

No. 59, 1957.]

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ACT

To amend the Estate Duty Act, 1955.

(English text signed by the Officer Administering the Government.)
(Assented to 21st June, 1957.)

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:—

Amendment of
section 1 of
Act 45 of 1955.

1. Section *one* of the Estate Duty Act, 1955 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "executor" of the following definition:

"'fair market value' in relation to immovable property on which *bona fide* farming operations are being carried on, means at the option of the executor either—

(a) the fair market value thereof; or

(b) an amount to be determined in accordance with the provisions of sub-section (2) as representing the aggregate of the fair agricultural or pastoral value of the land and the value which any improvements situated thereon may be expected to add to such value of the land (which aggregate is hereinafter referred to as the surface value), together with the fair market value of any mineral rights attaching to the land, as at the date of the death of the deceased person;"; and

(b) by the addition of the following sub-section, the existing section becoming sub-section (1):

"(2) (a) In the case of any property in respect of which the executor elects the value determined in accordance with paragraph (b) of the definition of 'fair market value' in sub-section (1), the executor shall lodge an application in the prescribed form in duplicate for a determination of the surface value of that property with the magistrate of the district in which any such property is situate.

(b) (i) Any magistrate with whom any such application has been lodged shall forward both copies thereof to any land bank valuator selected by him who has been appointed in terms of section *seventy* of the Land Bank Act, 1944 (Act No. 13 of 1944), with instructions to make a valuation of the surface value of the property in question.

(ii) The provisions of the Land Bank Act, 1944, applicable to valutors appointed under the said Act, and any instructions issued from time to time by the Land Bank to such valutors in connection with the exercise of their duties, shall apply to any such valuator instructed to make a valuation of the surface value of any such property as though he were making a valuation for land bank purposes.

(iii) Fees and travelling expenses shall be paid by the estate of the deceased to any such valuator in accordance with the tariffs applicable to the valuations of property for land bank purposes.

(c) Any land bank valuator to whom any such application in duplicate has been referred, shall cause the particulars of his valuation of the surface value of the property in question to be inserted on both copies of the application and shall within three days from the date on which his valuation was made forward one copy to the executor of the estate and the remaining copy to the magistrate for transmission to the Commissioner.

- (d) (i) The Commissioner shall thereupon determine the surface value of the property in question, which determination shall be subject to the provisions of paragraph (e), or may refer the matter to the Board of the Land Bank as constituted under section *four* of the Land Bank Act, 1944 (in this section referred to as the Board), for its determination of such value.
- (ii) The Commissioner shall at the same time determine the fair market value of the mineral rights attaching to the property in question and shall advise the executor of the values determined by him under this paragraph and shall indicate in such advice whether the determination of the surface value of the property was made by him or by the Board.
- (e) If the executor considers himself aggrieved by the Commissioner's determination of the surface value of any property in terms of paragraph (d), he shall notify the Commissioner thereof in writing within twenty-one days or such further period as the Commissioner may allow from the date of the advice referred to in the said paragraph and the Commissioner shall thereupon cause the matter to be referred to the Board for review.
- (f) (i) For the purposes of its determination under paragraph (d) or (e), the Board shall apply the same principles and follow the same practice and procedure as in the case of a determination by it of the value of property for land bank purposes.
- (ii) Any person duly authorized thereto by the Board shall at all reasonable times have full access to the property the value of which is being determined by the Board.
- (g) There shall be no appearance by or on behalf of either party before the Board, whose decision shall be final and shall be communicated in duplicate to the Commissioner who shall forward one copy thereof to the executor."

Amendment of
section 4 of
Act 45 of 1955.

2. Section *four* of the principal Act is hereby amended by the addition after paragraph (k) of the following paragraphs:

- "(l) so much of the amount of the proceeds of any local registered stock included as property of the deceased as does not exceed the difference between the sum of five thousand pounds and the amount allowed under paragraph (k);
- (m) the value of any usufructuary or other like interest in property, and of any right to an annuity charged upon property, included as property of the deceased under paragraph (a) of sub-section (2) of section *three*, if such interest or right was created by a predeceased spouse of the deceased and the property over which the deceased enjoyed such interest or right formed part of the estate of such predeceased spouse;
- (n) so much of any amount which, as a result of the grant to any person of a right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property for no consideration or for a consideration which in the opinion of the Commissioner is not an adequate consideration, is deemed to be property of the deceased under paragraph (c) of sub-section (3) of section *three*."

Amendment of
section 5 of
Act 45 of 1955.

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

- (a) by the addition at the end of paragraph (b) of sub-section (1) with effect from the date of commencement of the said section, of the following proviso:

"Provided further that where upon the cessation of the interest of the deceased in any property, there accrues to the holder of the bare dominium therein, the full ownership in that property, the value of the advantage or benefit so accruing by reason of the cessation of the interest held by the deceased, shall not exceed the difference between the fair market value of that property as at the date of such cessation and the value of the bare dominium as at the date when such

bare dominium was first acquired under the disposition creating the said interest held by the deceased.”; and
 (b) by the addition of the following sub-section:

“(4) Whenever the value of any property included in the estate of a deceased is reduced as a result of the continuance after the death of that person of any right in respect of which a deduction has been allowed under paragraph (n) of section *four*, the value of such property shall for the purposes of sub-section (1) be determined as though the said right had not been granted.”.

Amendment of section 8 of Act 45 of 1955.

4. Section *eight* of the principal Act is hereby amended by the insertion in paragraph (a) of sub-section (1) after the word “property” of the words “other than property whereof the fair market value has been determined in accordance with the provisions of sub-section (2) of section *one*”.

Amendment of section 24 of Act 45 of 1955, as amended by section 17 of Act 59 of 1956.

5. Section *twenty-four* of the principal Act is hereby amended by the insertion in sub-section (1) after the word “any” where it occurs for the second time of the words “determination of the Commissioner under sub-paragraph (ii) of paragraph (d) of sub-section (2) of section *one* of the mineral rights attaching to any property or by any”.

Amendment of First Schedule to Act 45 of 1955.

6. The First Schedule to the principal Act is hereby amended—

- (a) by the substitution in paragraph (i) of the first proviso for the words “five thousand” of the words “ten thousand”;
- (b) by the substitution in paragraph (ii) and in paragraph (iii) of the first proviso for the words “two thousand” of the words “five thousand”; and
- (c) by the substitution in the second proviso—
 - (i) for the word “three” where it occurs for the first time of the word “five”; and
 - (ii) for the words following the word “scale” and preceding the word “subject” of the following words:

“if the deceased dies within one year of the death of the first-dying person	..	100 per cent.
if the deceased dies more than one year, but not more than two years after the death of the first-dying person	..	80 per cent.
if the deceased dies more than two years, but not more than three years after the death of the first-dying person	..	60 per cent.
if the deceased dies more than three years, but not more than four years after the death of the first-dying person	..	40 per cent.
if the deceased dies more than four years, but not more than five years after the death of the first-dying person	..	20 per cent.”

Commencement of certain amendments.

7. The amendments effected by this Act save in the case of the amendment effected by paragraph (a) of section *three* shall first take effect in respect of the estate of any person who dies or died on or after the first day of April, 1957.

Short title.

8. This Act shall be called the Estate Duty Amendment Act, 1957.