now that Ordinance XXI of 1948 has expired, we have recast this clause so as to attract the provisions of section 6 of the General Clauses Act, 1897.

8. The Bill was published in Part V of the Gazette of India, dated the 28th August, 1948.

4. We think that the Bill has not been so altered as to require circulation under rule 49(5) of the Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

JOHN MATTHAI.

T. T. KRISHNAMACHARI.

TEK CHAND.

BIKRAM LAL SONDHI.

THAKUR DAS BHARGAVA.

K. HANUMANTHAIYA.

MAHAVIR TYAGI.

*RENUKA RAY.

HUKAM SINGH.

DESHBANDHU GUPTA.

*N. G. RANGA.

*B. DAS.

*L. K. BHARATHI.

M. ANANTHASAYANAM AYYANGAR.

TAJAMUL HUSSAIN.

NEW DELHI;

The 10th February, 1949.

MINUTES OF DISSENT.

I

I do not agree with the changes made by the Select Committee in the original clause 2 of the Bill so as to limit its application only to evacuees and those who are likely to leave the country. During the working of the Ordinance which the Bill is supposed to replace, the Income-tax Department have incidentally been able to rope in a number of non-evacuee tax defaulters and the revenue obtained by this action is considerable.

We have been informed that 8 non-muslim assesseees of Madras and 2 from Calcutta who owe Rs. 57,00,000 and Rs. 3,00,000 of taxes respectively, have been prevented from disposing of their property. In Calcutta and Bombay, the Ordinance has helped the Government to realise a considerable amount from outstanding taxes from some non-evacuees who had applied for tax clearance certificates.

I believe that middle-class people who might have been harassed by the over-all application of a measure like this Ordinance, should be exempted from the operation of the Bill by putting a limit of income to Rs. 25,000/- and above to which class of people the Bill should apply. I am averse to allowing full freedom to await payment of taxes to all people who are not likely to come within the new clause as amended by the Select Committee until such time as the income-tax law is amended so as to take advantage of the experience gained by the Department while the Ordinance was in force.

RENUKA RAY.

NEW DELHI.

The 10th February, 1949.

II

I am not in favour of this Bill at all in view of its immense capacity for inconveniencing thousands of people for every one who really ought to be dealt with. Secondly I suggest that none whose name has not been on the list of income-tax payees shall be expected to produce such a certificate, until and unless a specific demand to that effect by an Income-tax Officer. The burden of proving that anyone who has not been an income-tax payee that he may have to pay income-tax for the current year must be placed on the Income-tax Officer. Thirdly it may be better to stipulate an exemption limit on the value of property for which it may not be necessary to produce such a certificate.

N. G. RANGA.

NEW DELHI,

The 10th February, 1949.

III

I am unable to agree to the change of date in the operating clause of the Bill—clause 4 of the Bill (old clause 3)—from “after 14th day of August, 1947” to “after 7th February, 1948”, the date of promulgation of the Ordinance. Already properties of transferees have been assessed and taxes have been collected in most cases. It is only the dishonest tax-dodging transferees that have not paid up the taxes would get relief contrary to the spirit of the Ordinance or the spirit of the present Bill. No premium should be given to such dishonest transactions after 14th August, 1947, nor should there be any sympathy shown directly or indirectly to such-transferees.

B. DAS.

NEW DELHI,

The 10th February, 1949.

I am not in agreement with the majority view of the Committee in regard to the amendment of clause 3 of the original Bill which corresponds to clause 4 of the amended Bill. The result of their amendment would be that certain persons who either because of collusion with, or on account of inadvertance on the part of, the registering authority, had succeeded in effecting a transfer of property without production of no-demand of clearance certificates, in contravention of the Ordinance then in force would escape the consequences of their wrong doing, if the irregularity has not *already* come to the notice of the Income-tax Officer and challenged by him under section 3 of the Ordinance which was in force until the 6th February 1949. In Calcutta alone, such instances of irregular registration of transfers of property by 3 persons from whom tax amounting to Rs. 23 lakhs is due have come to the notice of the Income-tax Department, and there is no knowing how many more such cases might not have occurred in Calcutta and elsewhere. I feel, therefore, that even if, for the future, the provisions of the Bill are to apply to the limited class of persons mentioned in the new clause 2 of the amended Bill, the provisions of the renumbered Clause 4 ought to be applied to *all* persons who may have secured registrations for transfer of property since the 7th February 1948, *in contravention of the Ordinance then in force*. As it is, the amendments made by the majority of the Select Committee are likely to have the effect of helping persons to defeat the just dues of Government by contravening the Ordinance. I reserve to myself the right to move a suitable amendment.

L. KRISHNASWAMI BHARATHI.

NEW DELHI,
The 10th February, 1949.

