

ESTATE DUTY ASSESSMENT ACT 1974

No. 130 of 1974

An Act to amend the Law Relating to Estate Duty.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Estate Duty Assessment Act* 1974.¹

(2) The *Estate Duty Assessment Act* 1914-1973² 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* 1914-1974.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

3. After section 8 of the Principal Act the following section is inserted:—

Deduction in
respect of
matrimonial
residence.

“8AAA. (1) In this section, unless the contrary intention appears—
‘gross value’, in relation to any property, means—

- (a) in the case of property that does not consist of an interest in other property—
 - (i) if the property is not subject to a mortgage—the value of the property; or
 - (ii) if the property is subject to a mortgage—the amount that would be the value of the property if the property were not subject to a mortgage; or
- (b) in the case of property that consists of an interest in other property—
 - (i) if neither the first-mentioned property nor the other property is subject to a mortgage—the value of the first-mentioned property; or
 - (ii) if the first-mentioned property or the other property is subject to a mortgage, or both the first-mentioned property and the other property are subject to mortgages—the amount that would be the value of the first-mentioned property if neither that property nor the other property were subject to a mortgage;

‘mortgage’ includes any charge or other encumbrance;

‘prescribed amount’ means—

- (a) if the value or the sum of the values of the relevant property does not exceed \$35,000—that value or sum; or
- (b) if the value or the sum of the values of the relevant property exceeds \$35,000—an amount of \$35,000 reduced by \$7 for every \$10 by which that value or sum exceeds \$35,000;

‘relevant property’, in relation to the estate of a deceased person, means property that was included in the estate as mentioned in paragraph (b) of sub-section (5);

‘share’ means a share in the capital of a company, and includes stock.

“(2) A reference in this section to the sole or principal residence of a deceased person and the spouse of that person includes—

- (a) in the case of a dwelling-house—a reference to a garden or portion of ground adjacent to the dwelling-house and used by them in association with the dwelling-house; or
- (b) in the case of a flat or home unit—a reference to a garage or store-room used by them in association with the flat or home unit.

“(3) Subject to sub-section (4), the value of any relevant property that was included in the estate of a deceased person shall, for the purposes of this section, other than the definition of ‘gross value’ in sub-section (1), be taken to be—

- (a) in a case to which paragraph (b) does not apply—the gross value of the property immediately before the death of the person; and
- (b) in a case where the relevant property consists of an interest in shares—the gross value of the shares immediately before the death of the person reduced by such amount, if any, as the Commissioner considers appropriate having regard to the extent of the interest.

“(4) If the estate of a deceased person included any property mentioned in paragraph (b) of sub-section (5) and—

- (a) in the case of property mentioned in sub-paragraph (i) of that paragraph—the property that was the residence referred to in that sub-paragraph; or
- (b) in the case of property mentioned in sub-paragraph (ii) of that paragraph—the flat or home unit that was the residence referred to in that sub-paragraph,

was, at the time immediately before the death of the person, used partly for a purpose or purposes other than the purpose of constituting that residence, the amount that, for the purposes of this section, would, but for this sub-section, be the value of the property so included in the estate shall be reduced by such amount as the Commissioner considers reasonable having regard to the extent to which the property referred to in

paragraph (a) of this sub-section or the flat or home unit referred to in paragraph (b) of this sub-section, as the case may be, was so used for that other purpose or those other purposes.

“(5) Where—

- (a) a person who died on or after 30 April 1974 was, at the time immediately before the death of the person, domiciled in Australia;
- (b) the estate of the deceased person included—
 - (i) property that was, or constituted an interest in property that was, the sole or principal residence of the deceased person and the spouse of the person at the time immediately before the death of the person; or
 - (ii) property being shares, or an interest in shares (including an interest of a purchaser under a contract to purchase the shares), that gave rise to a right of occupancy in relation to a flat or home unit that was the sole or principal residence of the deceased person and the spouse of the person at the time immediately before the death of the person; and
- (c) the whole or a part of the relevant property passed to or for the benefit of the widow or widower of the deceased person by will, intestacy, gift *inter vivos*, settlement or right of survivorship,

there shall, subject to sub-sections (6) and (7), be deducted from the gross value of the estate liable to be assessed an amount equal to the prescribed amount.

“(6) If any relevant property is property that was included in the estate of the deceased person by reason of paragraph (a), (c) or (e) of sub-section (4) of section 8 (in this sub-section referred to as ‘notional property’) the amount to be deducted under sub-section (5) shall not exceed the amount that would have been the value, or the sum of the values, of all the relevant property if the value or values for the purposes of this section of any notional property were taken to be the amount or amounts that was or were included in the gross value of the estate as the value or values of that notional property.

“(7) Where a part only of any relevant property passed by will, intestacy, gift *inter vivos*, settlement or right of survivorship to or for the benefit of the widow or widower of the deceased person, the amount that would, but for this sub-section, be deducted from the gross value of the estate by virtue of sub-section (5) shall be reduced by such amount as the Commissioner considers appropriate.”

Quick
succession
rebates.

