



Western Australia

## **Death Duty Assessment Act 1973**

Compare between:

[03 Feb 1995, 00-h0-02] and [15 Dec 1997, 00-i0-05]



Western Australia

## **Death Duty Assessment Act 1973**

**An Act relating to the imposition, assessment, and collection of duties on the estates of deceased persons and for incidental and other purposes.**

~~[Assented to 21 December 1973.]~~

Be it enacted —

## **Part I — Preliminary**

**1. Short title**

This Act may be cited as the *Death Duty Assessment Act 1973*.

**2. Commencement**

This Act shall come into operation on a date to be fixed by proclamation.<sup>1</sup>

**3. Repeal and application**

(1) The following provisions of the *Administration Act 1903 -1973*, that is to say —

- (a) the whole of Part V of that Act other than section 71;
- (b) subsection (2) of section 139, and sections 145, 146, 147 and 148 of that Act; and
- (c) the Second Schedule to that Act,

are hereby repealed.

(2) Where, immediately before the date of the coming into operation of this Act, any provision repealed by subsection (1) of this section applied to and in relation to the death or estate of any person who died before that date, that provision shall continue to so apply on and after that date.

(3) This Act shall apply to and in relation to the death and estate of any person dying on or after the date of the coming into operation of this Act and before the first day of January, 1980.

[(4) *repealed by No. 79 of 1974 s.2.*]

- (5) Nothing in this section affects the operation of the *Interpretation Act 1918*.

*[Section 3 amended by No. 79 of 1974 s.2; No. 60 of 1978 s.2.]*

*[Reprinted as approved for reprint 23rd June 1971 and amended by Acts Nos. 18 and 40 of 1971; 46 and 57 of 1972; and 19 of 1973.]*

**4. Division of Act**

This Act is divided as follows —

PART I — PRELIMINARY — ss.1-5.

PART II — ADMINISTRATION — ss.6-7.

PART III — LIABILITY TO DUTY — ss.8-9.

PART IV — DUTIABLE PROPERTY AND  
DEDUCTIONS — ss.10-12

PART V — STATEMENTS — ss.13-16

PART VI — ASSESSMENT OF DUTY — ss.17-29

Division 1 — General — ss.17-20

Division 2 — Amendment of Assessments — s.21.

Division 3 — Exemption Allowances and  
Rebates — ss.22-29.

PART VII — PAYMENT OF DUTY — ss.30-46.

Division 1 — Time for Payment; Interest — ss.30-  
32.

Division 2 — Collection and Recovery — ss.33-  
37.

Division 3 — Adjustment — ss.38-39.

Division 4 — Miscellaneous — ss.40-41.

Division 5 — Release and Disposal of Assets —  
ss.42-46.

PART VIII — VALUATION — ss.47-56.

Division 1 — General — ss.47-51.

Division 2 — Valuation of Partnership Interests  
and Company Shares ss.52-56

PART IX — OBJECTIONS AND APPEALS — ss.57-58.

PART X — PENAL PROVISIONS — ss.59-62.

PART XI — MISCELLANEOUS — ss.63-70.

*[Section 4 amended by No. 2 of 1977 s.3.]*

**5. Definitions**

- (1) In this Act, unless the contrary intention appears, —
- “administration”** means any probate, letters of administration, order of any court, or any other document whereby any person becomes entitled at law to administer the estate of a deceased person or any part of his estate and includes any probate or letters of administration granted out of this State, and any exemplification thereof, if resealed in this State under Part III of the *Administration Act 1903*;
- “administrator”** means any person to whom probate or letters of administration have been granted, or who is entitled by virtue of any other administration or under any statutory power to administer, take charge of, or become receiver of, any property of a deceased person;
- “adopted child”**, in relation to a person, means a person adopted by the firstmentioned person adopted by the firstmentioned person under any law for the time being in force in this State or in any other State of the Commonwealth relating to the adoption of children or, if the adoption would be recognized under the law of this State, under any other law;

**“assessment”** means an assessment of duty and includes an assessment that no duty is payable, and an amended assessment;

**“child”**, in relation to a person, includes an adopted child, a step-child, or an illegitimate child, of that person;

**“Commissioner”** means the person holding the office of Commissioner of State Taxation under the *Public Service Act 1904*;

**“Court”** means the Supreme Court;

**“dependent child”**, in relation to a deceased person, means a child of the deceased person —

- (a) who is under the age of sixteen years;
- (b) who is under the age of twenty-five years and is receiving full-time education at a school, college or university;
- (c) who is under the age of twenty-five years and is employed as an apprentice under an agreement of apprenticeship;
- (d) in respect of whom an invalid pension is paid under any Act of the Commonwealth in force from time to time relating to Social Services; or
- (e) who has been wholly engaged in keeping house for the deceased person for at least two out of the three years immediately preceding his death;

**“dependent parent”**, in relation to a deceased person, means a parent who is not in receipt of an annual income greater than the maximum rate of pension payable under any Act of the Commonwealth in force from time to time relating to Social Services and who was receiving assistance from the deceased person;

**“duty”** means duty imposed by the *Death Duty Act 1973*, as assessed under this Act;

**“final balance”**, in relation to the estate of a deceased person, means the final balance on which duty is to be assessed that is to say, the total value of all property comprised in the estate for the

purposes of this Act (calculated by reference to the value of that property before the deduction of any amount that may be deductible from the value of that property under section 22, 23, 24 or 25) less the total amount of all deductions that are allowed under section 11 or 12;

**“gift *inter vivos*”** includes any gift absolute and every non-testamentary disposition of property of any kind, whether by way of conveyance, transfer, assignment, lease, appointment under power, by way of renunciation or disclaimer, by way of declaration or creation of any trust, by way of mortgage charge or encumbrance, by way of creation of any estate or interest in property, or by any means at law or in equity, whether subject to any limitation or not, and whether in writing or not, not being a settlement within the meaning of this Act, but does not include a disposition in favour of a *bona fide* purchaser, lessee, mortgagee, or encumbrancer for valuable consideration, except where any such disposition is made otherwise than for an adequate consideration in money or money’s worth, when the disposition shall be deemed to be a gift *inter vivos* to the extent of such inadequacy;

**“grandchild”**, in relation to a person, includes an adopted child, a stepchild, or an illegitimate child, of a child of that person;

**“notional property”** means any property, interest, beneficial interest, amount, or proportion of money payable, that is deemed pursuant to subsection (2) of section 10 to be property of a deceased person, or is deemed pursuant to section 63 to be property comprised in the estate of a person on his death;

**“policy of assurance”** includes a policy of insurance;

**“section”** means a section of this Act;

**“settlement”** includes every conveyance, transfer, appointment under power, declaration of trust, or other non-testamentary document, and every non-testamentary disposition of property made by any person, containing trusts or dispositions, or being a disposition, to take effect, or which shall or may take effect upon or after the death of such person, or of any other person;



**“statement”** means a statement of the particulars required by section 13 to be specified in relation to a deceased person and his estate;

**“Table 1 beneficiary”** means a person to whom Table 1 of Part I or II (whichever is the appropriate Part) of the Schedule to the *Death Duty Act 1973*, applies;

**“Table 2 beneficiary”** means a person to whom Table 2 of Part I or II (whichever is the appropriate Part) of the Schedule to the *Death Duty Act 1973*, applies;

**“Table 3 beneficiary”** means a person to whom Table 3 of Part I or II (whichever is the appropriate Part) of the Schedule to the *Death Duty Act 1973*, applies;

**“the repealed provisions”** means those provisions of the *Administration Act 1903-1973*, repealed by subsection (1) of section 3;

**“widow”** and **“widower”**<sup>4</sup> in relation to a deceased person include, as the case may require, a person who, although not legally married to the deceased person —

- (a) lived with the deceased person on a permanent and *bona fide* domestic basis immediately before the deceased person's death, if the deceased person leaves any dependent child who is the child of their union; or
- (b) lived with the deceased person on such a basis for not less than three years immediately before the deceased person's death, if the deceased person does not leave any such dependent child.

- (2) Without limiting the generality of the definition “gift *inter vivos*” in subsection (1) of this section, the release, discharge, surrender, forfeiture, or abandonment at law or in equity of any debt, contract, chose in action, or of any right, power, estate, or interest in or over any property shall be deemed a gift *inter vivos* in the circumstances and to the extent mentioned in that definition.

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- (2a) For the purposes of subsection (2) of this section, and without limiting the generality of the term “release” used in that subsection, a debt that has become irrecoverable or unenforceable by action or other process through lapse of time shall be deemed to have been released on the date on which it became irrecoverable or unenforceable.
- (2b) Nothing in the definition “gift *inter vivos*” or “settlement” in subsection (1) of this section applies to an appointment under power unless —
- (a) the donee of the power could have exercised the power in his own favour; or
  - (b) the property the subject of the power would, in default of any appointment, have been held in trust for the donee of the power.
- (3) Without limiting the generality of the term “passes”, where used in this Act in relation to property that forms part of the estate of a deceased person for the purposes of this Act, that term, unless the contrary intention appears, includes the taking of a limited interest in that property under any will or non-testamentary disposition.

*[Section 5 amended by No. 144 of 1976 s.3; No. 60 of 1978 s.4.]*

## **Part II — Administration**

### **6. Functions of Commissioner, etc.**

- (1) The Commissioner shall have the general administration of this Act.
- (2) The Commissioner may by instrument in writing under his hand delegate to the person holding office as the Assistant Commissioner (Probate Duties) or to any other officer assisting the Commissioner in the administration of this Act all or any of his powers or functions under this Act, except this power of delegation.
- (3) A delegation under subsection (2) of this section may be revoked at any time by the Commissioner by instrument in writing under his hand.
- (4) A power or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate.
- (5) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.
- (6) Notwithstanding the provisions of subsection (2) of this section or any delegation made under this section, the Commissioner may continue to exercise or perform all or any of the powers or functions conferred or imposed on him by this Act.
- (7) Any Act or thing done or suffered by a delegate of the Commissioner while acting in the exercise of a delegation under this section, shall have the same force and effect as if the Act or thing done had been done or suffered by the Commissioner.

