

ESTATE DUTY ASSESSMENT.

No. 18 of 1942.

An Act to amend the *Estate Duty Assessment Act* 1914-1940.

[Assented to 3rd June, 1942.]

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

Short title
and citation.

1.—(1.) This Act may be cited as the *Estate Duty Assessment Act* 1942.

(2.) The *Estate Duty Assessment Act* 1914–1940* 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* 1914–1942.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. Section three of the Principal Act is amended—

Definitions.

(a) by inserting after the definition of “ Assistant Commissioner ” the following definition :—

“ ‘ Board of Review ’ means a Board of Review constituted under the *Income Tax Assessment Act* 1936 or under that Act as amended ; ” ; and

(b) by adding at the end thereof the following definition :—

“ ‘ Valuation Board ’ means a Valuation Board constituted under the *Land Tax Assessment Act* 1910–1927 or under that Act as amended.”.

4. Section eight of the Principal Act is amended—

Duty on estates.

(a) by omitting from paragraphs (a) and (b) of sub-section (4.) the words “ one year ” and inserting in their stead the words “ three years ” ;

(b) by inserting after paragraph (e) of sub-section (4.) the word and paragraph :—

“ ; or (f) being money payable to, or to any person in trust for, the widow, widower, children, grand-children, parents, brothers, sisters, nephews or nieces of the deceased under a policy of assurance on the life of the deceased where the whole of the premiums has been paid by or on behalf of the deceased, or, where part only of the premiums has been paid by or on behalf of the deceased, such portion of any money so payable as bears to the whole of that money the same proportion as the part of the premiums paid by or on behalf of the deceased bears to the total premiums paid,” ;

(c) by inserting after sub-section (4.) the following sub-section :—

“ (4A.) Where a policy of assurance on the life of the deceased was in existence at the commencement of paragraph (f) of the last preceding sub-section, in ascertaining the money payable under that policy for the purposes of that paragraph there shall be deducted from the money actually payable an amount equal to the amount which, if

* Act No. 22, 1914, as amended by No. 29, 1916 ; No. 34, 1922 ; No. 47, 1928 ; and No. 12, 1940.
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invested at the date of that commencement and accumulated at three per centum per annum compound interest with yearly rests, would have produced, as at the date of death, an amount equal to the money actually payable.”; and

(d) by inserting in sub-section (5.), before the words “to a fund” the words “as or”.

5. Section nine of the Principal Act is repealed and the following section inserted in its stead :—

Estate of
persons dying
on active
service.

“ 9.—(1.) From the value of the estate of a member of the Naval, Military or Air Forces of the Commonwealth, or of any part of the King’s dominions, or of any Ally of Great Britain who, during the present war in which His Majesty is engaged, or within three years after its termination, dies on active service or as a result of injuries received or disease contracted on active service, there shall be deducted in respect of such part of the estate as passes to the widow, children, grand-children, parents, brothers, sisters, nephews or nieces of the deceased, a sum of Five thousand pounds, or where the value of that part is less than Five thousand pounds, an amount equal to the value of that part.

“(2.) Where any property in respect of which a deduction has been allowed under the last preceding sub-section later forms the whole or part of the estate of some other such member so dying, there shall be excluded from the estate of that other member so much of that property as passes to the widow, children, grand-children, parents, brothers, sisters, nephews or nieces of the other member.

“(3.) Where the question as to whether such a member has or has not died as a result of injuries received or disease contracted on active service has been finally determined for the purposes of the *Australian Soldiers’ Repatriation Act 1920–1941* by an authority constituted under that Act, the certificate by that authority that that member has or has not so died shall, for the purposes of this Act, be conclusive evidence that the member has or has not so died, as the case may be.”.

6. After section sixteen of the Principal Act the following section is inserted :—

Value of
shares and
stock.

