

ESTATE DUTY REPEAL BILL

EXPLANATORY NOTE

GENERAL POLICY STATEMENT

THIS bill repeals the provisions relating to estate duty.

No estate duty has been payable on the estate of any person who has died on or after 17 December 1992. This was achieved by the Estate Duty Abolition Act 1993 amending section 3 of the Estate and Gift Duties Act 1968, the section which imposed liability for estate duty. However, the estate duty provisions themselves, which are mainly contained in Parts I, II and III of the Estate and Gift Duties Act 1968, were not repealed. The bill effects the repeal of these provisions. The main amendments involve the repeal of significant parts of the Estate and Gift Duties Act 1968. A number of consequential amendments are also made to remove estate duty references in other Acts and a regulation; these consequential amendments are set out in the Schedule.

The gift duty provisions in the Estate and Gift Duties Act 1968 incorporate certain estate duty provisions. Amendments are made to re-enact the substance of those estate duty provisions in the gift duty provisions.

A savings provision ensures that the repealed estate duty provisions continue to apply in respect of the estate of any person who died before 17 December 1992. This provision is necessary to maintain the estate duty liabilities for such estates.

CLAUSE BY CLAUSE ANALYSIS

PART 1

AMENDMENTS TO ESTATE AND GIFT DUTIES ACT 1968

Clause 3 provides that the repeal of the estate duty provisions applies on and after the date of enactment.

Clause 4 repeals definitions in *section 2* that relate to estate duty.

Clause 5 repeals *Parts I, II and III*.

Clauses 6 to 11 amend the gift duty provisions to re-enact the substance of particular estate duty provisions (sections 6 (2), 20, 22, 23, 24, 25, 26, 50, 57 and 58) that are presently incorporated merely by cross-reference in the gift duty provisions.

Clause 12 consequentially amends *section 89 (2)* to refer to the new *section 68G*, inserted by *clause 8*.

Clause 13 repeals the *First Schedule*.

Clause 14 provides that the provisions and Parts repealed by *clauses 4, 5 and 13* continue to apply to the estate of any person who died before 17 December 1992, the date from which estate duty was abolished.

Clause 15 provides that consequential amendments are made to other Acts and a regulation in the manner indicated by the *Schedule*.

PART 2

AMENDMENT TO TAX ADMINISTRATION ACT 1994

Clause 17 adds the *Estate Duty Repeal Act 1999* to the schedule of Inland Revenue Acts.

PART 1

AMENDMENTS TO ESTATE AND GIFT DUTIES ACT 1968

3. Estate and Gift Duties Act 1968—This Part amends the Estate and Gift Duties Act 1968*.

*R.S. Vol. 28, p. 341

Amendments: 1992, No. 117; 1993, No. 132; 1994, No. 78; 1995, No. 23; 1996, Nos. 62, 67; 1997, Nos. 74, 107; 1998, No. 101

4. Interpretation—In section 2, the following definitions are repealed: 5

“Commonwealth”	
“Deceased person”	
“Deceased serviceman”	
“Emergency force”	10
“Foreign assets”	
“General power of appointment”	
“Infant child of the deceased”	
“Minister”	
“Allowable debt”	15
“Charitable allowance”	
“Charitable succession”	
“Charitable successor”	
“Deceased successor”	
“Dutiable estate”	20
“Final balance”	
“Matrimonial home allowance”	
“Personal chattels”	
“Predecessor”	
“Succession”	25
“Successor”.	

5. Repealed Parts—Parts I, II, and III are repealed.

6. Dutiable gift—Section 63 (2) is replaced by:

“(2) For the purpose of subsection (1)(b), the situation of the classes of property referred to in this subsection is determined as follows: 30

“(a) A seagoing ship, or a share or interest in such a ship, is treated as property situated in New Zealand if the ship is registered in New Zealand, and in other cases is treated as property situated outside New Zealand: 35

“(b) Property at sea, other than a seagoing ship, is treated as being situated in New Zealand if in the course of transit, directly or indirectly, to New Zealand, and in other cases is treated as being situated outside New Zealand: 40

“(c) The situation of a debt payable under a bond or other deed is not determined by where the bond or deed is situated:

5 “(d) A debt owing by a corporation, whether incorporated in New Zealand or elsewhere, is treated as property situated in New Zealand if the debt was incurred or is payable in New Zealand and the corporation has an office or place of business in New Zealand, and in other cases is treated as being property situated
10 outside New Zealand:

