

Estate Duty Assessment

No. 9 of 1970

An Act to amend the *Estate Duty Assessment Act* 1914–1967.

[Assented to 20 May 1970]

BE it enacted by the Queen'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* 1970.

(2.) The *Estate Duty Assessment Act* 1914–1967* 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* 1914–1970.

Commence-
ment.

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

Parts.

3. Section 2 of the Principal Act is amended by inserting after the words—

“Part III.—Estate Duty (Sections 8–9).”
the words—

“Part IIIA.—Rebates of Duty in respect of Estates of Primary Producers (Sections 9A–9E).”.

Duty on estates.

4. Section 8 of the Principal Act is amended by omitting sub-section (6.) and inserting in its stead the following sub-section:—

“ (6.) Where—

(a) a gift of property has been liable to gift duty under the provisions of the *Gift Duty Assessment Act* 1941, or of that Act as amended and in force at any time;

(b) the property is also included in the estate of the donor under this Act; and

(c) the estate duty payable apart from this sub-section in respect of the estate is increased by reason of the inclusion of the property in the estate,

there shall be deducted from the total duty to which the estate is liable under this Act an amount equal to—

(d) the amount of gift duty paid or payable in respect of the gift; or

* 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; and No. 40, 1967.

(e) the amount by which the estate duty payable apart from this sub-section in respect of the estate is increased by reason of the inclusion of the property in the estate, whichever is the less.”.

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

- (a) by inserting in paragraph (c) of sub-section (5.), after the word “section” (last occurring), the words “or Part IIIA.”; and
- (b) by inserting in paragraph (d) of sub-section (5.), after the words “section eight of this Act”, the words “, any rebate under Part IIIA.”.

Quick
succession
rebates.

6. After section 9 of the Principal Act the following Part is inserted:—

“ PART IIIA.—REBATES OF DUTY IN RESPECT OF ESTATES OF
PRIMARY PRODUCERS.

“ 9A.—(1.) In this Part, unless the contrary intention appears—

Interpretation.

‘ animals ’ includes poultry;

‘ family company ’, in relation to a person in relation to any time, means a company—

(a) that was incorporated as a proprietary company at that time under the law of a State or Territory of the Commonwealth; and

(b) in which persons other than the first-mentioned person or a relative of that person—

(i) did not beneficially own any shares at that time; or

(ii) did not beneficially own at that time shares that carried between them the right to receive more than five per centum of any distribution of capital of the company in the event of the winding up, or of a reduction in the capital, of the company;

‘ farm produce ’ means produce resulting directly from the cultivation of land or the maintenance of animals, and includes timber;

‘ gross farm income ’, in relation to a person in relation to a period, is—

(a) so much of the gross income of the person in relation to that period as was derived directly from the carrying on by the person (otherwise than as a partner in a partnership) of a business of primary production in Australia; and

(b) if the person is a partner in a partnership, (in addition to any amount included in his gross farm income by virtue of the last preceding paragraph) the amount that bears to the amount that would, in accordance with that paragraph, be the gross farm income of the partnership in relation to that period if the partnership were a single person the same proportion as the individual interest of the partner

in the net income of the partnership, or in the partnership loss, in respect of that period bears to that net income or partnership loss, as the case may be;

‘ gross income ’, in relation to a person in relation to a period, is—

- (a) the gross income (without deduction of any expenses incurred in deriving that income) derived by the person during that period (otherwise than by reason of the carrying on of a business by a partnership in which the person is a partner) directly or indirectly from all sources whether in or out of Australia other than income derived by the person as a trustee of a trust estate; and
- (b) if the person is a partner in a partnership, (in addition to any amount included in his gross income by virtue of the last preceding paragraph) the amount that bears to the amount that would, in accordance with that paragraph, be the gross income of the partnership in relation to that period if the partnership were a single person the same proportion as the individual interest of the partner in the net income of the partnership, or in the partnership loss, in respect of that period bears to that net income or partnership loss, as the case may be;

‘ gross value ’, in relation to any property, means—

- (a) if the property is not subject to a mortgage, charge or other encumbrance—the value of the property; or
- (b) if the property is subject to a mortgage, charge or other encumbrance—the amount that would be the value of the property if the property were not subject to that mortgage, charge or other encumbrance;

‘ income ’, in relation to a person, includes (without limiting the generality of the expression)—