“ 16A.—(1.) Where the Commissioner is of the opinion that it is necessary that the following provisions should apply for the purpose of assessing the value for duty of an estate for the purposes of this Act, the following provisions shall apply :—

(a) the value of shares or stock in any company, whether incorporated in Australia or elsewhere, shall be determined upon the assumption that the memorandum and articles of association or rules of the company, at the date of death, satisfied the requirements prescribed by the Committee or governing authority of the Stock Exchange

at the place where the share or stock register is situate for the purpose of enabling that company to be placed on the current official list of that Stock Exchange ;

- (b) no regard shall, in determining the value of any such shares or stock, 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 or stock of a deceased or other member is to be determined ; and
- (c) where the estate includes any shares or stock in any company the shares or stock of which are not or is not quoted in the official list of any Stock Exchange, the Commissioner may, in his discretion, notwithstanding anything contained in the last two preceding paragraphs, adopt as the value of any such shares or stock such sum as the holder thereof would receive in the event of the company being voluntarily wound up on the date of death.

“(2.) Any Board or Court having jurisdiction to determine, for the purposes of this Act, the value of any shares or stock to which the last preceding sub-section applies, may substitute its own opinion for, or use its own discretion in lieu of, any opinion or discretion of the Commissioner under that sub-section.”.

7. Section eighteen A of the Principal Act is amended

Statutory
exemption.

- (a) by omitting paragraphs (a) and (b) of sub-section (1.) and inserting in their stead the following paragraphs :

“(a) where the whole of the estate passes by will, intestacy, gift *inter vivos*, settlement or right of survivorship to the widow, children or grand-children of the deceased—

- (i) where the value of the estate does not exceed Two thousand pounds—a sum equal to the value of the estate ; or
- (ii) where the value of the estate exceeds Two thousand pounds—the sum of Two thousand pounds decreasing by One pound for every Ten pounds by which that value exceeds Two thousand pounds up to a value of Ten thousand pounds and thereafter decreasing by One pound for every Two pounds by which that value exceeds Ten thousand pounds ;

“(b) where no part of the estate so passes to the widow, children or grand-children of the deceased—

- (i) where the value of the estate does not exceed One thousand pounds a sum equal to the value of the estate ; or
- (ii) where the value of the estate exceeds One thousand pounds—the sum of One thousand pounds decreasing by One pound for every Ten pounds by which that value exceeds One thousand pounds up to a value of Six thousand pounds

and thereafter decreasing by One pound for every Eight pounds by which that value exceeds Six thousand pounds; or"; and

- (b) by omitting from paragraph (c) of sub-section (1.) the words "or settlement" and inserting in their stead the words ", settlement or right of survivorship".

8. Section twenty of the Principal Act is repealed and the following section inserted in its stead:—

**Amendment of
assessments.**

" 20.—(1.) The Commissioner may, subject to this section, at any time amend any assessment by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that duty may have been paid in respect of the assessment.

" (2.) Where an administrator has not made to the Commissioner a full and true disclosure of all the material facts necessary for the making of an assessment, and there has been an avoidance of duty, the Commissioner may—

- (a) where he is of opinion that the avoidance of duty is due to fraud or evasion—within twelve years from the date upon which the duty became due and payable under the assessment; and
- (b) in any other case—within three years from the date upon which the duty became due and payable under the assessment,

amend the assessment by making such alterations therein or additions thereto as he thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of duty, as the case may be.

" (3.) Where an administrator has made to the Commissioner a full and true disclosure of all the material facts necessary for the making of an assessment, and an assessment is made after that disclosure, no amendment of the assessment increasing the liability of the estate in any particular shall be made except to correct an error in calculation or a mistake of fact, and no such amendment shall be made after the expiration of three years from the date upon which the duty became due and payable under that assessment.

" (4.) No amendment effecting a reduction in the liability of an estate under an assessment shall be made except to correct an error in calculation or a mistake of fact, and no such amendment shall be made after the expiration of three years from the date upon which the duty became due and payable under that assessment.

" (5.) Where an assessment has, under this section, been amended in any particular, the Commissioner may, within three years from the date upon which the duty became due under the amended assessment make, in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the estate under the assessment as is just.

" (6.) Where an application for an amendment of the assessment of an estate is made within three years from the date upon which the duty became due and payable under that assessment, and the

administrator has supplied to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application, the Commissioner may amend the assessment when he decides that application notwithstanding that that period has elapsed.

