

ESTATE AND GIFT DUTIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Estate and Gift Duties Act 1955.

Clause 1 relates to the Short Title to the Bill.

Clause 2 gives effect to the changes in the rates of estate duty announced in the Budget. The new scale, as set out in the Schedule to the Bill, will apply to the estates of all persons dying on or after 25 June 1964.

Clause 3 amends the definition of the term "general power of appointment" to remedy defects in that definition disclosed by judgments in the case of *Commissioner of Stamp Duties v. Pratt and others* [1929] N.Z.L.R. 163 which have now been confirmed by the Court of Appeal in the case of *Re Manson (deceased), Public Trustee v. Commissioner of Inland Revenue* [1964] N.Z.L.R. 257. The combined effect of these two cases is that the existing definition does not cover a power or authority which enables a person to obtain property for his own benefit and does not cover a power or authority which is exercisable otherwise than by an instrument in writing.

Clause 4: At present there are two paragraphs of subsection (1) of section 5 of the principal Act which are directed towards including jointly held property, or an interest in it, in the dutiable estate of a deceased joint owner. Paragraph (e) brings into account the property to the extent that the deceased caused it to be vested in joint ownership, and for this purpose its value as at the date of vesting is relevant. Paragraph (i) brings into account the property to the extent to which the deceased could have disposed of his beneficial interest in it before his death, and for this purpose the value at the date of death is relevant. In the result (subject to the special exemption in the Joint Family Homes legislation) a joint family home comes within paragraph (e) in cases where the deceased was a settlor because under the Joint Family Homes legislation one joint owner cannot dispose of his or her individual interest, but other jointly owned property comes within paragraph (i) or within both paragraphs (e) and (i). The clause effects a simplification and adopts a more realistic approach by repealing both paragraphs and substituting a provision which brings into account in all cases the value of the deceased's share or interest immediately before death. The clause is expressed to operate from 1 April 1965 to coincide with the coming into force of related amendments in the Joint Family Homes Bill now before Parliament.

No. 86—1

Price 1s.

Clause 5: Under the existing law superannuation benefits which accrue or arise on the death of a member of a superannuation scheme are brought into account as part of his dutiable estate by virtue of section 5 (1) (g) of the principal Act as supplemented by the provisions of section 5 (2). The recent cases of *In re Garbett, Garbett v. Commissioner of Inland Revenue* [1963] N.Z.L.R. 384 and *In re Lauder (deceased), Public Trustee v. Commissioner of Inland Revenue* [1963] N.Z.L.R. 845 have disclosed defects in section 5 (1) (g) as it relates to superannuation benefits and, rather than adding to its supplementary provisions, the clause excludes benefits from group superannuation schemes from its operation and introduces a new paragraph (k) to deal specifically with them. Liability under the new paragraph will depend simply on whether benefits out of or under a group superannuation scheme as defined are payable or granted on or in consequence of the death. The new paragraph (k) is expressed to operate only where the deceased was domiciled in New Zealand at his death and therefore such benefits will not be subject to duty if the deceased died domiciled outside New Zealand.

The existing concessions for a widow's life or widowhood pension and for allowances for children during minority were enacted by section 3 of the Estate and Gift Duties Amendment Act 1959. These are brought forward to apply to the new paragraph (k) and have a broader application because of the wider definition of the term "group superannuation scheme". The concession for a widow's life or widowhood pension is further extended in scope by removing the restriction regarding a pension which arises from an election by the husband to surrender the whole or a part of his retiring allowance to provide such a pension.

Clause 6 declares that a person who disclaims a gift or testamentary benefit does not thereby make a gift for the purposes of the Act. This accords with departmental practice.

Clause 7: Under the existing law a gift statement requires to be filed in respect of all gifts which exceed £500 in value, or which would exceed that value when aggregated with other gifts by the donor within 12 months. This limit is now being increased to £1,000 so that it will coincide with the gift duty liability limit.

Hon. Mr Lake

ESTATE AND GIFT DUTIES AMENDMENT

ANALYSIS

Title		5. Group superannuation benefits
1. Short Title		6. Meaning of "disposition of property"
2. Rates of estate duty		7. Gift statements
3. General powers of appointment		Schedule
4. Joint property		

A BILL INTITULED

An Act to amend the Estate and Gift Duties Act 1955

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

1. **Short Title**—This Act may be cited as the Estate and Gift Duties Amendment Act 1964, and shall be read together with and deemed part of the Estate and Gift Duties Act 1955* (hereinafter referred to as the principal Act).
- 10 **2. Rates of estate duty**—(1) The principal Act is hereby amended by repealing the First Schedule (as substituted by section 2 of the Estate and Gift Duties Amendment Act 1961), and substituting the First Schedule set out in the Schedule to this Act.

*1957 Reprint, Vol. 4, p. 629

Amendments: 1959, No. 43; 1960, No. 43; 1961, No. 28; 1962, No. 25; 1963, No. 50

No. 86—1

Price 1s.