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- (8) Where the exercise or performance by the Commissioner of any power or function under this Act or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised or performed by a delegate of the Commissioner acting as such in relation to that matter, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of that delegate acting as such.
- (9) Where in any will, settlement, deed, or document reference is made to —
- (a) the Commissioner of Stamps;
  - (b) the Commissioner of Probate Duties; or
  - (c) the Commissioner of State Taxation,

in relation to his office, or to the exercise by him of any of his functions as Commissioner under the repealed provisions such reference, unless the context requires otherwise, shall on and after the coming into operation of this Act be deemed to refer to the Commissioner of State Taxation in relation to his office, or to the exercise by him of any of his corresponding functions, as Commissioner under this Act.

**7. Secrecy of information**

- (1) Where any information is disclosed to or obtained by a person in the course of his duties under this Act, that person shall not divulge that information unless he does so —
- (a) with the consent of the person, to whose affairs the information relates or, in the case of information relating to the affairs of a deceased person, with the consent of the executor or administrator of that deceased person's estate;
  - (b) in accordance with section 66;
  - (c) in connection with the administration of this Act or any other Act under the administration of the Commissioner; or

- (d) for the purpose of any legal proceedings arising out of this Act or any other Act under the administration of the Commissioner.

Penalty: Two hundred dollars.

- (2) Notwithstanding subsection (1) of this section the Commissioner may communicate or divulge to —
  - (a) the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to probate or death duties or to any person authorized in writing by any such Commissioner, Second Commissioner or Deputy Commissioner;
  - (b) the Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of the State or Territory relating to probate or death duties or to any person authorized in writing by any such Commissioner or other officer;
  - (c) the Director-General or the Assistant Director-General of the Department for Community Services, or to any person authorized in writing by such Director-General or Assistant Director-General; or
  - (d) the Director-General, or a Director, under the *Social Services Act 1947*, as subsequently amended, of the Commonwealth or to any person authorized in writing by any such Director-General or Director,

any information concerning the affairs of any deceased person disclosed or obtained under this Act.

*[Section 7 amended by No. 121 of 1984 s.36.]*

### **Part III — Liability to duty**

**8.          Duty on estates of deceased persons**

Subject to and in accordance with, the provisions of this Act, there shall be assessed, collected and paid on and in relation to the final balance of the estate of every deceased person, dying before the first day of January, 1980 duty at such rates declared by Parliament in the *Death Duty Act 1973*, as are appropriate and applicable at the date of the death of the deceased person.

*[Section 8 amended by No. 60 of 1978 s.3.]*

**9.          Duty to be paid by administrators**

- (1) Duty shall be paid by every administrator, and by every person ordered to file a statement pursuant to section 14.
- (2) Where duty is assessed on and in relation to a final balance determined pursuant to paragraph (b) of subsection (1) of section 14 and there is no administrator of the estate of the deceased person the duty shall be payable by the person or persons to whom the property comprised in that estate for the purposes of this Act passes.

## **Part IV — Dutiable property and deductions**

### **10. Property comprised in estate for purposes of this Act**

- (1) For the purposes of this Act the estate of a deceased person comprises —
  - (a) his real and personal property in this State; and
  - (b) his personal property situate outside this State if he was domiciled in this State at the time of his death.
  
- (2) For the purposes of subsection (1) of this section the following shall be deemed to be property of a deceased person, that is to say —
  - (a) any property the subject matter of a gift *inter vivos* made by the deceased person before, on, or after the date of the coming into operation of this Act within three years before his death, to the extent of the value of the gift at the time it was made irrespective of where the property other than immovable property situate outside the State was situate at the time of his death and whether or not at the time of his death it was still the property of the donee or was still in existence;
  - (b) an amount equal to the value, immediately prior to the death of the deceased person, of the beneficial interest held by the deceased person immediately prior to his death in any property as a joint tenant or joint owner with any other person or persons;
  - (c) any property in respect of which, before, on or after the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1976*, the deceased person has given any power of appointment, unless it is proved that the deceased person —
    - (i) was not the beneficial owner of the property at the time of the giving of the power;

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- (ii) was not the beneficial owner of the property at any time within the period of three years before his death; or
  - (iii) had no beneficial interest in the property at any time within the period of three years before his death;
- (d) any amount paid or property transferred before, on, or after the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1976* by or with the authority or direction of the deceased person and in consideration of the purchase of any annuity if —
  - (i) the payment or transfer was made within three years before the death of the deceased person; and
  - (ii) the purchase of the annuity was effected on a condition, whether expressed or otherwise, of the purchase of, or variation of the terms of, a policy of assurance effected on the life of the deceased person by the deceased person or any other person,to the extent to which that amount, or the value of that property at the time of its transfer, as the case may be, exceeds the aggregate amount of any payments made under that annuity before the death of the deceased person;
- [(e) deleted by No. 144 of 1976 s.4.]*
- (f) any property the subject matter of a settlement made by the deceased person before, on, or after the date of the coming into operation of this Act within three years before his death;
- (g) any property the subject matter of a settlement made by the deceased person before, on, or after the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1976* under which the deceased person had any beneficial interest of any kind for his life



or for any period ascertainable by reference to his death whether or not that interest was surrendered by him before his death unless it was so surrendered more than three years before his death;

*[(h) deleted by No. 144 of 1976 s.4.]*

- (i) any property over which the deceased person had at the time of his death a general power of appointment, if that power is exercised by his will;
- (j) any property the subject matter of a donatio mortis causa made by the deceased person before, on, or after the date of the coming into operation of this Act;

*[(k) deleted by No. 144 of 1976 s.4.]*

- (l) where during the period of three years before his death the deceased person wholly or partially kept up a policy of assurance effected by him before, on, or after the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1976* on his own life and, upon or after his death, money is payable under that policy to an assignee or nominee — the prescribed proportion of the money so payable;
- (m) where during the period of three years before his death the deceased person wholly or partially kept up a policy of assurance effected by any other person before, on, or after the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1976* on the life of the deceased person — the prescribed proportion of the money payable under that policy upon or after the death of the deceased person;
- (n) any annuity or other interest —
  - (i) purchased or provided before, on, or after the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1976*;

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- (ii) wholly or partially purchased or provided within three years before the death of the deceased person; and
- (iii) purchased or provided —
  - (A) by or on behalf of the deceased person either by himself alone, or in concert or by arrangement with any other person;
  - (B) by or on behalf of any person in concert or by arrangement with the deceased person; or
  - (C) by any person who at any time was the employer of the deceased person or who was acting on behalf of or in concert or by arrangement with the employer,

to the extent of the prescribed proportion of the beneficial interest accruing or arising therein by survivorship or otherwise upon or after the death of the deceased person;

*[(o) deleted by No. 79 of 1974 s.3.]*

- (p) where, during the period of three years before the death of the deceased person or on his death the value of any property owned by him at the date of his death or at any time within that period has been, or is, directly or indirectly diminished and, at any time within that period or at any time after the death of the deceased person, the property or the total value of the property of some other person has been, or is, directly or indirectly increased pursuant to or by the operation of any agreement, contract, obligation, engagement or transaction entered into, or Act done or omitted to be done, by or on behalf of the deceased person (whether before, on, or after the date of the coming into operation of the *Death Duty*

*Assessment Act Amendment Act 1976* and whether effected by an instrument in writing or not or by the deceased person alone or jointly with any other person or by the operation of one or more agreements, contracts, obligations, engagements or transactions entered into or acts done or omitted to be done) — an amount equal to the amount by which the value of the property of the deceased person was thereby diminished.

- (3) In the case of property the subject matter of a gift or gifts inter vivos made by a deceased person within three years before his death to a Table 1 beneficiary or Table 1 beneficiaries, paragraph (a) of subsection (2) of this section applies only in relation to the amount, if any, by which the aggregate value of all such property exceeds two thousand dollars.
- (3a) For the purposes of paragraph (c) of subsection (2) of this section, a deceased person shall not be regarded as having had a beneficial interest in property within three years before his death by reason only that, within that period, he received out of that property any fee, commission, remuneration or other benefit for or in connection with services rendered by him as a trustee for that property.
- (4) For the purposes of paragraphs (f) and (g) of subsection (2) of this section the property the subject matter of a settlement shall be deemed to include the proceeds of the sale or conversion of and all investments for the time being representing any such property and all property which has in any manner been substituted for property originally the subject matter of that settlement.
- (5) In the case of a settlement made for any consideration in money or money's worth, paragraph (f) or (g), as the case may be, of subsection (2) of this section applies only in relation to the amount, if any, by which the value of the property the subject matter of that settlement, valued at the date of the death of the deceased person, exceeds the amount of that consideration.

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- (6) Where a policy of assurance has been assigned by the deceased person the reference in paragraph (l) of subsection (2) of this section to the money payable under that policy to the assignee shall be read and construed as a reference to the amount by which the money so payable exceeds the consideration, if any, in money or money's worth received by the deceased person, or receivable by his estate, in respect of that assignment.
- (6a) In paragraphs (l) and (m) of subsection (2) of this section “**prescribed proportion**” in relation to money payable under a policy of assurance means —
- (a) the proportion that the amount of the premiums paid by the deceased person in respect of the policy within the period of three years before his death bears to the amount of all premiums paid in that respect within that period; or
  - (b) the proportion that the total amount of the premiums paid by the deceased person in respect of the policy bears to the total amount of all premiums paid in that respect,
- whichever is the lesser proportion.
- (6b) Nothing in paragraph (n) of subsection (2) of this section applies in relation to any beneficial interest accruing or arising under a trust or settlement or under a policy of assurance on the life of the deceased person.
- (6c) In paragraph (n) of subsection (2) of this section “**prescribed proportion**” in relation to a beneficial interest accruing or arising in an annuity or other interest means —
- (a) the proportion that the amount of the contributions by the deceased person towards the purchase or provision of that annuity or other interest within the period of three years before his death bears to the amount of all contributions towards that purpose within that period; or
  - (b) the proportion that the total amount of the contributions by the deceased person towards the purchase or

provision of that annuity or other interest bears to the total amount of all contributions towards that purpose,

whichever is the lesser proportion.