[Words ~~sidelined~~ or underlined indicate the amendments suggested by the Select Committee; asterisks indicate omissions.]

A

BILL

to make provision for the payment of taxes before transfers of property are registered in certain cases.

WHEREAS it is expedient to make provision for the payment of taxes before transfers of property are registered in certain cases;

It is hereby enacted as follows:—

1. **Short title and extent.**—(1) This Act may be called the Payment of Taxes (Transfer of Property) Act, 1949.

(2) It extends to all the Provinces of India.

* * * * *

2. **Application of Act.**—This Act shall apply to any person—

(i) who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances, leaves or has, since the 14th day of August, 1947, left any place in the Provinces of India for any place outside India, or who, since the said date, has been residing in any place outside India; or

(ii) who, in the opinion of any of the Income-tax authorities specified in sub-section (1) of section 5 of the Indian Income-tax Act, 1922 (XI of 1922), or a Custodian of Evacuee Property or a Collector, is likely to leave the Provinces of India with the intention of settling in any place outside the Provinces of India, and in respect of whom a declaration that he is a person to whom this Act applies has been received from any such Income-tax authority, Custodian of Evacuee Property or Collector by the registering officer of the area in which any property belonging to such person is situate.

3. **Payment of taxes before registration of documents.**—(1) Where any document required to be registered under the provisions of clause (a), clause (b), clause (c) or clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (XVI of 1908), purports to transfer, assign, limit or extinguish any right, title or interest in any property, other than agricultural land, belonging to any person to whom this Act applies, no registering officer appointed under the said Act shall register any such document, unless it is certified by the Income-tax Officer of the area in which the property is situate in respect of the person whose right, title or interest in the property is to be so transferred, assigned, limited or extinguished under the terms of the document that—

(a) such person is not liable to assessment or taxation under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940), or the Business Profits Tax Act, 1947 (XXI of 1947); or

(b) such person has either paid or made satisfactory provision for the payment of all existing or anticipated liabilities under any of the Acts specified in clause (a) of this sub-section; or

(2) the Income-tax Officer is otherwise satisfied that the registration of the document will not prejudicially affect the recovery of all existing or anticipated liabilities referred to in clause (b) of this sub-section.

(2) Every Income-tax Officer refusing to issue a certificate under the provisions of sub-section (1) shall make an order of refusal and record his reasons therefor and, on application made by any person claiming to be affected by such order, shall, subject to the payment of such fee as may be prescribed, furnish him with a copy of the order.

4. Recovery of taxes where property has been transferred without a certificate.—(1) Where in respect of the transfer made on or after the seventh day of February, 1948, in the Provinces of Bombay, West Bengal, East Punjab, Bihar, Delhi, and Ajmer-Merwara, and in any other Province on or after the date on which the Transfer of Property (India) Ordinance 1948 (II of 1948) was made applicable to that Province, of any right, title or interest in any immovable property, other than agricultural land, belonging to any person to whom this Act applies, the Income-tax Officer of the area where the property is situate is satisfied, after giving such person notice in this behalf for a period of not less than one month, that no certificate in the terms mentioned in section 3 would have been issued to him if this Act had been in force on the date the transfer was made, he may forward a statement to the Collector showing the existing and anticipated liabilities by way of taxes in respect of all or any of the parties to the transfer.

(2) On receipt of any statement under sub-section (1), the Collector shall proceed to recover the total amount shown in such statement as if it were an arrear of land revenue, and for the purpose of such recovery proceedings he may treat the property transferred as aforesaid as if it belonged to all or any of the persons named in the statement.

5. Right of appeal.—An appeal shall lie against the order of any Income-tax Officer refusing to issue a certificate under the provisions of sub-section (2) of section 3 to the Commissioner of Income-tax to whom the Income-tax Officer is subordinate, if presented to such Commissioner within thirty days from the date of the order, and the Commissioner may pass such orders thereon as he may think fit.

6. Effect of Act over other laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

7. Bar of suits.—No suit, prosecution or other legal proceeding shall lie against the Central Government * * * * or any person or authority in respect of anything which is in good faith done or intended to be done under this Act.

8. Power to make rules.—The Central Government may make rules for the purpose of carrying into effect the objects of this Act, and, in particular, prescribe the fee payable under sub-section (2) of section 3.

9. Effect of expiry of Ordinance XXI of 1948.—On the expiry of the Payment of Taxes (Transfer of Property) Ordinance, 1948 (XXI of 1948), section 6 of the General Clauses Act, 1897 (X of 1897) shall apply as if the Ordinance had then been repealed by a Central Act.

THE CONSTITUENT ASSEMBLY OF INDIA
(LEGISLATIVE)

A

BILL

to make provision for the payment of taxes before transfers of
property are registered in certain cases.

(As amended by the Select Committee.)