



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 90 of 1975

An Act to amend the Succession Duties Act, 1929-1973.

[Assented to 20th November, 1975]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Succession Duties Act Amendment Act, 1975". Short titles.

(2) The Succession Duties Act, 1929-1973, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Succession Duties Act, 1929-1975".

2. Section 4 of the principal Act is amended—

(a) by striking out from subsection (1) the definitions of "administration" and "administrator" and inserting in lieu thereof the following definitions:—

"administration" means—

(a) probate or letters of administration (with or without a will annexed) granted under the law of this State or of some other place;

(b) any rule or order of a court or judge, and any deed or document whereby a person becomes entitled under the law of this State, or of some other place, to administer, take charge of, or become receiver of, any property of a deceased person:

"administrator" means—

(a) any executor to whom probate of a will has been granted;

Amendment of
principal Act,
s. 4—
Interpretation.

(b) any person to whom letters of administration, with or without a will annexed, have been granted;

or

(c) any person who becomes entitled to administer, take charge of, or become receiver of, any property of a deceased person,

either under the law of this State or any other place;

(b) by inserting after the definition of "property" in subsection (1) the following definition:—

"putative spouse" in relation to a deceased person means a person adjudged under the Family Relationships Act, 1975, to have been a putative spouse of the deceased person as at the date of his death;

and

(c) by inserting after the definition of "settlement" in subsection (1) the following definition:—

"spouse" in relation to a deceased person means a person who was his lawful spouse on the date of his death and includes a putative spouse.

Enactment of
s. 4b of
principal Act—

3. The following section is enacted and inserted in the principal Act immediately after section 4a thereof:—

Application of
Succession
Duties Act
Amendment
Act, 1975.

4b. (1) This Act applies to and in relation to property derived from a deceased person who died before the commencement of the Succession Duties Act Amendment Act, 1975, in all respects as if that amending Act had not been enacted.

(2) This Act, as amended by the Succession Duties Act Amendment Act, 1975, applies to and in relation to property derived from a deceased person who died after the commencement of that amending Act.

Amendment of
principal Act,
s. 8—
Property
on which duty
is payable.

4. Section 8 of the principal Act is amended by inserting after subsection (1b) the following subsection:—

(1c) Notwithstanding the provisions of subsection (1) of this section, where—

(a) a deceased person made, during his lifetime, a gift to his spouse of an interest in a dwellinghouse with the intention that the dwellinghouse should be held jointly, or in common, by the deceased and his spouse as a matrimonial home;

and

(b) the dwellinghouse was the principal home of the deceased and his spouse at the date of death of the deceased,

the interest the subject of the gift shall not be deemed to be property derived from the deceased person.

5. Sections 9 and 9a of the principal Act are repealed and the following section is enacted and inserted in their place:—

Repeal of ss. 9 and 9a of principal Act and enactment of section in their place—

9. In calculating the net present value of property derived by any person for the purpose of assessing the duty payable thereon, no allowance shall be made—

Calculation of net present value of property derived.

- (a) by reason of the payment of, or the liability to pay any estate duties, succession duties, or other death duties under the law of this State, of the Commonwealth, or of any other place;
 - (b) by reason of any direction that the property is to be taken free of duty;
- or
- (c) by reason of any actual or prospective delay in obtaining administration of the property and in administering that property.

6. The following section is enacted and inserted in the principal Act immediately after section 10c:—

Enactment of s. 10d of principal Act—

10d. (1) Subject to subsection (2) of this section, where it is necessary for the purpose of assessing duty under this Act to ascertain the value of a debt (whether or not the debt, or the value of the debt, is included in the dutiable estate of the deceased person) the value shall be ascertained as if the outstanding amount of the debt had become due and payable immediately before the death of the deceased person.

Ascertainment of value of debt.

(2) Subsection (1) of this section does not apply in relation to—

- (a) a marketable security;
- or
- (b) a debt, the terms and conditions of which are such as would, in the opinion of the Commissioner, be expected in a normal commercial transaction.