- (a) any amount received by way of bounty or subsidy in or in relation to the carrying on of a business; and
- (b) any amount received by way of insurance or indemnity for or in respect of any loss—
 - (i) of trading stock within the meaning of the *Income Tax Assessment Act* 1936–1969, growing crops or standing timber; or
 - (ii) of profit or income;

‘ partnership ’ means an association of persons carrying on business as partners or in receipt of income jointly but does not include a body corporate;

‘ primary production ’ means production resulting directly from—

- (a) the cultivation of land;
- (b) the planting or tending in a plantation or forest of trees intended for felling; or

- (c) the maintenance of animals for the purpose of selling them or their bodily produce, including natural increase;

‘relative’, in relation to a person, means—

- (a) the spouse of the person;
- (b) a parent, step-parent or other lineal ancestor of the person or of the spouse of the person;
- (c) a child or other lineal descendant of the person or of the spouse of the person;
- (d) a brother or sister, or half-brother or half-sister, of the person or of the spouse of the person;
- (e) a child of a person to whom the last preceding paragraph applies; or
- (f) the spouse of a person to whom any of the last three preceding paragraphs applies;

‘rural property’, in relation to a deceased person, means property, or an interest in property, in Australia being property consisting of—

- (a) land that, at the time of the death of the person, was used wholly and exclusively for the purpose of carrying on a business of primary production;
- (b) animals or farm produce—
 - (i) used, or held for use, at the time of the death of the person in a business of primary production; or
 - (ii) raised or produced in the course of the carrying on of a business of primary production by the deceased person or by a partnership in which he was a partner;
- (c) a right to income other than income that is included in the gross income of the person in relation to the relevant period, being a right arising from the delivery to a marketing authority established by a law of the Commonwealth, a State or a Territory of the Commonwealth of farm produce produced in the course of the carrying on of a business of primary production by the deceased person or by a partnership in which he was a partner; or
- (d) plant, machinery, goods or articles that, at the time of the death of the person, were used, or held for use, in a business of primary production,

but not including property consisting of—

- (e) motor vehicles designed primarily and principally for the transport of persons;
- (f) household furniture, furnishings or appliances; or
- (g) wireless receivers or transmitters or television receivers or antennae;

‘share’, in relation to a company, means a share in the capital of the company, and includes stock;

‘ year of income ’, in relation to a person, means—

- (a) in a case to which the next succeeding paragraph does not apply—a period of twelve months ending on the thirtieth day of June; or
- (b) if the person has adopted an accounting period under the *Income Tax Assessment Act 1936–1969* being the twelve months ending on another date—a period of twelve months ending on that other date.

“(2.) For the purposes of the definition of ‘ relative ’ in the last preceding sub-section, relationships referred to in that definition shall be taken to include illegitimate relationships and relationships by adoption and relationships that are traced through illegitimate relationships or relationships by adoption.

“(3.) Where—

- (a) a person derives income (in this sub-section referred to as ‘ the relevant income ’) as a trustee of a trust estate; and
- (b) if the person were beneficially entitled to the relevant income and did not derive any other income during the period in which the relevant income was derived by him, the amount that would be the gross income of the person in relation to that period (in this sub-section referred to as ‘ the notional gross income ’) would have included an amount that would be gross farm income of the person in relation to that period (in this sub-section referred to as ‘ the notional gross farm income ’),

so much of any income derived by a beneficiary in the trust estate as is reasonably attributable to the relevant income as bears to the income so derived the same proportion as the notional gross farm income bears to the notional gross income shall be deemed, for the purposes of this Part, to be gross farm income of the beneficiary.

“(4.) Where—

- (a) income consisting of dividends, salary, wages, bonuses or director’s fees is derived from a company by a person (other than a company);
- (b) the person was, at the time when he derived the income, the beneficial owner of one or more shares in the company;
- (c) the company was a family company of the person at all times during—
 - (i) the year of income of the company during which the income was derived by the person; or
 - (ii) if the person died during that year of income—the part of that year of income that ended on the date of his death; and
- (d) the gross farm income of the company in relation to that year of income constituted more than one-half of the gross income of the company in relation to that year of income,

the income so derived by the person shall be deemed, for the purposes of this Part, to be income derived by the person directly from the carrying on by the person of a business of primary production in Australia.

“(5.) For the purposes of the definition of ‘family company’ in sub-section (1.) of this section, shares in a company shall be treated as having been beneficially owned by a person at the time of his death if the shares are included in his estate by reason of sub-section (4.) of section eight of this Act.

