

South Australia

## Succession Duties Act 1929

An Act to consolidate certain Acts relating to the imposition of succession duties.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Succession Duties Act 1929*.

#### 2—Acts consolidated and repealed

This Act is a consolidation of the Acts mentioned in Schedule 1, and the said Acts are hereby repealed.

#### 4—Interpretation

(1) In this Act, unless the context otherwise requires—

*administration* means—

- (a) probate or letters of administration (with or without a will annexed) granted under the law of this State or of some other place;

- (b) any rule or order of a court or judge, and any deed or document whereby a person becomes entitled under the law of this State, or of some other place, to administer, take charge of, or become receiver of, any property of a deceased person;

**administrator** means—

- (a) any executor to whom probate of a will has been granted; or
- (b) any person to whom letters of administration, with or without a will annexed, have been granted; or
- (c) any person who becomes entitled to administer, take charge of, or become receiver of, any property of a deceased person,

either under the law of this State or any other place;

**commissioner** means the Commissioner of Succession Duties appointed pursuant to this Act and includes the Deputy Commissioner of Succession Duties and any other officer while performing any of the duties or functions of the commissioner;

**deed of gift** means every deed of gift absolute, and every deed of conveyance, transfer, appointment under power, declaration of trust, or other non-testamentary disposition of property made by any person, and containing trusts or dispositions to take effect or which shall or may take effect during his lifetime, and not being made before and in consideration of marriage or in pursuance of a binding contract entered into before and in consideration of marriage, or in favour of a *bona fide* purchaser or incumbrancee for full consideration in money or money's worth, and whether or not the property comprised in the deed is subject to any limitation;

**disposition** includes release, discharge, surrender, forfeiture or abandonment at law or in equity of any debt, contract or chose in action, or of any right, power, estate or interest in or over any property, (where the right, power, estate or interest was created by an instrument executed or an arrangement made by a person after the commencement of the *Succession Duties Act Amendment Act 1970*) whether or not the disposition is effected by instrument in writing;

**duty** or **duties** means succession duty or duties under this Act or the repealed Acts;

**net present value**—

- (a) in relation to property given, accruing or derived under a deed of gift or in any of the circumstances mentioned in paragraph (n) or (o) of subsection (1) of section 8 of this Act, means the net value of the property at the date when the disposition thereof is made; and
- (b) in relation to any other property derived from a deceased person, means the net value of the property at the time of his death;

**person** includes body corporate, company, and society;

**property** includes any interest in property;

**putative spouse** in relation to a deceased person means a person adjudged under the *Family Relationships Act 1975* to have been a putative spouse of the deceased person as at the date of his death;

**reciprocating State** means any State or country (including any part of His Majesty's dominions) declared by proclamation for the time being in force to be a reciprocating State for the purposes of this Act;

**repealed Acts** means the Acts repealed by this Act or by the *Succession Duties Act 1893*;

**Savings Bank** means any of the following banks namely:

Australia and New Zealand Savings Bank Limited, Bank of New South Wales Savings Bank Limited, C.B.C. Savings Bank Limited, E. S. & A. Savings Bank Limited, The Bank of Adelaide Savings Bank Limited, The Commercial Savings Bank of Australia Limited, The Commonwealth Savings Bank of Australia, The National Bank Savings Bank Limited, The Savings Bank of South Australia;

**settlement** means every conveyance, transfer, appointment under power, declaration of trust, or other non-testamentary disposition of property made by any person containing trusts or dispositions to take effect upon or after the death of the settlor or any other person when the settlor or other person shall not have died before the twenty-sixth day of October, 1893;

**spouse** in relation to a deceased person means a person who was his lawful spouse on the date of his death and includes a putative spouse;

**testamentary expenses** means any expenses incurred in obtaining administration of any property of a deceased person by an administrator, and in vesting in the administrator the property to which the administration relates;

**the court** means the Supreme Court, or any judge thereof.

(1a) Where—

- (a) by virtue of the exercise of a power of appointment exercisable under or in relation to any trust or disposition contained in any conveyance, transfer, appointment under power, declaration of trust, or other non-testamentary disposition of property, any property or the right to assume immediate possession and enjoyment of any property accrues to any person upon, or by reason of, the death of some other person; and
- (b) such power of appointment is exercised after the commencement of the *Succession Duties Act Amendment Act 1963*,

that trust or disposition shall, for the purposes of this Act, be deemed to be a trust or disposition, as the case may be, to take effect upon the death of that other person.