7. Section 51 of the principal Act is amended—

Amendment of principal Act, s. 51—
Interest on duty.

(a) by striking out from subsection (1) the word “Interest” being the first word in subsection (1) and inserting in lieu thereof the passage “Subject to subsection (3) of this section, interest”;

(b) by striking out the proviso to subsection (1);

and

(c) by inserting after subsection (2) the following subsection:—

(3) The commissioner may, in any case where reasonable cause exists for doing so—

(a) postpone for such period as he thinks fit the date from which interest is chargeable under this section;

or

(b) remit wholly or in part the interest chargeable under this section.

Amendment of
principal Act,
s. 55—
When too
much duty paid.

8. Section 55 of the principal Act is amended—

(a) by striking out the passage “interest at the rate of four dollars per centum per annum” and inserting in lieu thereof the passage “interest at the rate fixed pursuant to subsection (2) of this section”;

and

(b) by inserting after the present contents thereof as amended by this section (which are hereby designated subsection (1) thereof) the following subsection:—

(2) The Treasurer may, from time to time, by notice published in the *Gazette*, fix the rate of interest payable under subsection (1) of this section.

Amendment of
principal Act,
s. 55b—
Remission of
duty in case of
persons dying
on active
service.

9. (1) Section 55b of the principal Act is amended by striking out subsection (3).

(2) This section is suspended until the day on which the Family Relationships Act, 1975, comes into operation.

Amendment of
principal Act,
s. 55c—
Remission of
succession duty
where death is
caused by the
war.

10. Section 55c of the principal Act is amended by striking out from subsection (2) the passage “the widow or widower” and inserting in lieu thereof the passage “a spouse”.

Amendment of
principal Act,
s. 55e—
Interpretation.

11. Section 55e of the principal Act is amended—

(a) by striking out the definition of “dwellinghouse” and inserting in lieu thereof the following definition:—

“dwellinghouse” includes a part of a building used as a residence: ;

(b) by striking out from the definition of “land used for primary production” the passage “in relation to a deceased person, means land which the commissioner is satisfied has been during the whole period of three years immediately preceding the death of the deceased person used by that person or the wife or husband or any descendant or ancestor of that person” and inserting in lieu thereof the passage “means land that is used”.

(c) by striking out paragraphs (a), (b), (c) and (d) of the definition of “land used for primary production” and inserting in lieu thereof the following paragraphs:—

(a) land given or accruing to an uncertain person or on an uncertain event, not being—

(i) land devised by a testator to his child contingently on his attaining a certain age;

or

(ii) land devised by a testator to a beneficiary contingently on his surviving the testator for a period not exceeding one calendar month;

(b) land devised for a term of years;

or

(c) an annuity or bequest secured by or charged upon land;

and

- (d) by striking out from the definition of "rural property" the passage "the wife or husband" and inserting in lieu thereof the passage "a spouse".

12. Section 55f of the principal Act is amended—

- (a) by striking out the passage "widow or widower" and inserting in lieu thereof the word "spouse";
and
(b) by striking out the passage "widow, widower" and inserting in lieu thereof the word "spouse".

Amendment of principal Act, s. 55f—
Rebate to spouse, ancestor or descendant.

13. Section 55g of the principal Act is amended—

- (a) by striking out the passage "the widow or widower" and inserting in lieu thereof the passage "a spouse";
and
(b) by striking out the passage "widow, widower" and inserting in lieu thereof the word "spouse".

Amendment of principal Act, s. 55g—
Special rebate in respect of land used for primary production.

14. Sections 55h and 55i of the principal Act are repealed and the following section is enacted and inserted in their place:—

55h. (1) Subject to this section, where property is derived by a spouse, ancestor or descendant of the deceased person the general statutory amount is the sum of the following amounts (so far as they may be applicable):—

Repeal of ss. 55h and 55i of principal Act and enactment of section in their place—

General statutory amount.