“(6.) For the purposes of the definition of ‘rural property’ in sub-section (1.) of this section, any land that—

- (a) is within or adjacent to an area of land (in this sub-section referred to as ‘the adjacent land’) that is included in the estate of a deceased person and was, at the time of the death of that person, used wholly and exclusively for the purpose of carrying on a business of primary production; and
- (b) was, at that time, used for the purposes of a residence occupied by—
 - (i) that person or a relative of that person;
 - (ii) an employee or tenant of that person, being an employee or tenant who was employed or engaged in a business of primary production carried on on the adjacent land; or
 - (iii) a share-farmer,

shall be deemed to have been used at that time wholly and exclusively for the purpose of carrying on a business of primary production.

“(7.) A reference in this Part to property, in relation to a deceased person, does not include a reference to—

- (a) property that was the subject of a devise, or of a specific bequest, in the will of the person; or
- (b) property that has passed by a gift *inter vivos* or a settlement by the person,

being property that is exempt from duty under sub-section (5.) of section eight of this Act.

“(8.) In this Part, unless the contrary intention appears, a reference to the whole of the property of a deceased person is a reference to all the real and personal property (including property over which he had a general power of appointment, exercised by his will) in or outside Australia beneficially owned by him and includes a reference to property that is included in his estate by reason of sub-section (4.) of section eight of this Act.

“9B.—(1.) For the purposes of this Part, the relevant period, in relation to a deceased person, is, subject to this section, the period comprising—

- (a) the year of income of the person that ended during the period of twelve months that ended on the date of his death; and
- (b) the four immediately preceding years of income.

“(2.) Except where the person died on the last day of a year of income of the person, the administrator of the estate of that person may elect that the relevant period in relation to the person is to be the period comprising—

- (a) the year of income of the person that ended during the period of twelve months that ended on the date of his death;
- (b) the three immediately preceding years of income; and
- (c) the period that commenced at the expiration of the year of income referred to in paragraph (a) of this sub-section and ended on the date of his death.

“(3.) An election under this section does not have effect unless it is in writing and is lodged with the Commissioner on or before the date of lodgment of the return of the estate or within such further period as the Commissioner, whether before, on or after that date, allows.

Determination
of value of
property.

“9C.—(1.) For the purposes of this Part, the value, as at the time of the death of a person, of a unit of property of the person shall be taken to have been—

- (a) in the case of property included in his estate by reason of paragraph (a), (b), (c), (e) or (f) of sub-section (4.) of section eight of this Act—the amount that is included in the gross value of the estate as being the value of that property;
- (b) in the case of any other property included in his estate where the amount included in the gross value of the estate as being the value of that property was the gross value of that property—the amount so included; and
- (c) in any other case—the gross value of the property as at the time of his death.

“(2.) The last preceding sub-section does not apply in relation to property being shares in a company if the administrator has made an election in relation to the shares under paragraph (d) of sub-section (2.) of the next succeeding section.

Application of
Part.

“9D.—(1.) This Part applies in relation to the estate of a deceased person if—

- (a) the person was domiciled in Australia at the time of his death;
- (b) the gross farm income of the person in relation to the relevant period constituted more than one-half of the gross income of the person in relation to that period; and
- (c) the value, as at the time of his death, of the rural property included in the estate exceeded one-half of the value, as at that time, of the whole of the property of the person.

“(2.) Where—

- (a) the estate of a deceased person included shares in a company that was a family company of the person at the time of his death (in this sub-section referred to as ‘the relevant time’);
- (b) the property of the company at the relevant time included property (in this sub-section referred to as ‘the rural assets’) that, apart

from this sub-section, would have constituted rural property of the person for the purposes of this Part if the rural assets had been beneficially owned by the person at that time and any business of primary production carried on by the company had been carried on by the person;

- (c) the gross value, as at the relevant time, of the rural assets exceeded one-half of the gross value, as at that time, of the whole of the property of the company; and
- (d) the administrator of the estate of the deceased person elects to have the shares taken into account in determining the value of the rural property included in the estate,

then, in determining for the purposes of this section and the next succeeding section the value, as at the relevant time, of the rural property included in the estate, there shall be added to the amount that would otherwise be that value an amount that bears to the value of those shares, as at that time, the same proportion as the gross value, as at that time, of the rural assets bears to the gross value, as at that time, of the whole of the property of the company.