“(7.) Nothing contained in this section shall prevent the amendment of any assessment in order to give effect to the decision upon any appeal, or its amendment by way of reduction in any particular in pursuance of any objection made by the administrator or pending any appeal.

“(8.) Where—

(a) any provision of this Act is expressly made to depend in any particular upon a determination, opinion or judgment of the Commissioner; and

(b) any assessment is affected in any particular by that determination, opinion or judgment,

then if, after the making of the assessment it appears to the Commissioner that the determination, opinion or judgment was erroneous, he may correct it and amend the assessment accordingly in the same circumstances as he could under this section amend an assessment by reason of a mistake of fact.

“(9.) Every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the administrator affected or other person liable to pay the duty, and unless made with his consent shall be subject to objection.

“(10.) An administrator shall be liable only for such additional or increased duty to the extent of any property then under his control or which can be applied by him for payment of such duty, unless it is owing to fraud or evasion on his part that the proper amount of duty was not paid in the first instance, in which case he shall be personally liable for the additional or increased duty.

“(11.) If the amendment of any assessment made under this section has the effect of reducing the duty payable on the estate, the Commissioner shall refund the duty which has been paid in excess of the amount payable on the assessment as amended.”.

9. Part V. of the Principal Act is repealed and the following Part inserted in its stead :—

“PART V.—OBJECTIONS AND APPEALS.

“24.—(1.) An administrator who is dissatisfied with the assessment of the Commissioner may, within thirty days after the service of notice of assessment, post or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail the grounds on which he relies :

Objection and appeal.

Provided that, where the assessment is an amended assessment, an administrator 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.

“(2.) The Commissioner shall consider the objection and may either disallow it or allow it either wholly or in part.

“(3.) The Commissioner shall give to the objector written notice of his decision on the objection.

“(4.) If the objector is dissatisfied with the decision of the Commissioner he may, within thirty days after the service by post of notice of that decision—

(a) in writing, request the Commissioner—

(i) to refer so much of the decision as relates to the value assigned to any property included in the estate to a Valuation Board for review of that value; or

(ii) to refer so much of the decision as does not relate to the value assigned to any property included in the estate to a Board of Review for a review of that decision; or

(b) in writing, request the Commissioner to treat his objection as an appeal and to forward it to the High Court, or to the Supreme Court of a State or Territory of the Commonwealth.

“(5.) Notwithstanding anything contained in this section, where the assessment made by the Commissioner is based upon assessments made under the law of a State, a reference or an appeal shall not lie from such assessment unless an appeal has been made from the State assessment upon which the assessment under this Act is based.

Reference to
Valuation
Board.

“25.—(1.) Where the objector has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Valuation Board, the Commissioner shall, if the objector's request is accompanied by a deposit of One pound, refer the decision to the Valuation Board not later than sixty days after the receipt of the request.

“(2.) The objector shall be limited on the review to the grounds which he has stated in his objection as being those upon which he objects to the value assigned to the property.

“(3.) If the value assigned to the property included in the assessment has been reduced by the Commissioner after considering the objection, the reduced value shall be the value dealt with by the Valuation Board under the next succeeding sub-section.

“(4.) Subject to the next succeeding sub-section, the Valuation Board shall give a decision and may either confirm the value assigned to the property in the assessment or reduce or increase that value.

“(5.) In default of the appearance of the objector before the Valuation Board for the purpose of the review, the Valuation Board shall confirm the value assigned to the property in the assessment :

Provided that upon good cause shown, the Valuation Board may, within the prescribed time, re-open the matter and review the value assigned to the property in the assessment.

“(6.) The objector may, within thirty days after the Valuation Board’s decision, request the Commissioner, in writing, to refer his objection, so far as it relates to grounds not dealt with by the Valuation Board, to a Board of Review or to the High Court or the Supreme Court of a State or Territory of the Commonwealth.

“(7.) The Commissioner or the objector may, within thirty days after the date of the Valuation Board’s decision, appeal to the High Court from any decision of the Valuation Board in this connexion, which, in the opinion of the High Court, involves a question of law, and the Valuation Board shall refer to the High Court any question of law arising before the Valuation Board, and the decision of the High Court shall be final and conclusive.

