

South Australia

Gift Duty Act 1968

An Act to provide for the imposition, assessment and collection of a duty on certain gifts and for purposes connected therewith.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Gift Duty Act 1968*.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

controlled company means a corporation that is under the control of not more than five persons and that is neither a corporation in which the public are substantially interested nor a subsidiary of any corporation in which corporation the public are substantially interested;

corporation means a corporation as defined in the *Companies Act 1962* as amended;

disposition of property means any conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, whether at law or in equity, and, without limiting the generality of the foregoing, includes—

- (a) the allotment or issue of shares in or debentures of a corporation;
- (b) the creation of any trust in property;
- (c) the grant or creation of any lease, mortgage, charge, encumbrance, easement, licence, partnership, power, option or other right, whether at law or in equity, or any interest in property;
- (d) the release, discharge, surrender, forfeiture, renunciation, disclaimer, or abandonment at law or in equity of any debt, contract or chose in action, or of any interest in property;
- (e) the exercise, whether solely or jointly with any other person or with or without the consent of any other person, of a general power of appointment in favour of any person other than the holder of the power;
- (ea) for the purposes only of subsection (12) and (13) of this section, the distribution by a controlled company of a dividend upon shares held in that company or of interest on money advanced to that company whether the dividend or interest be paid to the shareholder or creditor entitled thereto or accumulated or invested on his behalf or credited in his name to a loan account or fund however designated or otherwise held or dealt with on his behalf or as he may permit or direct;
- (f) any thing or things done or omitted to be done by any person, or any thing or things done or omitted to be done by two or more persons, either jointly or separately, as a result of which—
 - (i) the total estate or the value of the total estate of any person is diminished; and
 - (ii) the total estate or the value of the total estate of any other person is increased,

whether that result ensued from the doing of or the omission to do one or more of those things and whether or not the total estate or the value of the total estate of the person referred to in subparagraph (i) of this paragraph was diminished at the same time as the total estate or the value of the total estate of the person referred to in subparagraph (ii) of this paragraph was increased;

donee means a person to whom a gift is made and, where the gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary;

donor means a person by whom a gift is made;

general power of appointment includes any power or authority which enables the holder, or would enable him if he were of full capacity, to make an appointment in relation to, or dispose of, any property, or to charge any sum of money upon any property, as he thinks fit for his own benefit, but does not include any power exercisable by any person, in a fiduciary capacity, for the benefit only of others arising under a disposition not made by himself, or as tenant for life, or as mortgagee;

gift means any disposition of property which is made (whether with or without an instrument in writing) otherwise than by will, without consideration in money or money's worth passing from the person to whom or in whose favour the disposition is made to the person by whom the disposition is made, or with any such consideration so passing if the consideration is not fully adequate;

gift duty means the duty chargeable under this Act;

interest in property means any estate, interest, right or power whatsoever, whether at law or in equity, in or over property;

property includes real and personal property, any debt, any chose in action and any estate, interest, right or power whatsoever, whether at law or in equity, in or over property;

Territory of the Commonwealth includes a territory under the trusteeship of the Commonwealth;

the Commissioner means the person for the time being holding or acting in the office of Commissioner of Succession Duties and includes the person for the time being holding or acting in the office of Deputy Commissioner of Succession Duties, under the *Succession Duties Act 1929* and any other officer while performing any of the duties or functions of the Commissioner of Succession Duties;

voluntary contract means a contract or agreement entered into (whether with or without an instrument in writing and whether such contract or agreement was made before or after the commencement of this Act) without fully adequate consideration in money or money's worth.

- (2) For the purposes of the definition of **controlled company** in subsection (1) of this section—
- (a) a corporation shall be deemed to be a subsidiary only if, by reason of the beneficial ownership of shares therein, the corporation is under the control of a corporation which is not a controlled company or of two or more corporations none of which is a controlled company; and
 - (b) a corporation shall be deemed to be a corporation in which the public are substantially interested only if—
 - (i) shares of the corporation (not being shares in respect of which a fixed rate of dividend, whether with or without a further right to participate in profits, is payable) carrying more than twenty-five per centum of the voting power have been allotted to, or acquired by, and are at the relevant time beneficially owned by, the public, not including a controlled company; and
 - (ii) the right to transfer those shares is not restricted; and

- (iii) those shares are, in the opinion of the Commissioner, generally available for purchase by the public; and
 - (c) a corporation shall be deemed to be under the control of not more than five persons—
 - (i) if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital of the corporation; or
 - (ii) if any five or fewer persons together possess the greater part of the voting power at a general meeting of the corporation; or
 - (iii) if any five or fewer persons together exercise, or are able to exercise, or are entitled to acquire, direct or indirect control of the affairs of the corporation and they cannot be deprived of that control by the exercise of the voting power of any other person or persons at any meeting of the corporation; or
 - (iv) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed at the relevant time to the members, entitle them to receive the greater part of the amount so distributed; and
 - (d) in determining whether a corporation is or is not under the control of not more than five persons, a person who is related to another person and that other person, a person who is a nominee of another person and that other person and any other nominees of that other person, persons in partnership, or persons interested in any shares or obligations of the corporation which are subject to any trust or are part of the estate of a deceased person, shall be treated as one person.
- (3) For the purposes of paragraph (d) of subsection (2) of this section—
- (a) a person shall be deemed to be related to another person if one of those persons is the lineal issue, brother, sister, lineal issue of a brother or sister, spouse, ancestor of the spouse, brother or sister of the spouse, spouse of the brother or sister of the spouse, lineal issue of the brother or sister of the spouse, spouse of the lineal issue, spouse of a brother or sister, spouse of the lineal issue of a brother or sister, or spouse of the lineal issue of a brother or sister of the spouse, of the other of those persons; and
 - (c) a corporation shall be deemed to be related—
 - (i) to a person, if the corporation is a controlled company and any of the persons by whom it is controlled is related, as mentioned in paragraph (a) of this subsection, to that person; or
 - (ii) to another corporation, if those corporations are controlled companies and if any of the persons by whom either of those corporations is controlled are related, as mentioned in paragraph (a) of this subsection, to any of the persons by whom the other of those corporations is controlled.

- (4) A reference in paragraph (a) of subsection (3) of this section to lineal issue includes a reference—
- (a) to a step-child; and
 - (b) to an adopted child; and
 - (c) to a natural child,
- and a step-child shall, for the purposes of this section, be deemed to be related to any other person in the same manner as he would be if he were the child of both his step-parent and the spouse of his step-parent.
- (5) For the purposes of paragraph (d) of subsection (2) of this section, a person is deemed to be the nominee of another person if, whether directly or indirectly, he possesses on behalf of that other person or may be required to exercise on the direction of or on behalf of that other person any right or power in relation to a corporation.
- (6) Where a debt, contract, chose in action or interest in property becomes irrecoverable or unenforceable by action or other process through lapse of time, it shall unless the Commissioner is satisfied that it was not rendered so irrecoverable or unenforceable for the purpose of evading or avoiding gift duty—
- (a) for the purposes of paragraph (d) of the definition of *disposition of property* in subsection (1) of this section, be deemed to have been released, discharged, surrendered, forfeited, renounced, disclaimed or abandoned; and
 - (b) for the purposes of this Act, be deemed to have been released, discharged, surrendered, forfeited, renounced, disclaimed or abandoned at the time when it became so irrecoverable or unenforceable.
- (7) Where, after any debt, contract, chose in action or interest in property has been released, discharged, surrendered, forfeited, renounced, disclaimed or abandoned as mentioned in subsection (6) of this section so as to constitute a gift, there passes from the donee to the donor any consideration that, had the debt, contract, chose in action or interest in property not become irrecoverable or unenforceable, would have been consideration to which the donor was entitled on account of the debt, contract, chose in action or interest in property, the passing of that consideration shall, for the purposes of this Act, be deemed not to be a gift.
- (8) Where any consideration in relation to a contract passes from one party to the contract to another party to the contract and that contract is void, the passing of the consideration shall, where the Commissioner is of the opinion that, having regard to the nature of the contract, to the circumstances in which the contract was entered into, to any relationship of one party to the contract to any other party to the contract and to any other circumstances that the Commissioner thinks relevant, the contract was *bona fide* entered into in the course of an ordinary commercial transaction and was not entered into for the purpose of evading or avoiding gift duty, be deemed, for the purposes of this Act, not to be a gift.
- (9) Where—
- (a) any consideration in relation to a contract passes from one party to the contract to another party to the contract and that contract is void; and