“(e) A debt owing by a person or persons other than a corporation is treated as property situated in New Zealand if any of the debtors are resident in New Zealand, and in other cases is treated as property
15 situated outside New Zealand:

“(f) A debt owing by the Crown on behalf of the Government of New Zealand is treated as property situated in New Zealand if the debt was incurred or is payable in New Zealand, and in other cases is
20 treated as property situated outside New Zealand:

“(g) Despite paragraphs (a) to (f), a debt represented by an instrument which is negotiable in New Zealand is treated as being property situated in the country in which the instrument is or is treated as being
25 situated:

“(h) Despite paragraphs (a) to (g), a debt which is secured by mortgage, charge or otherwise on property situated or treated as being situated in New Zealand is treated itself as being situated in New Zealand,
30 unless the value of the security is less than the debt’s value, in which case the debt is treated as being situated in New Zealand to the extent of the value of the security:

“(i) Shares in a company incorporated in New Zealand are treated as property situated in New Zealand:
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“(j) Shares in a company incorporated outside of New Zealand are treated as property situated outside of New Zealand, except shares registered in a branch register in New Zealand under a law in force in
40 another part of the Commonwealth.”

7. Valuation of certain property—Section 68 is repealed.

8. New sections inserted—(1) After section 68, the following is inserted:

“68A. **Valuation of land**—(1) In this section, ‘capital value’ and ‘land’ have the meaning set out in the Rating Valuations Act 1998.

“(2) For the purpose of gift duty, the value of land situated in New Zealand must be either—

“(a) Determined by agreement between the Commissioner and the donor; or

“(b) In the absence of an agreement, be determined by the Commissioner in accordance with—

“(i) The capital value of the land as it appears in the district valuation roll in force under the Rating Valuations Act 1998 on the date that the value of the land is to be determined, together with the cost of improvements that are not included in the valuation that appears in the roll; or

“(ii) A special valuation of the capital value of the land, made by a registered valuer at the request of the Commissioner for the purpose of this Act, on the date that the value of the land is to be determined.

“(3) If the value of land has been determined by the Commissioner in accordance with **subsection (2)(b)(i)**, the donor may, no later than one month after the date on which the notice of the determination is given, or within such extended time as the Commissioner may allow, require the Commissioner to redetermine the value of the land in accordance with **subsection (2)(b)(ii)**.

“(4) If **subsection (3)** applies, the registered valuer’s fee is recoverable by the Commissioner from the donor as a debt due to the Crown.

“(5) A registered valuer who makes a special valuation of land under **subsection (2)** or **(3)** must give notice of the amount of the valuation to the Commissioner.

“(6) If the Commissioner receives notice of a special valuation, the Commissioner must—

“(a) Determine the value of the land in accordance with the special valuation; and

“(b) Give notice of the determination to the donor.

“(7) If **subsection (6)** applies, section 82 (3) applies accordingly.

“(8) Subject to **section 68B**, a determination or redetermination of the value of land made under this section is final and conclusive.

“(9) The district valuation roll is not to be altered as a result of—

“(a) An agreement reached for the purpose of this section; or

“(b) A valuation or revaluation made for the purpose of this section; or

5 “(c) A decision of a territorial authority or a Land Valuation Tribunal in accordance with **section 68B** of this Act and Part 4 of the Rating Valuations Act 1998.

“**68B. Objections to special valuations of land**—(1) In this section, ‘land’ and ‘owner’ have the meaning set out in the Rating Valuations Act 1998.

10 “(2) If a donor is dissatisfied with a special valuation of land made by a registered valuer under **section 68A**, the donor may object to the special valuation by delivering or posting to the Commissioner a written notice of objection setting out the grounds of objection and the value at which the donor considers the land should be valued.

15 “(3) An objection must be made no later than one month after the date on which the notice of the determination is given to the donor by the Commissioner under **section 68A (6)**, or within such extended time as the Commissioner may allow.

20 “(4) The Commissioner must forward the objection to the Valuer-General and Part 4 of the Rating Valuations Act 1998 applies to the objection as far as that Part is applicable and with all necessary modifications.

25 “(5) The owner of the land does not have the right to object to the special valuation or to receive notices served under Part 4 of the Rating Valuations Act 1998 unless the owner is also the objector.

