

Queensland



ANNO DECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 50

**An Act to Amend "The Succession and Probate Duties Acts, 1892 to 1958," and "The Gift Duty Acts, 1926 to 1960," each in certain particulars**

[ASSENTED TO 14TH DECEMBER, 1961]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

## PART I.—PRELIMINARY

1. This Act may be cited as "*The Succession and Probate Duties Acts and Another Act Amendment Act of 1961.*" Short title

2. This Act is divided into Parts as follows :— Parts of Act

PART I.—PRELIMINARY ;

PART II.—AMENDMENT OF "THE SUCCESSION AND PROBATE DUTIES ACTS, 1892 TO 1958" ;

PART III.—AMENDMENTS OF "THE GIFT DUTY ACTS, 1926 TO 1960."

PART II.—AMENDMENT OF “THE SUCCESSION AND PROBATE DUTIES ACTS, 1892 TO 1958”

Inter-pretation of Part II.

3. (1) This Part II. of this Act shall be read as one with “*The Succession and Probate Duties Acts, 1892 to 1958.*”

Collective title

(2) “*The Succession and Probate Duties Acts, 1892 to 1958,*” and this Part II. of this Act may be collectively cited as “*The Succession and Probate Duties Acts, 1892 to 1961.*”

New s. 4A inserted

4. “*The Succession and Probate Duties Acts, 1892 to 1958,*” are amended by inserting after section four the following section :—

Disposition of unpaid consideration for prior transaction

“ [4A.] Where, in the case of a disposition of property within the meaning of “*The Gift Duty Acts, 1926 to 1961,*” made, whether before, on or after the date of the enactment of this section, for a consideration in money not payable in full upon the making of such disposition, the disponent dies before the payment in full of such consideration and by reason thereof the disponent or any other person becomes beneficially entitled to the consideration or to any part thereof unpaid at the date of such death, the value of such succession shall be deemed to be the monetary value which the amount of the consideration or part thereof to which the disponent or other person became so beneficially entitled would have had if it were payable in full immediately prior to the death of the disponent.

With respect to the duties payable under this Act in respect of the grant of probate or letters of administration the value of such unpaid amount shall be the monetary value which it would have if it were payable at the date of the application for the grant.”

Section renumbered

5. “*The Succession and Probate Duties Acts, 1892 to 1958,*” are hereby amended by transposing to follow section 12B (as inserted by section three of “*The Succession and Probate Duties Acts Amendment Act of*

1955”) the section inserted after section 12A, and also numbered 12B, by section two of “*The Succession and Probate Duties Acts Amendment Act of 1958*,” and by renumbering as 12C the said section so transposed.

6. “*The Succession and Probate Duties Acts, 1892* <sup>New s. 12D inserted</sup> 1958,” are amended by inserting after section 12C, as previously transposed and renumbered by this Act, the following section :—

“ [12D.] (1.) In this section—

“ continuously resident ” in relation to a <sup>Concession to residents in isolated areas of the State</sup> predecessor, means that such predecessor resided in the isolated area for a period of not less than six months, or for periods aggregating not less than six months, in each and every one of the three years next preceding the date of his death.

The continuity of residence of a predecessor in the isolated area shall be deemed to have been not broken by absence therefrom necessary for the purpose of obtaining medical treatment or for hospitalisation ;

“ isolated area ” means all that part of the State lying north of the 20th parallel of south latitude, excluding that portion east of 144 degrees of east longitude between the 16th and the 20th parallels of south latitude ; and

“ prescribed property ” in relation to a <sup>Prescribed property</sup> predecessor, means any property prescribed by subsection six of this section.

(2.) The Commissioner, subject to this section, may allow a rebate of the duty which, except for this section, would be charged under this Act in respect of any succession derived from a predecessor who, at the time of his death, was domiciled in the State.

(3.) Such rebate shall be an amount equal to a percentage of the duty which, save for this section, would be charged in respect of the succession, which percentage shall be :—

(a) If the Commissioner is satisfied that the predecessor was continuously resident in the isolated area the aggregate of—

(i) twenty-five per centum ; and

(ii) an amount per centum which bears to twenty-five per centum the same proportion as the gross value of prescribed property, if any, bears to the gross value of all property (including any prescribed property) of the predecessor ; or

(b) In any other case, an amount per centum which bears to twenty-five per centum the same proportion as the gross value of prescribed property, if any, bears to the gross value of all property (including any prescribed property) of the predecessor.

(4.) The Commissioner shall not allow a rebate of duty under this section in respect of any succession unless application for such rebate is made to the Commissioner by or on behalf of the successor within two years after the date when he, or any person in his right or on his behalf, becomes entitled in possession to the succession.