- (b) there passes from that other party to the first mentioned party any consideration that, had the contract not been void, would have been consideration to which that first mentioned party was entitled under the contract,

the passing of the consideration as mentioned in paragraph (b) of this subsection shall, where the Commissioner is of the opinion that, having regard to the nature of the contract, to the circumstances in which the contract was entered into, to any relationship of one party to the contract to any other party to the contract and to any other circumstances that the Commissioner thinks relevant, the contract was *bona fide* entered into in the course of an ordinary commercial transaction and was not entered into for the purpose of evading or avoiding gift duty, be deemed, for the purposes of this Act, not to be a gift.

(10) For the purposes of this Act—

- (a) a disposition of property referred to in paragraph (f) of the definition of ***disposition of property*** in subsection (1) of this section shall, notwithstanding any other provision of this Act, be deemed to take effect at the time when the total estate or the value of the total estate of the person referred to in subparagraph (ii) of that paragraph is increased; and
- (b) the value of the property in any such disposition shall, notwithstanding any other provision of this Act, be deemed to be an amount that is equivalent to the amount by which the total estate or the value of the total estate of the person referred to in subparagraph (i) of that paragraph is diminished; and
- (c) notwithstanding any other provision of this Act, the person referred to in subparagraph (i) of that paragraph shall be deemed to be the person by whom a disposition or gift is made and the person referred to in subparagraph (ii) of that paragraph shall be deemed to be the person in whose favour or to whom a disposition or gift is made; and
- (d) in determining whether or not an increase in the total estate or the value of the total estate of a person has occurred and, if so, the amount of the increase, no allowance shall be made in respect of any contingency affecting the interest of the person in whose favour or to whom a disposition or gift is made; and
- (e) in determining whether or not a diminution in the total estate or the value of the total estate of a person has occurred and, if so, the amount of the diminution, no allowance shall be made in respect of any contingency affecting the interest of the person by whom a disposition or gift is made.

(11) Without limiting the generality of the definition of ***disposition of property*** in subsection (1) of this section, where the total estate or the value of the total estate of a person is diminished as the result, directly or indirectly, of any thing or things done or omitted to be done by a controlled company of which that person is a director, shareholder or creditor or in which that person has a pecuniary interest, or by a person as a director, shareholder or creditor of a controlled company, whether such thing or things was or were done by the controlled company or that person alone or together with any other person or persons—

- (a) that first mentioned person shall, for the purposes of this Act, be deemed to have made a disposition of property and to be, to the exclusion of any other person, the person by whom the disposition is made; and

- (b) a disposition of property referred to in paragraph (a) of this subsection shall be deemed to take effect at the time when the diminution referred to in this subsection takes place; and
- (c) the value of the property in any such disposition shall be deemed to be an amount that is equivalent to the amount of that diminution, ascertained without any allowance being made in respect of any contingency affecting the interests of the person by whom the disposition is made.

(12) Where—

- (a) a disposition of property (whether by way of dividend, interest or otherwise, but not being an allotment or issue of shares) is made by a controlled company, either alone or together with any other person or persons, to one or more of its members or creditors; or
- (b) a disposition of property (being an allotment or issue of shares) is made by a controlled company whether or not to one of its members,

and—

- (c) the resolution or other decision whereby the disposition was made or the obligation to make the disposition was created resulted, either wholly or partly and either directly or indirectly, from the exercise of a right or power that was possessed, or by the constitution of the controlled company expressed to be possessed, by any particular person, either alone or together with any other person or persons; or
- (d) by the exercise of a right or power that was possessed, or by the constitution of the controlled company expressed to be possessed, by him, a particular person, either alone or together with any other person or persons, could have prevented the passing of the resolution or the making of the other decision whereby the disposition was made or the obligation to make the disposition was created,

and that particular person, either alone or together with any other person or persons, could have exercised that or any other right or power whereby a disposition of that property or of property of equivalent value could have been made by the company to himself or themselves, that particular person or that particular person and that other or those other persons, as the case may be, shall, for the purposes of this Act, be deemed, to the exclusion of any other person, to have been the person or persons by whom the disposition of the property is made.

(13) Notwithstanding any other provisions of this Act, a disposition of property referred to in subsection (12) of this section and deemed pursuant to that subsection to have been made by a person other than the controlled company shall, for the purposes of this Act, be deemed to have been made without consideration except to the extent that the consideration, if any, that passed from the person to whom the disposition is made to the person or persons by whom the disposition is made or to the controlled company was, in the opinion of the Commissioner, fully adequate, having regard—

- (a) to the nature and extent of the right or power that could have been exercised by the person or persons by whom the disposition is made, as referred to in that subsection; and

- (b) to any increase in the total estate or the value of the total estate of the person to whom the disposition is made that resulted from the disposition; and
 - (c) to the nature and extent of the respective shareholdings of the shareholders of the company; and
 - (d) to any other circumstances that he thinks relevant.
- (13a) For the purposes of subsection (13) of this section, the disposition of property shall be deemed to have been made for adequate consideration—
- (a) where the disposition (in the case of a distribution of dividend or an allotment or issue of shares) is made, and all such dispositions (if any) made during the previous three years or during the period commencing on the third day of December, 1968, and ending on the day the disposition was made, whichever is the lesser period, were made, to all the shareholders of the company in proportion to their respective paid up shareholdings (not being shareholdings entitled to a fixed rate of dividend); or
 - (b) to the extent that the person or persons deemed by subsection (12) of this section to be the person or persons by whom the disposition is made disposes or dispose of such property to himself or themselves.
- (14) Nothing in subsection (12) of this section shall be construed so as to prevent any disposition of property made by a controlled company otherwise than as is mentioned in that subsection from being a disposition of property for the purposes of this Act.
- (15) Where a gift is made by a controlled company that is incorporated under the law of a State other than this State or of a Territory of the Commonwealth, but is carrying on business in South Australia, and gift duty is payable in respect of the gift by reason of paragraph (b) of subsection (1) of section 9 of this Act, the gift shall, for the purposes of this Act, be deemed to have been made to the donee by each member of the controlled company to the exclusion of any other person and the value of the gift made by each such member shall, for the purposes of this Act, be deemed to be an amount that bears to the value of the property comprised in the gift the same proportion as the value of his paid-up shareholding in the controlled company bears to the value of the paid-up capital of the controlled company.
- (16) Where a gift is deemed under subsection (15) of this section to have been made by a member (in this subsection referred to as the *donor controlled company*) of a controlled company that is itself a controlled company, a gift of the value deemed by that subsection to have been made by the donor controlled company shall, for the purposes of this Act, be deemed to have been made to the donee by each member of the donor controlled company to the exclusion of any other person and the value of the gift made by each member of the donor controlled company shall, for the purposes of this Act, be deemed to be an amount that bears to that value the same proportion as the value of that member's paid-up shareholding in the donor controlled company bears to the value of the paid-up capital of the donor controlled company.

