

ESTATE DUTY ASSESSMENT AMENDMENT ACT 1978

No. 22 of 1978

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

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

Short title,
&c.

1. (1) This Act may be cited as the *Estate Duty Assessment Amendment Act 1978*.¹

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

Commence-
ment

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

Interpret-
ation

3. Section 3 of the Principal Act is amended—

(a) by omitting the definition of “Children” and substituting the following definition:

“ ‘Child’ or ‘Children’, in relation to a person, includes an adopted child, a step-child or an ex-nuptial child of that person; ”;

(b) by inserting after the definition of “Gift *inter vivos*” the following definition:

“ ‘Member of the family’, in relation to a deceased person, means the widow or widower, a child, a grandchild, a parent or a grandparent of that person; ”; and

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

“(2) For the purposes of the definition of ‘Member of the family’ in sub-section (1)—

(a) ‘grandparent’, in relation to a person, means a person of whom that person is the grandchild; and

(b) ‘parent’, in relation to a person, means a person of whom that person is the child,

and, for the purposes of that definition and the definition of ‘grandparent’ in this sub-section—

(c) ‘grandchild’, in relation to a person, means a person who is the child of a child of that person.”.

Duty on
estates

4. (1) Section 8 of the Principal Act is amended by adding at the end of sub-section (1) “dying before 1 July 1979”.

(2) Section 8 of the Principal Act is amended by inserting in subparagraph (vi) of paragraph (b) of sub-section (5) “, The National Trust of Australia (Northern Territory), National Trust of Australia (A.C.T.)” after “National Trust of Australia (Tasmania)”.

(3) Section 8 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

“(5A) Duty shall not be assessed or payable upon so much of the estate as passes by will, intestacy, gift *inter vivos*, settlement or right of survivorship to, or for the benefit of, a member or members of the family of the deceased person.”.

5. Section 8AAA of the Principal Act is repealed.

Deduction in respect of property passing to widow or widower

6. (1) Section 10 of the Principal Act is amended by inserting after sub-section (1) the following sub-section: Returns to be lodged

“(1A) Sub-section (1) does not apply in relation to the estate of a person who dies on or after 1 July 1979.”.

(2) Section 10 of the Principal Act is amended—

(a) by omitting sub-section (3) and substituting the following sub-section:

“(3) Unless he is required by the Commissioner by notice in writing so to do, it shall not be necessary for the administrator to furnish a return in accordance with sub-section (1) in respect of an estate where—

(a) the whole of the estate passes to, or for the benefit of, a member or members of the family of the deceased person; or

(b) the value of the estate does not exceed \$20,000.”; and

(b) by omitting from sub-section (5) the words “deductions (if any) allowable under sections 8AAA and 18A” and substituting “deduction (if any) allowable under section 18A”.

7. Section 18A of the Principal Act is repealed and the following section substituted:

“18A. (1) From the value of the estate there shall be deducted—

Statutory exemption

(a) in the case of an estate in relation to which Part IIIA applies—

(i) where the value of the estate does not exceed \$24,000—a sum equal to the value of the estate; or

(ii) where the value of the estate exceeds \$24,000—the sum of \$24,000 decreased by \$2 for every \$8 by which that value exceeds \$24,000; or

(b) in any other case—

- (i) where the value of the estate does not exceed \$20,000—a sum equal to the value of the estate; or
- (ii) where the value of the estate exceeds \$20,000—the sum of \$20,000 decreased by \$2 for every \$8 by which that value exceeds \$20,000,

and the balance remaining shall be the value for duty of the estate.

“(2) For the purposes of this section, ‘value of the estate’ means the value ascertained by deducting from the gross value of the estate liable to be assessed all the deductions allowable under this Act except the deduction allowable under this section.”.

Amend-
ment of
assessments

8. Section 20 of the Principal Act is amended by inserting after sub-section (6) the following sub-section:

“(6A) Nothing contained in this section shall prevent the amendment of an assessment, either to reduce or (except in the case of an assessment made before the commencement of this sub-section) to increase the duty payable in respect of an estate, in order to take account, for the purposes of this Act, of any assessment, or any amendment of an assessment, of probate or succession duties payable in relation to the estate under any State Act or of any refund or rebate of, or any alteration in the amount of, any such probate or succession duties payable in relation to the estate, but no amendment shall be made under this sub-section after the expiration of 3 years from the date upon which duty became due and payable under the first-mentioned assessment.”.

Apportion-
ment of duty
among ben-
eficiaries

9. Section 35 of the Principal Act is amended by omitting the proviso.

Release from
liability for
duty in cases
of hardship

10. Section 48A of the Principal Act is amended by omitting from sub-section (1) “Department of the Treasury” and substituting “Department of Finance”.

Application
of amend-
ments, &c.

11. (1) The amendment made by sub-section 4 (2) applies, and shall be deemed to have applied, to the estates of persons who died on or after—

- (a) in the case of an estate or part of an estate devised or bequeathed or passing by gift *inter vivos* or settlement to or for the benefit of The National Trust of Australia (Northern Territory)—16 November 1976; or
- (b) in the case of an estate or part of an estate devised or bequeathed or passing by gift *inter vivos* or settlement to or for the benefit of the National Trust of Australia (A.C.T.)—20 December 1976.

(2) The amendments made by section 3, sub-section 4 (3), section 5, sub-section 6 (2) and sections 7 and 9 apply, and shall be deemed to

have applied, in relation to the estates of persons who died on or after 21 November 1977.

(3) The amendment made by section 10 does not affect the jurisdiction of a Board constituted under section 48A of the Principal Act in relation to any application made under that section the consideration of which had commenced before the commencement of this sub-section.

(4) Nothing in section 20 of the Principal Act prevents the amendment of an assessment made before the commencement of this Act for the purpose of giving effect to any of the amendments made by this Act.

NOTES

1. Act No. 22, 1978; assented to 7 June 1978.
2. Act No. 22, 1914, as amended. For previous amendments *see* Act 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; No. 216, 1973 (as amended by No. 20, 1974); No. 130, 1974; and No. 169, 1976.