

No. 65, 1960.]

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ACT

To amend the Estate Duty Act, 1955.

(Afrikaans text signed by the Governor-General.)
(Assented to 25th May, 1960.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. (1) Section *one* of the Estate Duty Act, 1955 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion in the definition of "duty" in sub-section (1) after the word "Act" of the words "and includes for the purposes of the second proviso to the First Schedule, in relation to the estate of any first-dying person referred to in that proviso who died before the first day of April, 1955, any estate duty payable under the Death Duties Act, 1922 (Act No. 29 of 1922)";
- (b) by the insertion in the definition of "fair market value" in the said sub-section after the words "carried on" of the words "in the Union"; and
- (c) by the substitution in sub-paragraph (iii) of paragraph (b) of sub-section (2) for the words "for land bank purposes" of the words "by sworn appraisers appointed by Masters of the Supreme Court".
- (2) The amendment effected by paragraph (a) of sub-section (1) shall be deemed to have come into operation on the first day of April, 1960, in respect of assessments issued on or after the said date: Provided that any reduction allowed under assessments issued before the said date on the basis of the amendment effected by the said paragraph (a) shall be deemed to have been lawfully allowed.
2. Section *three* of the principal Act is hereby amended—
- (a) by the substitution for paragraph (c) of sub-section (2) of the following paragraph:—
- "(c) in the case of a deceased who was not ordinarily resident in the Union at the date of his death, any right in immovable property situate outside the Union;"
- (b) by the insertion in paragraph (d) of the said sub-section after the word "Union" where it occurs for the second time of the words "at the date of his death";
- (c) by the substitution for paragraph (e) of the said sub-section of the following paragraph:—
- "(e) any debt not recoverable or right of action not enforceable in the Courts of the Union if the deceased was not ordinarily resident in the Union at the date of his death;"
- (d) by the insertion in paragraph (f) of the said sub-section after the word "Union" where it occurs for the second time of the words "if the deceased was not ordinarily resident in the Union at the date of his death";
- (e) by the substitution for paragraph (g) of the said sub-section of the following paragraph:—
- "(g) in the case of a deceased who was not ordinarily resident in the Union at the date of his death—
- (i) any stocks or shares held by him in a body corporate which is not a company; and
- (ii) any stocks or shares held by him in a company, provided any transfer whereby any change of ownership in such stocks or shares is recorded is not required to be registered in the Union;"
- (f) by the substitution for paragraph (d) of sub-section (3) of the following paragraph:—
- "(d) property (being property not otherwise chargeable under this Act or the full value of which is not otherwise required to be taken into account in the determination of the dutiable amount of the

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957.

Amendment of section 3 of Act 45 of 1955.

estate) of which the deceased was immediately prior to his death competent to dispose for his own benefit or for the benefit of his estate.”; and

- (g) by the insertion after sub-section (4) of the following sub-section:

“(5) For purposes of paragraph (d) of sub-section (3)—

- (a) the term ‘property’ shall be deemed to include the profits of any property;
- (b) a person shall be deemed to have been competent to dispose of any property—
- (i) if he had such power as would have enabled him, if he were *sui iuris*, to appropriate or dispose of such property as he saw fit whether exercisable by will, power of appointment or in any other manner;
- (ii) if under any deed of donation, settlement, trust or other disposition made by him he retained the power to revoke or vary the provisions thereof relating to such property;
- (c) the power to appropriate, dispose, revoke or vary contemplated in paragraph (b) shall be deemed to exist if the deceased could have obtained such power directly or indirectly by the exercise, either with or without notice, of power exercisable by him or with his consent;
- (d) the expression ‘property of which the deceased was immediately prior to his death competent to dispose’ shall not include the share of a spouse of a deceased in any property held in community of property between the deceased and such spouse immediately prior to his death.”.

3. Section *four* of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957.

- “(e) the amount included in the total value of all property of the deceased as representing the value of any right in or to property situate outside the Union acquired by the deceased—
- (i) before he became ordinarily resident in the Union for the first time; or
- (ii) after he became ordinarily resident in the Union for the first time, by inheritance or by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in the Union; or
- (iii) out of the profits and proceeds of any such property proved to the satisfaction of the Commissioner to have been acquired out of such profits or proceeds;”

4. Section *five* of the principal Act is hereby amended—

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957.