- (17) Without limiting the generality of the definition of *gift* in subsection (1) of this section, where a person has a right to recover any money which has become due and payable to him and does not take all reasonable steps to enforce payment of that money during the period of twelve months commencing on the date upon which the money first became due and payable or during any subsequent period of twelve months, a gift shall, for the purposes of this Act, be deemed to have been made at the expiration of each such period, and in respect of any such period the value of the gift shall be deemed to be the amount of interest that would have accrued at the expiration of that period if interest, calculated at the rate of five per centum per annum on the amount unpaid at the commencement of that period had been payable, or where any interest was actually paid or payable during that period, the amount of interest so calculated reduced by the interest actually paid or payable: Provided that this subsection shall not apply in the case of a contract *bona fide* entered into in the course of an ordinary commercial transaction which is not entered into for the purpose of evading or avoiding gift duty.
- (17a) For the purposes of subsection (17) of this section, a debt, loan or deposit that is payable on demand shall be deemed not to be due and payable unless and until a demand for payment thereof has been made by the person entitled to make the demand addressed to the person by whom the debt, loan or deposit is repayable.
- (18) Where a gift of property is made by two or more persons jointly, the gift shall, for the purposes of this Act, be deemed to have been made by each of them severally and the value of the gift made by each of them shall, for the purposes of this Act, be deemed to be an amount that bears to the total value of the gift the same proportion as the value of his interest in the property immediately before the gift was made bears to the value of the property.
- (19) Where the doing of or omission to do any two or more things constitutes a disposition of property within the meaning of this Act, the fact that any one of those things itself constitutes such a disposition does not prevent the doing of or omission to do those two or more things from constituting such a disposition or the doing of or omission to do that one thing from constituting such a disposition.
- (20) Where a disposition of property arises by reason of the doing of or omission to do any two or more things and that disposition is a gift in respect of which gift duty is payable and any one or more of those things itself constitutes a disposition of property that is a gift in respect of which gift duty is payable, the Commissioner may remit such part of that lastmentioned gift duty as he thinks fit.
- (21) Notwithstanding any other provision of this Act, where a gift that is a disposition of property referred to in subsections (11) to (17) inclusive of this section has been made before the third day of December, 1968, gift duty shall not be payable in respect thereof and it shall not be taken into account in ascertaining whether gift duty is payable in respect of any other gift made by the same donor or in ascertaining the amount of any gift duty so payable.

5—Definition of value of all gifts—Schedule

For the purpose of calculating the gift duty payable under this Act in respect of a gift, a reference in the Schedule to this Act to the value of all relevant gifts shall be construed as a reference to the sum of—

- (a) the value of the gift in respect of which the calculation is being made; and

- (b) the value of all other gifts made—
 - (i) at the same time as the gift referred to in paragraph (a) of this section, and within eighteen months previously (whether wholly or partly before the commencement of this Act or not) and within eighteen months subsequently; and
 - (ii) by the same donor who made the gift referred to in paragraph (a) of this section to the same or to any other donee.

5A—Non-application of this Act to certain gifts

Notwithstanding any other provision of this Act—

- (a) this Act shall not apply to any gift made on or after the first day of January, 1980; and
- (b) no such gift shall be taken into account in assessing the duty payable in respect of a gift made before that date.

Part 2—Administration

6—Administration

The Commissioner is charged with the general administration of this Act.

7—Services of officers or employees of any Government department

For the purposes of this Act the Commissioner may, with the approval of the Minister responsible for the administration of the department concerned and of the Public Service Board, on such terms as may be arranged, make use of the services of officers or employees of any Government department.

8—Secrecy

- (1) A person appointed or employed under or for the purposes of this Act or whose services are made use of pursuant to section 7 of this Act shall not, either directly or indirectly, except in the exercise or performance of any power or function under this Act and, either while he is or after he ceases to be so appointed or employed or his services cease to be so used, make a record of or divulge or communicate to any person any information acquired respecting the affairs of any other person disclosed or obtained under the provisions of this Act.
- (2) Nothing in this section prohibits a person appointed or employed under or for the purposes of this Act or whose services are made use of pursuant to section 7 of this Act from producing in any court any return, assessment, or notice of assessment or from divulging or communicating to any court any information acquired respecting the affairs of any other person disclosed or obtained under the provisions of this Act.
- (3) Any person appointed or employed under or for the purposes of this Act or whose services are made use of pursuant to section 7 of this Act shall, if and when required by the Commissioner to do so, make an oath or declaration in the manner and form required by the Commissioner to maintain secrecy in conformity with the provisions of this section.

- (4) Nothing in this section prevents the Commissioner or any person authorised in that behalf by the Commissioner from divulging or communicating any information acquired by him respecting the affairs of any person in the exercise or performance of his powers or functions under this Act to—
- (a) any person performing, in pursuance of any appointment or employment by the Commonwealth or by a State, any duty arising under any Act administered by the Commissioner, for the purpose of enabling that person to carry out any such duty; or
 - (b) the authority administering any Act of the Commonwealth or a State relating to income tax, stamp duty, estate duty, death, probate or succession duty or gift duty or any law of the Commonwealth relating to pensions.
- (5) Any person referred to in subsection (4) of this section to whom information is communicated by virtue of that subsection, and any person or employee under his control shall, in respect of that information, have the same rights and privileges under subsection (2) of this section as if he were a person appointed under this Act.
- (6) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Part 3—Liability to gift duty

9—Liability to pay gift duty—Schedule

- (1) Subject to the provisions of this Act, gift duty of the appropriate amount as calculated in accordance with the Schedule to this Act shall be charged, levied, collected and paid for the use of Her Majesty in respect of every gift made after the commencement of this Act—
- (a) where the property the subject of the gift is situated in South Australia at the time when the gift is made; and
 - (b) where the property the subject of the gift is personal property situated outside South Australia at the time when the gift is made if—
 - (i) either the donor or the donee, in either case not being a corporation, is, at the time the gift is made, domiciled or resident in South Australia; or
 - (ii) either the donor or the donee is a corporation incorporated or resident in South Australia; or
 - (iii) the donor—
 - (a) is a corporation incorporated under the law of a State other than this State or of any Territory of the Commonwealth; and
 - (b) is, at the time when the gift is made, a controlled company; and
 - (c) is carrying on business in South Australia,and gift duty would not, but for the provisions of this subparagraph, be payable under the provisions of this Act in respect of the gift.

- (1a) Notwithstanding the provisions of paragraph (b) of subsection (1) of this section, gift duty shall not be charged, levied or collected where—
- (a) the property the subject of the gift is situated outside the limits of the Commonwealth; and
 - (b) at the time the gift is made the donor is domiciled or resident outside the limits of the Commonwealth; and
 - (c) neither the situation of the property nor the domicile or residence of the donor had been removed from the limits of the Commonwealth with the object of avoiding or evading liability to gift duty.
- (2) Where a gift is made by a corporation, being a donor referred to in subparagraph (iii) of paragraph (b) of subsection (1) of this section, and the corporation also carries on business outside South Australia, the gift shall, for the purposes of this Act, be deemed to be of an amount that bears to the value of the personal property the subject of the gift the same proportion as the value of the assets of the corporation that are situated in South Australia bears to the value of its total assets wherever situated.

10—Calculation of gift duty—Schedule

The gift duty payable in respect of a gift is an amount calculated on the value of the gift at the rate per centum calculated in accordance with the formula in the second column of the Schedule to this Act opposite the value of all relevant gifts, specified in the first column of that Schedule, made by the donor.

