

ESTATE AND GIFT DUTIES AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Estate and Gift Duties Act 1955.

Clause 1 relates to the Short Title.

Clause 2 amends section 2 of the principal Act by substituting a new definition for the term "general power of appointment".

The original definition was substituted by an amendment passed in 1964, as a decision of the Court of Appeal in 1963 highlighted an anomaly.

Since then it has been discovered that the 1964 amendment has created hardship in respect of the estates of some persons who died before the amendment was passed.

To alleviate this situation, and also to give interested parties time to alter their wills to take account of the new definition, the clause postpones the effective date of the 1964 amendment until 1 April 1967.

The effect of this is that the original definition will apply to the estates of persons dying on or before 31 March 1967, and the new definition (as enacted by the 1964 amendment) will apply to the estates of persons dying on or after 1 April 1967.

Clause 3 amends section 9 of the principal Act. In calculating the final balance of an estate for duty purposes, allowance is made for debts. However, no allowance is made if a debt is contingent or is incapable of estimation. But if such a debt should become actually payable or capable of estimation within three years, the allowance will be made and excess duty refunded.

The amendment alters the time limit to six years which brings it into line with the general provision for claiming a refund of excess duty paid under section 80 of the principal Act.

Clause 4 substitutes a new section for section 75 of the principal Act relating to the valuation of land for the purpose of assessing estate duty and gift duty. At present, the value of land is determined either by agreement or by a special valuation made by the Valuer-General at the request of the Commissioner of Inland Revenue.

The new section will now provide for the value to be determined as follows:

- (a) By agreement:
- (b) Failing agreement, by the Commissioner by reference to the current capital value in the district valuation roll plus the cost of improvements not included in the roll value; or by a special valuation made at the Commissioner's request without charge to the administrator, in the case of estate duty, or the donor, in the case of gift duty.

If the value is based on the roll value plus cost of improvements, the administrator or donor, as the case may be, may request a special valuation at his own expense.

Existing rights of appeal to the Land Valuation Court against special valuations are retained but a new provision provides for a preliminary objection to the Valuer-General.

The clause will come into force on 1 January 1967.

Hon. Mr Lake

ESTATE AND GIFT DUTIES AMENDMENT

ANALYSIS

Title		
1. Short Title		3. Contingent debts
2. General power of appointment		4. Valuation of land

A BILL INTITULED

An Act to amend the Estate and Gift Duties Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title**—This Act may be cited as the Estate and Gift Duties Amendment Act 1966, and shall be read together with and deemed part of the Estate and Gift Duties Act 1955* (hereinafter referred to as the principal Act).

10 2. **General power of appointment**—(1) Subsection (1) of section 2 of the principal Act is hereby amended by repealing the definition of the term “general power of appointment” (as substituted by section 3 (1) of the Estate and Gift Duties Amendment Act 1964), and substituting the following defini-
15 tion:

“ ‘General power of appointment’ includes—

“(a) Any power or authority—

“(i) Conferred by the will of any person dying
20 on or before the thirty-first day of March,
nineteen hundred and sixty-seven; or

*Reprinted 1964, Vol. 3, p. 1371
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“(ii) Conferred by any settlement *inter vivos* executed on or before that date; or

“(iii) Created in any other manner whatsoever on or before that date—

which enables the donee or other holder thereof, 5
or would enable him if he was of full capacity, to
appoint or dispose of any property, or to charge any
sum of money upon any property, as he thinks fit
for his own benefit, whether exercisable by instru-
ment *inter vivos* or by will, but exclusive of any 10
power exercisable in a fiduciary capacity under a
disposition not made by himself, or exercisable as
mortgagee:

“(b) Any power or authority—

“(i) Conferred by the will of any person dying 15
on or after the first day of April, nineteen
hundred and sixty-seven; or

“(ii) Conferred by any settlement *inter vivos*
executed on or after that date; or

“(iii) Created in any other manner whatsoever 20
on or after that date—

which enables the donee or other holder thereof,
or would enable him if he was of full capacity, to
obtain or appoint or dispose of any property, or to
charge any sum of money upon any property, as 25
he thinks fit for his own benefit, whether exercisable
orally or by instrument *inter vivos* or by will or
otherwise howsoever, but does not include any
power exercisable by a person in a fiduciary capacity
under a disposition not made by himself, or exer- 30
cisable as mortgagee:”.