*[(7), (8) and (9) subsections repealed by No. 79 of 1974 s.3.]*

- (10) (a) Paragraph (p) of subsection (2) of this section does not apply where the value of any property of a deceased person was diminished pursuant to or by the operation of an agreement, contract, obligation, engagement, transaction or Act entered into or done or omitted to be done for adequate consideration in money or money's worth in the course of a *bona fide* commercial transaction or business dealing.
- (b) Where the consideration for any agreement, contract, obligation, engagement or transaction consisted of a covenant or promise that remained unperformed at the date of the death of the deceased person the onus of establishing for the purposes of paragraph (a) of this subsection that the consideration was an adequate consideration in money or money's worth lies upon the administrator or other person liable to pay duty.
- (c) Paragraph (p) of subsection (2) of this section does not apply in relation to any agreement, contract, obligation, engagement, transaction or Act entered into or done before the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1974* for the purpose of avoiding or mitigating the effect or operation of paragraph (o) of that subsection as enacted before that date.
- (d) The onus of establishing for the purposes of paragraph (c) of this subsection that an agreement, contract, obligation, engagement, transaction or Act was entered into or done or omitted to be done for the purpose of avoiding or mitigating the effect or operation of paragraph (o) of subsection (2) of this section as enacted before the date of the coming into operation of the *Death Duty Assessment Act Amendment Act 1974* lies on the administrator or other person liable to pay duty.

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- (10a) For the purposes of paragraph (p) of subsection (2) of this section the value of property is diminished on the death of the deceased person if its value at that time is less than the amount that would have been its value at that time if the deceased had not died and his death had not been imminent.
- (11) (a) For the purposes of this Act the estate of a deceased person does not include any amount received by or payable to —
- (i) a widow, widower, child, or dependent parent of the deceased person; or
  - (ii) any person who was financially dependent upon the deceased person at the date of the deceased person's death,

under a *bona fide* superannuation or pension scheme or arrangement.

*[(b) repealed by No. 144 of 1976 s.4. <sup>2</sup>]*

- (12) Not more than one of paragraphs (a) to (p), both inclusive, of subsection (2) of this section shall apply to or in relation to the same property, interest, beneficial interest, amount, or proportion of money payable, and where, but for this subsection, more than one of those paragraphs would apply to or in relation to the same property, interest, beneficial interest, amount or proportion of money payable, the Commissioner may at his discretion determine which one of those paragraphs shall so apply.

*[Section 10 amended by No. 79 of 1974 s.3; No. 144 of 1976 s.4; No. 60 of 1978 s.4.]*

**11. Deduction of liabilities in calculation of final balance**

- (1) In calculating the final balance for the purposes of this Act the following deductions shall be allowed from the estate of a deceased person, that is to say —
- (a) if he was domiciled in this State at the time of his death —

- (i) all debts due and owing by him at the time of his death, except debts charged on real property situate outside this State;
    - (ii) the amount of funeral and burial or cremation expenses not otherwise provided for arising out of his death;
  - (b) if he was not domiciled in this State at the time of his death, all debts due and owing by him at the time of his death to persons resident in this State, or contracted to be paid in, or charged on property situate in, this State.
- (2) For the purposes of this Act the debts due and owing by a person at the time of his death shall be deemed to include the amount of income tax which, under the provisions of section 101A of the *Income Tax Assessment Act 1936*, as subsequently amended, of the Commonwealth, or any Act substituted for that Act, is assessed or assessable on any property comprised in the estate of that person for the purposes of this Act.
- (3) No allowance as a deduction shall be made under subsection (1) of this section for any debt in respect of which there would have been, at the time of the death of the deceased person, a right of reimbursement from any other estate or person, except to the extent to which, in the opinion of the Commissioner, reimbursement could not have been obtained at that time.

**12. Deduction of certain legacies, etc., in calculation of final balance**

- (1) In calculating the final balance the value of any property comprised in the estate of a deceased person for the purposes of this Act that is the subject matter of any gift, devise, bequest, legacy, or settlement to or for —
- (a) any public hospital within the meaning of the *Hospitals and Health Services Act 1927*;
  - (b) any hospital in the Commonwealth that is not carried on for the purpose of private gain;

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- (c) the maintenance of a free ward in any hospital in the Commonwealth;
- (d) any public educational institution in the Commonwealth that is wholly or in part dependent on any State or Commonwealth grant or subsidy;
- (e) any body corporate or unincorporate in the Commonwealth the main object of which is to dispense or provide voluntary aid to indigent, aged, sick, blind, halt, deaf, dumb, or maimed persons;
- (f) any publicly subscribed medical service or fund in the Commonwealth, the main object of which is the relief of the sick, or any public medical service or fund in the Commonwealth that is assisted by any State or Commonwealth grant or subsidy;
- (g) any school that, pursuant to the provisions of the *Education Act 1928*, is included in the latest list of schools published in the *Gazette* that have been inspected and found efficient or have been certified to be efficient for the purposes of that Act;
- (h) the Services Canteens Trust Fund established under the *Services Trust Funds Act 1947*, as subsequently amended, of the Commonwealth;
- (i) the council of a municipality within the meaning of the *Local Government Act 1960*, in trust for a charitable or public purpose;
- (j) any body, institution, or purpose, which the Treasurer, in his absolute discretion, considers to be of a charitable or public nature,

shall be allowed as a deduction from the estate of the deceased person.

- (2) No duty shall be chargeable in respect of property referred to in subsection (1) of this section.

*[Section 12 amended by No. 103 of 1994 s.18.]*



## **Part V — Statements**

### **13. Statement to be filed**

- (1) Every administrator shall file in the office of the Commissioner a statement specifying the particulars of —
  - (a) all property comprised in the estate of the deceased person for the purposes of this Act;
  - (b) the value of the property referred to in paragraph (a) of this subsection;
  - (c) any debts due and owing by the deceased person at the time of his death and any other amounts that are allowed deductions by this Act;
  - (d) the identity of the person or persons entitled to the property referred to in paragraph (a) of this subsection and his or their relationship (if any) to the deceased person;
  - (e) an address at which notices and other documents may be served or given and to which notices and other documents may be sent; and
  - (f) such other matters as may be prescribed.
- (2) The statement shall —
  - (a) be in the prescribed form;
  - (b) be accompanied by a copy of the death certificate of the deceased person and a copy of the last will and testament of the deceased person and any codicil thereto, if any;
  - (c) be certified as correct by the person making the statement; and
  - (d) be filed within six months from the date of the death of the deceased person or within such further time as the Commissioner may allow.
- (3) All amounts shown in the statement shall be expressed in Australian currency to the nearest dollar.

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- (4) Paragraph (d) of subsection (1) of this section and paragraph (b) of subsection (2) of this section do not apply to or in relation to a statement filed with respect to the estate of a person who was not domiciled in this State at the time of his death.
- (5) From the information contained in the statement and from such other information as he may possess the Commissioner shall determine the final balance of the estate of the deceased person.

**14. Powers of Commissioner where statement is not filed**

- (1) Where, after the expiration of six months from the date of the death of a deceased person, a statement has not been filed, the Commissioner, if he has reason to believe that duty is payable in respect of property comprised in the estate of the deceased person for the purposes of this Act, —
  - (a) may apply to the Court for an order that the administrator, or any person having possession of the will of the deceased person, or any person entitled to a grant of representation to the estate, or the donee or other person in possession of property conveyed, assigned or given by the deceased person, file a statement; or
  - (b) determine the final balance of the estate from such information as he may possess.
- (2) On the hearing of an application made pursuant to paragraph (a) of subsection (1) of this section, the Court may, after giving the administrator or other person against whom the order is sought an opportunity of being heard, order that he file a statement in terms of the application within a time to be fixed by the order; and may enforce the order as orders are now enforced by the Court; and may make such order as to costs as it thinks fit.

**15. Power of Commissioner to require additional information**

- (1) Where a statement is, in the opinion of the Commissioner, incomplete or unsatisfactory, or both, the Commissioner may by notice in writing require the person by whom the statement was

filed to furnish such additional information relating to the estate of the deceased person as the Commissioner considers necessary for the purposes of this Act.

- (2) Where a person to whom notice is given pursuant to subsection (1) of this section fails or refuses to comply with that notice the Commissioner may proceed to determine the final balance of the estate.

**16. Alterations to statements**

- (1) The Commissioner may permit a person who has filed a statement to add to, alter, or vary that statement.
- (2) The Commissioner may add to, alter, or vary a statement.

## **Part VI — Assessment of duty**

### **Division 1 — General**

**17. Assessment of duty**

The Commissioner shall assess the duty payable on and in relation to the final balance of the estate of a deceased person.

**18. Power to compromise duty**

Where, in the opinion of the Commissioner, any property is of such a nature, or so disposed of or circumstanced, that the value thereof is not fairly ascertainable under this Act, or where, because of the complication of circumstances affecting the value of any property or the assessment or recovery of the duty thereon or for any other sufficient reason, the Commissioner considers it just and expedient to exercise the power conferred on him by this section, he may compound the duty in respect of that property upon such terms as he thinks fit, and may give a discharge to the administrator or other person liable to pay duty on that property, upon payment of the duty according to that composition.

**19. Ascertainment of duty on property passing to an uncertain person or on an uncertain event**

- (1) Where property comprised in the estate of a deceased person for the purposes of this Act passes to an uncertain person, or on an uncertain event, the Commissioner may assess duty as if the property had been given by way of vested remainder to a Table 3 beneficiary.
- (2) Upon the Commissioner being satisfied that property in respect of which duty has been paid under subsection (1) of this section has actually become vested in any person whose relationship to the deceased is such that a lesser amount of duty should have been paid, the Commissioner shall amend the assessment and the amount of duty overpaid shall be refunded to

the person by whom it was paid with interest thereon at the rate declared for the time being pursuant to section 32 calculated from the date of payment of the duty to the date of the issue by the Commissioner of notice of the amended assessment.

*[Section 19 amended by No. 60 of 1978 s.4.]*

**20. Notice of assessment**

- (1) As soon as conveniently may be after an assessment is made the Commissioner shall cause notice in writing of the assessment to be served on the administrator or other person liable to pay duty, or in the case of an assessment that no duty is payable, on the administrator or other person by whom a statement was filed.
- (2) Where in making an assessment the Commissioner has adjusted the value of any property so as to adopt a value which differs from the value specified in respect of that property in the statement, the notice of assessment shall be accompanied by an adjustment sheet setting out details of all such adjustments.
- (3) An assessment is not invalidated by the omission to serve any notice or adjustment sheet required by this section.

**Division 2 — Amendment of assessments**

**21. Amendment of assessments**

- (1) Subject to this section the Commissioner may at any time amend an assessment by making such alterations or additions thereto as he considers necessary.
- (2) An amendment that increases the amount of duty payable under an assessment shall not be made more than two years after that duty has been paid in full unless it is owing to fraud or gross negligence on the part of the administrator or other person liable to pay duty that the proper amount of duty was not assessed at first.
- (3) Where an amendment increases the amount of duty payable under an assessment the administrator or other person liable to

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pay duty shall only be liable for the additional duty to the extent of any property then under his control, or which can be applied by him for the payment of the additional duty, unless it is owing to any fraud or gross negligence on his part that the proper amount of duty was not assessed at first.