11—Remission of gift duty under five dollars

- (1) Subject to subsection (2) of this section, where the gift duty that would, apart from this section, be payable in respect of a gift is less than five dollars, no gift duty is payable in respect of the gift.
- (2) This section does not operate to exempt a gift from gift duty if—
- (a) the value of the gift; and
 - (b) the value of all other gifts given by the same donor to the same donee within eighteen months before or after the date of the gift,

are such that if those gifts together constituted a single gift, gift duty of an amount of five dollars or more would be payable in respect of that single gift.

11A—Reduction of duty in case of gift of interest in matrimonial home

- (1) Where a donor makes a gift to his spouse of an interest in his matrimonial home (whether or not subsection (3) of this section applies to the gift), the donor may claim the benefit of this subsection, and if he does so, the following principles operate:
- (a) the dutiable value of the gift is as follows:
 - (i) where the value of the interest given to the spouse exceeds \$4 000 but does not exceed \$6 000, the dutiable value is \$4 000; and
 - (ii) where the value of the interest given to the spouse exceeds \$6 000 but does not exceed \$8 000, the dutiable value is the actual value less an amount equal to the difference between \$2 000 and the amount by which the value of the gift exceeds \$6 000; and

- (b) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on that gift, the dutiable value (as distinct from the actual value) of the gift; and
 - (c) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on gifts made within eighteen months before or after the date of the gift, the actual value of the gift.
- (2) Where a donor makes a gift to his spouse of an interest in his matrimonial home (being a gift to which subsection (3) of this section applies) the donor may claim the benefit of this subsection, and if he does so, the following principles operate:
- (a) the dutiable value of the gift is as follows:
 - (i) where the gross value of the matrimonial home does not exceed \$40 000, the gift has no dutiable value;
 - (ii) where the gross value of the matrimonial home exceeds \$40 000 and no debt is secured by mortgage over the matrimonial home, the dutiable value of the gift is one-half of the gross value of the matrimonial home less \$20 000;
 - (iii) where the gross value of the matrimonial home exceeds \$40 000 and a debt is secured by a mortgage over the matrimonial home, the dutiable value of the gift is ascertained by reference to the following formula:
$$v = \left[\frac{1}{2}g - 20000 \right] - \frac{(g - 40000)m}{2g}$$
where—
 - v represents the dutiable value of the gift; and
 - g represents the gross value of the matrimonial home; and
 - m represents the outstanding principal of the debt secured over the matrimonial home; and
 - (b) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on that gift (but not on any other gift), the actual value of the gift; and
 - (c) the value of all relevant gifts includes, for the purpose of ascertaining the percentage rate at which gift duty is payable on other gifts made within eighteen months before or after the date of the gift, the dutiable value (as distinct from the actual value) of the gift.
- (3) Where a donor makes a gift to his spouse of an interest in his matrimonial home with the intention that the matrimonial home should be held by the donor and his spouse in joint tenancy, or in tenancy in common in equal shares, and—
- (a) no matrimonial home has been held jointly or in common by the donor and his spouse either on the fourteenth day of July, 1975, or after that date and before the date of the gift; and
 - (b) the gift is made on or after the fourteenth day of July, 1975, but before the thirty-first day of January, 1977; and

- (c) a return in respect of the gift is lodged under this Act with the Commissioner before the thirty-first day of January, 1977,

this subsection applies to that gift.

- (4) A person is not entitled to claim the benefit of a provision of this section where he has previously enjoyed the benefit of that provision, or some other provision of this section, or of a provision of this Act superseded by this section.

- (5) In this section—

matrimonial home of a donor means a dwellinghouse (together with its curtilage) that constitutes in the opinion of the Commissioner the principal permanent home at which the donor and his spouse live together as husband and wife:

curtilage in relation to a dwellinghouse means an area of land, determined by the Commissioner, not exceeding 0.2 hectare in area, on which the dwellinghouse is situated;

gross value in relation to a matrimonial home means the value of the matrimonial home unencumbered by any mortgage.

- (6) Where the Commissioner is satisfied by such evidence as he may require that two persons who are not married are living together as husband and wife, the provisions of this section apply to those persons as if they were married.

- (7) Where the Commissioner is satisfied by such evidence as he may require—

- (a) that a donor has made a gift of cash to his spouse with a view to the acquisition by the donor and his spouse in joint tenancy, or in tenancy in common in equal shares, of a matrimonial home; and
- (b) that a matrimonial home has been subsequently so acquired by the donor and his spouse,

the gift shall be treated for the purposes of this section as a gift of an interest in a matrimonial home made at the date of acquisition by the donor and his spouse of the matrimonial home.

12—When gift is deemed to be made

- (1) A disposition of property made or taking effect in pursuance of or in performance or satisfaction, whether wholly or in part, of a voluntary contract shall, for the purposes of this Act, be deemed to be a gift when and so far as the disposition has affected the property or any of the property to which the contract or agreement relates.
- (2) For the purposes of this Act, a gift shall be deemed to be made after the commencement of this Act if the disposition of property comprised in the gift is made or takes effect after the commencement of this Act, notwithstanding that a contract or agreement or instrument of title which relates to the property or any part thereof was made or executed before the commencement of this Act.
- (3) Nothing in the foregoing provisions of this section shall be construed as limiting the meaning of the expression "gift made after the commencement of this Act" in any other provision of this Act, in any case where the gift is in fact made after the commencement of this Act.

13—Where property deemed to be situated

For the purposes of this Act—

- (a) shares in or debentures of a corporation incorporated in South Australia shall be deemed to be property situated in South Australia whether the shares or debentures are recorded in a register kept in South Australia or elsewhere; and
- (b) shares in or debentures of a corporation incorporated outside South Australia shall be deemed to be property situated in South Australia if they are recorded in a branch register of the company in South Australia; and
- (c) where the total estate or the value of the total estate of a person is diminished as mentioned in paragraph (f) of the definition of *disposition of property* in subsection (1) of section 4 of this Act or in subsection (11) of that section, the property the subject of the disposition shall be deemed to be personal property situated in South Australia in the case where the donor is domiciled or resident in South Australia and personal property situated outside South Australia in any other case; and
- (d) property at sea in the course of transit to South Australia shall be deemed to be property situated in South Australia.

14—Exemptions

- (1) Notwithstanding anything contained in this Act but except as provided in subsection (2) of this section, gift duty shall not be payable in respect of—
 - (a) a contribution by an employer to, or for the purpose of establishing, a fund for the purpose of providing retiring allowances, pensions or other personal benefits for his employees, or any class or classes of his employees, or their dependants; or
 - (b) a payment made by an employer, or by the trustees of a fund established by an employer for the purpose of making payments to an employee or the dependants of an employee, in consequence of the retirement of an employee from the service of the employer or in consequence of his death, where the payment is or payments are not excessive having regard to the remuneration of the employee at the time of his retirement or death, to his length of service with the employer and to any payments made to other employees in similar circumstances and such other relevant facts as may be submitted to or otherwise known to the Commissioner; or
 - (c) any gratuity or bonus paid by an employer to an employee during the continuance of the employment where the gratuity or bonus is paid in recognition of special or faithful services rendered and is not excessive having regard to the remuneration of the employee, to his length of service with the employer and to any payments made to other employees in similar circumstances and such other relevant facts as may be submitted to or otherwise known to the Commissioner; or

