

ESTATE DUTY ASSESSMENT.

No. 47 of 1928.

An Act to amend the *Estate Duty Assessment Act* 1914-1922, and for other purposes.

[Assented to 28th September, 1928.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Estate Duty Assessment Act* 1928.

Short title
and citation.

(2.) The *Estate Duty Assessment Act* 1914-1922* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Estate Duty Assessment Act* 1914-1928.

3. Section three of the Principal Act is amended by inserting in the definition of "Gift *inter vivos*", after the word "encumbrancer", the words "(other than a purchaser who is a relative by blood, marriage or adoption of the deceased person)".

Definition
of "gift
inter vivos."

3. Section four A of the Principal Act is repealed and the following sections are inserted in its stead:—

4A.—(1.) There may be a Second Commissioner of Taxation.

Second
Commissioner.

"(2.) The person for the time being holding the office of Assistant Commissioner of Taxation shall be the Second Commissioner of Taxation; and any reference in this Act to the Assistant Commissioner shall be deemed to include a reference to the Second Commissioner of Taxation.

* Act No. 22, 1914, as amended by No. 29, 1916; and No. 34, 1922.

Powers of
Assistant
Commissioner.

“4B.—(1.) Subject to this section, the Assistant Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act.

“(2.) Where in this Act the exercise of any power or function by the Commissioner, 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 by the Assistant Commissioner, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of the Assistant Commissioner in relation to that matter.

“(3.) Nothing in this section shall be deemed to confer upon the Assistant Commissioner any power or function of the Commissioner under sub-section (1.) of section four, section six, or section seven of this Act or to prevent the exercise of any power or function by the Commissioner, and the Commissioner shall have, in relation to any act of the Assistant Commissioner, the same power as if the act were done by himself.”

Delegat on
by the
Commissioner.

4. Section six of the Principal Act is amended by omitting from sub-section (1.) the words “ may, by writing under his hand, delegate to the Assistant Commissioner all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers and functions may be exercised as fully and effectually by the Assistant Commissioner as by the Commissioner, and ”.

Duty on
estates.

5. Section eight of the Principal Act is amended—

(a) by omitting paragraphs (a) and (b) of sub-section (4.) and inserting in their stead the following paragraphs :—

“(a) which passed from the deceased person by any gift *inter vivos* or by a settlement made before or after the commencement of this Act within one year before his decease :

Provided that where the gift consists of a disposition of property in pursuance of a binding contract entered into for valuable consideration by a relative by blood, marriage or adoption of the deceased the property so disposed of shall not be taken into account for the purposes of this paragraph where the purchase price exceeds three-quarters of the value of the property at the date of disposition and where the price does not exceed three-quarters of that value, shall be so taken into account only to the extent of the excess of that value over that price ; or

(b) being an interest of any kind of the deceased person for his life in property comprised in a settlement (not being a settlement made by the deceased person) which interest he surrendered to any other person within one year before his decease :

Provided that the value which shall be assessed in respect of this interest shall be the total value or amount

which would have been received by the person who surrendered the interest (calculated for the expectation of his life from the date of the surrender of the interest) if it had not been surrendered by him ; or

(c) comprised in a settlement made by the deceased person under which he had any interest of any kind for his life whether or not that interest was surrendered by him at any time before his decease ; or

(d) being the beneficial interest held by the deceased person, immediately prior to his death, in a joint tenancy or joint ownership with other persons ; or

(e) being a beneficial interest in property which the deceased person had at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person," ;

(b) by omitting from sub-section (5.) the words " charitable or public educational purposes ", and inserting in their stead the following words " or public educational purposes in Australia or to a public hospital or public benevolent institution in Australia or to a fund established and maintained for the purpose of providing money for use for such institutions or for the relief of persons in necessitous circumstances in Australia " ; and

(c) by omitting sub-section (7.) and inserting in its stead the following sub-section :—

" (7.) When any duty is lawfully paid in any place outside Australia in respect of any part of the estate situate outside Australia there shall be deducted from the total duty to which the estate is liable under this Act the lesser of the following sums—

(a) the amount of duty so paid in the place outside Australia ; or

(b) the duty which is payable under this Act in respect of that part of the estate."

6. Section sixteen of the Principal Act is amended by omitting the word " make " and inserting in its stead the words " cause to be made ".

Default
assessments.

7. Section twenty of the Principal Act is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-sections :—

Commissioner
may alter
assessments.

