

ESTATE AND GIFT DUTIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Estate and Gift Duties Act 1968.

Clause 1 relates to the Short Title.

Clause 2: Section 25 of the principal Act provides that the value of any annuities or other interests for life or for widowhood shall be valued in accordance with the tables set out in the Second Schedule to the principal Act. It also provides that where any person is suffering from a mortal illness the value of any annuity or other interest for life shall be ascertained by the Commissioner in such manner as he thinks fit, and not in accordance with the tables.

This clause extends the latter provision to include any case where any annuity or other interest for widowhood is to be valued.

Clause 3: This clause inserts a new provision in the principal Act relating to the value of successions for the purposes of calculating relief from estate duty in the case of the estates of persons dying domiciled outside New Zealand, and leaving foreign assets as well as New Zealand assets. At present although no estate duty is payable on the foreign assets the administrator in such a case can pay a pecuniary legacy entirely out of the New Zealand assets and claim full relief against the New Zealand estate duty.

This clause provides that the pecuniary legacy will be apportioned between the New Zealand assets and the foreign assets, and relief given on the proportion of the legacy which is apportioned to the New Zealand assets.

Clause 4: Section 40 of the principal Act provides relief from estate duty in respect of duties paid outside New Zealand.

This clause makes it clear that the rate of exchange to be used is that prevailing at the date of death of the deceased. It has been made retrospective to the commencement of the principal Act to remove any doubt as to the correctness of the existing practice and case law.

Clause 5: This clause provides for the deferment of estate duty on an interest in certain mining ventures as announced in the Budget. Where the Commissioner is satisfied that the dutiable estate of the deceased includes an interest in a mining venture which has not yet become income-producing and which represents a significant part of the dutiable estate, the whole or part of the estate duty applicable to that interest may be deferred until such time as sufficient of the interest is sold or sufficient income is derived from that asset or some other event has occurred. The amount of estate duty and interest deferred will be secured by a mortgage on the interest in the mining venture. No interest will be payable under the mortgage but interest on the estate duty deferred will continue to accumulate in accordance with the Act at the rate of 5 percent a year.

This clause will apply to the estates of all persons dying before or after the commencement of the principal Act.

Clause 6 is a formal amendment only. It transfers to section 73 (2) of the principal Act a provision in section 75 (3) of the Fire Services Act 1949 exempting from gift duty certain transfers of property to or by an Urban Fire Authority or the Fire Service Council.

Clause 7 is also a formal amendment. Section 85 of the principal Act provides that gift duty is payable on the making of a gift. As gift duty is charged only on dutiable gifts as defined in the Act, this clause amends the section to provide that gift duty is payable on the making of a dutiable gift. This amendment is retrospective to the commencement of the Act, but will not affect the liability to duty of any gift.

Clause 8 is consequential upon *clause 5* of the Bill. It extends the provisions of section 91 of the principal Act to enable the administrator to object to the Board of Review in connection with the Commissioner's discretion under that clause to defer payment of estate duty and to determine when sufficient of the interest in the mining venture has been realised, or sufficient income from that interest has been derived, to pay the deferred duty.

This clause will apply to the estates of all persons dying before or after the commencement of the principal Act.

Hon. Mr Muldoon

ESTATE AND GIFT DUTIES AMENDMENT

ANALYSIS

Title	4. Relief for estate duty paid outside New Zealand
1. Short Title	5. Commissioner may defer payment of estate duty on certain mining ventures
2. Valuation of annuities and other interests for life or other periods, or expectant on death or other events	6. Exemption for gifts to charities and certain bodies
3. Valuation of succession for purposes of relief	7. When gift duty payable
	8. Objections against exercise of Commissioner's discretion

A BILL INTITULED

An Act to amend the Estate and Gift Duties Act 1968

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 1971, and shall be read together with and deemed part of the Estate and Gift Duties Act 1968* (hereinafter referred to as the principal Act).

*1968, No. 35

Amendments: 1969, No. 26; 1970, No. 23

2. Valuation of annuities and other interests for life or other periods, or expectant on death or other events—Section 25 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) For estate duty purposes— 5

“(a) The expectation of life of any person shall be deemed to be the period specified in Table A or Table B in the Second Schedule to this Act, appropriate to the sex and age of that person:

“(b) The expectation of widowhood of any widow shall be deemed to be the period specified in Table C in the Second Schedule to this Act, appropriate to the age of that widow: 10

“Provided that the expectation of life or widowhood of any person suffering from a mortal illness shall be ascertained by the Commissioner in such manner as he thinks fit.” 15

3. Valuation of succession for purposes of relief—The principal Act is hereby amended by inserting, after section 35B (as inserted by section 5 of the Estate and Gift Duties Amendment Act 1970) and the heading “*Reliefs*”, the following section: 20

“35c. For the purposes of calculating reliefs under sections 36 to 39 and section 41 of this Act, where any succession consists, in whole or in part, of a pecuniary legacy or other pecuniary claim which may be lawfully paid or satisfied either out of the dutiable estate of the deceased or out of foreign assets, the value of that succession, or as the case may be, that part of that succession, shall be calculated in accordance with the following formula: 25

$$\frac{a}{b} \times c \quad 30$$

where—

- a is the value of the dutiable estate; and
- b is the total value of the dutiable estate and the foreign assets; and 35
- c is the value of that pecuniary legacy or other pecuniary claim.”

