

ESTATE DUTY ASSESSMENT.

No. 22 of 1914.

An Act relating to the Imposition, Assessment, and
Collection of Duties upon the Estates of
Deceased Persons.

[Assented to 21st December, 1914.]

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

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Estate Duty Assessment Act* Short title.
1914.

2. This Act shall be divided into Parts as follows :— Parts.

- PART I.—Introductory.
- PART II.—Administration.
- PART III.—Estate Duty.
- PART IV.—Returns and Assessments.
- PART V.—Objections and Appeals.
- PART VI.—Collection and Recovery of Duty.
- PART VII.—Miscellaneous.

3. In this Act, unless the contrary intention appears— Definitions.

“Administrator” means any executor to whom probate of a will is granted, or any person to whom letters of administration, with or without a will annexed, is granted, and also any person who, by virtue of any administration, becomes entitled to administer, take charge of, or become receiver of, any property of a deceased person :

“Debts” includes probate and succession duties payable under any State Act, but does not include voluntary debts.

“Duty” means estate duty under this Act :

“Estate” includes both real and personal estate :

“Gift *inter vivos*” includes every gift absolute and every non-testamentary disposition of property, whether by way of conveyance, transfer, appointment under power, declaration of trust or otherwise, made by any person either before or after the commencement of this Act, and containing trusts or dispositions to take effect during his lifetime, not being made before and in consideration of marriage, or in pursuance of a binding contract entered into before and in consideration of marriage, or in favour of a *bonâ fide* purchaser or encumbrancer for valuable consideration, and whether or not the property comprised in the gift is subject to any limitation :

“Settlement” means a conveyance, transfer, appointment under power, declaration of trust or other non-testamentary disposition of property made by any person either before or after the commencement of this Act containing trusts or dispositions to take effect after the death of the settlor or any other person dying after the commencement of this Act :

“The Commissioner” means the Commissioner of Taxation :

“The Minister” means the Treasurer of the Commonwealth :

“The Supreme Court” means the Supreme Court of a State or part of the Commonwealth.

PART II.—ADMINISTRATION.

Commissioner. 4.—(1.) There shall be a Commissioner of Taxation, who shall, subject to the control of the Minister, have the general administration of this Act.

(2.) The Commissioner of Land Tax shall be the Commissioner.

(3.) The provisions of section five, sub-sections (2.) and (3.), and section six of the *Land Tax Assessment Act 1910-1912* shall apply in relation to the office of Commissioner under this Act as they apply in relation to the office of Commissioner of Land Tax.

Deputy Commissioners. 5. There may be such Deputy Commissioners of Taxation as are required, who shall, subject to the control of the Commissioner, have such powers and functions as are prescribed or as the Commissioner directs.

Delegations by the Commissioner. 6.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Commissioner.

7.—(1.) The Commissioner shall furnish to the Minister annually, for presentation to the Parliament, a report on the working of this Act.

Report by the
Commissioner

(2.) In the report the Commissioner shall draw attention to any breaches or evasions of this Act, which have come under his notice.

PART III.—ESTATE DUTY.

8.—(1.) Subject to this Act, estate duty shall be levied and paid upon the value, as assessed under this Act, of the estates of persons dying after the commencement of this Act.

Duty on
estates.

(2.) Estate duty shall be at such rates as are declared by the Parliament.

(3.) For the purposes of this Act the estate of a deceased person comprises—

- (a) his real property in Australia (including real property over which he had a general power of appointment, exercised by his will);
- (b) his personal property, wherever situate (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in Australia; and
- (c) his personal property in Australia (including personal property over which he had a general power of appointment, exercised by his will), including all debts, money, and choses in action receivable or recoverable by the administrator in Australia, if the deceased had, at the time of his death, a foreign domicile.

(4.) Property—

- (a) which passed from the deceased person by any gift *inter vivos* or settlement made before or after the commencement of this Act within one year before his decease, or, being property comprised in a settlement under which he was tenant for life, the life interest of which was surrendered by him to the remaindermen within one year before his decease; or
- (b) in which he had a beneficial interest 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,

shall for the purposes of this Act be deemed to be part of the estate of the person so deceased.

(5.) Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes.

(6.) In respect of so much of the estate as by will intestacy gift *inter vivos* or settlement passes to the widow or children or grandchildren of the deceased estate duty shall be assessed and payable at two-thirds of the rate which would otherwise be payable.

