



ANALYSIS

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1960, No. 43

An Act to amend the Estate and Gift Duties Act 1955

[21 October 1960]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Estate and Gift Duties Amendment Act 1960, and shall be read together with and deemed part of the Estate and Gift Duties Act 1955* (hereinafter referred to as the principal Act).

PART I

PREPAYMENTS TOWARDS ESTATE DUTY

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2. Interpretation—In this Part of this Act the expression “net estate duty” means estate duty calculated in accordance with the scale of rates set out in the First Schedule to the

*1957 Reprint, Vol. 4, p. 629
Amendments: 1958, No. 8; 1959, No. 43

principal Act, after making all deductions or reductions which require to be made under such of the provisions of sections 17, 18, 19, 20, 35, and 66 of the principal Act as are applicable.

3. Payments under this Part—(1) Any person of an age of not less than twenty-one years (in this Part of this Act referred to as the payer) may from time to time make a payment under this Part of this Act by paying to the Commissioner an amount of ten pounds or a multiple of ten pounds and lodging with the Commissioner a statement in writing in the form set out in the Schedule hereto containing the prescribed particulars and duly signed by the payer and attested.

(2) For the purposes of this Part of this Act, any such payment shall be deemed to be made on the date when the amount thereof is received by the Commissioner, unless the statement is received by the Commissioner on a later date, in which case it shall be deemed to be made on that later date.

4. Conditions of payment—(1) Except as otherwise provided in this Part of this Act, the amount of any payment made thereunder shall not constitute a debt owing by the Crown to the payer or to any other person, nor shall the amount so paid be recoverable by the payer or by any other person.

(2) All payments received by the Commissioner under this Part of this Act shall be paid into the Public Account to the credit of a deposits account to be opened under paragraph (d) of section 38 of the Public Revenues Act 1953, and shall be entered in an estate duty prepayment account to be kept by the Commissioner in the name of the payer.

(3) On the death of the payer, the amount paid by him shall be transferred from the deposits account to the Consolidated Fund.

5. Effect of bankruptcy—Where—

(a) At the time when any payment is made under this Part of this Act the payer is an undischarged bankrupt under the Bankruptcy Act 1908 or a bankrupt under that Act whose order of discharge is suspended for a term not then expired or is subject to conditions not then fulfilled; or

(b) The payer becomes a bankrupt under that Act at any time after making any such payment,—

the amount of the payment shall constitute a debt owing by the Crown to the payer, and shall be refunded.

6. Effect of death within seven days—Where the payer dies within seven days after any payment was made by him under this Part of this Act, not being a payment to which section 5 of this Act applies, the amount of that payment shall constitute a debt owing by the Crown to the payer at the date of his death and be included in his dutiable estate, and, to the extent to which the amount of that payment is not applied in satisfaction in whole or in part, as the case may be, of the net estate duty payable in the estate of the payer (after making any deduction therefrom under section 7 of this Act where that section is applicable), it shall be refunded.

7. Application of payments on death of payer—(1) On the death of the payer—

(a) The amount of any payment made by him under this Part of this Act, not being a payment to which section 5 or section 6 of this Act applies (hereinafter in this section referred to as a prepayment), shall not be included in the dutiable estate of the payer:

(b) The sum of the amounts of all prepayments made not less than one year before the date of death of the payer and of ninety per cent of the amounts of all prepayments made within one year before the date of death of the payer shall be applied in satisfaction in whole or in part, as the case may be, of the net estate duty payable in his dutiable estate, and only the residue (if any) of that duty shall be payable.

(2) Where, on the application of the provisions of subsection (1) of this section, the sum of the amounts of all prepayments made not less than one year before the date of death of the payer and of ninety per cent of the amounts of all prepayments made within one year before the date of death of the payer exceeds the net estate duty payable,—

(a) The amount of the excess shall constitute a debt owing by the Crown to the payer at the date of his death and be included in his dutiable estate, and the net estate duty shall be reassessed accordingly:

(b) The amount of the excess, to the extent to which it is not applied in satisfaction in whole or in part, as the case may be, of the additional net estate duty payable in the estate as a result of that reassessment, shall be refunded.

(3) Notwithstanding anything to the contrary in subsection (1) or subsection (2) of this section, where the amounts of all prepayments (whether made within one year before the date of death of the payer or otherwise) exceed in the aggregate the net estate duty which would be payable if those amounts were included in the dutiable estate of the payer, those amounts shall constitute a debt owing by the Crown to the payer at the date of his death and be included in his dutiable estate, and, to the extent to which those amounts are not applied in satisfaction in whole or in part, as the case may be, of the net estate duty payable in that estate, they shall be refunded:

Provided that this subsection shall not apply unless its application would result in the refund of an amount greater than the amount that would be refundable under subsection (2) of this section.

(4) For the purposes of section 33 of the principal Act, the amount of the liability of any successor or his trustee for the net estate duty payable in the estate of the payer shall be extinguished by the amount applied in satisfaction of the net estate duty under subsection (1) of this section, unless, after that amount is applied, there is a residue of the net estate duty payable, in which case the amount of that liability shall be reduced by an amount bearing to the amount applied under subsection (1) of this section the same proportion as the amount of that liability bears to the net estate duty.