(1b) Where—

- (a) under any trust or disposition referred to in paragraph (a) of subsection (1a) of this section, any property has become vested in any person but, by virtue of the existence of an express or implied power of appointment or revocation or condition in defeasance, that vesting does not become absolute until the death of some other person; and
- (b) upon or by reason of the death of that other person the vesting becomes or is rendered absolute,

that trust or disposition shall, for the purposes of this Act, be deemed to be a trust or disposition, as the case may be, to take effect upon the death of that other person.

- (2) The word *duty* in section 12 of the *Administration and Probate Act 1919* shall mean duty under this Act, or any Act amending the same or substituted therefor.

#### **4A—Application of *Succession Duties Act Amendment Act 1970***

Except as, and to the extent, provided in subsection (3) of section 55AA of this Act, the amendments made by the *Succession Duties Act Amendment Act 1970* apply only to and in relation to property derived from a person who died after the commencement of that Act.

#### **4B—Application of *Succession Duties Act Amendment Act 1975***

- (1) This Act applies to and in relation to property derived from a deceased person who died before the commencement of the *Succession Duties Act Amendment Act 1975* in all respects as if that amending Act had not been enacted.
- (2) This Act, as amended by the *Succession Duties Act Amendment Act 1975*, applies to and in relation to property derived from a deceased person who died after the commencement of that amending Act.

#### **4C—Application of *Succession Duties Act Amendment Act 1976***

- (1) This Act applies to and in relation to property derived from a deceased person who died before the commencement of the *Succession Duties Act Amendment Act 1976* in all respects as if that amending Act had not been enacted.
- (2) This Act, as amended by the *Succession Duties Act Amendment Act 1976*, applies to and in relation to property derived from a deceased person who died after the commencement of that amending Act.

#### **4D—Application of *Succession Duties Act Amendment Act 1977***

- (1) This Act applies to and in relation to property derived from a deceased person who died before the commencement of the *Succession Duties Act Amendment Act 1977* in all respects as if that amending Act had not been enacted.
- (2) This Act, as amended by the *Succession Duties Act Amendment Act 1977*, applies to and in relation to property derived from a deceased person who died after the commencement of that amending Act.

#### **4E—Non-application of this Act to the estates of persons who die on or after 1/1/80**

This Act does not apply to or in relation to—

- (a) property derived, or deemed to be derived, from a deceased person who dies on or after the first day of January, 1980; or
- (b) the administrator of the estate of any such deceased person in his capacity as the administrator of that estate.

#### **5—Commissioner of Succession Duties and administration of Act**

- (1) The Governor may appoint a Commissioner of Succession Duties, a Deputy Commissioner of Succession Duties, and any other necessary officers for carrying this Act into effect.

- (2) This Act shall be administered by the Commissioner of Succession Duties for the time being, who shall, in addition, administer the repealed Acts so far as the same shall remain in operation.

## **6—Reciprocity in the deduction of duty paid in respect of foreign property**

- (1) If at any time the Governor is satisfied that by the law of any other State or country (including any part of His Majesty's dominions) no succession duties, probate duties, death duties, estate duties, or other duties of the same nature are charged or payable upon property situated or deemed to be situated in South Australia, or no such duties are charged or payable on any substantial part of such property as aforesaid, or provision is or will be made—
  - (a) for the deduction from succession duties, probate duties, death duties, estate duties, or other duties of the same nature, payable in the said State or country in respect of property in South Australia of duty paid in this State in respect of the same property; or
  - (b) for exempting from any such duties as aforesaid property in this State,or to the like effect or substantially the like effect, the Governor may, by proclamation, declare the said State or country to be a reciprocating State for the purposes of this Act.
- (2) If subsequently the Governor is satisfied that succession duties, probate duties, death duties, estate duties, or other duties of the same nature are charged or payable upon property situated or deemed to be situated in South Australia, or that any such duties are charged or payable upon a substantial part of any such property, or that any such provision as mentioned in subsection (1) of this section is no longer in force, or will not be made, or is not being given effect to in the reciprocating State, the Governor may, by proclamation revoke the proclamation made with respect to the said reciprocating State.

## **Part 2—Imposition and ascertainment of succession duties**

### **7—Succession duties payable by administrator**

- (1) Every administrator shall pay to the commissioner succession duties, to be assessed by the commissioner, according to the rates mentioned in Schedule 2 hereto, but where any such duty shall have been paid in respect of any property derived, or deemed to be derived, from any deceased person no further duty shall be paid by reason of any additional administration subsequent to any such payment.
- (2) The duties, in relation to any particular person, shall be assessed upon the aggregate of the net present value of all the property derived, or deemed to be derived, by that person from any deceased person and shall be chargeable and payable accordingly.
- (3) Where, pursuant to section 16A of this Act, a trustee or other person is required to pay duty in respect of any property, this section shall extend and apply to, and have effect in relation to, that trustee or other person as if he were the administrator and to and in relation to that property.