30 “(6) If an alteration is made to the special valuation as a result of the objection, the Valuer-General must notify the Commissioner, and the Commissioner must redetermine the value of the land accordingly.

35 “**68C. Valuation of shares**—(1) For the purpose of gift duty, when determining the value of shares in a company, the Commissioner may not take account of provisions in the company’s constitution, in any agreement, deed or writing, or in any other manner whatsoever that restrict the transfer or alienation of those shares, except to the extent that the Commissioner considers that the restrictive provisions are reasonable having regard to all relevant matters.

40 “(2) Relevant matters to which the Commissioner must have regard include—

“(a) The contribution to the company made by any relevant shareholder by way of services, management, capital or otherwise; and

“(b) The benefits received from the company by that shareholder.

“68D. **Valuation of debt due to donor or controlled company**—(1) In this section, ‘controlled company’ means a company that immediately before a gift is made is controlled by or on behalf of— 5

“(a) The donor; or

“(b) A person connected with the donor by blood relationship, marriage or adoption; or

“(c) The donor and a person who meets **paragraph (b)**. 10

“(2) For the purpose of **subsection (1)**, control may be direct or indirect, or may be through the holding of a majority of shares in the company or any other company, or in any other manner whatsoever.

“(3) **Subsection (4)** applies if a dutiable gift is made in respect of a debt which is owed to a donor or a controlled company by— 15

“(a) A person connected with the donor by blood relationship, marriage or adoption; or

“(b) A controlled company; or

“(c) A trustee for— 20

“(i) A person who meets **paragraph (a)**; or

“(ii) A controlled company.

“(4) For the purpose of gift duty, the value of the debt is determined without taking into account that all or part of the debt may not be payable on or before the date of its valuation. 25

“(5) This section does not apply to a debt if the Commissioner is satisfied that the donor or the controlled company and the debtor were at all times dealing with each other in such a manner and on such terms as would be expected if the debtor were not the person, controlled company or trustee referred to in **subsection (3)**. 30

“68E. **Valuation of share or interest in partnership**—
(1) For the purpose of gift duty, when determining the value of a share or interest in a partnership, the Commissioner may not take account of provisions in an agreement or arrangement by the partners that restrict the value of that share or interest, except to the extent that the Commissioner considers that the restrictive provisions are reasonable having regard to all relevant matters. 35

“(2) Relevant matters to which the Commissioner must have regard include— 40

“(a) The contribution to the partnership made by the respective partners by way of services, management, capital or otherwise; and

“(b) The benefits received from the partnership by the respective partners.

“68F. **Valuation of annuities and life interests**—(1) For the purpose of gift duty—

5 “(a) The life expectation of a person is treated as the period specified in Table A or Table B of the Second Schedule, appropriate to the sex and age of the person; and

10 “(b) The expectation of widowhood of a widow is treated as the period specified in Table C of the Second Schedule, appropriate to the age of the widow.

“(2) Despite **subsection (1)**, the Commissioner must determine the life expectation or widowhood of a person suffering from a mortal illness in such manner as the Commissioner thinks fit.

15 “(3) For the purpose of gift duty, the value of an annuity or other interest for the life of a person or for any other period, or the value of an interest expectant on death of a person or on any other event, is calculated on the basis of compound interest at the rate of 5% per annum with annual rests, and Tables A, B, 20 C and D of the Second Schedule are to be used as far as they are applicable.

“68G. **Valuation of contingent interests**—(1) For the purpose of gift duty, every contingency affecting the interest of the donee in the property that is comprised in a dutiable gift, 25 or the value of that property, is treated as having been determined in the manner in which the Commissioner considers it probably will determine, and the interest is to be valued accordingly.

30 “(2) If the contingency determines differently from that assumed by the Commissioner, the interest must be revalued on the basis of the actual event and on the date on which the gift was made, and section 82 (3) applies accordingly.

“(3) If an interest in or the value of property will be affected by a widow’s remarriage, that possibility—

35 “(a) Is not treated as a contingency under this section; but

“(b) Is taken into account in valuing the interest in accordance with Table C of the Second Schedule.”