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- (d) any payments in lieu of wages or salary made by an employer to an employee during his illness or invalidity where the payments are not excessive having regard to the wages or salary to which the employee is ordinarily entitled and to any payments made to other employees in similar circumstances and such other relevant facts as may be submitted to or otherwise known to the Commissioner; or
 - (e) any gift to, or wholly for the benefit of, or by, an institution, organisation or body of persons, whether incorporated or not incorporated, for the sole or predominant purpose of the relief of poverty, the advancement of religion, science or education in Australia, or a benevolent institution or benevolent society formed and operating in Australia or any of the bodies referred to in paragraph 6 of Schedule 2 to the *Succession Duties Act 1929* or any society or institution for the time being approved by the Commissioner for the purposes of this paragraph whose resources are in accordance with its rules or objects used wholly or predominantly for—
 - (i) any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the Naval, Military or Air Forces of the Commonwealth or their dependants or for the promotion of any other patriotic object; or
 - (ii) any other purpose that in the opinion of the Commissioner warrants that society or institution being regarded as a charitable society or institution; or
 - (f) any gift to or by the Commonwealth or a State of the Commonwealth; or
 - (g) any gift to, or wholly for the benefit of, an institution, organisation or body of persons, whether incorporated or not incorporated, that, in the opinion of the Commissioner, is formed and carried on and whose resources are used for the benefit of the public generally and are not used for the benefit of any particular person or persons; or
 - (h) any gift to or by a council as defined in the *Planning and Development Act 1966* as amended; or
 - (i) any gift where the Commissioner is satisfied—
 - (i) that the value of the gift together with all other gifts made by the same donor to the same donee, whether at the same time, within eighteen months previously (whether wholly or partly before the commencement of this Act or not) or within eighteen months subsequently, does not exceed in the aggregate two hundred dollars and that the gift is made as part of the normal expenditure of the donor; or
 - (ii) that the gift is made for or towards the maintenance of the wife, husband, child or other person dependent on the donor or for or towards the education or apprenticeship of a child or other person dependent on the donor and is not excessive in amount having regard to the legal or moral obligations of the donor to afford the maintenance, education or apprenticeship; or

- (j) any premiums, not exceeding five hundred dollars per annum, paid by a person on insurance policies effected by him on his own life and expressed to be for the benefit of his wife or any of his children; or
 - (k) any moneys paid by an employer to an employee who is a member of or attached to the Naval, Military or Air Forces of the Commonwealth for the purpose of augmenting the employee's pay as a member of any of those Forces.
- (2) Where any payment, gratuity or bonus referred to in paragraph (b), (c) or (d) of subsection (1) of this section is found to be excessive within the meaning of that paragraph, gift duty shall be payable under this Act only on the part of the payment, gratuity or bonus by which the payment, gratuity or bonus exceeds any part thereof that is found not to be excessive.

15—Certain gifts not to be taken into account

Where, by virtue of section 14 of this Act gift duty is not payable in respect of a gift, the value of the gift shall not be taken into account in ascertaining whether gift duty is payable in respect of any other gift made by the same donor or in ascertaining the amount of any gift duty so payable.

16—Value of the gift where consideration is not adequate

Where any disposition of property is made and consideration in money or money's worth passes from the person to whom the disposition is made to the person by whom it is made but the disposition constitutes a gift for the purposes of this Act by reason of the consideration not being fully adequate, the value of the gift shall, for the purposes of this Act, be the extent of that inadequacy.

17—Value of gift

For the purpose of computing the value of a gift—

- (a) no allowance shall be made in respect of any contingency affecting the interests of any donee; and
- (b) subject to this Act, the value of the gift shall be taken to be its value at the time it is made; and
- (c) no deduction shall be allowed in respect of any mortgage, charge, encumbrance or liability affecting or incident to the property comprised in the gift existing at the time it is made, if and so far as the donee is entitled as against the donor or any other person or as against any other property to any right of indemnity or contribution in respect of the mortgage, charge, encumbrance or liability.

18—Disposition in consideration of reservation of benefit

- (1) Where any disposition of property is made subject to a reservation of any benefit or advantage in favour of the person by whom the disposition is made, and the whole or any part of that benefit or advantage is subsequently made the subject of a gift from the person by whom the disposition is made to the person to whom it is made, the subsequent gift shall be deemed to have been made at the time of the earlier disposition or upon the third day of December, 1968, whichever is the later.

- (2) Where a disposition of property is made—
- (a) in consideration of a sum payable on demand or at a future date and upon terms agreed between the persons by whom and to whom the disposition is made; or
 - (b) in part as a gift and in part in consideration of a sum payable on demand or at a future date and upon terms agreed between the persons by whom and to whom the disposition is made,

that consideration shall be deemed not to be a reservation of benefit or advantage for the purposes of subsection (1) of this section.

Part 4—Returns and assessments

19—Returns by donors and donees

- (1) In this section—

prescribed period, in relation to a gift, means the period that commences eighteen months before the day on which the gift is made and that ends on, and includes, that day, whether that period is partly before and partly after, or is wholly after, the commencement of this Act.

- (2) Where a person—

- (a) makes a gift, the value of which, together with the value of all other gifts made by him to the same or any other donee within the prescribed period applicable in relation to that gift; or
- (b) receives a gift, the value of which, together with the value of all other gifts made to him by the same donor within the prescribed period applicable in relation to that gift,

exceeds three thousand dollars, that person shall—

- (c) where the gift was made in Australia and—
 - (i) it was made on or after the commencement of this Act but before the day on which the Governor assented to this Act, within one month after that day; or
 - (ii) it is of a benefit or advantage referred to in section 18 of this Act, within one month after that gift is actually made; or
 - (iii) neither subparagraph (i) nor subparagraph (ii) of this paragraph applies, within one month after making the gift; or
- (d) where the gift was made outside Australia and—
 - (i) it was made on or after the commencement of this Act but before the day on which the Governor assented to this Act, within two months after that day; or
 - (ii) it is of a benefit or advantage referred to in section 18 of this Act, within two months after that gift is actually made; or
 - (iii) neither subparagraph (i) nor subparagraph (ii) of this paragraph applies, within two months after making the gift,

furnish to the Commissioner a return, in a manner approved by him containing all particulars—

- (e) with respect to the gift; and
- (f) where the return—
 - (i) is made by a donor, with respect to all other gifts, if any, made by him within the prescribed period applicable in relation to the gift; or
 - (ii) is made by a donee, with respect to all other gifts, if any, made to him by the same donor within the prescribed period applicable in relation to the gift,

that are necessary to enable the Commissioner to determine whether the gift is liable to gift duty and to assess the gift duty, if any, payable by that person.

- (3) If any gift, the particulars of which are contained in the return, has been created, or is evidenced, by any written instrument, the person making the return shall furnish with the return a copy of that instrument certified by him to be a correct copy.
- (4) Compliance by the donor of a gift with the provisions of this section shall release the donee of that gift from compliance with those provisions, but, in any proceeding against the donee, the onus of proving compliance by the donor shall be on the donee.
- (5) In this section—

gift does not include any gift in respect of which gift duty is, by section 14 of this Act, not payable.

20—Power to require valuation

- (1) Where a gift liable to duty does not consist of money, the Commissioner may require a proper valuation thereof by some competent valuer to be furnished with or in relation to any return required under this Act and, if the value of any gift on which duty is or may be payable is in dispute, or, if the Commissioner is not satisfied with any valuation submitted to him, the Commissioner may cause a proper valuation to be made of such gift by any competent valuer he may select and assess the duty thereon accordingly.
- (2) Where the Commissioner causes a valuation to be made of any gift by any valuer selected by him, that valuer may inspect any property that is the subject of the gift and the person having the custody or possession of that property shall allow the valuer to have access to and inspect it at all reasonable times and if he refuses or fails to allow the valuer to do so, he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.
- (3) The Commissioner may, having regard to the circumstances of each case, charge the whole or any part of the expenses of or incidental to the making of any valuation caused to be made by him to the person liable to pay the duty and may recover the amount thereof from him as a debt due to Her Majesty in any court of competent jurisdiction.