- (a) where an interest in a dwellinghouse is derived from the deceased person by a beneficiary of the first category and the dwellinghouse was, in the opinion of the Commissioner, the principal home of the deceased and of that beneficiary at the date of death of the deceased—an amount determined as follows:—

- (i) if the aggregate value of the property derived from the deceased person by that beneficiary does not exceed \$A the amount is—

(A) an amount equal to the value of the interest;

or

(B) an amount of \$B,

whichever is the lesser;

- (ii) if the aggregate value of the property derived from the deceased person by that beneficiary exceeds \$A but does not exceed \$C, the amount is—

(A) an amount equal to the value of that interest;

or

(B) an amount equal to one-half of the sum by which \$C exceeds the aggregate value of the property derived,

whichever is the lesser;

(b) where property is derived from the deceased person by a beneficiary of the second category, an amount of \$D less—

(i) one-half of the sum by which the aggregate value of the property derived exceeds \$C;

or

(ii) an amount of \$E,

whichever is the lesser;

and

(c) where property is derived from the deceased person by a beneficiary of the third category—an amount of \$F.

(2) Where two or more beneficiaries derive from a deceased person interests in a dwellinghouse that attract the benefit of paragraph (a) of subsection (1) of this section, the amount attributable to each beneficiary under that paragraph is determined as follows:—

(a) an amount is first determined as if all such interests had been derived by a single beneficiary;

and

(b) an apportionment of that amount is then made between those beneficiaries according to the proportion that the value of the interest in the dwellinghouse derived by each bears to the aggregate value of all such interests derived by beneficiaries entitled to the benefit of that paragraph.

(3) Where property is derived from a deceased person by a lawful spouse, and by a putative spouse, of the deceased, the amount attributable to each spouse under paragraph (b) of subsection (1) of this section is determined as follows:—

(a) an amount is first determined as if all the property derived by both spouses had been derived by a single spouse;

and

(b) an apportionment is then made between the spouses according to the proportionate share of each in the total property derived by both spouses.

(4) In this section—

\$A = \$35 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

\$B = \$17 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

\$C = \$69 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$D = \$18\,000$, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$E = \$6\,000$, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$F = \$6\,000$, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year.

(5) After the thirtieth day of September but before the thirty-first day of December in 1976 and each subsequent year the Treasurer shall cause to be published in the *Gazette* a notice attributing values to the symbols referred to in subsection (1) of this section and the values so attributed shall be determined as follows (calculating to the nearest \$1 000):—

$\$A = \$35\,000$ plus the amount by which $\$B$ exceeds \$17 000 and the amount by which $\$D$ exceeds \$18 000:

$\$B = \$17\,000$ multiplied by the factor by which, in the opinion of the Valuer-General, the average market value of residential properties in South Australia as at the thirtieth day of September, 1975, must be multiplied in order to arrive at the average market value of residential properties as at the thirtieth day of September immediately preceding publication of the notice:

$\$C = \$69\,000$ plus the amount by which $\$D$ exceeds \$18 000 and three times the amount by which $\$B$ exceeds \$17 000:

$\$D = \$18\,000$ multiplied by the factor (calculated to four decimal places) by which the consumer price index (All Groups for Adelaide) for the September quarter 1975 must be multiplied in order to arrive at the consumer price index for the September quarter last preceding publication of the notice:

$\$E = \D less \$12 000:

$\$F = \$6\,000$ multiplied by the same factor used to arrive at $\$D$.

(6) In this section—

“beneficiary of the first category” in relation to a deceased person means—

(a) a spouse of the deceased person;

(b) a child of the deceased person who—

(i) became an orphan child by reason of the death of the deceased;

and

(ii) was, on the date of death of the deceased, under the age of eighteen years;

or

(c) a child of the deceased person who was, in the opinion of the Commissioner, wholly engaged throughout the period of twelve months immediately preceding the deceased person's death in keeping house for the deceased person:

“beneficiary of the second category”, in relation to a deceased person, means—

(a) a spouse of the deceased person;

or

(b) a child of the deceased person who was, on the date of death of the deceased, under the age of eighteen years:

“beneficiary of the third category” in relation to a deceased person, means—

(a) an ancestor of the deceased person;

or

(b) a descendant of the deceased person who is not a beneficiary of the second category.