(5.) A decision of the Commissioner under this section shall not be appealed against under section fifty of this Act, or otherwise called in question in any court, including the Supreme Court, and no writ of prohibition shall be issued or mandamus or injunction directed to the Commissioner by any court, including the Supreme Court, whether for wrongful exercise of his powers under this section or failure to exercise the same, or upon any other ground whatsoever relating to the powers of the Commissioner under this section.

(6.) (a) In relation to a predecessor, any of the following property which, at the date of the death of the predecessor, was situated, or deemed by this subsection to have been situated, in the isolated area shall be prescribed property, namely :—

- (i) Any real property save a mortgage over land ;
- (ii) Live stock ;
- (iii) Plant, machinery and any other personal property whatsoever which was reasonably required (including as an amenity) for any purpose of or connected with establishing, developing, operating, managing, maintaining or carrying on in the isolated area any rural pursuit or any industry, business, undertaking or occupation ;
- (iv) Any mortgage over land situated in the isolated area securing a loan the term for repayment whereof is not less than five years and which was borrowed for acquiring or improving such land, or acquiring live stock which in relation to such land is prescribed property, or for effecting in relation to such land any of the purposes mentioned in subparagraph (iii) of this paragraph.

(b) For the purposes of this subsection :—

- (i) Livestock shall be deemed to be situated on the land whereon such livestock are permanently depastured ; but the term “livestock” does not include any livestock agisted or otherwise temporarily held or situated on land in the isolated area ; and
- (ii) In any case where any parcel of land is partly situated in the isolated area—
  - (a) if one-half or more in area of such parcel is situated within the isolated area, such parcel and all livestock permanently depastured thereon and all other prescribed property thereon shall be deemed to be situated wholly in the isolated area ; or

(b) if less than one-half in area of such parcel is situated within the isolated area, one-half by value of the land comprised in such parcel and of all livestock permanently depastured thereon and of all other prescribed property thereon shall be deemed to be situated in the isolated area.

(c) (i) Shares held by a predecessor in a company shall be deemed to be prescribed property only to the extent hereinafter specified in this paragraph (c) and if, and only if, such company owned at the date of death of the predecessor property in the isolated area (hereinafter referred to in this paragraph (c) as "subject property") which, if it had been held by such predecessor, would have been prescribed property.

Property of a company in which another company holds shares shall not, in relation to that other company, be subject property.

(ii) If the whole of the property of such company was subject property, such shares shall be deemed to be wholly prescribed property.

(iii) If the company also owned property other than subject property and the value of the subject property was not less than ten per centum of the value of all the property (including the subject property) owned by that company, then as respects such shares—

(a) the extent of the prescribed property therein shall be deemed to be an amount which bears to the total value of the shares the same proportion as, in values respectively, the subject property bears to all the property (including the subject property) owned by that company ; and

(b) the extent in value of the property therein, other than the prescribed property, shall be deemed to be the difference between the total value of the shares and the amount of the prescribed property therein.

(iv) If the company also owned property other than subject property and the value of the subject property was less than ten per centum of the value of all the property (including the subject property) owned by the company, such shares shall not be deemed to be prescribed property.

(v) For the purposes of this paragraph (c) the Commissioner may ascertain the value of all the property of the company (including the subject property) and the value of the subject property from the accounts and records of the company at a convenient balancing date as near as may be immediately prior to the date of death of the predecessor."

**PART III.—AMENDMENTS OF "THE GIFT DUTY ACTS, 1926 TO 1960"**

7. (1) This Part of this Act shall be read as one with "*The Gift Duty Acts, 1926 to 1960.*" Inter-pretation of Part III.

(2) "*The Gift Duty Acts, 1926 to 1960,*" and this Part III. of this Act may be collectively cited as "*The Gift Duty Acts, 1926 to 1961.*" Collective title

8. Section two of "*The Gift Duty Acts, 1926 to 1960,*" is amended by inserting in the definition "Gift", after the second paragraph (being the paragraph commencing with the words "If any such disposition"), the following paragraph :— Amendment of s. 2

"In the case of a disposition of property made (whether before, on or after the date of the enactment of this paragraph) for a consideration in money not payable in full upon the making of such disposition, the Commissioner in determining—

- (a) the adequacy or otherwise or, if inadequate, the extent of the inadequacy of such consideration ; or
- (b) the value as at any time subsequent to the making of such disposition whilst such consideration or any part thereof remains unpaid, of such consideration or part,

shall deem such consideration or part to be of the monetary value which (exclusive of any interest payable in respect thereof) it would have—

- (i) if it were payable in full upon the making of the disposition ; or
  - (ii) (as respects its value at any time subsequent to the making of the disposition whilst it remains unpaid) if the disposition had been made at such subsequent time and it were then payable in full.”
-