- (a) by the insertion in paragraph (a) of sub-section (1) after the word “in” where it occurs for the second time of the words “paragraph (f)*bis* or”;
- (b) by the addition to paragraph (b) of the said sub-section of the following proviso:
- “Provided further that if upon the cessation of the interest held by the deceased it is not possible to ascertain until some future date the person or some or all of the persons who will become entitled to the right of enjoyment of the property, the value shall be determined by capitalizing at six per cent. over a period of fifty years the annual value of the right of enjoyment of the property in which such interest was held, unless the Commissioner and the executor agree that, having regard to the circumstances of the case, it would be reasonable to adopt a lesser period than fifty years, in which event such lesser period, as agreed, may be adopted accordingly;”;
- (c) by the insertion after paragraph (f) of the said sub-section of the following paragraphs:

“(f)*bis* in the case of shares, not quoted on any stock exchange, in a company controlled, directly or indirectly, whether through a majority of the

shares thereof or other interest therein or in any other manner whatsoever, by the deceased or by the deceased and one or more persons connected with him by blood relationship, marriage or adoption or by any other person on his or their behalf, the value of such shares in the hands of the deceased as at the date of his death as determined by the Commissioner subject to the following provisions, namely—

- (i) no regard shall be had to any provision in the memorandum and articles of association or rules of the company restricting the transferability of the shares therein, but it shall be assumed that such shares were freely transferable;
- (ii) no regard shall be had to any provision in the memorandum and articles of association or rules of the company whereby or whereunder the value of the shares of the deceased or any other member is to be determined;
- (iii) if upon a winding-up of the company the deceased would have been entitled to share in the assets of the company to a greater extent *pro rata* to shareholding than other shareholders, no lesser value shall be placed on the shares held by the deceased than the amount to which he would have been so entitled if the company had been in course of winding-up and the said amount had been determined as at the date of his death;
- (iv) no regard shall be had to any increase or decrease in value of the shares held by the deceased which may have taken place for any reason at or after the moment of death, except to the extent that the amount of such decrease is required to be included in the dutiable amount of the estate in terms of paragraph (d) of sub-section (3) of section three;
- (v) there shall be taken into account any power of control exercisable by the deceased and the company whereunder he was entitled or empowered to vary or cancel any rights attaching to any class of shares therein, including by way of redemption of preference shares, if, by the exercise of such power he could have conferred upon himself any benefit or advantage in respect of the assets or profits of the company;
- (vi) regard shall be had to any sworn appraisal made by some impartial person with due regard to the provisions contained in subparagraphs (i) to (v);

(f)ter in the case of any property referred to in paragraph (d) of sub-section (3) of section three which consists only of profits, an amount determined by capitalizing at six per cent. such amount as the Commissioner may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his death, and in the case of any other property referred to in the said paragraph the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he had at that date exercised his power of disposition;”;

- (d) by the substitution for the proviso to paragraph (g) of the said sub-section of the following proviso:
“Provided that in any case in which, as a result of conditions imposed by any person whomsoever, the value of any property could or would be reduced for any reason at or after the moment of death, the value of such property shall, unless the Commissioner other-

wise directs, be determined as though those conditions had not been imposed.”; and

- (e) by the insertion after sub-section (4) of the following sub-section:

“(5) For purposes of paragraph (f)*bis* of sub-section

(1)—

- (a) the term ‘shares’ includes any class of shares, stock, debenture stock, debenture or right to subscribe for or purchase shares, stocks or debentures, and the term ‘company’ includes any company incorporated in the Union or elsewhere;
- (b) the term ‘blood relationship’ includes such relationship to the fourth degree.”.

5. Section *sixteen* of the principal Act is hereby amended—

(a) by the deletion of the word “and” at the end of paragraph (a);

Amendment of section 16 of Act 45 of 1955.

(b) by the addition of the word “and” at the end of paragraph (b); and

(c) by the addition of the following paragraph:

“(c) without in any way modifying or adding to the rights of any person under an agreement entered into by the Government of the Union with the Government of any other country or territory relating to the prevention of or relief from double taxation in respect of estate duty, any amount of any death duties proved to the satisfaction of the Commissioner to have been paid to any other State in respect of any property situate outside the Union and included in the estate of any person who at the date of his death was ordinarily resident in the Union: Provided that the deduction under this paragraph shall not exceed the duty imposed on such property by this Act.”.

6. This Act shall be called the Estate Duty Amendment Act, 1960, and shall, save as provided in sub-section (2) of section *one*, apply in respect of the estate of any person who dies on or after the first day of June, 1960.

Short title and commencement of amendments.