- (4) An amendment that decreases the amount of duty payable under an assessment shall not be made more than two years after duty has been paid in full unless application for that amendment has been made to the Commissioner within that period or within such further period as the Commissioner may allow.
- (5) Where an amendment decreases the amount payable under an assessment the amount of duty overpaid shall be refunded to the person by whom it was paid.
- (6) Where, at any time an administrator or other person who has filed a statement discovers property that should have been included in that statement he shall notify the Commissioner forthwith.
- (7) For the purposes of this section where an assessment is made that no duty is payable in respect of an estate, duty shall be deemed to be fully paid on the date on which notice of that assessment is served.

**Division 3 — Exemption, allowances and rebates**

*[Heading amended by No. 2 of 1977 s.4.]*

**22. Exemption for widows and widowers**

Where property comprised in the estate of a deceased person for the purposes of this Act passes to the widow or widower of the deceased person —

- (a) no duty shall be assessable or payable in respect of that property; and
- (b) the Commissioner shall deduct an amount of fifty thousand dollars from the final balance of the estate for the purpose of, and before, assessing the duty payable in

respect of any property comprised in the estate that passes to any Table 1 beneficiary.

*[Section 22 repealed and re-enacted by No. 2 of 1977 s.5; amended by No. 60 of 1978 s.4.]*

**23. Allowances in relation to dependent children**

- (1) Where property comprised in the estate of a deceased person for the purposes of this Act passes to the widow or widower of the deceased person and that widow or widower has a child who was a dependent child of the deceased person at the date of his death the Commissioner shall deduct the prescribed amount from the final balance of the estate for the purpose of, and before, assessing the duty payable in respect of any property comprised in the estate that passes to any Table 1 beneficiary.
- (2) The prescribed amount for the purposes of subsection (1) of this section is an amount of ten thousand dollars in respect of each such dependent child, in addition to the sum of fifty thousand dollars referred to in section 22.
- (3) Where property comprised in the estate of a deceased person for the purposes of this Act passes to —
  - (a) a dependent child of the deceased person; or
  - (b) a dependent child of the deceased person and such child has no surviving parents,the Commissioner shall —
  - (c) deduct the prescribed amount from the value of that property for the purpose of, and before, assessing the duty payable in respect of that property; and
  - (d) deduct the prescribed amount from the final balance of the estate for the purpose of, and before, assessing the duty payable in respect of any property comprised in the estate that passes to any Table 1 beneficiary.
- (4) The prescribed amount for the purposes of subsection (3) of this section is —

- (a) in a case to which paragraph (a) of that subsection applies — an amount of ten thousand dollars in respect of each such dependent child; and
  - (b) in a case to which paragraph (b) of that subsection applies — an amount of thirty-five thousand dollars in respect of each such dependent child.
- (5) The Commissioner may, if in the circumstances he considers it just and reasonable to do so, deem a grandchild of a deceased person to be a child of the deceased person and of the deceased person's widow or widower, and apply the provisions of this section accordingly.

*[Section 23 repealed and re-enacted by No. 2 of 1977 s.6; amended by No. 60 of 1978 s.4.]*

**24. Furniture and personal effects allowance**

For the purpose of and before assessing the total duty payable in respect of property comprised in the estate of a deceased person for the purposes of this Act that passes to Table 1 beneficiaries, the Commissioner shall —

- (a) deduct from the final balance of the estate —
  - (i) the aggregate value of furniture and personal effects comprised in the estate that pass to the widow or widower of the deceased person or to Table 1 beneficiaries; or
  - (ii) one thousand five hundred dollars, whichever is the lesser amount; and
- (b) deduct from the aggregate value of that property —
  - (i) the aggregate value of furniture and personal effects included in that property; or
  - (ii) one thousand five hundred dollars, whichever is the lesser amount.

*[Section 24 repealed and re-enacted by No. 2 of 1977 s.7; amended by No. 60 of 1978 s.4.]*



**25. Quick succession allowance**

(1) In this section —

**“deceased successor”** means a person who —

- (a) as a successor to a predecessor who died before the date of the coming into operation of this Act is entitled to —
  - (i) any property that formed, or was deemed to form, part of the estate of that predecessor for the purposes of the *Administration Act 1903*; or
  - (ii) any amount required by the *Administration Act 1903*, to be included in the final balance of the estate of that predecessor; or
- (b) as a successor to a predecessor who died on or after the date of the coming into operation of this Act is entitled to any property comprised in the estate of that predecessor for the purposes of this Act,

and who was the widow or widower, a child, grandchild or other issue, or a dependent parent, of that predecessor;

**“predecessor”**, in relation to a deceased successor, means a person who has died, whether before, on, or after the date of the coming into operation of this Act, within ten years before the death of the deceased successor.

(2) Subjection to subsection (4) of this section where the Commissioner is satisfied that —

- (a) any property comprised in the estate of a deceased successor for the purposes of this Act, —
  - (i) passed from the predecessor directly to the deceased successor; and
  - (ii) passes from the deceased successor to the widow or widower of the deceased successor or to a Table 1 beneficiary; and
- (b) duty has been paid on that property under this Act or under the *Administration Act 1903*,

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the Commissioner shall deduct the prescribed percentage of the value of that property from the final balance of the estate for the purpose of, and before, assessing the duty payable in respect of any property comprised in the estate that passes to any Table 1 beneficiary.

- (2a) Subject to subsection (4) of this section where the Commissioner is satisfied that —
- (a) any property comprised in the estate of a deceased successor for the purposes of this Act, —
    - (i) passed from the predecessor directly to the deceased successor; and
    - (ii) passes from the deceased successor to a Table 1 beneficiary; and
  - (b) duty has been paid on that property under this Act or under the *Administration Act 1903*,

the Commissioner shall deduct the prescribed percentage of the value of that property from the total value of property passing to that person, for the purpose of, and before, assessing the duty payable in respect of property so passing.

- (3) The prescribed percentage for the purposes of subsections (2) and (2a) of this section is —
- (a) if the deceased successor dies within one year after the death of the predecessor, one hundred per centum;
  - (b) if the deceased successor dies within two years, but not within one year after the death of the predecessor, ninety per centum;
  - (c) if the deceased successor dies within three years, but not within two years after the death of the predecessor, eighty per centum;
  - (d) if the deceased successor dies within four years, but not within three years after the death of the predecessor, seventy per centum;

- (e) if the deceased successor dies within five years, but not within four years after the death of the predecessor, sixty per centum;
  - (f) if the deceased successor dies within six years, but not within five years after the death of the predecessor, fifty per centum;
  - (g) if the deceased successor dies within seven years, but not within six years after the death of the predecessor, forty per centum;
  - (h) if the deceased successor dies within eight years, but not within seven years after the death of the predecessor, thirty per centum;
  - (i) if the deceased successor dies within nine years, but not within eight years after the death of the predecessor, twenty per centum;
  - (j) if the deceased successor dies within ten years, but not within nine years after the death of the predecessor, ten per centum.
- (4) This section does not apply to or in relation to any property in respect of which the duty referred to in paragraph (b) of subsection (2) or paragraph (b) of subsection (2a) of this section was paid under the *Administration Act 1903*, if that duty was subsequently wholly or partly refunded pursuant to section 70A or 91 of that Act.
- (5) Where a claim is made for a deduction under this section the Commissioner may require any further statement, declaration or information that he thinks necessary in relation to that claim.

*[Section 25 amended by No. 2 of 1977 s.8; No. 60 of 1978 s.4.]*

**26. Reduction of duty in certain cases where stamp duty has been paid**

- (1) Where for the purposes of this Act property the subject matter of a gift or settlement in or of an agreement or disposition to which paragraph (p) of subsection (2) of section 10 applies, is

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comprised in the estate of the person by whom the gift, settlement, agreement or disposition was made, there shall be deducted from the duty that, but for this section and sections 27 and 28, would be assessable in respect of that estate —

- (a) the amount of the *ad valorem* stamp duty paid under the *Stamp Act 1921*, in respect of that gift, settlement, agreement or disposition; or
- (b) the amount of duty assessable in respect of that property,

whichever is the lesser amount.

- (2) A reduction of duty shall not be made under subsection (1) of this section unless the instrument on which the *ad valorem* stamp duty was charged is produced to the Commissioner, or he is otherwise satisfied as to the payment of the *ad valorem* stamp duty thereon.

*[Section 26 amended by No. 79 of 1974 s.4.]*

**27. Reduction of duty where duty is also payable outside the State**

- (1) Where consequent on the death of a person any duty (other than duty under any Act of the Commonwealth) has lawfully been paid, or is or will be lawfully payable, outside this State in respect of property comprised in the estate of that person that is situate outside this State, then, subject to section 28, the duty assessed in respect of that estate shall be the amount calculated by use of the following formula —

$$\frac{A - B \times C}{A} = D$$

where —

A is the gross value of property comprised in the estate;

B is the gross value of property comprised in the estate that is situate outside this State and in respect of

which duty (other than duty under any Act of the Commonwealth) has been paid, or is or will be payable, outside the State;

C is the duty that, but for this section and section 28, would be assessable in respect of the estate;

D is the duty that, subject to section 28, shall be assessed in respect of the estate.

(2) For the purpose of this section the Commissioner may adopt as the value of any property situate outside this State the value adopted in the place where that property is situate for the purpose of assessing the duty payable in that place in respect of that property.

**28. Reduction of duty where deceased died on or as a result of active service**

- (1) For the purposes of this section “**deceased person**” means —
- (a) a person who at the time of his death is a member of the naval, military, or air forces of the Commonwealth or of any ally of the Commonwealth, or of any medical corps or nursing service attached to any of those forces, and who dies whilst on active service or as a result of injuries received or disease contracted on active service; or
  - (b) a person who has been a member of the naval, military, or air forces of the Commonwealth, or of any ally of the Commonwealth, or of any medical corps or nursing service attached to any of those forces, and who dies, within one year after ceasing to be such a member, as a result of injuries received or disease contracted on active service; or
- (2) A certificate by an authority constituted under the *Repatriation Act 1920*, as subsequently amended, of the Commonwealth or under any Act substituted for that Act, that a person has or has not died as a result of injuries received or disease contracted on

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active service shall be conclusive evidence that the person has or has not so died, as the case may be, within the meaning of this section.