## 8—Property on which duty is payable

- (1) For the purposes of this Act property shall, subject to this section, be deemed to be derived from a deceased person and shall be subject to duty in so far as it comprises or is portion of, or is payable out of—
- (a) his real property in South Australia (including real property over which he had a general power of appointment, exercised by his will); or
  - (b) his personal property, wherever the same shall be (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in South Australia; or
  - (c) his personal property in South Australia (including personal property over which he had a general power of appointment, exercised by his will), including all debts, money, and choses in action receivable or recoverable by the administrator in South Australia if the deceased had, at the time of his death, a foreign domicile; or
  - (d) property the subject-matter of a gift by way of a *donatio mortis causa* made by the deceased person; or
  - (e) property given or accruing to any person under any settlement, such property being deemed to be derived from, and upon the death of, the settlor or other person upon or after whose death the trusts or dispositions take effect; or
  - (f) property given or accruing to any person under any deed of gift made by the deceased person if he dies within one year after the date of the deed of gift; or
  - (g) the increase of benefit accruing to any person by the extinction or determination of any charge, encumbrance, estate, or interest determinable by the death of the deceased person, or at any period ascertainable only by reference to his death, to which any property has become subject by any non-testamentary disposition made since the twenty-sixth day of October, 1893; or
  - (h) the increase of benefit accruing to any person by the extinction or determination of any benefit reserved or assured to the deceased person (whether he was the grantor or any other person) for the term of his life, or for any period ascertainable only by reference to his death, by any reservation, assurance, or contract in or accompanying any non-testamentary disposition of property, not being a *bona fide* sale, made since the twenty-sixth day of October, 1893; or
  - (i) the beneficial interest in any property vested since the twenty-sixth day of October, 1893, in any person or persons jointly with the deceased person which accrues to the other or others of such persons by survivorship upon the death of the deceased person; or
  - (j) the beneficial interest in any money received under a policy of assurance effected after the twenty-seventh day of November, 1919, on his life by the deceased person, where the policy was wholly kept up by the deceased person for the benefit of a donee, nominee or assignee, or a part of such money, in proportion to the premiums paid by the deceased person, where the policy was partially kept up by him for the benefit of a donee, nominee or assignee; or

- (k) the beneficial interest in any money received under a policy of assurance effected after the twenty-seventh day of November, 1919, by any person on the life of the deceased person, where the premiums in respect of the policy were wholly paid by the deceased person, or, if part only of the premiums were paid as aforesaid, then a part of the money received in proportion to the amount of the premiums paid as aforesaid compared with the whole of the premiums paid in respect of the policy; or
- (l) any annuity or other interest purchased or provided by the deceased person, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased person; or
- (m) the property given or accruing to any person under any deed of gift made by the deceased person to the extent to which the property, or property required to satisfy the same, or the beneficial enjoyment thereof, has not been parted with by the deceased person at least one year before the date of his death; or
- (n) any property, other than gifts to any person not exceeding in aggregate value the sum of four hundred dollars, given or accruing after the twenty-seventh day of November, 1919, under any conveyance, assignment, gift, delivery, transfer, or other non-testamentary disposition of property (whether of like nature or not) made by the deceased person, whether in writing or otherwise, and whether by way of declaration of trust or otherwise, not being a deed of gift or settlement and not being before and in consideration of marriage, or for full consideration in money or money's worth wholly for the benefit of the deceased person, in the event of his death within one year of the making of the disposition; or
- (o) any property, other than gifts to any person not exceeding in aggregate value the sum of four hundred dollars, which after the twenty-seventh day of November, 1919, was disposed of by the deceased person by deed of gift, gift, or otherwise than for full consideration in money or money's worth, whensoever such person died, unless the person taking under the disposition had *bona fide* assumed the beneficial interest and possession of the property one year or more before the death of the deceased person and, during the period of one year or more immediately before the death of the deceased person, retained such beneficial interest and possession to the entire exclusion of the deceased person and without reservation to him of any benefit of whatsoever kind or in any way whatsoever or whether enforceable at law or in equity or not; or
- (p) the beneficial interest in any property which, under any document purporting to be a declaration of trust, purports to be given to or vested in or held in trust for any deceased person, where—
  - (i) the document is not revoked or otherwise determined before the death of the deceased person; and
  - (ii) the document is such that, if there were present an intention of creating a trust on the part of the person declaring the trust, such document would be construed as a declaration of trust with respect to such property; and