(7.) All duties lawfully paid in any place outside Australia, in respect of any part of the estate situate outside Australia may be deducted from the duty to which the estate is liable under this Act.

(8.) In this Act, "public educational purposes" includes the establishment or endowment of an educational institution for the benefit of the public or a section of the public.

Exemption of persons dying in military or naval service.

9. Nothing in this Act shall apply to the estate of any person who during the present war or within one year after its termination dies on active service or as a result of injuries received or disease contracted on active service with the military or naval forces of the Commonwealth or any part of the King's Dominions.

PART IV.—RETURNS AND ASSESSMENTS.

Returns.

Returns to be lodged.

10.—(1.) For the purpose of assessment and levy of estate duty every administrator shall, except as prescribed, within the prescribed period, prepare and furnish in the prescribed form and at the prescribed place a statement setting forth a full and complete return of all the estate in Australia of the deceased person in respect of whose estate he is the administrator.

(2.) The statement shall set forth the descriptions and values of the items comprising the estate, before deducting any debts or other charges upon the estate, and shall also set forth in detail all the debts and other charges upon the estate, distinguishing between secured and unsecured debts and describing and valuing any security for any such debts.

Commissioner may require further or other returns.

11. The Commissioner may require such further or other returns as he deems necessary for the full and complete assessment and collection of the duty assessable under this Act, and may permit the administrator or other person interested to make alterations in any return lodged, upon the Commissioner being satisfied as to the necessity for the alteration.

Verification of returns.

12. Every return required to be furnished under this Act shall be verified by a statutory declaration by the administrator.

Assessments.

Arrangement with States to supply information.

13. The Governor-General may make arrangements with the Governor of a State for the supply to the Commissioner of particulars of assessments made by the State for the purpose of collecting probate and succession duty under the laws of the State.

14. In assessing duty in accordance with this Act, the Commissioner may if he thinks fit adopt, as far as it extends, the value of dutiable estate as assessed for duty under a State law in respect of the same estate. State valuations may be adopted.

15. From the returns, particulars and values so furnished, supplied or ascertained, and from any other information in his possession, or from any one or more of these sources, and whether any return has been furnished or not, the Commissioner shall cause an assessment to be made for the purpose of ascertaining the amount upon which duty shall be levied in accordance with this Act. Commissioner to make assessments.

16. If—

(a) any administrator makes default in furnishing any return ; Default assessments.
or
(b) the Commissioner is not satisfied with the return made by any administrator ; or
(c) the Commissioner has reason to believe that any estate (though no return has been furnished) is dutiable,
the Commissioner may make an assessment of the amount on which, in his judgment, duty ought to be levied, and the estate shall be liable to duty thereon, except so far as the amount is, on appeal, shown to be excessive.

17. For the purpose of assessing the value for duty of the estate of any person dying after the commencement of this Act, all debts due and owing by the deceased at the time of his death shall be deducted from the gross value of the assessable estate if the deceased was at the time of his death domiciled in Australia. Assessable value for residents.

18. If the deceased was at the time of his death not domiciled in Australia the debts which may be deducted from the gross value of the assessable estate shall be debts due and owing to persons resident in Australia, or contracted to be paid in Australia, or charged on property situate in Australia. Assessable value for absentees.

19. Where in the opinion of the Commissioner any estate is of such a nature or is so disposed of or circumstanced that the value thereof is not fairly ascertainable under this Act, he may compound the duty on such property on such terms as he thinks fit, and may give a discharge to the administrator or to any other person interested in the property upon payment of the duty according to such composition. Compounding duties.

20.—(1.) The Commissioner may, within one year after the last payment on account of duty on any assessment, make all such alterations in or additions to the assessment as he thinks necessary in order to insure its completeness and accuracy. Court may alter assessments.

(2.) 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, and unless made with his consent shall be subject to appeal.

(3.) An administrator shall only be liable 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 any fraud or gross negligence 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.

(4.) If the alteration in any assessment made by the Commissioner 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 altered assessment.

Validity of assessments.

21. The validity of any assessment shall not be affected by reason that any provisions of this Act have not been complied with.

Evidence.

22.—(1.) Production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—

- (a) be conclusive evidence of the due making of the assessment ; and
- (b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *prima facie* evidence only.

(2.) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any return or assessment shall for all purposes be sufficient evidence of the matter therein set forth, without the production of the original.