- (3) The duty assessed in respect of property comprised in the estate of a deceased person for the purposes of this Act that passes to a Table 1 beneficiary shall be one-quarter of the amount of duty that, but for this section, would be assessable in respect of that property.
- (4) The duty assessed in respect of property comprised in the estate of a deceased person for the purposes of this Act that passes to a Table 2 beneficiary shall be one-half of the amount of duty that, but for this section, would be assessable in respect of that property.

*[Section 28 amended by No. 60 of 1978 s.4.]*

**29. Application of and method of applying this Division**

- (1) This Division is not applicable in relation to the estate of any deceased person who was not domiciled in this State at the time of his death.
- (2) Where more than one of sections 26, 27 and 28 are applicable in relation to the estate of a deceased person —
  - (a) the provisions of section 26 shall be applied before those of section 27 or 28 are applied;
  - (b) the provisions of section 27 shall be applied before those of section 28 are applied.

## **Part VII — Payment of duty**

### **Division 1 — Time for payment; interest.**

#### **30. Time for payment of duty**

- (1) Every administrator or other person liable to pay duty shall pay the duty assessed by the Commissioner within thirty days of the service of the notice of assessment or within such further time as the Commissioner may allow.
- (2) The Commissioner may accept proposals for the payment of duty by instalments and may amend or revoke any such arrangement.
- (3) Where, under section 31, payment of duty has been deferred for a period, the duty does not become payable until the expiration of that period.
- (4) Whenever any payment of duty is made the Commissioner shall give a receipt for that payment.

#### **30A. Arrangements in case of hardship**

- (1) Where the Treasurer is of the opinion that the payment of duty in full in one amount would result in severe financial hardship being suffered by the administrator or other person liable to pay duty, or the persons to whom property comprised in the estate of a deceased person passes, or any one or more of them, the Treasurer may, subject to this section, approve of an arrangement providing for the payment of duty, or any part thereof, by instalments over a period not exceeding three years from the date on which such approval is given.
- (2) The Treasurer shall not approve of an arrangement pursuant to subsection (1) of this section unless —
  - (a) the administrator or other person liable to pay duty —
    - (i) within thirty days of the service of the notice of assessment, notifies the Commissioner that he

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wishes to enter into an arrangement under this section; and

- (ii) within ninety days of giving the notification mentioned in subparagraph (i) of this paragraph, supplies the Commissioner with full details of the financial situation of the estate, the financial hardship that would be suffered if duty were paid in full in one amount, and such other information as the Commissioner may reasonably require; and
- (b) the Treasurer is satisfied that sufficient security exists to secure the payment of the outstanding duty.
- (3) The Treasurer may, from time to time, amend an arrangement approved pursuant to this section and may, in the event of the administrator or other person liable to pay duty failing to meet his obligations under the arrangement, revoke the arrangement.
- (4) Nothing in this section limits or otherwise affects the power of the Commissioner to —
  - (a) allow further time for the payment of duty; or
  - (b) accept proposals for the payment of duty by instalments,pursuant to section 30.

*[Section 30A inserted by No. 144 of 1976<sup>2,4</sup> s.8.]*

**31. Deferment of duty**

- (1) Where the whole or part of the property comprised in the estate of a deceased person for the purposes of this Act consists of a dwelling house that, at the date of the death of the deceased person was ordinarily used by a dependent relative, or dependent relatives, of the deceased person as his or their ordinary place of residence, or of an amount equal to the value, immediately prior to the death of the deceased person, of any interest in such a dwelling house held by the deceased person immediately prior to his death, and the final balance of the estate of the deceased person does not exceed one hundred



thousand dollars, the Treasurer, on written application being made to the Commissioner by or on behalf of that dependent relative, or those dependent relatives, may at the Treasurer's option, defer, subject to such conditions if any, as the Treasurer thinks fit, payment of the whole or part of the duty until the death of that dependent relative or of the last survivor of those dependent relatives, as the case may be.

- (2) In this section “**dependent relative**” in relation to a deceased person means the widow or widower of the deceased person or a dependent child or dependent parent of the deceased person, or any other relative of the deceased person who was wholly or partially financially dependent on the deceased person.

*[Section 31 repealed and re-enacted by No. 144 of 1976<sup>2</sup> s.9.]*

**32. Interest on duty**

- (1) Where a statement is not filed within six months of the death of a deceased person or within such further time as the Commissioner may allow under section 13, interest calculated on the amount that is subsequently assessed as duty on that estate shall be charged from and after the expiration of that time or further time, as the case may be, at such rate, not exceeding ten per centum per annum, as the Treasurer may from time to time declare.
- (2) The interest referred to in subsection (1) of this section —
- (a) shall continue to be charged until such time as —
    - (i) a statement is filed; or
    - (ii) an assessment is made by the Commissioner pursuant to section 14; and
  - (b) becomes payable when duty is assessed by the Commissioner.
- (3) Subject to subsection (4) of this section, where duty is not paid within thirty days of the service of a notice of assessment or within such further time as the Commissioner may allow under section 30, interest shall be charged and payable from and after

the expiration of that time or further time, as the case may be, on the amount of that duty at such rate, not exceeding ten per centum per annum, as the Treasurer may from time to time declare.

- (4) Where, under section 31, the payment of duty is deferred for a period, interest shall not be charged under subsection (3) of this section during that period.
- (5) The Commissioner may, in any particular case, for reasons that he thinks sufficient, remit the whole or any part of any sum payable by way of interest under this section.
- (6) Interest charged under this section shall be paid and adjusted in the same manner as the duty on which it is charged and may be recovered in the same manner as that duty.

### **Division 2 — Collection and recovery**

#### **33. Duty a debt to Her Majesty and a charge on estate**

- (1) Duty shall be deemed when it becomes payable to be a debt due to Her Majesty and payable to the Commissioner.
- (2) Duty is not a debt due and owing by a deceased person at the time of his death for the purposes of subsection (1) of section 11.
- (3) Duty constitutes as from the death of a deceased person a charge upon all property comprised in the estate of that person for the purposes of this Act, but no such charge shall affect the title of a *bona fide* purchaser, transferee, or mortgagee, (whether holding the legal estate or not) for value without notice.

#### **34. Recovery of duty by Commissioner**

- (1) Any duty unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

- (2) In the case of duty assessed in respect of any notional property of a deceased person duty unpaid may, if the Commissioner thinks fit and notwithstanding any judgment that the Commissioner may have obtained against any other party, be recoverable by him from the person to whom that property passed.
- (3) The Commissioner may apply to the Court for an order that a sufficient portion of any property in respect of which duty has been assessed may be sold to pay unpaid duty.
- (4) Nothing in subsection (3) of this section limits the power of the Commissioner to recover unpaid duty by any other means.

**35. Administrator to pay duty out of property vested in him**

- (1) An administrator shall pay duty out of all property comprised in the estate that is vested in him whether the property in respect of which the duty or any part thereof has been assessed is vested in him or not.
- (2) Subject to any deferment under section 31 an administrator shall pay duty in priority to all debts of the deceased person other than funeral and burial or cremation expenses and testamentary expenses.
- (3) For the purpose of raising money for the payment of any duty an administrator may sell, or mortgage with a power of sale, all or any property in respect of which duty has been assessed, upon such terms and conditions as he may think proper.
- (4) Subject to any special provision by the testator for the payment of duty, an administrator shall deduct from each and every devise, bequest, or legacy coming to any person under a will the amount of the duty assessed in respect of the property comprised in that devise, bequest or legacy.
- (5) In the case of an intestacy an administrator shall deduct from each distributive share of the intestate's estate, the amount of the duty assessed in respect of the property comprised in that share.

- (6) Subject to any specific direction to the contrary in any will, where duty assessed in respect of notional property of a deceased person is paid or payable by an administrator the administrator may recover the amount of the duty in respect of that property from the person to whom that property passed, or may retain or deduct the amount out of or from any money in his hands belonging to that person.
- (7) Property the subject matter of a *donatio mortis causa* shall vest in the administrator until duty has been paid and the administrator has been reimbursed by the donee for the amount calculated as the duty assessed in respect of that property.

**36. Person liable to pay duty may apply for order to sell**

The person liable to pay duty may, if he requires the assistance of the Court in that behalf, apply to the Court for an order that a sufficient portion of any property in respect of which duty has been assessed may be sold.

**37. Powers of Court**

- (1) On the hearing of an application under section 34 or section 36 the Court may order that a sufficient portion of the property in respect of which duty has been assessed be sold, at such time, in such manner, and subject to such terms and conditions as it deems advisable, and may make such order as to the costs of and consequent upon the application as it thinks fit.
- (2) The moneys arising from the sale shall be applied in the first place towards paying the costs and expenses, if so ordered, of and consequent upon the application, and in the next place towards the payment of the duty, and the surplus, if any, shall be disposed of or invested in such manner as the Court may order.

### **Division 3 — Adjustment**

#### **38. Adjustment of duty**

- (1) Subject to any specific direction to the contrary in any will, every person liable to pay duty shall adjust the duty payable or paid by him, and the incidence thereof, so as to throw the burden thereof upon the respective properties in respect of which the duty has been assessed.
- (2) For the purpose of carrying the adjustment of duty into effect an administrator may sell, or mortgage with a power of sale, all or any property in respect of which duty has been assessed, upon such terms and conditions as he may think proper.
- (3) For the purpose of carrying the adjustment of duty into effect an administrator may also, by any instrument in writing, impose any charge on any property in favour of any person, whether then ascertained or not, entitled contingently or otherwise to any other property.
- (4) A charge referred to in subsection (3) of this section may contain a power of sale and may be upon such terms and conditions as the administrator may think proper.
- (5) On application being made to it under this subsection the Court may make such order as to the adjustment of duty and the incidence thereof, and to the costs of the application and adjustment, and for the sale or charge or encumbrance of any part of the property concerned for the purpose of the adjustment and the payment of those costs, as it thinks advisable.
- (6) An application for an order under subsection (5) of this section may be made by the person liable to pay duty or, where from any cause adjustment of duty has not been effected within a reasonable time, by any person interested.