- (iii) upon or after the death of the deceased person, the beneficial interest in the property is retained by the person declaring the trust.
- (1a) Paragraphs (d) to (p) (inclusive) of subsection (1) of this section shall apply in relation to property mentioned in those paragraphs in so far as such property comprises or is portion of, or is payable out of—
- (a) the real property in South Australia of the deceased person; or
  - (b) the deceased person's personal property, wherever the same shall be, if he was at the time when such property was derived from him domiciled in South Australia; or
  - (c) the deceased person's personal property in South Australia, including all debts, money, and choses in action receivable or recoverable by him in South Australia, where he had, at the time when such property was derived from him, a foreign domicile; or
  - (d) any such real or personal property over which the deceased person had a general power of appointment exercised by the deed of gift, settlement or other instrument under which such property was given or accrued,
- and, for the purposes of this subsection, any real or personal property derived from the deceased person shall be deemed to be his real or personal property, as the case may be.
- (1b) For the purposes of this Act, the same non-testamentary disposition of property may be in part a settlement and in part a deed of gift, and the net present value of the property given or accruing under the respective parts shall be construed accordingly.
- (2) All duties lawfully paid in any reciprocating State in respect of property within that State, and derived from any deceased person, may be deducted from the duty to which the same property is liable under this Act.

### **8A—Property passing to spouse exempt from duty**

Notwithstanding any other provision of this Act, no duty shall be payable on any property derived from a deceased person by his spouse.

### **9—Calculation of net present value of property derived**

In calculating the net present value of property derived by any person for the purpose of assessing the duty payable thereon, no allowance shall be made—

- (a) by reason of the payment of, or the liability to pay any estate duties, succession duties, or other death duties under the law of this State, of the Commonwealth, or of any other place; or
- (b) by reason of any direction that the property is to be taken free of duty; or
- (c) by reason of any actual or prospective delay in obtaining administration of the property and in administering that property.

### **9B—Relief from duty on successive deaths**

- (1) In this section—

*limited interest* includes every estate interest or benefit which terminated during the lifetime or on the death of the person in whom it was vested;

*predecessor* means a person on or by reason of whose death property has passed to a person;

*successor* means a person to whom property has passed on or by reason of the death of a predecessor.

- (2) Where property has passed to a successor on or by reason of the death of a predecessor, and the successor dies not later than five years after the death of the predecessor, a rebate shall be allowed on the duty on all property derived by other persons from the successor.
- (3) Subject to subsection (4) every such rebate shall be an amount equal to a percentage of the duty paid on the property (other than limited interests) which passed to the successor from his predecessor, and such percentage shall be determined in accordance with the following rules:
  - (a) If the successor died in the first year after the predecessor, fifty per cent;
  - (b) If the successor died in the second year after the predecessor, forty per cent;
  - (c) If the successor died in the third year after the predecessor, thirty per cent;
  - (d) If the successor died in the fourth year after the predecessor, twenty per cent;
  - (e) If the successor died in the fifth year after the predecessor, ten per cent.
- (4) Where the net present value of the whole estate of the successor is less than the net present value of the property (other than limited interests) which passed to him on or by reason of the death of his predecessor, the rebate shall be a part of the amount fixed by subsection (3), bearing the same ratio to the whole of that amount, as the net present value of the whole estate of the successor bears to the net present value of the said property (other than limited interests) which passed to him on or by reason of the death of his predecessor.
- (5) Every rebate shall be apportioned between the several amounts of property derived by persons from the successor according to the respective amounts of duty chargeable on each such amount of property.
- (6) Where a rebate of duty is claimed under this section the administrator or some person on his behalf shall furnish the commissioner with a declaration in the prescribed form, but the commissioner may require any further statement, declaration, or information which he may deem necessary.
- (7) This section shall apply to cases where the successor dies after the passing of the *Succession Duties Act Amendment Act 1955* whether the predecessor died before or after such passing.