Repeal of s. 55j of principal Act and enactment of section in its place—
Special statutory amount in respect of rural property.

15. Section 55j of the principal Act is repealed and the following section is enacted and inserted in its place:—

55j. (1) Subject to subsection (2) of this section, where property derived by a spouse, ancestor, or descendant of a deceased person includes any beneficial interest in rural property, the special statutory amount is one-half of the value of that interest.

(2) Where rural property was held by the deceased person jointly or in common with any other person or persons (whether or not a beneficiary or beneficiaries of the deceased) the special statutory amount attributable to a beneficiary under subsection (1) of this section in respect of that property shall be reduced by the proportion that the value of the interest of that person or those persons bore, immediately before the death of the deceased, to the total value of that rural property.

Amendment of principal Act, s. 55k—
Administrator to apply in certain cases.

16. Section 55k of the principal Act is amended—

(a) by striking out from subsection (1) the passage “or in respect of moneys received under a policy of assurance”;

(b) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) Where property derived by a beneficiary from a deceased person includes both an interest in a dwellinghouse and an interest in rural property, a claim may be made for a rebate under this Part—

(a) in respect of the dwellinghouse;

or

(b) in respect of the rural property,
but not in respect of both.;

(c) by striking out from subsection (3) the passage “widow, widower, descendant or ancestor, as the case may be,” and inserting in lieu thereof the passage “beneficiary in respect of whom the rebate is claimed”;

and

(d) by striking out from subsection (4) the passage “the widow, widower, descendant or ancestor, as the case may be (or in the case of rural property the guardian of any descendant being a minor)” and inserting in lieu thereof the passage “any such beneficiary”.

17. Section 55m of the principal Act is amended by striking out from paragraph (b) the passage “one half of an acre” and inserting in lieu thereof the passage “0.2 hectare”.

Amendment of
principal Act,
s. 55m—
Valuation of
dwellinghouse.

18. Section 55n of the principal Act is amended—

(a) by striking out from subsection (2) the passage “paragraphs (d) to (p) (inclusive)” and inserting in lieu thereof the passage “paragraphs (d) to (h) (inclusive) and paragraphs (m) to (p) (inclusive)”;

and

(b) by inserting after subsection (2) the following subsection:—

(3) No rebate shall be allowed under this Part in respect of land used for primary production unless the Commissioner is satisfied that—

(a) the deceased person, or a spouse, descendant or ancestor of the deceased person was using the land for the business of primary production immediately before the death of the deceased person;

and

(b) that person—

(i) has used the land for the business of primary production;

or

(ii) has been solely or principally engaged in the business of primary production,

throughout the period of three years immediately preceding the date of death of the deceased person.

19. (1) Section 56a of the principal Act is repealed.

Repeal of s. 56a
of principal
Act.

(2) This section is suspended until the day on which the Family Relationships Act, 1975, comes into operation.

Amendment of
principal Act,
s. 63a—
Prohibition of
dealing with
shares, etc.

20. Section 63a of the principal Act is amended—

- (a) by striking out from paragraph (b) of the proviso to subsection (3) the passage “one thousand two hundred dollars” and inserting in lieu thereof the passage “two thousand dollars”;
- (b) by striking out from paragraph (b) of the proviso to subsection (3) the passage “the widow, widower” and inserting in lieu thereof the passage “a spouse”;
- (c) by striking out from paragraph (b) of subsection (6) the passage “the widow or widower” and inserting in lieu thereof the passage “a spouse”.

Amendment of
second schedule
of principal
Act.

21. The second schedule to the principal Act is amended by striking out the passage “the widow, widower” and inserting in lieu thereof the passage “a spouse”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor