

DEATH DUTY ASSESSMENT.

No. 144 of 1976.

**AN ACT to amend the Death Duty Assessment Act,
1973-1974.**

[Assented to 13th December, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Death Duty Assessment Act Amendment Act, 1976.*

Short title
and
citation.

(2) In this Act the Death Duty Assessment Act, 1973-1974 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Death Duty Assessment Act, 1973-1976.

Application
of amend-
ments.

2. (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 1st 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.

3. Section 5 of the principal Act is amended—

Section 5
amended.

(a) as to subsection (1)—

- (i) by deleting the definition “notional property” and substituting a definition as follows—

“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; ;

- (ii) by deleting the passage “section 3.” in the last line of the definition “the repealed provisions” and substituting the passage “section 3;” and adding after that definition a definition as follows—

“widow” and “widower” 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. ;

(b) by adding after subsection (2) subsections as follows—

(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. .

Section 10
amended.

4. Section 10 of the principal Act is amended—

(a) as to subsection (2)—

(i) by inserting before the word “the” where it first occurs in line one of paragraph (b) the passage “an amount equal to the value, immediately prior to the death of the deceased person, of”;

(ii) by deleting paragraphs (c) and (d), and substituting paragraphs as follows—

(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;

(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; ;

(iii) by deleting paragraph (e);

(iv) by deleting paragraph (g) and substituting a paragraph as follows—

(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; ;

(v) by deleting paragraphs (h) and (k);

(vi) by deleting paragraphs (l), (m), (n) and (p) and substituting paragraphs as follows—

(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;

(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;

(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. ;

- (b) by adding after subsection (3) a subsection as follows—

(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. ;

- (c) by deleting the passage “paragraph (f)” in line one of subsection (4) and substituting the passage “paragraphs (f) and (g)”;
- (d) by repealing subsection (6) and substituting subsections as follows—

(6) Where a policy of assurance has been assigned by the deceased person the reference in paragraph (1) 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. ;

- (e) by adding after subsection (10) a subsection as follows—

(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. ;

- (f) by repealing paragraph (b) of subsection (11); and

- (g) by adding after subsection (11) a subsection as follows—

(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 22
amended.

5. Section 22 of the principal Act is amended by deleting the word "twenty" where it occurs in line one of paragraph (a) and line one of paragraph (b) and substituting the word "fifty" in each case.

Section 23
amended.

6. Subsection (2) of section 23 of the principal Act is amended—

(a) by deleting the word "twenty" in the penultimate line of paragraph (a) and substituting the word "fifty";

(b) by deleting the word "twenty" in line two of paragraph (c) and substituting the word "thirty-five".

Section 24
amended.

7. Subsection (2) of section 24 of the principal Act is amended by deleting the passage "subsection (2)" in line two and substituting the passage "subsection (1)".

Section 30A
added.

8. The principal Act is amended by adding after section 30 a section as follows—

Arrange-
ments in
case of
hardship.

30A. (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 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 31
repealed
and
re-enacted.

Deferment
of duty.

9. The principal Act is amended by repealing section 31 and re-enacting that section as follows—

31. (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. .

10. Subsection (2) of section 44 of the principal Act is amended by adding after the word "stands" in the last line of paragraph (b) the words "in the books in this State of the body corporate or unincorporate".

Section 44
amended.

11. Subsection (1) of section 46 of the principal Act is amended by deleting the words "in the money in the account that accrues to the survivor or survivors by reason of the death of the deceased person" in lines nine, ten, eleven and twelve of paragraph (b) and substituting the words "held by the deceased person immediately prior to his death in the money in the account".

Section 46
amended.

12. The principal Act is amended by repealing section 51 and re-enacting that section as follows—

Section 51
repealed
and
re-enacted.

51. 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—

Valuation of
interest of
tenant in
common.

- (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. .

13. The principal Act is amended by adding after section 55 a section as follows—

Section 55A
added.

55A. (1) This section applies to and in relation to any marketable securities that—

Deduction
in respect
of loss on
sale of
certain
marketable
securities.

- (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 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 affects generally all holders of marketable securities of the class or description of the first-mentioned 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 and their value as at the date of death shall be taken to be the value, as at that date, 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;
- (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 63
repealed
and
re-enacted.

14. The principal Act is amended by repealing section 63 and re-enacting that section as follows—

Dispositions
etc. made to
avoid or
diminish
duty.

63. 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 years 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.