“26. (1.) Where the objector has, in accordance with section twenty-four of this Act, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the objector’s request is accompanied by a deposit of One pound, refer the decision to a Board of Review not later than sixty days after the receipt of the request.

Reference to
Board of
Review.

“(2.) The objector shall be limited on the review to the grounds which he has stated in his objection.

“(3.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment dealt with by the Board of Review under the next succeeding sub-section.

“(4.) Subject to the next succeeding sub-section, the Board of Review shall give a decision and may confirm, reduce, increase or vary the assessment.

“(5.) In default of the appearance of the objector before the Board of Review, for the purpose of review, the Board of Review shall confirm the assessment :

Provided that upon good cause shown, the Board of Review may, within the prescribed time, re-open the matter and review the assessment.

“(6.) For the purpose of reviewing the assessment, a Board of Review shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of a Board of Review and its decisions upon review, shall for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner :

Provided that a Board of Review shall not reduce or increase any value assigned in the assessment to any property, but shall accept as final the value assigned to the property by the Commissioner, or, where the value has been reduced or increased by a Valuation Board, by the Valuation Board.

“(7.) The objector may, within thirty days after the decision of the Board of Review, request the Commissioner, in writing, to refer his objection, so far as it relates to the value assigned to any property in the assessment, to a Valuation Board.

“(8.) Where a Board of Review has reviewed any assessment and given any decision thereon and the value assigned to any property in that assessment is subsequently reduced or increased by a Valuation Board, the Commissioner shall vary the assessment to give effect to the decision of the Valuation Board.

“(9.) The Commissioner or the objector may, within thirty days after the decision of a Board of Review, appeal to the High Court from any decision of the Board of Review in this connexion which, in the opinion of the High Court, involves a question of law, and the Board shall refer to the High Court any question of law arising before the Board of Review, and the decision of the High Court shall be final and conclusive.

Appeals to
Court.

“27.—(1.) Where an objector has, in accordance with the provisions of this Part, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or a Supreme Court, the Commissioner shall forward it accordingly.

“(2.) The appeal shall be heard by a single Justice or Judge of the Court.

“(3.) The objector shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

“(4.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the appeal.

“(5.) On the hearing of the appeal, the Court may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment.

“(6.) The order of the Court shall be final and conclusive except as hereinafter provided.

“(7.) The costs of the appeal shall be in the discretion of the Court.

Case stated
to High Court.

“28.—(1.) The Court may, if it thinks fit, state a case in writing for the opinion of the Full Court of the High Court upon any question of law arising on the appeal.

“(2.) The High Court shall hear and determine the question, and remit the case, with its opinion, to the Court below and may make such order as to the costs of the case stated as it thinks fit.

Appeal to
High Court.

“28A. The Commissioner or the objector may appeal to the High Court in its appellate jurisdiction from any order made under subsection (5.) of section twenty-seven of this Act.

“28B. The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal or reference, and estate duty may be recovered on the assessment as if no appeal or reference were pending.

Pending appeal or reference not to affect assessment.

“28C. If the assessment is altered on the appeal or reference a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.”.

Adjustment of duty after appeal.

10. Section thirty-five of the Principal Act is amended by omitting the words “devised or bequeathed or passes by gift *inter vivos* or settlement for religious scientific charitable or public educational purposes” and inserting in their stead the words “exempt from estate duty by sub-section (5.) of section eight of this Act”.

Apportionment of duty among beneficiaries.

11.—(1.) The amendments effected by sections four, six and seven of this Act shall apply to the estates of all persons dying on or after the date of the commencement of this Act.

Application of amendments.

(2.) The amendment effected by section five of this Act shall apply to the estates of all such members so dying on or after the third day of September, One thousand nine hundred and thirty-nine, and any assessment made prior to the commencement of this Act may, in order to give effect to that amendment, be amended notwithstanding anything contained in section twenty of the Principal Act as amended by this Act.

(3.) The amendments effected by sections eight and nine of this Act shall apply to all assessments issued on or after the date of the commencement of this Act.