21—Power to adopt Commonwealth valuation

In assessing duty for the purposes of this Act, the Commissioner may, if he thinks fit, adopt, as far as the case permits, the value of a gift liable to duty under this Act as assessed for gift duty or estate duty under any Commonwealth law in relation to the same gift or in relation to any part thereof.

22—Net value of annuity etc when duty chargeable

For the purposes of this Act, the value of any annuity or any interest in an annuity or any interest for life or for a term of years at the time at which gift duty becomes chargeable thereon shall be the net present value, respectively, of the annuity or interest ascertained by calculation in accordance with the provisions of the *Succession Duties Act 1929*, as amended, and the regulations thereunder.

23—Further returns

Any person, whether a donor or donee or not, shall, if required by the Commissioner, furnish him with such returns or such fuller or other returns, to enable the Commissioner to determine whether such person is liable to pay gift duty under this Act, as the Commissioner requires.

24—Assessment of gift duty

From the returns, and from any other information in his possession, or from any one or more of those sources, the Commissioner shall make an assessment of the amount of the gift duty, if any, payable in respect of any gift.

25—Amendment to assessment

- (1) The Commissioner may, whether or not gift duty has been paid on any assessment, at any time amend the assessment by making such alterations therein or additions thereto as he thinks necessary, and any such amended assessment shall be an assessment for the purposes of this Act.
- (2) Where by reason of any amendment of an assessment a person's liability to pay gift duty under this Act is reduced, the Commissioner shall refund any gift duty overpaid.
- (3) Where gift duty has been paid on a gift by reason of the operation of subsection (6) of section 4 of this Act and where consideration has passed to the donor as mentioned in subsection (7) of that section, the Commissioner, on an application in writing made to him within six years after the date on which the gift is made, shall refund to the person or persons appearing to the Commissioner to be entitled thereto such amount as bears to the gift duty the same proportion as that consideration bears to the value of the gift, but shall not in any case refund an amount exceeding the gift duty.
- (4) Where a person becomes entitled to a refund of gift duty by virtue of subsection (2) of this section the Commissioner shall refund the amount of such duty to the person or persons entitled thereto together with interest thereon at the rate of four per centum per annum from the day on which the duty was paid.
- (5) Where the Commissioner refunds any gift duty to any person or persons, the amount of such duty together with interest, if any, payable thereon shall be paid out of the General Revenue of the State.

26—Default assessments

If any person who is required by this Act to furnish a return, document or information, makes default in furnishing such return, document or information, or the Commissioner is not satisfied with any return, document or information furnished, he may cause an assessment to be made of the amount on which, in his judgment, gift duty ought to be levied and that amount shall, unless and until that amount is shown to be wrong upon an objection or an appeal under section 34 of this Act or the Commissioner ascertains the true value of the gift or makes a further assessment under this section, be deemed for the purposes of this Act, to be the value of the gift.

27—Notices of assessment

- (1) The Commissioner shall serve notice of any assessment of gift duty made under this Act upon the donor and may serve such a notice on the donee.
- (2) Any such notice may be served by sending it by post to, or by leaving it with some person apparently of or above the age of sixteen years at, the place of abode or business of the donor or donee last known to the Commissioner or at an address for service of notices furnished to the Commissioner by the donor or donee.

Part 5—Collection and recovery of gift duty

28—Liability for gift duty

- (1) Gift duty on any gift shall be due and payable on the making of the gift, or, where the gift duty becomes payable or further gift duty becomes payable by reason of the making of a subsequent gift, the gift duty or further gift duty, as the case may be, shall be due and payable upon the making of the subsequent gift.
- (2) Where a gift or a subsequent gift was made after the commencement of this Act but before the day on which the Governor assented to this Act, it shall, for the purposes of this Part, be deemed to have been made on that day.
- (3) The donor and the donee shall be jointly and severally liable for the payment of gift duty on the gift.
- (4) Gift duty shall, until paid, constitute a first charge on all property (other than money or negotiable instruments) comprised in the gift, but any such charge shall not affect the title of a *bona fide* purchaser for value without notice of the charge.
- (5) Where there is more than one donee under the same gift, each of them shall be liable only for the same proportion of the gift duty as the value of his interest bears to the total value of the gift.
- (6) Where the interest of a donee is a future interest, he shall not become personally liable for the payment of the gift duty until that interest becomes an interest in possession.
- (7) A trustee may raise such moneys as are necessary to pay gift duty by mortgage, with or without power of sale, of any property comprised in the gift held by him upon trust.
- (8) Where the donee is a trustee he shall not be personally liable for the payment of any gift duty in respect of any trust property unless the Commissioner, by notice in writing, advises him that gift duty is due and payable in respect of that trust property, and then only to the extent of the value of so much of the trust property as is held by him on the date upon which the notice is served upon him.

28A—Donor not liable for duty if diminution of his estate occurred without his knowledge

- (1) Notwithstanding any other provision of this Act, where a gift is made and that gift is a disposition of property whereby the total estate or the value of the total estate of the donor of the gift is diminished, the donor shall not be liable for the payment of gift duty on the gift if the diminution of his total estate occurred without his knowledge and contrary to his intention or if it occurred with his knowledge in any case where he took all reasonable and practicable measures to prevent its occurrence.
- (2) Subsection (1) of this section does not limit or affect the liability of the donee of the gift for the payment of gift duty on the gift.
- (3) Without limiting the generality of the application of section 52 of this Act, where, in the opinion of the Commissioner, the value of a gift, as determined for the purposes of gift duty under this Act, is unreasonable in the circumstances, the Commissioner may assess by way of composition for the duty so payable, such sum as the Commissioner thinks proper under the circumstances and may accept payment of the sum so assessed in full discharge of all claims for such duty.

29—Extension of time to pay and payment by instalments

The Commissioner may, in any case, grant such extension of time for payment of gift duty or permit such payment to be made by such instalments and within such time as he considers the circumstances warrant.

30—Additional duty for late payment

- (1) If any gift duty is not paid within four months after the day on which the duty becomes payable in the case of a gift made in Australia or six months after the day on which the duty becomes payable in the case of a gift made outside Australia, additional gift duty at the rate of ten per centum per annum on the amount unpaid computed from the expiration of that period of four months or six months, as the case may be, or, where an extension of time has been granted under section 29 of this Act, from such date as the Commissioner determines, shall become payable and recoverable in all respects as gift duty by and from every person liable for the payment of the gift duty.
- (2) The Commissioner may remit the additional gift duty or any part thereof.

31—Gift duty to be charged on land

- (1) Where gift duty is payable on more than one piece of land, the subject of a gift, the amount of such duty shall be a charge on the land included in each assessment for gift duty in the proportion that the amount of that assessment bears to the total amount of all such assessments.
- (2) Where any gift duty is a charge on any land, the Registrar-General shall, if the land is land subject to the provisions of the *Real Property Act 1886* on the application of the Commissioner accompanied by a certificate under the hand of the Commissioner certifying the amount of gift duty payable, but unpaid, on such land, make all such entries as may be necessary or proper to evidence that the land is subject to the charge or, if the land is not subject to the provisions of that Act, register in the General Registry Office a memorial to the effect that the land is subject to the charge.

- (3) A charge to which any land is subject by virtue of this section may, upon application in writing to the Registrar-General by the Commissioner, by order of the Registrar-General, be varied or discharged and, upon such variation or discharge, as the case may be, the Registrar-General shall, without fee, make all such entries or register such memorials as may be necessary or proper to evidence such variation or discharge.