**39.      Duty on limited interest payable out of corpus**

Subject to any specific direction to the contrary in any will, an administrator shall, in carrying out the adjustment of the incidence of duty payable or paid by him, —

- (a) charge upon and pay out of the corpus of any property in which any limited interest is taken under any will or non-testamentary disposition, all duty paid or payable in respect of that limited interest and the remainders or the reversion expectant thereon, and the corpus so diminished shall thereafter, as between the respective persons entitled thereto, be deemed to be the property in which those interests are taken;
- (b) charge the duty payable on any annuity on the property or fund out of which the same is derived, or which may be invested or which may require to be invested, to produce that annuity, and abate the annuity itself by the same percentage at which the duty in respect thereof is assessed.

**Division 4 — Miscellaneous**

**40.      Purchasers not bound to inquire**

No purchaser at any sale made or purporting to be made under any order of the Court obtained under this Act shall be bound or concerned to see or inquire whether the person effecting the sale has power to sell, or as to the necessity of the sale, or whether the order was properly obtained or whether the sale is properly made, nor shall he be affected by notice to the contrary; and the remedy of any person aggrieved by an improper sale shall be in damages only against the person or Commissioner effecting the sale.

**41.      Court may make vesting order**

- (1) When any property is sold under any order of the Court obtained under this Act, the Court may make such order vesting

that property in such person in such manner and for such estate or interest as the Court thinks fit.

- (2) Every vesting order made under subsection (1) of this section shall have the same effect as if the administrator, Commissioner, or other person obtaining the order had been seised of, or possessed of, or entitled to, the property for the estate or interest vested by the vesting order, and had been freed from all disability, and had duly executed all proper conveyances, transfers, and assignments of the property for that estate or interest.

### **Division 5 — Release and disposal of assets**

#### **42. Property not to be disposed of without consent of Commissioner**

- (1) Except for the purpose of any sale or disposition made under an order of the Court obtained under this Act after duty has become chargeable on any property comprised in the estate of a deceased person for the purposes of this Act, there shall not be any disposition of that property without the written consent of the Commissioner.
- (2) Any person who disposes of any property in contravention of subsection (1) shall, without prejudice to the recovery of the duty by any other means, be personally liable for the duty.

#### **43. Property accruing by survivorship not to be registered without consent of Commissioner**

Subject to sections 45 and 46, no person whose duty it is to register any document, or to make any entry, or to issue any certificate, relating to the survivorship of any joint tenant in any property shall register such a document, make such an entry, issue such a certificate, or do any other Act to enable or entitle the survivor to become registered as surviving owner, without the production of the written consent of the Commissioner.

Penalty: One hundred dollars.

**44. Assets not to be released without consent of Commissioner**

- (1) Subject to this Act, where a body corporate or unincorporate carrying on business in this State has notice of the death of a deceased person (whether received pursuant to subsection (4) of this section or otherwise) it shall not —
- (a) register, record or otherwise give effect to any dealing with any property to which this subsection applies; or
  - (b) in the case of property to which this subsection applies consisting of a policy of life assurance, satisfy that policy,

without the written consent of the Commissioner.

Penalty: One hundred dollars.

- (2) Subsection (1) of this section applies to —
- (a) property standing in the books in this State of the body corporate or unincorporate in the name of the deceased person either alone or jointly with any other person as owner or trustee; and
  - (b) property consisting of a policy of life assurance on the life of the deceased person that stands in the books in this State of the body corporate or unincorporate in the name of any other person.
- (3) Where —
- (a) any safe deposit is held in the name of any deceased person, either alone or jointly, at the premises in this State of any body corporate or unincorporate; or
  - (b) any property is deposited for safe custody in the name of any deceased person, either alone or jointly, at the premises in this State of any body corporate or unincorporate,

and the body corporate or unincorporate has notice of the death of the deceased person (whether received pursuant to subsection (4) of this section or otherwise), it shall not allow or



suffer the removal of any property from that safe deposit, or of any property so deposited for safe custody without the written consent of the Commissioner.

Penalty: One hundred dollars.

- (4) The administrator shall give notice of the death of the deceased person to a body corporate or unincorporate holding, or having on its books, property to which this section applies, within three months of the date of the grant of administration.

Penalty: Forty dollars.

- (5) It shall be a defence to any charge under subsection (4) of this section if the administrator shows that he gave the required notice within three months of the time when he first had knowledge that the body corporate or unincorporate held, or had on its books, property to which this section applied.

*[Section 44 amended by No. 144 of 1976 s.10.]*

#### **45. Exceptions in case of certain life assurance policies**

Notwithstanding section 44 a body corporate carrying on business in this State may —

- (a) satisfy any policy or policies of life assurance standing in its books in the name of a deceased person on his own life if the aggregate amount of the moneys payable thereunder does not, excluding bonus additions, exceed two thousand dollars;
- (b) satisfy any policy or policies of life assurance standing in its books in the name of any person or persons, other than the deceased person, on the life of the deceased person if the aggregate amount of the moneys payable thereunder does not, excluding bonus additions, exceed two thousand dollars;
- (c) register, record or give effect to dealings with a policy or policies of life assurance standing in its books in the name of a deceased person on the life of a person or persons other than the deceased person if the aggregate

of the surrender values thereof did not exceed two thousand dollars at the date of the death of the deceased person,

without the consent of the Commissioner.

**46. Exceptions in case of bank accounts**

(1) Notwithstanding section 44 —

(a) a payment made pursuant to section 139 of the *Administration Act 1903*, may be made without the consent of the Commissioner;

(b) where any money stands in any bank account to the credit of a deceased person jointly with any other person or persons the bank may permit the survivor or survivors to withdraw money from the account without the consent of the Commissioner so long as the balance of the money in the account does not fall below the amount of the beneficial interest held by the deceased person immediately prior to his death in the money in the account.

(2) For the purposes of this section “**bank**” means a person carrying on the business of banking and includes a society that is registered under the *Building Societies Act 1920*, and a body known as a credit union that is registered under the *Co-operative and Provident Societies Act 1903*.

*[Section 46 amended by No. 144 of 1976 s.11.]*

## **Part VIII — Valuation**

### **Division 1 — General**

#### **47. Property to be valued at date of death**

Except where this Act provides otherwise, the value for the purposes of this Act of property comprised in the estate of a deceased person is its value as at the date of the death of the deceased person.

#### **48. Outstanding options to be disregarded**

- (1) Subject to subsection (2) and (3) of this section, where any option is given over any property that has to be valued for the purposes of this Act, and that option remains unexercised but capable of being exercised at the material date at which that property has to be valued, the option shall not be taken into account in valuing the property.
- (2) Where —
  - (a) any property that has to be valued for the purposes of this Act is, at the material date at which it has to be valued, the subject of an option that remains unexercised but capable of being exercised at that date;
  - (b) that option was given or renewed within three years before that material date; and
  - (c) the value of the property at that material date is greater than —
    - (i) the value at the time of the giving or renewal of the option; and
    - (ii) the amount or value of the option consideration,

then the value to be taken shall be the value at the time of the giving or renewal of the option, or the amount of the option consideration, whichever is the greater amount.

- (3) Where any property that has to be valued for the purposes of this Act is, at the material date at which it has to be valued, the subject of an option that remains unexercised but capable of being exercised at that date, the value of any improvements to the property effected at the expense of the option-holder before that date shall be excluded for the purpose of assessing the value of the property at that date.
- (4) Nothing contained in this section affects the operation of section 52 relating to the valuation of any share or interest in a partnership.

**49. Ascertainment of value of debts**

- (1) Subject to subsection (2) of this section, where it is necessary for the purpose of calculating the final balance of the estate of a deceased person to ascertain the value of a debt (whether or not the debt is property comprised in that estate) the value shall be ascertained as if the amount thereof outstanding on the date on which the value of the debt is to be ascertained had become due and payable on that date.
- (2) Subsection (1) of this section does not apply —
  - (a) to a marketable security that, on the date referred to in that subsection, is quoted in a stock or share market in or out of this State; or
  - (b) where the terms on which the debt so referred to is repayable are such as would be expected in a normal commercial transaction or a *bona fide* family arrangement and the Commissioner is satisfied that it would not be just and reasonable in the circumstances that the subsection should apply.
- (3) Where as a result of the application of subsection (1) of this section the amount of duty assessed in respect of a debt comprised in the estate of a deceased person is greater than the amount that would have been assessable in respect of that debt if that subsection had not been applied, the Treasurer, on written application being made to the Commissioner by or on behalf of

the administrator or other person liable to pay duty, shall, unless in the opinion of the Treasurer there is good reason for not so doing, permit the payment of the additional duty incurred as a result of the application of that subsection to be deferred for such period and on such conditions, if any, as the Treasurer thinks fit.

(4) In this section —

**“debt”** means a debt of any kind whatsoever, whether secured or unsecured and whether under seal or otherwise, and includes a bill of exchange or promissory note, whether negotiable or otherwise;

**“marketable security”** means a marketable security as defined in the *Stamp Act 1921*.

**50. Valuation of shares in unadministered estates and trust estates**

Where a share or interest in any estate of a deceased person which is unadministered or in any trust estate, passes to a person, then notwithstanding that the personal representative or trustee may be domiciled out of this State, that person shall be deemed to have become entitled to a share or interest in the assets situate in this State which at the time of his becoming entitled thereto constitute or form portion of the unadministered estate or trust estate and for the purpose of computing the value of that share or interest in this State, any liabilities in this State at that time of the unadministered estate or trust estate may be set off against the value of the assets situate in this State and for the purposes of section 33 those are the assets upon which duty is a charge.

**51. Valuation of interest of tenant in common**

For the purposes of this Act the value of the undivided share in any property of any tenant in common of that property shall be ascertained by —

- (a) determining the total value of the property (valued as if that tenant in common were the sole owner);
- (b) expressing the share of that tenant in common as a fraction; and
- (c) multiplying the total value mentioned in paragraph (a) of this section by the fraction mentioned in paragraph (b) of this section.

*[Section 51 repealed and re-enacted by No. 144 of 1976 s.12.]*

## **Division 2 — Valuation of partnership interests and company shares**

### **52. Valuation of partnership interests**

- (1) In the valuation of the share or interest of any person in any partnership for the purposes of this Act, the share or interest of the partner concerned shall be that sum which bears the same proportion to the total capital of the partnership as his fractional share bears to the whole number of shares in the partnership.
- (2) In subsection (1) of this section “**total capital**” means the value of the assets of the partnership less the liabilities of the partnership.
- (3) Any legatee, beneficiary, donee or other person to whom any share or interest in a partnership passes shall be liable to pay to the person responsible for the payment of duty on such share or interest under this Act, any increase in duty which may be necessitated by valuing the share or interest of the deceased partner in accordance with subsection (1) of this section.
- (4) The person liable to pay such increase in duty shall have the same rights of objection and appeal as if he were the person responsible under this Act for the payment of the whole of the duty and the provisions of this Act shall apply accordingly, with the necessary modification, to any such objection or appeal.