(2) Section 3 of the Estate and Gift Duties Amendment Act 1964 is hereby consequentially repealed.

(3) This section shall be deemed to have come into force on the eighteenth day of November, nineteen hundred and 35
sixty-four.

3. Contingent debts—Subsection (3) of section 9 of the principal Act is hereby amended—

(a) By omitting the words “three years” where they first occur, and substituting the words “six years”: 40

(b) By omitting the words “but no action for the recovery of any such refund shall be commenced except within three years after the payment of the duty so paid in excess”.

4. Valuation of land—(1) The principal Act is hereby amended by repealing section 75, and substituting the following section:

5 “75. (1) For the purpose of assessing estate duty or gift duty the value of any land situated in New Zealand shall be determined either—

10 “(a) By agreement between the Commissioner and the administrator, in the case of estate duty, or between the Commissioner and the donor, in the case of gift duty; or

15 “(b) In default of agreement, by the Commissioner in accordance with—

20 “(i) The capital value of the land as it appears in the district valuation roll, in force under the Valuation of Land Act 1951, at the date on which the value of the land is to be determined for the purpose of the assessment of the duty, together with the cost of any improvements not included in the valuation appearing in the roll; or

25 “(ii) A special valuation of the capital value of the land, made by the Valuer-General on the requisition of the Commissioner for the purposes of this Act, as at the date on which the value of the land is to be determined for the purpose of the assessment of the duty.

30 “(2) Where the value of any land has been determined by the Commissioner in accordance with subparagraph (i) of paragraph (b) of subsection (1) of this section, the administrator or donor, as the case may be, may, within one month after the date on which notice of the determination is given or within such extended time as the Commissioner in his absolute discretion thinks fit, require the Commissioner to redetermine the value of the land in accordance with subparagraph (ii) of the said paragraph (b).

35 “(3) There shall be payable to the Valuer-General by the Commissioner in respect of any special valuation made pursuant to this section such fee as may be fixed pursuant to any regulations for the time being in force under the Valuation of Land Act 1951. In every case where the valuation has been made pursuant to the requirement of an administrator or donor, under subsection (2) of this section, the amount of the fee shall be recoverable from the administrator or donor, as the case may be, by the Commissioner as a debt due to the Crown.

“(4) Subject to subsections (7) and (8) of this section, every determination or redetermination made under subsection (1) or subsection (2) of this section shall be final and conclusive.

“(5) Where a special valuation of any land is made by the Valuer-General under subsection (1) or subsection (2) of this section, notice of the amount of that valuation shall be given by him to the Commissioner. 5

“(6) The Commissioner shall thereupon determine the value of the land in accordance with the special valuation, and shall give notice of the determination to the administrator or donor, as the case may be. 10

“(7) Any person to whom any such notice is given may, within one month after the date on which the notice is given, object to the special valuation by delivering or posting to the Commissioner a written notice of objection stating the grounds of the objection and the value at which he contends the land should be assessed for duty. The Commissioner shall thereupon forward the objection to the Valuer-General, and the provisions of sections 20, 21, 22, and 23 of the Valuation of Land Act 1951, as far as they are applicable and with the necessary modifications, shall apply to the objection: 15 20

“Provided that where the objector is not also the owner of the land, the owner of the land shall not have any right to object to the special valuation or to have served on him any notice required to be served under those sections. 25

“(8) If, as a result of the objection, any alteration is made to the special valuation the Valuer-General shall notify the Commissioner who shall redetermine the value of the land accordingly. 30

“(9) No alteration shall be made to the district valuation roll by virtue of any agreement reached, or valuation or revaluation made, for the purposes of this section, or by virtue of any decision of the Valuer-General or the Land Valuation Court pursuant to this section. 35

“(10) In this section the terms ‘capital value’, ‘land’, and ‘owner’ have the same meaning as in the Valuation of Land Act 1951.”

(2) Section 7 of the Valuation of Land Amendment Act 1965 is hereby consequentially amended by repealing subsection (3). 40

(3) This section shall come into force on the first day of January, nineteen hundred and sixty-seven.