9. Assessment of gift duty—Section 82 (6) is replaced by:

40 “(6) The Commissioner may assess by way of composition the gift duty the Commissioner considers is proper in the circumstances if it is difficult, impracticable or would cause undue delay or expense to determine the exact amount of gift

duty payable because of complex or uncertain facts, or any other cause.

“(6A) The Commissioner may accept payment of the sum assessed by way of composition in full discharge of all claims for that duty. 5

“(6B) A composition is not a good discharge from duty if it has been procured by fraud or by failure to disclose material facts.”

10. Gift duty to be a charge on the property comprised in the gift—Section 87 (4) is repealed. 10

11. New sections inserted—(1) After section 87, the following is inserted:

“**87A. Registration of charge for gift duty**—(1) If gift duty constitutes a charge on land or an interest in land that is subject to the Land Transfer Act 1952 or the Deeds Registration Act 1908 or a mining privilege, lease or licence under the Mining Act 1971, the Commissioner may register the charge by depositing a certificate under the Commissioner’s hand setting out the description of the land, interest in land, mining privilege, lease or licence so charged, including a reference to any relevant certificate of title, with— 15 20

“(a) In the case of land subject to the Land Transfer Act 1952 or a mining privilege, lease or licence that has been registered under the Land Transfer Act 1952 in accordance with the Mining Tenures Registration Act 1962, the District Land Registrar for the land registration district in which the land is situated: 25

“(b) In the case of any other mining privilege, lease or licence, the Mining Registrar in whose office the mining privilege, lease or licence is registered: 30

“(c) In the case of land subject to the Deeds Registration Act 1908, the Registrar of Deeds for the district in which the land is situated.

“(2) If **subsection (1)** applies, the appropriate Registrar must, without payment of a fee, register the certificate against the title to the land, or privilege, lease or licence so charged. 35

“(3) Registration of the certificate is treated as being actual notice to all persons that the charge exists, and the charge operates and has priority on and after the date of registration.

“(4) When a charge has been satisfied, the Commissioner must deposit a release of the charge with the appropriate Registrar and the Registrar must, without payment of a fee, 40

register the release against the title to the land, or privilege, lease or licence.

5 “87B. **Enforcement of charge for gift duty by High Court**—(1) If gift duty constitutes a charge on property, the High Court may on application by the Commissioner make such order as it thinks fit, either for—

“(a) The payment of all or part of the property to the Commissioner; or

10 “(b) The sale or realisation of all or part of the property and the payment of the proceeds to the Commissioner, or

“(c) The appointment of a receiver of the rents, profits or income from the property and the payment of the rents, profits or income to the Commissioner.

15 “(2) An order made under **subsection (1)** applies to the extent that it is necessary to meet the duty and the costs of the Commissioner.

20 “(3) If property has been sold under a High Court order, the High Court may, on the application of the purchaser or the Commissioner, make an order vesting the property in the purchaser.

25 “(4) A vesting order made by the High Court has the same effect as if all persons entitled to the property had been free from disability and had executed all proper conveyances, transfers and assignments of the property specified in the order, and in the case of land, an interest in land or a mining privilege, lease or licence under the Mining Act 1971, the purchaser’s title must be registered under the Land Transfer Act 1952, the Deeds Registration Act 1908 or the Mining Act
30 1971 accordingly.”

12. Refund of gift duty, penalty, and interest paid in excess—In section 89 (2), “section 26 (2) of this Act, as extended by section 68 (2) of this Act” is replaced by “**section 68G**”.

35 **13. Repealed schedule**—The First Schedule is repealed.

14. Repealed provisions to apply to pre-December 1992 estates—Despite **sections 4, 5 and 13** of this Act, section 2, Parts I, II and III, and the First Schedule of the Estate and Gift Duties Act 1968 continue to apply to the estate of any person who
40 died before 17 December 1992.

15. Consequential amendments—(1) The Acts specified in Part 1 of the Schedule are amended in the manner indicated in that Part of the schedule.

