



ANALYSIS

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1993, No. 132

An Act to amend the Estate and Gift Duties Act 1968

[28 September 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Estate and Gift Duties Amendment Act 1993, and shall be read together with and deemed part of the Estate and Gift Duties Act 1968 (hereinafter referred to as the principal Act).

2. Interpretation—Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “share”, the following definition:

“‘Taxation Review Authority’, or ‘Authority’, means a Taxation Review Authority established under the Inland Revenue Department Act 1974.”.

3. Exemption for certain dispositions of matrimonial property—(1) Section 75A of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) Any disposition of property by or pursuant to any order of the Court under section 25 of the Matrimonial Property Act 1976 shall not constitute a gift to the extent that the disposition is to a spouse or former spouse or is solely for the benefit of minor or dependent children of the marriage.”

(2) This section shall apply with respect to dispositions of property by or pursuant to any order of the Court that is made under section 25 of the Matrimonial Property Act 1976 on or after the day on which this Act receives the Royal assent.

4. Objections to assessments—(1) Section 90 of the principal Act is hereby amended by repealing subsection (3).

(2) This section shall apply with respect to objections lodged on or after the 1st day of April 1994.

5. New sections substituted—(1) The principal Act is hereby amended by repealing sections 91 and 92, and substituting the following sections:

“91. Commissioner may alter assessment, or objection may be submitted to Taxation Review Authority—(1) The Commissioner shall consider all objections properly made or accepted by the Commissioner under section 90 of this Act, and may alter any assessment after such consideration.

“(2) If an objection is not wholly allowed by the Commissioner, the objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by a Taxation Review Authority, and in that event the objection shall be heard and determined by an Authority, and the provisions of Part II of the Inland Revenue Department Act 1974 shall apply in respect of the institution, hearing, and determination of the proceedings on the objection.

“(3) If the Commissioner, after considering an objection, has allowed the objection in part and has reduced the assessment, the reduced assessment shall be the assessment to be dealt with by the Authority.

“92. When objection may be referred in first instance to High Court—(1) Notwithstanding anything in this Part of this Act, where—

“(a) An objection to an assessment is made in accordance with section 90 (1) of this Act or accepted by the Commissioner under section 90 (2) of this Act; and

“(b) The objection is not wholly allowed by the Commissioner, and

“(c) The objection is one to which subsection (2) or subsection (3) of this section applies,—

the objection may be referred directly to the High Court by way of case stated in accordance with this section.

“(2) Where an objection relates to a question of law only,—

“(a) The objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner require the Commissioner to state a case for the opinion of the High Court, and shall specify in the notice the registry of that Court in which the objector requires the case to be filed:

“(b) The Commissioner, in any case where under section 91 of this Act the objector has required the objection to be heard and determined by a Taxation Review Authority, may, instead of referring the objection to a Taxation Review Authority, state a case for the opinion of the High Court, and shall notify the objector accordingly.

“(3) Where an objection relates to a question of fact (whether or not it also relates to a question of law),—

“(a) The objector may, within 2 months after the date on which notice of disallowance is given to the objector by or on behalf of the Commissioner, give notice in writing to the Commissioner that the objector desires the Commissioner to state a case for the opinion of the High Court, specifying in the notice the registry of the Court in which the objector desires the case to be filed:

“(b) The Commissioner may, in any case where the objector has under section 91 of this Act required the objection to be heard and determined by a Taxation Review Authority, notify the objector that the Commissioner desires the objection to be referred directly to the High Court.

“(4) Where any notice is given by the objector or the Commissioner under subsection (3) of this section, the objection shall be referred directly to the High Court—

“(a) If both the Commissioner and the objector consent to that course; or

“(b) With the leave of that Court granted on the application of the objector or the Commissioner, as the case may be, upon the ground that in the opinion of the Court, by reason of the amount of the duty in dispute between the parties or of the general or public importance of the matter or of its

extraordinary difficulty or for any other reasons, it is desirable that the objection be heard and determined by the High Court instead of by a Taxation Review Authority.

“(5) Within 3 months after—

“(a) The date of the objector’s giving notice under subsection (2) (a) or subsection (3) (a) of this section, where it is the objector who requires or desires the Commissioner to state a case for the opinion of the High Court; or

“(b) The date of the objector’s giving notice in relation to the objection under section 91 (2) of this Act, where it is the Commissioner who determines or desires under subsection (2) (b) or subsection (3) (b) of this section to state a case for the opinion of the High Court,—

the objector shall serve on the Commissioner, by delivery to the Head Office of the Inland Revenue Department at Wellington or to such other address as may have been notified in writing by the Commissioner to the objector for the purpose, a notice in the prescribed form of the objector’s points of objection.

“(6) The points of objection shall state, with sufficient particularity so as to fairly inform the Commissioner and the Court,—

“(a) The facts upon which the objector relies in support of the objection; and

“(b) The propositions of law (if any) on which the objector relies in support of the objection; and

“(c) The issues which the objector considers require to be determined by the Court.