(2) The following enactments are hereby consequentially repealed:

(a) Section 2 of the Estate and Gift Duties Amendment Act 1961:

(b) So much of the Schedule to the Estate and Gift Duties Amendment Act 1961 as relates to the First Schedule to the principal Act. 5

(3) This section shall be deemed to have come into force on the twenty-fifth day of June, nineteen hundred and sixty-four, and shall apply to the estates of all persons dying on or after that date. 10

3. General powers of appointment—(1) Subsection (1) of section 2 of the principal Act is hereby amended by revoking the definition of the term “general power of appointment”, and substituting the following definition: 15

“‘General power of appointment’ includes any power or authority which enables the donee or other holder thereof, or would enable him if he was of full capacity, to obtain or appoint or dispose of any property, or to charge any sum of money upon any property, as he thinks fit for his own benefit, whether exercisable orally or by instrument *inter vivos* or by will or otherwise howsoever, but does not include any power exercisable by a person in a fiduciary capacity under a disposition not made by himself, or exercisable as mortgagee:”. 20 25

(2) The Trustee Act 1956 is hereby amended by repealing so much of the Third Schedule as relates to the Estate and Gift Duties Act 1955.

4. Joint property—(1) Section 5 of the principal Act is hereby amended by repealing paragraph (e) of subsection (1). 30

(2) Section 5 of the principal Act is hereby further amended by repealing paragraph (i) of subsection (1), and substituting the following paragraph: 35

“(i) The beneficial interest held by the deceased immediately before his death in any property as a joint tenant or joint owner with any other person or persons if that property was situated in New Zealand at the death of the deceased:”. 40

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

5. Group superannuation benefits—(1) Subsection (1) of section 2 of the principal Act is hereby amended by inserting, after the definition of the term “general power of appointment”, the following definition:

“Group superannuation scheme” means—

10 “(a) Any fund, plan, or scheme under the Superannuation Act 1956, or the National Provident Fund Act 1950:

“(b) Any superannuation fund, plan, or scheme established for the benefit of the employees of an employer or any class or classes of those employees:

15 “(c) Any superannuation fund established for the benefit of contributors thereto otherwise than as employees of any employer, and approved by the Commissioner for the purposes of the Land and Income Tax Act 1954:”.

20 (2) Subsection (1) of section 2 of the principal Act is hereby further amended by repealing the definition of the term “superannuation fund” (as substituted by subsection (1) of section 2 of the Estate and Gift Duties Amendment Act 1959).

25 (3) Section 5 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

30 “(k) Any pension or other benefit which is payable or granted out of or under a group superannuation scheme on or in consequence of the death of the deceased (whether pursuant to a pre-existing right or an election or the exercise of a discretion or otherwise howsoever) if the deceased was domiciled in New Zealand at his death.”

35 (4) Section 5 of the principal Act (as amended by subsection (1) of section 12 of the Estate and Gift Duties Amendment Act 1960) is hereby further amended by adding the following subsection:

“(6) For the purposes of paragraph (k) of subsection (1) of this section the following provisions shall apply:

“(a) Where an inalienable pension is payable or granted out of or under a group superannuation scheme to the widow of the deceased for the rest of her life or during her widowhood that pension shall not be deemed to be included in the dutiable estate of the deceased unless its amount exceeds five hundred pounds a year, in which case it shall not be deemed to be included in the dutiable estate to the extent of five hundred pounds a year: 5

“Provided that where two or more pensions are payable or granted to a widow the amount so exempted in respect of each pension shall, where necessary, be reduced proportionately so that the total amount exempted in respect of all the pensions does not exceed five hundred pounds a year: 10 15

“(b) Where an inalienable pension is payable or granted out of or under a group superannuation scheme to, or for the benefit of, an infant child of the deceased until that child attains an age not greater than twenty-one years, that pension shall not be deemed to be included in the dutiable estate of the deceased.” 20

(5) Subsection (2) of section 5 of the principal Act is hereby amended by repealing paragraphs (e) and (f) (as substituted by section 3 of the Estate and Gift Duties Amendment Act 1959), and substituting the following paragraph: 25

“(e) Paragraph (g) of subsection (1) of this section shall not apply to any pension or other benefit under a group superannuation scheme.”

(6) Subsection (1) of section 2 of the principal Act is hereby consequentially amended by repealing the definition of the term “contributor” (as substituted by subsection (2) of section 2 of the Estate and Gift Duties Amendment Act 1959). 30

(7) Section 16 of the principal Act is hereby amended by adding to subsection (1) the words “and includes any person who on the death of the deceased or in consequence of the death of the deceased acquires any benefit out of or under a group superannuation scheme, so far as that benefit is included in the dutiable estate of the deceased”. 35

(8) Section 48 of the principal Act is hereby amended—

5 (a) By omitting the words “contributor to any superannuation fund”, and substituting the words “member or participant of or in any group superannuation scheme”:

(b) By omitting the words “the fund” in each place where they occur, and substituting in each case the words “the group superannuation scheme”.