" (1.) In any case in which, within one year after the payment of duty on an assessment has been completely made, it appears that alterations in or additions to that assessment are necessary in order to insure its completeness and accuracy, the Commissioner may cause such alterations and additions to be made as he thinks necessary for that purpose.

“(1A.) When it appears necessary to make an alteration or addition under the last preceding sub-section and it is not reasonably practicable to make that alteration or addition within the period specified in that sub-section, the administrator shall be notified in writing within that period of the intention to make that alteration or addition and the alteration or addition shall be made and notified to the administrator not later than six months after the expiration of that period”;

(b) by inserting in sub-section (2.), after the word “affected”, the words “or other person liable to pay the duty”; and

(c) by omitting from sub-section (4.) the words “by the Commissioner”.

Evidence.

8. Section twenty-two of the Principal Act is amended by inserting in sub-section (1.), after the word “Commissioner”, the words “, Assistant Commissioner or a Deputy Commissioner”.

Objection and appeal.

9. Section twenty-four of the Principal Act is amended by omitting from sub-section (1.) the words “by the Commissioner”.

Date of payment of duty.

10. Section twenty-nine of the Principal Act is amended by inserting after the word “administrator” the words “or other person liable under paragraph (b), (c), or (d) of sub-section (3.) of section thirty-four of this Act, or under paragraph (a) of section thirty-five A of this Act, to pay the duty”.

Penalty duty.

11. Section thirty-one of the Principal Act is amended by omitting the words “of the duty unpaid” and inserting in their stead the words “per annum upon the amount of the duty unpaid”.

Duty may be sued for.

12. Section thirty-three of the Principal Act is amended by inserting, after the word “Commissioner”, the words “, Assistant Commissioner or a Deputy Commissioner”.

Duty a first charge on estate.

13. Section thirty-four of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the word “Commissioner”, the words “Assistant Commissioner or a Deputy Commissioner”;

(b) by omitting from sub-section (2.) the word “administrator” and inserting in its stead the word “person”; and

(c) by adding at the end thereof the following sub-sections:—

“(3.) Where there is no administrator of the estate of a deceased person—

(a) the duty payable in respect of the estate shall be assessed in the same manner as it would have been assessed if there had been an administrator;

(b) the duty assessed shall be payable by the persons who received the estate from the deceased person;

- (c) the duty payable by every such person shall be the sum which bears the same proportion to the total duty payable in respect of the estate as the value of the property received by that person in the estate bears to the total value of the estate ;
- (d) persons who hold interests as joint tenants in any property forming the whole or part of the estate of the deceased person shall be jointly liable to pay the duty which is payable in respect of that property, and shall each be liable for the whole duty payable in respect of that property, but any of them who has paid the duty may recover contributions, as follows :—
- (i) a person who has paid the duty in respect of any property may recover by way of contribution from any other person having an interest in that property a sum which bears the same proportion to the duty as the value of the interest of such other person in the property bears to the total value of the property ;
- (ii) every person entitled to contribution in respect of duty under this paragraph may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request, or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute ;
- (e) every person who, under the provisions of this sub-section, is liable to pay any duty shall make such returns as are prescribed or as the Commissioner requires in respect of any property for the purpose of a full assessment of the estate of the deceased person ; and
- (f) any duty assessed in a case to which this sub-section applies shall be a first charge on the property in respect of which the duty was assessed in priority to all other encumbrances whatever, and notwithstanding any change of ownership of that property it shall continue to be liable in the hands of any purchaser or holder for the payment of the duty so long as it remains unpaid :

Provided that no such charge shall be of effect as against a *bona fide* purchaser for value who at the time of purchase has made inquiry of the Commissioner as prescribed but has had no notice of the liability.

“(4.) The provisions of Part V. of this Act shall apply to any person who is liable to pay duty in accordance with the provisions of the last preceding sub-section, as if the reference to an administrator in Part V. of this Act were a reference to that person.”

14. After section thirty-five of the Principal Act the following section is inserted :—

Apportionment
of duty.