“(7) The objector shall annex to the points of objection copies of any documents upon which the objector intends to rely in support of the objection:

“Provided that where the documents upon which the objector intends to rely are numerous, the objector may annex a list of those documents instead of copies of the actual documents.

“(8) If the objector fails to serve on the Commissioner the points of objection within the period referred to in subsection (5) of this section, or within such further period as may be allowed pursuant to subsection (12) of this section, the objection shall be deemed to be withdrawn and the Commissioner shall not be required to take any further steps in relation to the objection.

“(9) Where under this section an objection is to be referred directly to the High Court, the Commissioner shall, within

3 months after the date of service of the points of objection or within such further period as may be allowed pursuant to subsection (12) of this section, state and sign a case which shall comprise—

“(a) A notice in the prescribed form containing—

“(i) Particulars of the assessment made by the Commissioner to which the objection has been made; and

“(ii) The grounds of objection given by the objector; and

“(iii) The question for the determination of the Court; and

“(b) The points of objection served by the objector; and

“(c) A notice in the prescribed form stating—

“(i) Any further facts which the Commissioner considers are relevant to the issues to be determined by the Court; and

“(ii) The issues which the Commissioner claims require to be determined by the Court.

“(10) The case so stated and signed together with one copy thereof shall be filed by the Commissioner—

“(a) In the registry of the High Court specified by the objector in the notice under subsection (2) (a) or subsection (3) (a) of this section, where such a notice has been given by the objector; or

“(b) In such registry of the High Court as the Commissioner thinks fit in any other case, having due regard to the convenience of the objector.

“(11) A copy of the case so filed shall be served by the Commissioner on the objector either personally or by sending it to the objector by registered post addressed to the objector at the address for service specified by the objector in the points of objection, or at such other address as the objector may have notified to the Commissioner in writing for the purpose, and the copy so sent by registered post shall be deemed to have been received when in the ordinary course of post it would be delivered.

“(12) The High Court may, on the written application of the objector or the Commissioner, as the case may be,—

“(a) Extend the time for service by the objector on the Commissioner of the points of objection; or

“(b) Extend the time for the filing of the case by the Commissioner—

until such time as the Court thinks fit, whether the application is made before or after the expiry of the time limit:

“Provided that when application is made for an extension of time more than 2 months after the date for service of the points of objection or the date for filing the case, as the case may be, an order for extension of time shall be made only in exceptional circumstances.

“(13) Where the Commissioner fails to file a case within the time specified in subsection (9) of this section, or within such further time as may be allowed pursuant to subsection (12) of this section, the objector may apply to the High Court for an order directing the Commissioner to allow the objector’s objection, and the High Court—

“(a) Shall make such an order accordingly, unless it is satisfied that there are reasonable grounds for the failure to file the case:

“(b) May, where it refuses to make such an order, make such other orders as in the circumstances it thinks fit, whether relating to the filing of the case in the High Court, the remitting of the objection to a Taxation Review Authority for hearing and determination, or otherwise.

“(14) The contents of the case shall not be conclusive as to the matters set forth therein either against the objector or the Commissioner, except so far as agreed to in writing by or on behalf of the objector and the Commissioner.

“(15) At any time before the case stated is set down for hearing—

“(a) The Commissioner may file an amended case and serve a copy on the objector at the objector’s address for service:

“(b) The objector may serve on the Commissioner amended points of objection at the Commissioner’s address for service specified in the case.

“(16) Sections 34 (2), 35, and 36 of the Inland Revenue Department Act 1974, as far as they are applicable, shall apply to any such case stated by the Commissioner as if references in those provisions to an Authority were references to the High Court. Subject to those provisions, the procedure at the hearing before the High Court of any such case stated shall be the same, with any necessary modifications, as if the case were a proceeding in which the objector is the plaintiff and the Commissioner is the defendant.

“(17) On hearing any case stated under this section, the High Court may—

“(a) Confirm or cancel or vary the assessment, or reduce its amount, or increase its amount to the extent to

which the Commissioner was empowered to make an assessment of an increased amount at the time the assessment to which the objection relates was made, and that last-mentioned assessment shall be altered by the Commissioner to such extent as may be necessary to conform to that determination:

“(b) Make any assessment which the Commissioner was empowered to make at the time the assessment to which the objection relates was made, or direct the Commissioner to make such an assessment, in which case an assessment shall be made by the Commissioner so as to conform to that direction.