4. Relief for estate duty paid outside New Zealand—Section 40 of the principal Act is hereby amended as from its commencement by inserting, after subsection (1), the following subsection: 40

“(1A) For the purposes of paragraph (a) of subsection (1) of this section, the duties paid under the laws of any countries or territories outside New Zealand shall be converted into New Zealand currency at the rate of exchange prevailing at the
5 date of death of the deceased.”

5. Commissioner may defer payment of estate duty on certain mining ventures—(1) The principal Act is hereby further amended by inserting, after section 43, the following section:

10 “43A. (1) Where, in the opinion of the Commissioner, any property included in the dutiable estate is an interest in a mining venture (whether in respect of petroleum or minerals of any kind) and—

15 “(a) The mining venture has not become income-producing before the date of death of the deceased; and

“ (b) The interest in the mining venture has a value which is significant in relation to the total value of the dutiable estate,—

20 the Commissioner may, notwithstanding anything in this Act, defer in accordance with this section payment of the whole or any part of the estate duty attributable to that interest.

“ (2) The Commissioner shall, where estate duty in respect of any interest is to be deferred under this section, accept a mortgage, charge, or other security (in this section referred
25 to as a mortgage) over that interest to secure payment of that estate duty.

“ (3) The mortgage shall be subject to such terms and conditions as the Commissioner thinks fit, and, without limiting the generality of the foregoing, may include provisions for
30 deferring the payment of the estate duty until the Commissioner determines that—

“ (a) Sufficient of the interest in the mining venture has been realised, or sufficient income has been derived from that interest, to pay the whole of that estate
35 duty, or any part thereof; or

“ (b) Any other event, on the occurrence of which the estate duty or any part thereof is to be paid, has occurred:

40 “ Provided that no interest shall be payable under the mortgage, but interest on estate duty shall continue to be payable under section 52 of this Act.

“ (4) No penalty on estate duty shall be payable in respect of the estate duty secured by the mortgage, except as provided in subsection (5) of this section.

“(5) Where any determination is made pursuant to subsection (3) of this section or to any provision in the mortgage, notice of the determination shall be given by the Commissioner to the administrator, and the provisions of this Act as to payment of estate duty, including section 51, shall apply as if the notice of the determination were a notice of assessment of the amount of estate duty so determined. 5

“(6) Nothing in this section shall derogate from the powers of the Commissioner under this Act to reduce, remit, or refund any estate duty, interest on estate duty, or penalty on estate duty. 10

“(7) For the purposes of section 43 of this Act, any mortgage under this section shall be sufficient security for payment of the estate duty secured by the mortgage.”

(2) Section 52 of the principal Act is hereby amended by inserting in subsection (3), after the expression “43”, the expression “43A,”. 15

(3) Subsections (1) and (2) of this section shall apply to the estates of all persons, whether dying before or after the commencement of the principal Act. 20

6. Exemption for gifts to charities and certain bodies—

(1) Section 73 of the principal Act is hereby amended by adding to subsection (2) (as amended by section 5 (1) of the Estate and Gift Duties Amendment Act 1969) the following paragraph: 25

“(g) Any gift to or by an Urban Fire Authority or the Fire Service Council in either case for the purposes of section 75 of the Fire Services Act 1949.”

(2) Section 75 of the Fire Services Act 1949 is hereby consequentially amended by omitting from subsection (3) the words “No gift duty, stamp duty, or other duty”, and substituting the words “No stamp duty”. 30

7. When gift duty payable—Section 85 of the principal Act is hereby amended as from its commencement by omitting from subsection (1) the words “on the making of a gift”, and substituting the words “on the making of a dutiable gift”. 35

8. Objections against exercise of Commissioner's discretion—(1) Section 91 of the principal Act is hereby amended by inserting in the definition of the expression “discretion” in subsection (1), after paragraph (g), the following paragraph:

5 “(gg) Subsection (1) of section 43A of this Act, and subsection (3) of that section so far as it relates to the amount of estate duty payable under any determination:”.

(2) Section 90 of the principal Act is hereby consequentially
10 amended by inserting in paragraph (d) of subsection (4), after the words “Part III”, the words “(other than section 43A)”.

(3) Subsections (1) and (2) of this section shall apply to the estates of all persons, whether dying before or after the
15 commencement of the principal Act.