8. Refund of payments—(1) Any amount required to be refunded under this Part of this Act may be refunded by the Commissioner at any time not later than six years after the date of death of the payer.

(2) Any claim for a refund of any amount under this Part of this Act may be enforced by action against the Commissioner in his official name, as nominal defendant on behalf of the Crown, in any Court of competent jurisdiction, but not otherwise. In this subsection "Commissioner" does not include a District Commissioner of Stamp Duties.

(3) No such action shall be brought after the expiration of six years from the date of death of the payer.

(4) Any money payable under this Part of this Act by way of refund shall, without further appropriation than this section, be paid out of the Consolidated Fund if the payer has died and out of the deposits account in any other case.

9. Commencement, and incidental provisions—(1) This Part of this Act shall be deemed to have come into force on the twenty-second day of July, nineteen hundred and sixty, and shall apply to the estates of all persons dying on or after that date.

(2) Where since the commencement of this Part of this Act and before the passing of this Act any payer has made a payment of an amount of ten pounds or a multiple of ten pounds to the Commissioner in anticipation of the passing of this Act, that payer may, if he so desires, within three months after the passing of this Act, by notice in writing to the Commissioner, elect to withdraw the whole of that amount or any part thereof, being an amount of ten pounds or a multiple of ten pounds, and in that event, the amount which he has elected to withdraw shall constitute a debt owing by the Crown to the payer and shall be refunded.

(3) Where since the commencement of this Part of this Act any payer has made a payment of an amount of ten pounds or a multiple of ten pounds to the Commissioner in anticipation of the passing of this Act and has died before the passing of this Act, the administrator of his estate may, if he so desires, within three months after the passing of this Act, by notice in writing to the Commissioner, elect to withdraw all payments so made by that payer, and in that event, the amounts of those payments shall constitute a debt owing by the Crown to the payer at the date of his death and be included in his dutiable estate, and, to the extent to which those amounts are not applied in satisfaction, in whole or in part, as the case may be, of the net estate duty payable in the estate of the payer, they shall be refunded.

(4) If an election is not made by the administrator under subsection (3) of this section, any such payment so made by the payer shall, to the extent to which the payer has not elected to withdraw it under subsection (2) of this section, be deemed to be a payment for the purposes of this Part of this Act, and for that purpose shall be deemed to have been made on the date when the amount thereof was received by the Commissioner unless particulars of the payer's name, address, occupation, and age were received by the Commissioner on a later date, in which case it shall be deemed to have been made on that later date.

PART II

MISCELLANEOUS AMENDMENTS

10. Gifts where donor not excluded—Section 5 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of paragraph (c) of subsection (1) of this section, where property comprised in the gift was an interest in land or was chattels, retention or assumption by the deceased of actual occupation of the land or actual enjoyment of an incorporeal right over the land or actual possession of the chattels shall be disregarded if for full consideration in money or money’s worth paid before or payable at the date of death of the deceased.”

11. Interests purchased or provided by the deceased—Section 5 of the principal Act is hereby further amended by adding to subsection (2) (as amended by section 3 of the Estate and Gift Duties Amendment Act 1959) the following paragraph:

“(g) Where an interest under or in a contract or trust made or created wholly or in part for the purpose of providing benefits on or after the death of any employee of an employer was conditional, directly or indirectly, on an employee serving or continuing to serve as an employee of that employer after the making or creation of the contract or trust, that interest shall, to the extent of the beneficial interest accruing or arising on the death of that employee, be deemed to have been purchased or provided by the employee, and for this purpose a director of a company shall be deemed to be an employee of that company.”

12. Relief where section 33 of Wills Act operates—(1) Section 5 of the principal Act is hereby further amended by adding the following subsection:

“(5) The dutiable estate of the deceased shall not include any property to which, on a subsequent death, he becomes entitled by virtue of the operation of section 33 of the Wills Act 1837.”

(2) The principal Act is consequentially amended by repealing section 21.

13. Relief from successive estate duties—Section 19 of the principal Act is hereby amended by repealing paragraphs (a), (b), (c), (d), and (e) of subsection (2), and substituting the following paragraphs:

- “(a) If the deceased successor has died within the first period of four months after the death of the predecessor, by seventy-five per cent:
- “(b) If the deceased successor has died within the second period of four months after the death of the predecessor, by sixty per cent:
- “(c) If the deceased successor has died within the third period of four months after the death of the predecessor, by fifty per cent:
- “(d) If the deceased successor has died within the second year after the death of the predecessor, by forty per cent:
- “(e) If the deceased successor has died within the third year after the death of the predecessor, by thirty per cent:
- “(f) If the deceased successor has died within the fourth year after the death of the predecessor, by twenty per cent:
- “(g) If the deceased successor has died within the fifth year after the death of the predecessor, by ten per cent:”.

14. Exemption from gift duty—Section 47 of the principal Act is hereby amended by adding to paragraph (b) the words “or for the purpose of providing benefits on or after the death of his employees or any class or classes of his employees”.