“(18) Where any notice is given by the objector to the Commissioner under subsection (3) (a) of this section and the Commissioner gives notice to the objector that the Commissioner does not consent to the objection being referred directly to the High Court under this section, then—

“(a) If within one month after the last-mentioned notice is given to the objector by the Commissioner no application is made by the objector to the High Court for the leave of the Court to refer the objection directly to that Court; or

“(b) If on any such application the High Court refuses to grant such leave,—

the first-mentioned notice shall have effect as if it were a notice requiring the objection to be heard and determined by a Taxation Review Authority, and this Part of this Act shall apply accordingly.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 8 of the Estate and Gift Duties Amendment Act 1971:

(b) Section 2 (2) of the Estate and Gift Duties Amendment Act (No. 2) 1974:

(c) Section 11 of the Estate and Gift Duties Amendment Act 1976:

(d) Section 2 (3) of the Estate and Gift Duties Amendment Act 1979.

(3) This section shall apply with respect to objections lodged on or after the 1st day of April 1994.

6. Test case procedure—(1) The principal Act is hereby amended by inserting, after section 92, the following section:

“92A. (1) Where—

“(a) An objector has given notice under section 91 (2) or section 92 (2) (a) or section 92 (3) (a) of this Act requiring or requesting that an objection be heard and determined by a Taxation Review Authority, or that a case be stated for the opinion of the High Court in respect of an objection; and

“(b) The Commissioner considers that determination of the objection, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections,—

the Commissioner may designate that objection as a test case, and shall notify the objector accordingly.

“(2) The Commissioner may, notwithstanding section 92 (4) of this Act, state a test case for the opinion of the High Court without need for—

“(a) The objector’s consent; or

“(b) The leave of the High Court,—

and subsections (5) to (17) of section 92 of this Act shall apply in respect of any test case as if the Commissioner had determined to state the case pursuant to subsection (2) (b) of that section.

“(3) The Commissioner may in relation to any objection, at any time after the objection has been lodged and before it has been determined by a Taxation Review Authority or the High Court, notify the objector in writing that the objection will be stayed by reason of the taking of a test case on a similar objection before the High Court, if the Commissioner considers that the test case is likely to be determinative of all or a substantial number of the issues in the objection proposed to be stayed.

“(4) Subject to subsection (9) of this section, the written notification by the Commissioner referred to in subsection (3) of this section shall have the effect of staying the objection pending the determination of the test case.

“(5) Upon receipt by an objector of the written notification by the Commissioner referred to in subsection (3) of this section, the objector may notify the Commissioner that the objector requires that the objection be heard and determined notwithstanding the stating of a test case for the opinion of the High Court. Such notice shall be given in writing at such address as may be specified by the Commissioner in the notice given under subsection (3) of this section.

“(6) Within 14 days after the receipt by the Commissioner of the notice from the objector referred to in subsection (5) of this

section, the Commissioner may apply to the High Court by originating application for an order that the objection be stayed pending the determination of the test case or the further order of the Court.

“(7) An application by the Commissioner pursuant to subsection (6) of this section shall be made on notice to the objector whose objection the Commissioner seeks to have stayed.

“(8) Where an objection has been stayed, the objector, the Commissioner, or both of them, may at any time apply to the High Court for an order that the objection cease to be stayed.

“(9) A stay pursuant to subsection (4) of this section shall lapse on the expiry of 14 days following the day on which occurs any of the following:

“(a) The expiry of the 14-day period specified in subsection (6) of this section, where the objector has issued a notice in writing pursuant to subsection (5) of this section and the Commissioner has not within the 14-day period made an application pursuant to subsection (6) of this section; or

“(b) The making by the High Court of an order dismissing an application by the Commissioner pursuant to subsection (6) of this section; or

“(c) The making by the High Court on an application under subsection (8) of this section, of an order that the objection cease to be stayed; or

“(d) The determination of the test case which caused the objection to be stayed by the expiration of all rights of appeal.

“(10) For the purposes of this Act,—

“(a) For so long as an objection is stayed pursuant to this section, any time limits or periods specified in or pursuant to this Act (other than in subsections (5) to (9) of this section) in relation to proceedings on the objection shall not apply:

“(b) Where the stay of an objection lapses under subsection (9) of this section, any time limits or periods so specified shall be treated as if they were extended by the period commencing with the date of the Commissioner’s written notification under subsection (3) of this section, and ending with the day on which the stay lapses pursuant to subsection (9) of this section.

“(11) Service of notices by the Commissioner pursuant to subsections (3) and (7) of this section may be effected—

- “(a) Personally; or
- “(b) By sending a copy of the notice to the objector by registered post to the objector at the objector’s usual or last known place of abode or business in New Zealand, in which case it shall be deemed to have been received when in the ordinary course of post it would be delivered; or
- “(c) By service on a solicitor who accepts service in writing on behalf of the objector, which service shall be deemed for the purposes of this section to be personal service on the objector; or
- “(d) By effective delivery to an address for service supplied by the objector to the Commissioner.”
- (2) This section shall apply with respect to objections lodged on or after the 1st day of April 1994.

This Act is administered in the Inland Revenue Department.