4. Section 8A of the Principal Act is amended—

- (a) by omitting from sub-section (2) the word “The” (first occurring) and substituting the words “Subject to sub-section (2A), the”;

- (b) by inserting after sub-section (2) the following sub-section—

“(2A) Where, in pursuance of section 48A, a person has been released from the liability to pay an amount of duty in respect of the estate of the predecessor by reason that the exaction of that amount of duty would entail serious hardship to the successor, the average rate of duty applicable to the estate of the predecessor shall, for the purposes of sub-section (2), be reduced by an amount per dollar ascertained by dividing the amount to which the release relates by —

- (a) where the whole of the estate of the predecessor passed to the successor—the number of whole dollars in the value for duty of the estate of the predecessor; or
 - (b) where part only of the estate of the predecessor passed to the successor—the number of whole dollars in the part of the value for duty of the estate of the predecessor that, in the opinion of the Commissioner, was attributable to that part of the estate of the predecessor.”;
- (c) by inserting in paragraph (c) of sub-section (5), after the word “estate” (last occurring), the words “and before taking into account any release granted under section 48A”; and
- (d) by inserting in paragraph (d) of sub-section (5), after the word “estate” (last occurring), the words “and before taking into account any release granted under section 48A”.

5. Section 9E of the Principal Act is amended—

- (a) by inserting in paragraph (c) of sub-section (3), before the words “the amount of the duty”, the words “subject to paragraph (ca),”;
- (b) by omitting from the end of paragraph (c) of sub-section (3) the word “and”;
- (c) by inserting after paragraph (c) of sub-section (3) the following paragraph:—

“(ca) where a deduction from the gross value of the estate liable to be assessed is allowable under section 8AAA, then, for the purposes of paragraph (c), the value of the whole of the property of the deceased person referred to in that paragraph shall be reduced by the amount of that deduction and, where the property included in the estate as mentioned in paragraph (b) of sub-section (5) of section 8AAA constitutes rural property, the value of the rural property included in the estate shall be reduced by a like amount; and”.

Rebate of
duty.

6. Section 18A of the Principal Act is amended by inserting after sub-section (2) the following sub-section:—

“(2A) Notwithstanding sub-section (2), any deduction allowable under section 8AAA shall, in calculating the value of a part of the estate

Statutory
exemption.

for the purposes of this section, be applied in reducing or extinguishing successively—

- (a) the amount that would, apart from the deduction, be the value of the part of the estate that passed to the widow, children or grandchildren of the deceased person; and
- (b) the amount that would, apart from the deduction, be the value of the part of the estate that did not so pass.”.

7. After section 48 of the Principal Act the following section is inserted:—

Release from
liability for
duty in cases
of hardship.

“48A. (1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Department of the Treasury and the Comptroller-General of Customs, or of such substitutes for all or any of them as the Minister appoints from time to time, that—

- (a) the exaction of the full amount of duty payable in respect of an estate will entail serious hardship to a beneficiary in the estate; and
- (b) if the person liable to pay the duty were released in whole or in part from his liability, the benefit resulting from the release would accrue to the beneficiary,

the Board may release the person liable to pay the duty in whole or in part from his liability.

“(2) The Commissioner or his substitute shall be Chairman of the Board, and the decision of the majority of the members of the Board shall prevail.

“(3) Where an application is made for release in respect of an amount of duty, the Board—

- (a) shall, if that amount is not less than \$2,000; and
- (b) may, if that amount is less than \$2,000,

refer the application to a Board of Review for a report by a member of the Board of Review and shall notify the applicant in writing of its having done so.

“(4) An application that is referred to a Board of Review under subsection (3) shall be dealt with by the Chairman of that Board or such other member of that Board as the Chairman authorizes in writing.

“(5) The applicant may appear before the member of the Board of Review or the member of the Board of Review may require the applicant to appear before him (which appearance may, at the option of the applicant, be in person or by a representative) and the member of the Board of Review may examine the applicant or the representative of the applicant upon oath or affirmation concerning any statements that the applicant has, or desires to have, placed before the Board constituted under this section.

“(6) The member of the Board of Review shall be assisted in his examination of the applicant or the representative of the applicant by an officer employed in the Australian Taxation Office who is a qualified accountant.

“(7) The member of the Board of Review may permit the applicant or the representative of the applicant to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

“(8) If an application is made by a person other than the beneficiary, references in sub-sections (5), (6) and (7) to the applicant include references to the beneficiary.

“(9) The member of the Board of Review shall cause a record to be made of the information obtained by him during his examination.

“(10) The member of the Board of Review shall—

- (a) submit a report to the Board constituted under this section upon the facts disclosed by his examination, together with the record referred to in sub-section (9); and
- (b) draw the attention of that Board to any facts that, in his opinion, have particular bearing upon the application.

“(11) In lieu of referring an application to a Board of Review in accordance with sub-section (3), the Board constituted under this section may refer the application to the Chairman of a Valuation Board, in which event sub-sections (5), (6), (7), (9) and (10) apply as if the references in those sub-sections to the member of the Board of Review were references to the Chairman of that Valuation Board.

“(12) In any case where the amount of duty in respect of which an application is made under this section does not exceed \$200, the powers conferred by sub-section (1) on the Board specified in that sub-section may be exercised by the Commissioner.”.

8. Nothing in section 20 of the *Estate Duty Assessment Act* 1914-1974 prevents the amendment of an assessment made before the commencement of this Act for the purpose of giving effect to the amendments made by sections 3, 4 and 5 of this Act. Amendment
of
assessments.

NOTES

1. Act No. 130, 1974; assented to 6 December 1974.
2. Act No. 22, 1914, as amended by No. 29, 1916; No. 34, 1922; No. 47, 1928; No. 12, 1940; No. 18, 1942; No. 16, 1947; No. 80, 1950; Nos. 1 and 52, 1953; No. 94, 1956; No. 60, 1957; No. 97, 1962; No. 72, 1963; Nos. 32 and 138, 1965; Nos. 53 and 93, 1966; No. 40, 1967; No. 9, 1970; No. 95, 1972; and No. 216, 1973 (as amended by No. 20, 1974).