“(3.) A reference in the last preceding sub-section to the whole of the property of a company is a reference to the whole of the real and personal property in or outside Australia beneficially owned by the company.

“(4.) For the purposes of this section, the value of the shares, as at the time of the death of the person, is—

- (a) in a case to which the next succeeding paragraph does not apply—the amount that the holder of the shares would have received, or been entitled to receive, in respect of the shares if the company had been voluntarily wound up on the date of the death of the person; or
- (b) in the case of shares that are included in the estate of the person by reason of paragraph (a) of sub-section (4.) of section eight of this Act and in relation to which the proviso to that paragraph applies—the amount that would have been included in the gross value of the estate as being the value of those shares if the reference in that proviso to the value of the property at the date of disposition were a reference to the amount that the holder of the shares would have received, or been entitled to receive, in respect of the shares if the company had been voluntarily wound up on the date of disposition.

“(5.) In ascertaining the amount referred to in paragraph (a) or paragraph (b) of the last preceding sub-section, account shall not be taken of any costs that would have been incurred in the winding up of the company or of any liability to income tax that would have been incurred by the company by reason of the winding up.

“(6.) An election under paragraph (d) of sub-section (2.) of this section does not have effect unless it is in writing and is lodged with the Commissioner on or before the date of lodgment of the return of the estate or within such further time as the Commissioner, whether before, on or after that date, allows.

“(7.) Subject to the next succeeding sub-section, an election under paragraph (d) of sub-section (2.) of this section may be withdrawn by the administrator by notice in writing lodged with the Commissioner and, in that case, this Act has effect as if the election had not been made.

“(8.) Where an assessment has been made in relation to the estate, the election may not be withdrawn—

- (a) if the administrator has not objected to the assessment—after the expiration of thirty days after service of notice of the assessment; or
- (b) if the administrator has objected to the assessment—
 - (i) where the administrator has not made a request in pursuance of sub-section (4.) of section 24 of this Act—after the expiration of thirty days after service of notice of the decision of the Commissioner on the objection; or
 - (ii) where the administrator has made such a request—after the expiration of thirty days after the final determination by a Valuation Board, Board of Review or Court of the correctness of the decision of the Commissioner.

Rebate of duty.

“9E.—(1.) A rebate of duty in accordance with this Part is allowable in respect of the estate of a deceased person, being an estate in relation to which this Part applies and the value of which is less than Two hundred and fifty thousand dollars.

“(2.) The amount of the rebate allowable is the prescribed percentage of the amount of the duty attributable to the rural property included in the estate.

“(3.) For the purposes of this section—

- (a) the prescribed percentage is—
 - (i) where the value of the estate does not exceed One hundred and forty thousand dollars—fifty per centum; and
 - (ii) where the value of the estate exceeds One hundred and forty thousand dollars—fifty per centum reduced by one-tenth of one per centum for each complete Two hundred and twenty dollars by which that value exceeds One hundred and forty thousand dollars;
- (b) the value of the estate is the value that would be ascertained for the purposes of section eighteen A of this Act if the value, as at the time of the death of the person, of any property of the person, being shares in relation to which an election has been made under paragraph (d) of sub-section (2.) of the last preceding section, were ascertained in accordance with sub-section (4.) of that section;

- (c) the amount of the duty attributable to the rural property included in the estate is the amount that bears to the net amount of duty payable in respect of the estate the same proportion as the value, as at the time of the death of the person, of the rural property included in the estate bears to the value, as at that time, of the whole of the property of the deceased person (other than real property outside Australia); and
- (d) the net amount of duty payable in respect of the estate of a deceased person is the duty (excluding any additional duty payable under section thirty-one or section forty-seven A of this Act) that would be payable in respect of the estate before the allowance of any deductions under sub-section (6.) or sub-section (7.) of section eight of this Act, any rebates under section eight A of this Act or any credit for foreign duty under the *Estate Duty Convention (United States of America) Act 1953* if the value, as at the time of the death of the person, of any property of the person, being shares in relation to which an election has been made under paragraph (d) of sub-section (2.) of the last preceding section, were ascertained in accordance with sub-section (4.) of that section.

“(4.) The allowance of a rebate under this section shall be deemed to form part of an assessment under this Act.”.

7. Section 16A of the Principal Act is amended by omitting from sub-section (1.) the words “Where the Commissioner” and inserting in their stead the words “Subject to the next succeeding section, where the Commissioner”.

Value of shares and stock.