32—Enforcement of charge for duty

- (1) Where gift duty is not paid within six months after the day on which the duty becomes due and payable the Commissioner may apply to the Supreme Court for an order that such part of the property comprised in the gift as is specified in the order be sold, and that the proceeds of the sale be applied in payment of the gift duty and the costs incurred in connection with the application and the sale.
- (2) Where any property has been sold under any such order the Supreme Court may make an order vesting the property in the purchaser.
- (3) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability, and as if it were a proper conveyance, transfer or assignment of the property for such estate or interest as is specified in the order, duly executed by those persons.

33—No limitation of action

No statute of limitations now or hereafter in force shall bar or affect any action, proceeding or remedy for recovery of gift duty.

Part 6—Objections and appeals

34—Objections and appeals

- (1) Any person required to pay gift duty, and any person required under section 42 of this Act to pay additional gift duty amounting in any particular case to one hundred dollars or more, who is dissatisfied with the assessment of the Commissioner may—
 - (a) within twenty-one days after the service on him of notice of assessment lodge with the Treasurer an objection in writing against the assessment stating fully and in detail the grounds on which he relies; or
 - (b) within thirty days after the service on him of notice of assessment appeal to the Supreme Court.
- (2) Notwithstanding subsection (1) of this section, where the assessment is an amended assessment, the objector or appellant shall have no further or other right of objection or appeal than he would have had if the amended assessment had not been made, except to the extent to which by reason of the amended assessment a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

- (3) Where such person forwards to the Treasurer an objection against the Commissioner's assessment the Treasurer, after obtaining the opinion of the Crown Solicitor and making such other inquiries and obtaining such other information and advice as he deems proper, may confirm or modify the assessment; and, if such assessment is not confirmed, the amount of duty to be ultimately retained shall be that fixed by the Treasurer and the difference shall be refunded by the Commissioner to the person who lodged the objection.
- (4) In deciding an objection the Treasurer shall not be bound by any rules of practice, procedure or evidence.
- (5) If upon the confirmation or modification by the Treasurer of the Commissioner's assessment such person is still dissatisfied he may within thirty days after the Treasurer's decision is communicated to him appeal to the Supreme Court.
- (6) A person desirous of appealing from or against any assessment of the Commissioner or against the decision by the Treasurer on an objection shall within thirty days after the day on which the Commissioner's assessment or, as the case may be, after the day on which the Treasurer's decision is communicated to him, institute an appeal to the Supreme Court by giving notice in writing to the Commissioner of his intention to appeal therefrom together with a statement of the grounds of such appeal and, within a further period of fourteen days, lodging with the Supreme Court a petition of appeal.
- (7) The Court or any judge thereof sitting in Court or in Chambers may hear and determine the matter of such appeal and make such order with regard thereto and the costs thereof as shall be just.
- (8) A reference in subsection (2) of this section to an amended assessment includes a reference to an assessment in respect of a gift in respect of which further gift duty becomes payable by reason of the making of a subsequent gift.

35—Pending appeal or objection not to affect assessment

The fact that an appeal or objection is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal or objection and gift duty may be recovered on the assessment as if no appeal or objection were pending.

36—Adjustment of duty after appeal or objection

If the assessment is altered on an appeal or objection, a due adjustment shall be made for which purpose amounts paid in excess shall be refunded by the Commissioner and amounts short paid shall be recoverable by the Commissioner as additional duty.

Part 7—Miscellaneous

37—Duty and other moneys recoverable

Gift duty and other moneys payable to Her Majesty under this Act, shall be debts due to Her Majesty from every person liable for the payment of the duty or moneys, and may be recovered by action in a court of competent jurisdiction.

38—Rebate in case of double gift duty

- (1) Where gift duty has been paid in respect of a gift of personal property actually situated in any place other than South Australia and it is shown to the satisfaction of the Commissioner that gift duty (not being gift duty under any Act of the Parliament of the Commonwealth) has been lawfully paid on the personal property, or stamp duty on any instrument of conveyance effecting the gift has been lawfully paid, under a law of the place in which the property is actually situated at the time of the gift, the Commissioner shall refund to the person who has paid the gift duty under this Act on the property an amount equal to the gift duty or stamp duty paid thereon under the law of the place in which it is situated or to the gift duty so paid thereon under this Act, whichever is the lesser.
- (2) Where the Commissioner is satisfied that in such cases as are referred to in subsection (1) of this section a refund will become payable he may require the payment of the gift duty less a provisional allowance of the estimated amount of the refund, subject to such conditions as he may impose.

39—Rebate of stamp duty paid

- (1) Where by virtue of the operation of the *Stamp Duties Act 1923*, as amended, stamp duty on the conveyance has been paid on any instrument effecting a gift, there shall be deducted from the gift duty assessed in respect of such gift an amount equal to the portion of the stamp duty paid on the instrument that, in the opinion of the Commissioner is attributable to the value of the gift or the gift duty so assessed, whichever is the lesser.
- (2) No deduction shall be made under this section unless the instrument on which the stamp duty has been paid is produced to the Commissioner or unless he is satisfied as to the payment of such duty.

40—Department to obtain information and evidence

- (1) The Commissioner may, by notice in writing, require any person, whether a donor or donee or not, including any officer employed in or in connection with any department of the Government of the State or by any public authority—
 - (a) to furnish him with such information as he requires; or
 - (b) to attend and give evidence before him or before any officer authorised by him in that behalf concerning any matter on which the Commissioner requires information for the purposes of this Act,and may require him to produce all books, documents and other papers whatever in his custody or under his control relating to any such matter.
- (2) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing, and for that purpose he or the officer so authorised by him may administer an oath.
- (3) A person attending before the Commissioner or officer pursuant to a requirement under this section shall be entitled to be paid by the Commissioner an allowance in accordance with the scale of allowances to witnesses in local courts for the time being in force.

41—Deduction of gift duty from succession duty in certain cases

- (1) Where by virtue of the provisions of the *Succession Duties Act 1929* succession duty is chargeable on any property on which a successor or the donor has paid gift duty in accordance with this Act, there shall be deducted from the succession duty assessed in respect of such property the amount of such gift duty so paid or the succession duty so assessed whichever is the lesser.
- (2) The gift duty to be deducted for the purposes of subsection (1) of this section shall not include any sum paid by way of additional gift duty in accordance with section 30 or section 42 or any sum ordered to be paid under subsection (2) of section 45 of this Act.

42—Additional duty in certain cases

- (1) Any person who fails duly to furnish as and when required by this Act or by the Commissioner, any return or other information in relation to any matter affecting either his liability to pay gift duty, or the amount of gift duty in respect of a gift, shall be liable to pay as additional gift duty such amount as the Commissioner determines not exceeding the gift duty payable by him or the amount of two dollars, whichever is the greater.
- (2) Any person who—
 - (a) fails or neglects to include in any return any particulars relating to a gift; or
 - (b) includes in any return or information a false statement concerning any particulars relating to a gift,

that affect his liability to pay gift duty, or that would reduce the amount of gift duty payable by him if the return were accepted as correct, shall be liable to pay as additional gift duty such amount as the Commissioner determines not exceeding double the difference between the gift duty properly payable by him and the gift duty that would be payable if it were assessed upon the basis of the return or information furnished by him, or the amount of two dollars, whichever is the greater.

- (3) The Commissioner may remit the additional gift duty or any part thereof.