- (5) In the valuation of the share or interest of a person in a partnership for the purposes of this Act, no regard need be had to any agreement between the partners as to the purchase price or the determination of the value of the share or interest or as to the passing of the share or interest of a deceased partner to another partner for no consideration or for a consideration that is less than its value as determined pursuant to subsection (1) of this section.

**53. Non-domiciled persons with partnership interests in this State**

For the purposes of this Act, where any partnership is carried on by any person or persons in this State or in this State and elsewhere and one or more of the partners therein is domiciled out of this State, the value of the share or interest of any such non-domiciled partner shall be assessed on the value of the assets actually situate in this State less the liabilities in this State and for the purposes of section 33 those are the assets upon which duty is a charge.

**54. Valuation of shares in private companies**

- (1) In the valuation of shares of a shareholder in any private company, such shares shall be valued as if the company were a partnership and the shareholders were the constituent partners.
- (2) In subsection (1) of this section “**private company**” means any company in which not more than five persons are entitled to at least two-thirds of the shares in the subscribed capital.

**55. Valuation of shares in other companies**

- (1) For the purposes of this Act, the valuation of shares in any company, whether incorporated in or out of this State, shall be made upon the assumption that the memorandum and articles of association or rules of the company, on the date on which the shares have to be valued, satisfied the requirements prescribed by the committee or governing authority of the stock exchange at the place where the share register is kept, so as to enable

those shares to be quoted on the official list of that stock exchange.

- (2) In subsection (1) of this section “company” does not include a private company within the meaning of section 54.

**55A. Deduction in respect of loss on sale of certain marketable securities**

- (1) This section applies to and in relation to any marketable securities that —
- (a) are included in the property comprised in the estate of a person who was domiciled in this State at the time of his death; and
  - (b) fall to be valued as at the date of the death of the deceased person for the purposes of this Act; and
  - (c) are sold by the administrator or other person liable to pay duty within the period of twelve months immediately following the death of the deceased person.

- (2) On a claim being made in that behalf by the administrator or other person liable to pay duty the Commissioner shall determine for the purposes of this section the amount (if any) by which —

- (a) the aggregate of the values (as at the date of the death of the deceased person) of the marketable securities to which this section applies

exceeds —

- (b) the aggregate of the values of those marketable securities at the time they were sold by the administrator or other person liable to pay duty taking the value of any marketable securities for this purpose as the price for which they were so sold or, if it is greater, the best consideration that could reasonably have been obtained for them at the time of the sale,



and in this section the amount of that excess is referred to, in relation to those marketable securities, as “the loss on sale”.

- (3) Having determined the loss on sale in relation to marketable securities to which this section applies the Commissioner shall have regard to —
- (a) all factors that, to his knowledge, have affected the value of the marketable securities at any time after the death of the deceased person including within those factors (but without limiting the duty of the Commissioner in that respect) —
    - (i) new issues of marketable securities, whether or not for consideration;
    - (ii) payments of dividends or interest;
    - (iii) reduction or return of capital consequent upon company reconstruction;
    - (iv) calls made by a company on shareholders;
  - (b) the extent (if any) to which the effect on the value of the marketable securities caused by the factors to which the Commissioner has regard pursuant to paragraph (a) of this subsection (or any of them) has in the opinion of the Commissioner been wholly or partly compensated for by the effect that those factors (or any of them) have had, within the period specified in paragraph (c) of subsection (1) of this section, on the aggregate value of other property included in the property comprised in the estate of the deceased person,

and shall adjust the loss on sale accordingly.

- (4) If the loss on sale as adjusted pursuant to subsection (3) of this section exceeds ten per centum of the aggregate of the values (as at the date of the death of the deceased person) of the marketable securities to which this section applies, the Commissioner shall, subject to subsection (5) of this section, allow the amount of the loss on sale as so adjusted as a deduction from the value for the purposes of this Act of those

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marketable securities and, as the case requires, issue or amend the assessment accordingly.

- (5) The Commissioner is not required to make a deduction pursuant to subsection (4) of this section if that deduction would result in a decrease of less than one hundred dollars in the amount of duty that has been assessed or would otherwise have been assessed, as the case may be, in respect of the estate of the deceased person.
- (6) Where, for the purposes of this section it is necessary to determine the price at which marketable securities were sold, or the best consideration that could reasonably have been obtained on the sale of marketable securities, no account shall be taken of any expenses (whether by way of brokerage, commission, stamp duty or otherwise) that are incidental to the sale.
- (7) Subject to subsection (8) of this section for the purposes of this section the date on which marketable securities were sold by the administrator or other person liable to pay duty shall be taken to be the date on which he entered into a contract to sell the marketable securities.
- (8) If the sale of any marketable securities by the administrator or other person liable to pay duty results from the exercise of an option, then, for the purposes of this section, the date on which the marketable securities were sold shall be taken to be the date on which the option was granted.
- (9) Subject to subsection (11) of this section, if, within the period specified in paragraph (c) of subsection (1) of this section, the administrator or other person liable to pay duty exchanges (with or without any payment by way of equality of exchange) any marketable securities described in paragraphs (a) and (b) of that subsection, then regardless of the nature of the property taken in exchange, if the market value of those marketable securities is at the date of exchange greater than their value as at the date of the death of the deceased person, they shall be treated for the

purposes of this section as having been sold at the date of exchange for a price equal to that market value.

- (10) For the purposes of subsection (9) of this section the market value of any marketable securities at any time means the value that would be their value for the purposes of this Act if they were included in the property comprised in the estate of a person who died at that time.
- (11) Subsection (9) of this section does not apply in relation to any exchange of marketable securities mentioned in subsection (12) of this section.
- (12) Where marketable securities of any class or description included in the property comprised in the estate of a deceased person have been exchanged for marketable securities of another class or description as the result of —
  - (a) an amalgamation of companies;
  - (b) the acquisition of the firstmentioned marketable securities under a takeover arrangement;
  - (c) any action that effects generally all holders of marketable securities of the class or description of the firstmentioned marketable securities,

the marketable securities received in exchange shall, for the purposes of this section, be deemed to have been included in the property comprised in the estate of the deceased person at his death in lieu of the marketable securities for which they were exchanged adjusted upwards or downwards, as the case may require, having due regard to any amount paid or received on behalf of the estate of the deceased person in respect of the exchange.

- (13) A claim in respect of a loss on sale of marketable securities to which this section applies —
  - (a) shall be made to the Commissioner in writing within fourteen months immediately following the death of the deceased person;

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- (b) shall specify —
  - (i) the dates of sale;
  - (ii) the price for which the marketable securities were sold;
  - (iii) all factors, known to the claimant, that have or may have affected the value of the marketable securities between the death of the deceased person and the date of sale of those securities;
- (c) shall be accompanied or supported by such further information as the Commissioner requires (generally or in a particular case) to enable him to determine and adjust the loss on sale.

- (14) In this section “**marketable securities**” means marketable securities, as defined in the *Stamp Act 1921*, that are listed on a stock exchange in Australia.

*[Section 55 inserted by No. 144 of 1976 s.13.]*

**56. Certain valuation provisions to be disregarded**

In the valuation of shares in any company for the purposes of this Act no regard need be had to any provision in the memorandum or articles of association or rules of the company whereby or whereunder the value of the shares of a deceased other member is to be determined.

## **Part IX — Objections and appeals**

### **57. Objections**

- (1) Subject to subsection (2) of this section any administrator or other person liable to pay duty, who is dissatisfied with any assessment of the Commissioner may, within forty-two days after service of the notice of assessment, or such further time as the Commissioner may allow, lodge an objection in writing with the Commissioner against the assessment.
- (2) Notwithstanding subsection (1) of this section, where an assessment is an amended assessment the administrator or other person liable to pay duty shall have no further right of objection than he would have had if the amendment had not been made, except to the extent to which, by reason of the amendment, a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.
- (3) An objection lodged under this section shall —
  - (a) set out fully and in detail the grounds of the objection; and
  - (b) where it relates to the value adopted by the Commissioner in respect of any property, be supported by valuations or other documentary evidence as to the value of the property.
- (4) The Commissioner shall consider the objection, and may either disallow it or allow it, either wholly or in part.
- (5) The Commissioner shall serve on the objector written notice of his decision on the objection.
- (6) The fact that an objection has been made with respect to any assessment does not affect the liability of the administrator or any other person to pay the duty so assessed.
- (7) If the assessment has been reduced by the Commissioner after considering the objection, any amount of duty that has been overpaid shall be refunded to the objector.

**58. Appeals**

- (1) Any administrator or other person liable to pay duty, who is dissatisfied with the decision of the Commissioner on an objection made by him may, within forty-two days after service of notice of that decision or within such further time as the Court may allow appeal to the Court in such manner as is prescribed by Rules of Court, and the Court may make such order upon such appeal as may seem just.
- (2) An objector may amend the grounds set out in his objection on such terms (if any) as the Court thinks fit.
- (3) The fact that an appeal is pending with respect to any assessment shall not in the meantime interfere with or affect the assessment the subject of that appeal, and the duty may be recovered as if no appeal were pending.
- (4) If the assessment is amended on appeal it shall be adjusted accordingly and any amount of duty that has been overpaid shall be refunded to the objector with, unless the Court otherwise orders, interest thereon at the rate declared for the time being pursuant to section 32 calculated from the date of payment of the duty to the date of the issue by the Commissioner of notice of the amended assessment.

## **Part X — Penal provisions**

### **59. Obstructing officers**

A person shall not obstruct or hinder any officer of the State Taxation Department acting in the administration of this Act.

Penalty: Two hundred dollars.

### **60. Offences**

(1) Any person who —

- (a) refuses or neglects to file any statement required to be filed by him under this Act within the time prescribed by or allowed under this Act;
- (b) makes, assists in making, or files any statement that is false in any particular;
- (c) alters a statement so as to render that statement false in any particular;
- (d) furnishes any information that is false or misleading in any particular;
- (e) without just cause or excuse, refuses or neglects to furnish any information that he has been required by the Commissioner to furnish or to produce any books, documents, or other papers, required of him by the Commissioner; or
- (f) refuses or neglects to pay any duty payable by him under this Act within the time prescribed by or allowed under this Act,

commits an offence

Penalty: One thousand dollars.