(2) The regulation specified in Part 2 of the Schedule is amended in the manner indicated in that Part of the schedule. 5

PART 2

AMENDMENT TO TAX ADMINISTRATION ACT 1994

16. Tax Administration Act 1994—This Part amends the Tax Administration Act 1994*.

*1994, No. 164

Amendments: 1995, Nos. 24, 32, 72, 77; 1996, Nos. 19, 56, 67, 142, 159, 161; 1997, Nos. 9, 59, 74; 1998, Nos. 7, 101, 107

17. Addition to Schedule—The **Estate Duty Repeal Act 1999** is added to the schedule listing Inland Revenue Acts. 10

SCHEDULE
CONSEQUENTIAL AMENDMENTS
PART I
ACTS AMENDED

Title of Act	Amendment
1908, No. 89—Judicature Act 1908 (R.S. Vol. 22, p. 107)	By inserting in rule 653 (2), after the words “Estate and Gift Duties Act 1968”, the words “(as in force before its repeal by the Estate Duty Repeal Act 1999)”.
1949, No. 33—Law Reform (Testamentary Promises) Act 1949 (R.S. Vol. 37, p. 427)	By omitting from section 4 (2)(b) the words “other than those of the Estate and Gift Duties Act 1968”.
1953, No. 64—Patents Act 1953 (R.S. Vol. 37, p. 509)	By repealing paragraph (c) of the definition of “qualified person” in section 86 (1).
1953, No. 65—Designs Act 1953 (R.S. Vol. 6, p. 111)	By repealing paragraph (c) of the definition of “qualified person” in section 41 (1).
1953, No. 66—Trade Marks Act 1953 (R.S. Vol. 37, p. 867)	By repealing paragraph (c) of the definition of “qualified person” in section 58 (1).
1956, No. 61—Trustee Act 1956 (R.S. Vol. 15, p. 615)	By omitting from section 84 (2) the words “death duties,”.
1957, No. 36—Public Trust Office Act 1957 (R.S. Vol. 35, p. 577)	By omitting from section 112 (2) the words “for the purposes of the Estate and Gift Duties Act 1968 or for any other purposes whatsoever”.
1964, No. 45—Joint Family Homes Act 1964 (R.S. Vol. 27, p. 637)	By repealing section 22.
1967, No. 35—Trustee Companies Act 1967 (R.S. Vol. 18, p. 901)	By omitting from section 18 (3)(a) the words “, other than estate duty”.
1968, No. 36—Diplomatic Privileges and Immunities Act 1968 (R.S. Vol. 17, p. 171)	By repealing section 20 (2)(a).
1969, No. 52—Administration Act 1969 (R.S. Vol. 38, p. 13)	By repealing section 18 (2). By repealing section 36A. By omitting from section 62 (3) the words “is determined for the purposes of the Estate and Gift Duties Act 1968”, and substituting the words “would be determined for the purpose of the Estate and Gift Duties Act 1968 (as in force before the Estate Duty Repeal Act 1999 was enacted)”.
	By repealing section 62 (4).
	By omitting the word “, and” at the end of section 64A (3)(c).
	By repealing section 64A (d).
	By omitting from section 81 (5)(a) the words “, and estate duty in his estate shall be assessed,”.

SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Title of Act	Amendment
1972, No. 35—New Zealand Council for Educational Research Act 1972 (R.S. Vol. 23, p. 755)	By repealing section 34 (3).
1976, No. 166—Matrimonial Property Act 1976 (R.S. Vol. 26, p. 491)	By repealing section 4 (5) and substituting the following subsection: “(5) Nothing in this section affects the law that applies where the husband or the wife is acting as trustee under any deed or will.” By omitting from section 48 (4) the words “of the Estate and Gift Duties Act 1968 or”.
1977, No. 102—Queen Elizabeth the Second National Trust Act 1977 (R.S. Vol. 27, p. 815)	By repealing section 30 (3).
1979, No. 33—Civil List Act 1979 (R.S. Vol. 38, p. 415)	By repealing section 7 (2)(b)(i).
1982, No. 123—Law Practitioners Act 1982 (R.S. Vol. 37, p. 277)	By repealing section 73 (4).
1987, No. 13—Sport, Fitness, and Leisure Act 1987 (R.S. Vol. 28, p. 867)	By repealing section 35 (4).
1993, No. 4—Maori Land Act 1993	By repealing section 105.
1996, No. 39—Institute of Chartered Accountants of New Zealand Act 1996	By repealing clause 10 of the First Schedule.

PART 2
 REGULATION AMENDED

Title of Regulation	Amendment
The Joint Family Homes Regulations 1965 (S.R. 1965/65)	By omitting from Form 7 in the First Schedule the words “, and the estate duty exemption in respect of the property specified in the application will not apply”.