15. Valuation of contingent interests—Section 52 of the principal Act is hereby amended by omitting the words “contingency affecting the gift”, and substituting the words “contingency affecting the interest of a beneficiary”.

16. Objections against exercise of Commissioner’s discretion—(1) The principal Act is hereby further amended by inserting, after section 68, the following section:

“68A. (1) For the purposes of this section—

“ ‘Board of Review’ or ‘Board’ means a Board of Review constituted under the Inland Revenue Department Amendment Act 1960:

“ ‘Discretion’ means a discretion or a power to determine any matter vested in the Commissioner under—

“(a) Subsection (1) of section 2 of this Act in so far as it relates to the definition of the term ‘deceased serviceman’ or of the term ‘infant child of the deceased’:

“(b) Paragraph (d) of subsection (3) of section 5 of this Act:

“(c) Paragraph (d) of subsection (2) and subsection (3) of section 9 of this Act:

“(d) Subsection (1) of section 15 of this Act, and that subsection as extended by section 24 or section 52 of this Act:

“(e) Subsection (2) of section 19 of this Act:

“(f) Subsection (2) of section 20 of this Act:

“(g) Section 46 of this Act:

“(h) Subsection (3) of section 54 of this Act.

“(2) Where the Commissioner makes a decision in exercise of a discretion and makes an assessment of estate duty or gift duty accordingly, the administrator in the case of estate duty and the donor in the case of gift duty may, within twenty-one days after notice of the assessment has been given to him, object to that decision by delivering or posting to the Commissioner a written notice of objection stating shortly the grounds of his objection and requiring the objection to be heard and determined by a Board of Review, and in that event the objection shall be heard and determined by a Board and the provisions of the Inland Revenue Department Amendment Act 1960 shall apply in respect of the institution, hearing, and determination of the proceedings on the objection.

“(3) No notice of objection given after the time so specified shall be of any force or effect unless the Commissioner, in his discretion, accepts the same and gives notice to the objector accordingly.

“(4) On the determination of any such objection the Board may either confirm, modify, or cancel the decision of the Commissioner, and the Commissioner shall thereupon assess the duty in accordance with the determination of the Board.

“(5) If no such objection is made and duly prosecuted, the decision of the Commissioner shall be final and conclusive.”

(2) The principal Act is hereby consequentially amended—

(a) By inserting in the definition of the term “deceased serviceman” in subsection (1) of section 2, after the words “any person who”, the words “in the opinion of the Commissioner”:

- (b) By omitting from paragraph (a) of the same definition and also from paragraph (b) of that definition the word "Dies", and substituting in each case the words "Has died":
- (c) By repealing subsection (2) of section 15, subsection (3) of section 18, and subsection (2) of section 46:
- (d) By inserting in subsection (1) of section 69, before the words "Any administrator", the words "Subject to the provisions of section 68A of this Act".

(3) This section shall come into force on the first day of January, nineteen hundred and sixty-one, and shall apply to the estates of all persons dying on or after that date and to all gifts made on or after that date.

(4) The provisions amended or repealed by subsection (2) of this section, in so far as they relate to death duties, shall continue to apply to the estates of all persons who have died before the commencement of this section, and, in so far as they relate to gift duty, shall continue to apply to all gifts made before the commencement of this section.

17. Valuation of land on which trees are growing—(1) The principal Act is hereby further amended by inserting, after section 75, the following section:

"75A. (1) Notwithstanding anything to the contrary in section 75 of this Act, where a proprietary interest in land on which trees are growing forms part of the dutiable estate of the deceased, the value of that interest shall, for the purpose of assessing estate duty, be determined without taking into account any value which the trees may have for their wood.

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"(2) For the purposes of this section—

"(a) The term 'proprietary interest in land' means an interest as owner or co-owner of an estate in fee simple in land in New Zealand together with the trees growing on the land, or an interest as lessee under a lease of land in New Zealand for a fixed term of not less than twenty-one years or a lease in perpetuity where (in either case) the lessee owns or has the right to remove the trees growing on the land:

"(b) The term 'lease' includes a lease as defined in section 122 of the Land Act 1948 and a deferred-payment licence as defined in that Act; and 'lessee' has a corresponding meaning:

“(c) Where a company (other than a company engaged in felling trees or in milling or processing timber) has a proprietary interest in land, an interest as a shareholder in that company shall be deemed to be a proprietary interest in that land if the value of the shares requires to be ascertained by reference to the value of the assets of the company.”

(2) Section 76 of the principal Act is hereby amended by omitting the words “section seventy-five”, and substituting the words “sections 75 and 75A”.

Section 3 (1)

SCHEDULE

INLAND REVENUE

ESTATE DUTY

Statement to Accompany Payment Under Part I of Estate and Gift Duties Amendment Act 1960

To the District Commissioner of Stamp Duties [*Place*]

I, [*Full name*]

of [*Address and occupation*]

aged [*State age*] years,

desire to make a payment of £* under and subject to the conditions and restrictions imposed by Part I of the Estate and Gift Duties Amendment Act 1960, and tender that amount herewith.

Dated at, this day of 19.....

Signature

Witness

Occupation.....

Address

*Payment must be of an amount of £10 or a multiple of £10.