Notice of assessment.

23.—(1.) As soon as conveniently may be after an assessment is made the Commissioner shall cause notice in writing of the assessment to be given to the person liable to pay the duty.

(2.) The omission to give any such notice shall not invalidate the assessment.

PART V.—OBJECTIONS AND APPEALS.

Objection and appeal.

24.—(1.) An administrator who is dissatisfied with the assessment made by the Commissioner under this Act may within thirty days after service by post of the notice of assessment or such further time not exceeding thirty days as the Commissioner may allow lodge an objection in writing with the Commissioner against the assessment, stating fully the reasons for the objection.

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

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

(4.) An administrator who is dissatisfied with the decision of the Commissioner on his objection may, within thirty days after the receipt of notice of the decision of the Commissioner, appeal to the High Court or the Supreme Court.

(5.) Notice of the appeal may be in the prescribed form, and a copy shall forthwith be served on the Commissioner.

(6.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment appealed from.

(7.) An appeal under this section may be heard by a single Justice of the High Court or Judge of the Supreme Court.

(8.) Notwithstanding anything contained in this section, where the assessment made by the Commissioner is based solely upon assessments made under the law of a State, 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.

25.—(1.) The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment appealed from ; and duty may be levied and recovered on the assessment as if no appeal were pending. Pending appeal not to delay payment of duty.

(2.) If the assessment is altered on appeal 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.

26. On the hearing of the appeal the Court may make such order as it thinks fit, and may either reduce or increase the assessment, and may make such order as to costs as it thinks fit and the order of the Court shall be final and conclusive except as provided in section twenty-eight of this Act. Power of Court on hearing of appeal.

27.—(1.) On the hearing of any appeal the Court may, if it thinks fit, state a case in writing for the opinion of the High Court upon any question arising in the appeal which in the opinion of the Court is a question of law. Court may state case for opinion of High Court.

(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.

28. An appeal shall lie to the High Court from any order made under section twenty-six of this Act. Appeals to High Court.

PART VI.—COLLECTION AND RECOVERY OF DUTY.

29. Duty assessed under this Act shall be due and payable by the administrator within thirty days after the service by post of a notice of assessment. Date of payment of duty.

30. If the Commissioner is satisfied that the duty cannot be paid within the time specified in the last preceding section, he may, upon receipt of sufficient security for payment of the duty— Time to pay— Extensions an instalments.

(a) extend the time for payment as he considers the circumstances warrant ; or

(b) permit the payment of the duty to be made by instalments :
Provided that the whole of the duty payable shall be paid within a period of two years.

Penalty duty.

31. If the duty is not paid as provided by section twenty-nine of this Act or such further time as is provided by section thirty of this Act, additional duty amounting to ten per centum of the duty unpaid shall be payable in addition by way of penalty.

Duty debt to King.

32. The duty assessed under this Act shall be deemed when it becomes due or payable to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.

Duty may be sued for.

33. Any duty unpaid, including any additional duty, may be sued for and recovered in any Court of competent jurisdiction by the Commissioner suing in his official name.

Duty a first charge on estate.

34.—(1.) The duty assessed under this Act shall be a first charge upon the estate in priority over all other encumbrances whatever, and there shall not be any disposition of the estate or any part of it until the duty thereon has been paid or the Commissioner certifies that he holds security for payment of the duty sufficient to permit any specified part of the estate to be disposed of.

(2.) Any administrator who disposes of any estate or part of it in contravention of this section shall, without prejudice to the recovery of the duty by any other means, be personally liable for the duty.

Apportionment of duty among beneficiaries.

35. Subject to any different disposition made by a testator in his will, the duty payable in respect of an estate, exclusive of so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious scientific charitable or public educational purposes, shall be apportioned by the administrator among the persons beneficially entitled to the estate in the following manner:—

- (a) The duty shall in the first instance be apportioned among all the beneficiaries in proportion to the value of their interests; and
- (b) where there are any beneficiaries under the will each of whom takes only specific bequests or devises of a value not exceeding Two hundred pounds, the duty which under paragraph (a) of this section would be payable in respect of the interests of those beneficiaries shall be apportioned among all the beneficiaries in proportion to the value of their interests.

Provided that for the purposes of this section the value of the interests of the widow or children or grandchildren of the deceased shall be reckoned at two-thirds of their assessed value.

Distribution of charge on estate.