10 (9) The Estate and Gift Duties Amendment Act 1959 is hereby amended by repealing subsections (1) and (2) of section 2, and subsection (1) of section 3.

6. Meaning of “disposition of property”—Section 42 of the principal Act is hereby amended by adding the following subsection:

15 “(4) For the purposes of this section a disclaimer of an interest under a disposition made *inter vivos* or by will or of an interest under an intestacy shall not constitute a disposition of property.”

20 **7. Gift statements**—(1) Subsection (1) of section 59 of the principal Act is hereby amended by omitting the words “five hundred pounds” in each place where they occur, and substituting in each case the words “one thousand pounds”.

(2) Section 61 of the principal Act is hereby amended by 25 omitting the words “five hundred pounds”, and substituting the words “one thousand pounds”.

SCHEDULE

Section 2

NEW FIRST SCHEDULE TO PRINCIPAL ACT

"FIRST SCHEDULE

SCALE OF RATES OF ESTATE DUTY

Final Balance of Estate	Rate
Not exceeding £4,000	Nil.
£4,001– £5,000	5 per cent of excess of the final balance over £4,000.
£5,001– £6,000	£50 plus 7 per cent of excess of the final balance over £5,000.
£6,001– £7,000	£120 plus 9 per cent of excess of the final balance over £6,000.
£7,001– £8,000	£210 plus 11 per cent of excess of the final balance over £7,000.
£8,001– £9,000	£320 plus 13 per cent of excess of the final balance over £8,000.
£9,001– £10,000	£450 plus 15 per cent of excess of the final balance over £9,000.
£10,001– £11,000	£600 plus 17 per cent of excess of the final balance over £10,000.
£11,001– £12,000	£770 plus 19 per cent of excess of the final balance over £11,000.
£12,001– £14,000	£960 plus 15 per cent of excess of the final balance over £12,000.
£14,001– £16,000	£1,260 plus 17 per cent of excess of the final balance over £14,000.
£16,001– £18,000	£1,600 plus 19 per cent of excess of the final balance over £16,000.
£18,001– £20,000	£1,980 plus 21 per cent of excess of the final balance over £18,000.
£20,001– £22,000	£2,400 plus 23 per cent of excess of the final balance over £20,000.
£22,001– £24,000	£2,860 plus 25 per cent of excess of the final balance over £22,000.
£24,001– £26,000	£3,360 plus 27 per cent of excess of the final balance over £24,000.
£26,001– £28,000	£3,900 plus 29 per cent of excess of the final balance over £26,000.
£28,001– £30,000	£4,480 plus 31 per cent of excess of the final balance over £28,000.
£30,001– £32,000	£5,100 plus 33 per cent of excess of the final balance over £30,000.
£32,001– £34,000	£5,760 plus 35 per cent of excess of the final balance over £32,000.
£34,001– £36,000	£6,460 plus 37 per cent of excess of the final balance over £34,000.

"FIRST SCHEDULE—*continued*SCALE OF RATES OF ESTATE DUTY—*continued*

Final Balance of Estate	Rate
£36,001– £38,000	£7,200 plus 39 per cent of excess of the final balance over £36,000.
£38,001– £40,000	£7,980 plus 41 per cent of excess of the final balance over £38,000.
£40,001– £42,000	£8,800 plus 43 per cent of excess of the final balance over £40,000.
£42,001– £44,000	£9,660 plus 45 per cent of excess of the final balance over £42,000.
£44,001– £46,000	£10,560 plus 47 per cent of excess of the final balance over £44,000.
£46,001– £48,000	£11,500 plus 49 per cent of excess of the final balance over £46,000.
£48,001– £51,000	£12,480 plus 43 per cent of excess of the final balance over £48,000.
£51,001– £54,000	£13,770 plus 45 per cent of excess of the final balance over £51,000.
£54,001– £57,000	£15,120 plus 47 per cent of excess of the final balance over £54,000.
£57,001– £60,000	£16,530 plus 49 per cent of excess of the final balance over £57,000.
£60,001– £63,000	£18,000 plus 51 per cent of excess of the final balance over £60,000.
£63,001– £66,000	£19,530 plus 53 per cent of excess of the final balance over £63,000.
£66,001– £69,000	£21,120 plus 55 per cent of excess of the final balance over £66,000.
£69,001– £72,000	£22,770 plus 57 per cent of excess of the final balance over £69,000.
£72,001– £75,000	£24,480 plus 59 per cent of excess of the final balance over £72,000.
£75,001– £80,000	£26,250 plus 51 per cent of excess of the final balance over £75,000.
£80,001– £85,000	£28,800 plus 53 per cent of excess of the final balance over £80,000.
£85,001– £90,000	£31,450 plus 55 per cent of excess of the final balance over £85,000.
£90,001– £95,000	£34,200 plus 57 per cent of excess of the final balance over £90,000.
£95,001–£100,000	£37,050 plus 59 per cent of excess of the final balance over £95,000.
Over £100,000	40 per cent of the final balance."