- (2) It shall be a defence to any charge under paragraph (b), (c), or (d) of subsection (1) of this section for the person charged to prove that he honestly and reasonably believed that the statement made or altered by him was not false in any particular

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or that the information furnished by him was not false or misleading in any particular, as the case may be.

- (3) A prosecution in respect of an offence against paragraph (a), (b), (c) or (d) of subsection (1) of this section may be commenced at any time.
- (4) Any person who contravenes any provision of this Act for the contravention of which no penalty is expressly provided commits an offence.

Penalty: Two hundred dollars.

**61. Institution of prosecutions**

- (1) A complaint for an offence against any provision of this Act may be laid in the name of the Commissioner by any officer of the State Taxation Department employed in the administration of this Act and authorized to lay complaints on behalf of the Commissioner, and any prosecution instituted in the name of the Commissioner shall, in the absence of evidence to the contrary, be deemed to have been instituted by his authority.
- (2) An officer referred to in subsection (1) of this section may appear on behalf of the Commissioner in any proceedings for an offence against any provision of this Act.

**62. Penalties not to affect liability**

The fact that a person has incurred a penalty under this Act does not relieve him or any other person from liability to pay duty.



## Part XI — Miscellaneous

### 63. Dispositions etc. made to avoid or diminish duty

Where the sole or predominant purpose of, or motivation for —

- (a) any disposition, arrangement, agreement, contract, obligation, engagement or transaction made, created or entered into by a person within three years before his death; or
- (b) any Act done or omitted to be done by a person within three year before his death,

was to avoid or diminish the liability to pay duty with respect to the property of that person or where, in the opinion of the Court, a person has, by virtue of any disposition, arrangement, agreement, contract, obligation, engagement or transaction made or entered into, or of any Act done or omitted to be done, with the said sole or predominant purpose or motivation, artificially reduced the liability to pay duty with respect to the property of that person, then for the purposes of this Act that property shall on the death of that person be deemed to be property comprised in his estate and its value shall be determined as if that disposition, arrangement, agreement, contract, obligation, engagement, transaction or Act had not been made, created, entered into, done or omitted to be done, as the case may be.

*[Section 63 repealed and re-enacted by No. 144 of 1976 s.14.]*

### 64. Commissioner may state a case to Court

- (1) The Commissioner may, if he thinks fit, state a case for the opinion of the Court on any question of law arising with regard to the estate of a deceased person or the assessment of duty thereon.
- (2) The Court shall hear and determine the question and notify the Commissioner of its opinion thereon.

**65.        Power of Commissioner to obtain information and inspect documents**

- (1) The Commissioner may, by notice in writing, require any person, whether an administrator or not, to furnish him with such information as he requires for the purpose of inquiring into any matter or thing that may arise in connection with the provisions of this Act, and may require the person to produce all books, documents and other papers in his custody or under his control relating to that matter or thing.
- (2) The Commissioner may require any information furnished pursuant to this section to be verified by statutory declaration.
- (3) The Commissioner, or any officer authorized by him in that behalf, shall at all reasonable times have full and free access to all lands, buildings, places, books, documents and other papers and to all registers of deeds and documents of title, for the purpose of valuing or inspecting any estate or of ascertaining the ownership thereof, or for inquiring into any matter or thing that may arise in connection with the provisions of this Act; and, for any of those purposes, the Commissioner or authorized officer may make extracts from or copies of, any of those books, documents or papers.

**66.        Inspection of statements, etc.**

Where the Commissioner is satisfied that a person is beneficially entitled to any property comprised in the estate of a deceased person for the purposes of this Act, the Commissioner may allow that person to inspect and obtain copies of, or extracts from, any statement, will or death certificate filed in the office of the Commissioner in relation to that estate, and may certify any such copy or extract to be a true copy or extract, as the case may be.

**67. Consent of Commissioner to dealings, dispositions, etc.**

In any case where the written consent of the Commissioner is needed under section 42, 43 or 44 the Commissioner may withhold that consent if —

- (a) in his opinion, it is necessary for him to do so in order to secure the recovery of any duty chargeable under this Act; or
- (b) information required by him under this Act relating to the estate in relation to which the consent is needed, has not been furnished.

**68. Evidence**

- (1) The production of any notice of assessment, or of any document under the hand or purporting to be under the hand of the Commissioner (that document purporting to be a copy of notice of assessment), shall —
  - (a) be conclusive evidence of the due making of the assessment; and
  - (b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *prima facie* evidence only.
- (2) The production of any document purporting to be under the hand of the Commissioner (that document purporting to be a copy of or extract from any statement, notice of assessment, or adjustment sheet), shall, for all purposes, be sufficient evidence of the matter therein set forth, without the production of the original.
- (3) In any proceedings against a person for refusing or neglecting to file a statement, a certificate in writing purporting to be signed by the Commissioner certifying that the statement has not been received from that person shall be *prima facie* evidence that that person has refused or neglected to file the statement.

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- (4) In any proceedings against a person for refusing or neglecting to furnish the Commissioner with any information required by the Commissioner in pursuance of section 65, a certificate purporting to be signed by the Commissioner certifying that —
- (a) that person was so required to furnish the Commissioner with the information of the nature specified in the certificate; and
  - (b) that person refused or neglected to furnish the information as and when required by the Commissioner,
- shall be *prima facie* evidence of the matters so certified.

**69. Service of notices, etc.**

Any notice or other document required or authorized to be served on or given to any administrator or other person shall be deemed to have been duly served or given —

- (a) if delivered to him personally;
  - (b) if left at his address for service shown in the statement; or
  - (c) if posted by prepaid letter post, addressed to him at his address for service shown in the statement.
- (2) Service of a notice, or other document in accordance with paragraph (c) of subsection (1) of this section shall *prima facie* be deemed to have been effected at the time when it would be delivered in the ordinary course of post.
- (3) The provisions of this section are in addition to and not in derogation of the provisions of the *Interpretation Act 1918*, or the provisions of section 528, 529 or 530 of the *Companies (Western Australia) Code*.

*[Section 69 amended by No. 10 of 1982 s.28.]*

**70. Regulations**

- (1) The Governor may make regulations prescribing any matter which by this Act is required or permitted to be prescribed, and

may make all such other regulations as may in his opinion be necessary or convenient for giving effect to or achieving the objects and purposes of this Act, and for the due administration of this Act.

- (2) Without in any way limiting the generality of the powers conferred by subsection (1) of this section, regulations may be made —
- (a) prescribing tables and rules for determining values of any property;
  - (b) prescribing fees for the inspection of documents filed in the office of the Commissioner, for the making of copies of or extracts from such documents, and for the certification of such copies or extracts;
  - (c) requiring banks and other bodies corporate and unincorporate to furnish returns in relation to payments and other transactions referred to in sections 45 and 46 and authorizing the Commissioner to approve of forms for use in the furnishing of such returns;
  - (d) prescribing forms for use in connection with this Act;
  - (e) prescribing penalties, not exceeding a fine of one hundred dollars, for any offence against the regulations.

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**NOTES**

- <sup>1.</sup> This is a compilation of the *Death Duty Assessment Act 1973* and includes all amendments effected by the other Acts referred to in the following Table.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Death Duty Assessment Act 1973</i>	80 of 1973	21 Dec 1973	1 Jan 1974 (see <i>Gazette</i> 28 Dec 1973 p.4725)
<i>Death Duty Assessment Act Amendment Act 1974</i>	79 of 1974	10 Dec 1974	10 Dec 1974
<i>Death Duty Assessment Act Amendment Act 1976</i> <sup>2,4</sup>	144 of 1976	13 Dec 1976	13 Dec 1976
<i>Death Duty Assessment Act Amendment Act 1977</i> <sup>3</sup>	2 of 1977	29 Aug 1977	29 Aug 1977
<i>Death Duty Assessment Act Amendment Act 1978</i>	60 of 1978	21 Sep 1978	21 Sep 1978
<i>Companies (Consequential Amendments) Act 1982</i> , section 28	10 of 1982	14 May 1982	1 Jul 1982 (see section 2 (1))
<i>Acts Amendment (Department of Community Services) Act 1984</i> , section 36	121 of 1984	19 Dec 1984	1 Jan 1985 (see <i>Gazette</i> 28 Dec 1984 p.4197)
<i>Hospitals Amendment Act 1994</i> , section 18 item 4 of Table	103 of 1994	11 Jan 1995	3 Feb 1995 (see <i>Gazette</i> 3 Feb 1995 p.333)

**[This Act was repealed by the Statutes \(Repeals and Minor Amendments\) Act 1997 s. 5\(1\) \(No. 57 of 1997\) as at 15 Dec 1997 \(see s. 2\)](#)**

<sup>2</sup> Section 2 of the *Death Duty Assessment Act Amendment Act 1976* (Act No. 144 of 1976) reads as follows —

“

**2. Application of amendments**

- (1) Subject to subsection (2) of this section where, immediately before the date of the coming into operation of this Act, any provision of the principal Act applied to and in relation to the death or estate of any person who died before that date, that provision shall continue to so apply on and after that date.
- (2) Notwithstanding subsection (1) of this section —

- (a) the principal Act as amended by subparagraph (ii) of paragraph (a) of section 3, paragraph (f) of section 4 and sections 5 and 6 of this Act shall apply to and in relation to the death and estate of any person dying on or after the 6th day of October, 1976;
  - (b) where, at the coming into operation of this Act, duty has not been paid in respect of the estate of a person who died on or after the 1<sup>st</sup> day of January, 1974 the principal Act as amended by sections 8 and 9 of this Act shall apply in relation to the payment of that duty.
- (3) The principal Act as amended by this Act shall apply to and in relation to the death and estate of any person dying on or after the date of the coming into operation of this Act..

”.

<sup>3</sup> Section 2 of the *Death Duty Assessment Act 1977* (Act No. 2 of 1977) reads as follows —

“

**2. Application of amendments**

- (1) Where immediately before the first day of July, 1977 any provision of the principal Act applied to and in relation to the death or estate of any person who died before that date, that provision shall continue to so apply on and after that date.
- (2) The principal Act as amended by this Act shall apply to and in relation to the death and estate of any person dying on or after the first day of July, 1977.

”.

<sup>4</sup> This interpretation was added by Act No. 144 of 1976 section 3 and applies on or after 6 October 1976.