36.—(1.) The Commissioner may if he thinks fit, either of his own motion or at the request of any person to whom any estate has passed on the death of another person, or of any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of such person in any separate properties or any defined portions of the same property as he considers reasonable.

(2.) The duty so separately assessed shall thereafter be charged solely upon the separate estate in respect of which it has been assessed and upon payment of any amount so separately assessed, the portion of the particular estate affected shall thereafter be free from charge in respect of any unpaid duty assessed separately on any other portion of the estate.

37. The Commissioner may register any duty assessed under this Act as a charge on the particular interest assessed with the duty, after having certified in writing that there are arrears of duty payable and the Registrar-General or Registrar of Titles or other proper officer of a State or part of the Commonwealth shall register the charge accordingly and give effect to it as if the certificate were an instrument of charge or encumbrance duly executed under the laws in force in that State or part of the Commonwealth.

Registration of duty as a charge.

38.—(1.) Subject to the last two preceding sections, duty assessed under this Act shall be paid out of personal estate.

Duty—how payable.

(2.) If there is not sufficient personal estate to pay the duty, the administrator may raise the deficiency by way of mortgage secured upon the real estate, or may, if he thinks fit, apply to the High Court or the Supreme Court for the sale of the whole or any portion of the estate for the purpose of enabling him to pay the duty.

39. If any duty is not paid by the final date fixed for the payment thereof under the authority of this Act, the Commissioner may apply to the High Court or the Supreme Court for an order that a sufficient portion of any estate subject to the duty may be sold to pay the duty.

Commissioner may apply for order to sell.

40. The Court may grant the order applied for and may fix the prices, terms and conditions of the sale and may make such order as to costs of and consequent upon such application, proceedings and sale as it thinks fit.

Power of Court.

41. The moneys arising from such sale shall be applied first towards paying the costs and expenses, if so ordered, of and consequent upon any such application, proceedings or sale, and in the next place towards the payment of the duty and additional duty due, and the balance shall be paid to or held or disposed of by the administrator upon the same trusts as the property sold would have been held and disposed of :

Application of proceeds.

Provided that the Court may make any order that seems just as to such surplus moneys and as to the disposal or investment thereof, and as to the person or persons to whom the same or the interest thereof shall be paid.

Court may order *re* surplus.

PART VII.—MISCELLANEOUS.

42. No purchaser shall be concerned as to the *bona fides* of any sale to him made or purporting to be made under any order mentioned in sections thirty-nine and forty of this Act.

Protection to purchaser.

Title of purchaser, &c., not affected.

43. The title of a *bonâ fide* purchaser, transferee, or mortgagee for valuable consideration, whether holding the legal estate or not, shall not be prejudiced by the non-payment of any duty assessed under this Act, if his interest was acquired at a sale made or purporting to be made under an order mentioned in sections thirty-nine and forty of this Act.

Access to lands, buildings, &c.

44. The Commissioner, or any officer authorized by him on that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents, and other papers, and to all registers of deeds or documents of title, for the purpose of valuing or inspecting any estate or of ascertaining the ownership thereof and for any of these purposes may make extracts from or copies of any such books, documents or papers.

Power to obtain evidence.

45.—(1.) The Commissioner may by notice in writing require any person to attend and give evidence before him or before any officer authorized by him in that behalf concerning any estate or assessment, and to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he, or the officer so authorized by him, may administer an oath.

Obstructing officers.

46. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the Regulations shall be guilty of an offence.

Penalty : Fifty pounds.

47. Any person who—

Offences.

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

(b) without just cause shown by him refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him, or to produce any book, document or papers required of him by the Commissioner or any such officer ; or

(c) knowingly and wilfully makes or delivers any false return, or makes any false answer, whether verbally or in writing, in relation to any matter or thing affecting the liability to or exemption from assessment under this Act of any estate ;

shall be guilty of an offence.

Penalty : One hundred pounds.

48. Any person who—

(a) with intent to defraud, in any return understates the value of any estate, or

(b) by any wilful act default or neglect, or by any fraud, art or contrivance whatever, evades assessment or duty,

shall be guilty of an indictable offence.

Penalty : Five hundred pounds or imprisonment for three years.

49. Payment of penalties under this Act shall not relieve any estate from liability to assessment and payment of any duty.

Under-valuation
of estate.

Payment of
penalties no
release from
duty.

50. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.