“35A. Where an estate includes property which passed from the deceased person by gift *inter vivos* or settlement—

- (a) the Commissioner may, if he thinks fit, either of his own motion or upon the request of the administrator or of any person entitled to any interest in the estate, apportion the duty between the property which so passed and the residue of the estate in proportion to the respective values of that property and the residue, and the duty apportioned to that property shall be payable by the same persons and in the same manner as it would have been payable if there had been no administrator of the estate, and the administrator and any other person entitled to any interest in the estate shall be relieved from any liability in respect of the duty apportioned to that property ; and
- (b) where there is no apportionment under the last preceding paragraph—the administrator may—
 - (i) recover, in any court of competent jurisdiction, from any person to whom property so passed, the amount of the duty assessed in respect of that property as a debt due and payable by that person to the administrator ; or
 - (ii) retain or deduct that amount out of or from any moneys in his hands belonging or payable to that person.”.

15. Section forty-five of the Principal Act is repealed and the following section is inserted in its stead :—

Power to
obtain
evidence.

“45.—(1.) The Commissioner, Assistant Commissioner or a Deputy Commissioner may by notice in writing require any person—

- (a) to furnish him with such information as he requires ; or
- (b) to attend before him, or before any officer authorized by him in that behalf, and to answer any question put by him or by that officer concerning any estate or assessment, and to produce all books, documents or other papers whatever in his custody or under his control relating thereto.

“(2.) The Commissioner, Assistant Commissioner or Deputy Commissioner may require the information or the answers to questions to be given on oath, and either verbally or in writing, and for that purpose he, or the officer so authorized by him, may administer an oath.”.

16. Section forty-seven of the Principal Act is repealed and the following sections are inserted in its stead :—

Offences.

“47.—(1.) Any person who—

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations, or to

comply with any requirement of the Commissioner, Assistant Commissioner or a Deputy Commissioner made in pursuance of this Act or the Regulations ;

- (b) without just cause shown by him, refuses or neglects duly to attend and give evidence when required by the Commissioner, Assistant Commissioner, a Deputy Commissioner or any officer duly authorized by him or to answer truly and fully any questions put to him or to produce any books or papers required of him by the Commissioner, Assistant Commissioner, a Deputy Commissioner or any such officer ; or
- (c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing in relation to any matter arising under this Act,

shall be guilty of an offence.

Penalty : One hundred pounds.

“(2.) A prosecution in respect of an offence against paragraph (a) or (c) of sub-section (1.) of this section may be commenced at any time.

“(3.) Any person who, after conviction for an offence against paragraph (a) or (b) of sub-section (1.) of this section, continues to fail to comply with the requirements of this Act or of the Regulations, or of the Commissioner, Assistant Commissioner, a Deputy Commissioner or other authorized officer in respect of which he was convicted, or who is convicted of an offence against paragraph (c) of that sub-section and repeats that offence, shall be guilty of an indictable offence.

Penalty : Five hundred pounds or imprisonment for three years.

“(4.) It shall be a defence to a prosecution for an offence against paragraph (c) of sub-section (1.) of this section if the defendant proves that the false particulars were given or the false statement was made, through ignorance or inadvertence.

“47A.—(1.) Notwithstanding anything contained in the last preceding section, any administrator who—

Offences by
administrator.

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations or by the Commissioner, Assistant Commissioner or a Deputy Commissioner ; or
- (b) fails to include in any return any part of the estate of the deceased person in respect of whose estate he is administrator,

shall—

- (i) in any case to which paragraph (a) of this sub-section applies, be liable to pay additional duty at the rate of ten per centum per annum upon the amount of duty payable by the administrator (such percentage to be calculated for the period commencing on the last day allowed for furnishing the

return or information and ending on the day on which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater; or

- (ii) in any case to which paragraph (b) of this sub-section applies, be liable to pay, by way of additional duty, the amount of One pound or double the amount of the difference between the duty properly payable and the duty which would be payable if the assessment were based upon the return lodged, whichever is the greater, in addition to any additional duty which may become payable by him in accordance with section thirty-one of this Act :

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional duty or any part thereof.

“(2.) Where proceedings have been taken to recover a penalty provided by the last preceding section or by the next succeeding section, any additional duty which would otherwise have been payable under this section by the person against whom the proceedings have been taken shall not be charged.”.

Application of
amounts.

17. The amendments effected by section two of this Act in section three of the Principal Act and by paragraphs (a) and (b) of section five of this Act in section eight of the Principal Act shall apply only to assessments in respect of estates of persons dying after the commencement of this Act and sections three and eight of the Principal Act shall remain unaffected by those amendments in the application of those sections to assessments in respect of estates of persons dying before the commencement of this Act.