43—Failure to furnish returns and information etc

- (1) Any person who fails duly to furnish any return, document or information or to comply with any requirement of the Commissioner as and when required by this Act or by the Commissioner shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars and the court before which the person is prosecuted for an offence under this subsection may, on application by or on behalf of the Commissioner, order the person to furnish the Commissioner with the return, document or information or to comply with any requirement of the Commissioner, notwithstanding that the time within which the return, document or information should have been furnished or the requirement should have been complied with has elapsed.

- (2) Any person who fails to comply with an order of a court made under subsection (1) of this section shall be guilty of an offence and liable to a penalty not exceeding ten dollars for every day on which the failure occurs or continues after the order takes effect, and if the person fails to comply with an order that requires compliance therewith within or before a certain time, then, notwithstanding that such time has elapsed, the failure shall be deemed to continue so long as the return, document or information required to be furnished has not been furnished or the requirement required to be complied with has not been complied with.
- (3) A prosecution for an offence under subsection (1) of this section may be commenced at any time.

44—Refusal to give evidence

Any person who refuses or neglects—

- (a) duly to attend before the Commissioner or an officer authorised by him in that behalf when required by the Commissioner; or
- (b) to answer any question put to him by the Commissioner or any such officer; or
- (c) to produce any book or paper required of him by the Commissioner or any such officer,

shall, unless just cause or excuse for the refusal or neglect is shown by him, be guilty of an offence and be liable to a penalty not exceeding five hundred dollars.

45—False returns etc

- (1) Any person who makes or delivers a return which is false in any particular, or makes a false answer, whether orally or in writing, to any question duly put to him by the Commissioner or any officer duly authorised by him, shall be guilty of an offence and be liable to a penalty not exceeding five hundred dollars.
- (2) On the conviction of a person for an offence under subsection (1) of this section, the court may order that person to pay to the Commissioner a sum not exceeding double the amount of gift duty that would have been avoided if the return or answer had been accepted as correct.
- (3) Any sum ordered to be paid under subsection (2) of this section may be recovered as if it were gift duty payable by the person against whom the order is made.
- (4) A prosecution for an offence under subsection (1) of this section may be commenced at any time.

46—Assessments to be evidence

- (1) Production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—
 - (a) be conclusive evidence of the due making of the assessment; and
 - (b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *prima facie* evidence only.

- (2) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any return shall be sufficient evidence of the matter therein set out, without the production of the original unless it is proved not to be a true copy of or extract from the return.

47—Penalty for making false declaration or oath not affected

Nothing in this Act affects the liability of any person for any offence arising out of the making by him of any false statement in a statutory declaration or on oath.

48—Books to be open to inspection

- (1) Any officer of the public service authorised in that behalf by the Commissioner may require any person to produce to him any books, records, papers, documents, or proceedings that in the opinion of that officer relate to any gift or the amount of any gift duty and that are in the custody or control of that person.
- (2) Any person who refuses or neglects to comply with a requirement made by an officer under subsection (1) of this section shall be guilty of an offence and be liable to a penalty not exceeding two hundred dollars.

49—Proceedings for offences and penalties

- (1) Proceedings for an offence against this Act shall be disposed of summarily.
- (2) Penalties incurred under this Act may be recovered in a summary way before a court of summary jurisdiction, or may be sued for by information in the Supreme Court in the name of the Attorney-General for South Australia and may be recovered with full costs of suit.

50—Liability for duty not exonerated

The fact that a person has incurred a penalty or has become liable to pay additional gift duty under this Act shall not exonerate him or any other person liable to pay gift duty from that liability.

51—Valuation of shares

- (1) For the purposes of this Act, the value of shares in or debentures of any corporation, whether incorporated under the law of South Australia or not, that are the subject of a gift shall be determined upon the assumption that, on the day when the gift was made, the memorandum and articles of association or rules of the corporation satisfied the requirements prescribed by the committee or governing authority of the Stock Exchange at the place where the share register or debenture register is situated, for the purpose of enabling that corporation to be placed on the current official list of that Stock Exchange.
- (2) No regard shall, in determining the value of shares in any corporation, be had to any provisions in the memorandum or articles of association or rules of the corporation whereby or whereunder the value of the shares is to be determined.

- (3) The Commissioner may, if he thinks fit, notwithstanding anything contained in subsection (1) or (2) of this section, adopt as the value of any shares of any class in or debentures of any class of any corporation (the shares or debentures of that class not being quoted in the official list of any Stock Exchange) such net benefit as in the opinion of the Commissioner the holder thereof would receive after payment of all income taxes in respect thereof in the event of the corporation being voluntarily wound up on the day when the gift was made, notwithstanding that any such winding up is not intended or in contemplation.

52—Commissioner may compromise a claim for duty

- (1) Where by reason of the complexity or uncertainty of the facts or from any other cause it is difficult or impracticable to ascertain exactly the value of any gift or to ascertain the same without undue delay or expense, the Commissioner may assess, by way of composition for the duty so payable, such sum as the Commissioner thinks proper under the circumstances and may accept payment of the sum so assessed in full discharge of all claims for such duty.
- (2) No such composition shall constitute a good discharge from duty if it is procured by fraud or by a wilful failure to disclose material facts.

53—Regulations

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may impose a penalty not exceeding one hundred dollars for any offence against the regulations.

54—Financial provision

The moneys required for any of the purposes of this Act shall be aid out of moneys to be provided by Parliament for those purposes.

Schedule

<u>First column</u>	<u>Second column</u>
Where the value of all relevant gifts—	The rate per centum of duty on the value of the gift in question shall be—
Does not exceed \$4 000	Nil
Exceeds \$4 000 but does not exceed \$4 500	0.006 per cent multiplied by the whole number of dollars by which the value of all relevant gifts exceeds \$4 000.
Exceeds \$4 500 but does not exceed \$7 000	3.0 per cent plus 0.0002 per cent for each whole dollar by which the value of all relevant gifts exceeds \$4 500.
Exceeds \$7 000 but does not exceed \$15 000	3.5 per cent plus 0.000125 per cent for each whole dollar by which the value of all relevant gifts exceeds \$7 000.
Exceeds \$15 000 but does not exceed \$75 000	4.5 per cent plus 0.0001 per cent for each whole dollar by which the value of all relevant gifts exceeds \$15 000.

Schedule

First column	Second column
Exceeds \$75 000 but does not exceed \$202 777	10.5 per cent plus 0.00009 per cent for each whole dollar by which the value of all relevant gifts exceeds \$75 000.
Exceeds \$202 777	22 per cent.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Repeal of Act

The *Gift Duty Act 1968* was repealed by s 63 of the *Statutes Amendment and Repeal (Simplify) Act 2017* on 15.3.2017.

Principal Act and amendments

Year	No	Title	Assent	Commencement
1968	48	<i>Gift Duty Act 1968</i>	19.12.1968	6.9.1968: s 2
1969	100	<i>Gift Duty Act Amendment Act 1969</i>	18.12.1969	18.12.1969
1973	23	<i>Gift Duty Act Amendment Act 1973</i>	20.9.1973	20.9.1973
1975	76	<i>Statutes Amendment (Gift Duty and Stamp Duties) Act 1975</i>	16.10.1975	14.7.1975: s 2
1976	54	<i>Statutes Amendment (Gift Duty and Stamp Duties) Act 1976</i>	28.10.1976	14.7.1976: s 2
1979	63	<i>Gift Duty Act Amendment Act 1979</i>	15.11.1979	15.11.1979

Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 4 of The Public General Acts of South Australia 1837-1975 at page 441.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 5A	inserted by 63/1979 s 2	15.11.1979
Pt 3		
s 11A		
s 11A(3)	amended by 54/1976 s 5	14.7.1976