8. After section 16A of the Principal Act the following section is inserted:—

“ 16B. Where—

- (a) the administrator of an estate has made an election under paragraph (d) of sub-section (2.) of section nine D of this Act in relation to shares or stock in the capital of a company, being shares or stock included in the estate; and
- (b) a rebate of duty in accordance with Part IIIA. is allowable in respect of the estate,

Shares or stock to be valued on a winding up basis in certain cases.

the value of the shares or stock is, for all purposes relating to the assessment of duty, the value as ascertained in accordance with sub-section (4.) of section nine D of this Act.”.

**Statutory
exemption.****9. Section 18A of the Principal Act is amended—**

- (a) by omitting from sub-section (1.) the word “ From ” and inserting in its stead the words “ Subject to the next succeeding sub-section, from ”; and
- (b) by inserting after sub-section (1.) the following sub-section:—
 - “ (1A.) In the case of an estate in relation to which Part IIIA. applies, the last preceding sub-section has effect as if—
 - (a) the references in sub-paragraphs (i) and (ii) of paragraph (a) to Twenty thousand dollars (wherever occurring) were read as references to Twenty-four thousand dollars; and
 - (b) the references in sub-paragraphs (i) and (ii) of paragraph (b) to Ten thousand dollars (wherever occurring) were read as references to Twelve thousand dollars.”.

**Amendments
of assessments.****10. Section 20 of the Principal Act is amended by inserting after sub-section (7.) the following sub-section:—**

“ (7A.) Where the value of any property included in an estate, being shares or stock in the capital of a company, has been ascertained in an assessment in respect of the estate on the basis referred to in sub-section (4.) of section nine D of this Act and—

- (a) a rebate of duty in accordance with Part IIIA. is not allowable in respect of the estate; or
- (b) the election made under paragraph (d) of sub-section (2.) of section nine D of this Act in relation to the estate has been withdrawn,

nothing in this section prevents the amendment of the assessment for the purpose of ascertaining the value of the shares or stock on a different basis.”.

**Objections,
reviews and
appeals.****11. Section 24 of the Principal Act is amended—**

- (a) by inserting after sub-section (1.) the following sub-section:—
 - “ (1A.) Where, by reason of the withdrawal of an election made under paragraph (d) of sub-section (2.) of section nine D of this Act, an assessment is amended for the purpose of ascertaining the value of any property included in an estate, being shares or stock in the capital of a company, on a basis other than the basis referred to in sub-section (4.) of that section, nothing in the proviso to the last preceding sub-section prevents the making of an objection to the amended assessment in relation to the value of the shares or stock.”; and

- (b) by omitting from sub-paragraphs (i) and (ii) of paragraph (a) of sub-section (4.) the words “included in the estate”.

12. Sections 30 and 31 of the Principal Act are repealed and the following sections inserted in their stead:—

“ 30. The Commissioner may, in his discretion, whether before or after the expiration of the period within which any duty is required to be paid under the last preceding section or under a determination previously made under this section, determine that the period for payment of the duty is extended for such further period, or that payment of the duty may be made by instalments of such amounts and payable at such times, as he considers the circumstances warrant. Deferment of payment of duty.

“ 31.—(1.) Subject to the next succeeding sub-section, if any duty is not paid before the expiration of the period referred to in section twenty-nine of this Act, additional duty is due and payable at the rate of ten per centum per annum on the amount of the duty unpaid, computed from the expiration of that period. Penalty duty.

“ (2.) If the Commissioner has made a determination in pursuance of the last preceding section extending the period for the payment of any duty or permitting the payment of any duty to be made by instalments, and any duty is not paid in accordance with the determination, additional duty is due and payable at the rate of ten per centum per annum on the amount of the duty unpaid, computed from such date as the Commissioner determines, not being a date earlier than the date on which the duty would have been payable if the Commissioner had not made the first-mentioned determination.

“ (3.) The Commissioner may, in any case, for reasons that he thinks sufficient, remit the additional duty or any part of that duty.”.

13. Section 35 of the Principal Act is amended by adding at the end thereof the words “ or in accordance with those provisions as affected by sub-section (1A.) of that section, as the case requires.”. Apportionment of duty among beneficiaries.

14. The amendments made by sections 5 to 11, inclusive, and section 13 of this Act apply in relation to the estates of persons who died or die on or after the twenty-fifth day of September, One thousand nine hundred and sixty-nine. Application of amendments.