## **10—Property derived from a deceased person**

- (1) For the purposes of this Act property shall be deemed to be derived from a deceased person—
  - (a) if a title thereto is conferred beneficially upon any person either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation by the will of the deceased person or by devolution of law consequent on the death of the said person:

- (b) if the title thereto consists, wholly or in part, of any non-testamentary disposition of property, including therein any debt, covenant, bond, obligation, mortgage, encumbrance, or engagement made, incurred, given, created, or entered into by the deceased person during his lifetime, otherwise than before and in consideration of marriage, or for full consideration in money or money's worth wholly for the benefit of the said deceased person, to the extent of any property which the administrator of the said deceased person is bound to transfer, convey, deliver, or pay in satisfaction of the said disposition, unless the same property so deemed to be derived from the deceased person is otherwise liable to duty under this Act.
- (2) Where under any disposition of property taking effect upon the death of any person, any person has a general power of appointment over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled at the time of the death to the property or interest thereby appointed as a succession derived from the donor of the power.

### **10A—Certain covenants to pay to be dispositions of property**

It is hereby declared that in the interpretation and for the purposes of the application of the provisions of this Act, every covenant to pay (whether made before or after the passing of the *Succession Duties Act Amendment Act 1943*) conferring complete ownership of the debt and diminishing the covenantor's net assets by the amount of the debt is and shall be deemed to be a disposition of property within the meaning and for the purposes of this Act.

### **10B—Valuation of unlisted 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 constitute or form part of property derived, or deemed to be derived, from a deceased person shall be determined upon the assumption that, on the day when the property was so derived or deemed to have been so derived, those shares or debentures were duly listed on a Stock Exchange in Australia.
- (2) For the purposes of this Act, in determining the value of shares in any corporation, no regard shall be had to any provision in the memorandum or articles of association or in the constitution of the corporation whereby or whereunder the value of the shares is to be determined.
- (3) Notwithstanding anything contained in subsection (1) or subsection (2) of this section, the commissioner may, if he thinks fit, adopt as the value of any shares of any class in or debentures of any class of a 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 administrator concerned would receive after payment of all income tax in respect thereof in the event of the corporation becoming voluntarily wound up on the day when the property which comprises such shares or debentures was so derived or deemed to have been so derived, notwithstanding that such winding up is not intended or in contemplation.

### **10C—Agreement as to value of share in partnership may be disregarded**

In determining the net present value of an interest in a partnership of a deceased partner, no regard need be had to any agreement between the partners as to the purchase price or the determination of the value of the interest or as to the passing of the interest on the death of the deceased partner to another partner for no consideration or for a consideration that is less than the actual value of that interest.

### **10D—Ascertainment of value of debt**

- (1) Subject to subsection (2) of this section, where it is necessary for the purpose of assessing duty under this Act to ascertain the value of a debt (whether or not the debt, or the value of the debt, is included in the dutiable estate of the deceased person) the value shall be ascertained as if the outstanding amount of the debt had become due and payable immediately before the death of the deceased person.
- (2) Subsection (1) of this section does not apply in relation to—
  - (a) a marketable security; or
  - (b) a debt, the terms and conditions of which are such as would, in the opinion of the commissioner, be expected in a normal commercial transaction.

### **11—Duty to be a first charge on real and personal estate**

- (1) The duty payable under this Act shall, subject to subsection (2) of this section, be a first charge upon the property derived from the deceased person and shall become chargeable upon the said property immediately upon the death of the deceased person.
- (2) In the case of property given or accruing under a settlement, deed of gift or gift, the charge shall be subject to any security or charge effected before the settlement, deed of gift or gift, upon the property comprised therein.

### **12—Administrator to file statement**

- (1) For the purpose of enabling the commissioner to ascertain the incidence and the amount (if any) of duty in relation to property derived from a deceased person, every administrator shall—
  - (a) file with the commissioner, within the prescribed period of time from the grant of administration, a statement containing such information as may be prescribed; and
  - (b) furnish the commissioner with such further information as he may from time to time require.
- (2) If the administration is limited to any particular property, the statement shall be limited to that particular property.
- (3) In respect of any property referred to in paragraphs (d) to (p) (inclusive) of subsection (1) of section 8 of this Act, the commissioner may in the prescribed manner direct that, within the prescribed time or within such further time as the commissioner shall allow after the duty shall become chargeable on any property derived thereunder, a similar statement shall be filed by the trustee, guardian or committee in whom the property is or was vested or by any person nominated by the commissioner who is or was beneficially entitled to such property, and the trustee, guardian, committee or person shall comply with that direction.

- (4) Subsection (3) of this section does not limit the application of subsections (1) and (2) of this section.

### **13—Reasonable funeral and testamentary expenses may be deducted**

- (1) Every administrator may, in the statement filed with the commissioner for the purpose of ascertaining the net present value of all the property derived from the deceased person, deduct from the gross value of the property all reasonable funeral and testamentary expenses (other than any commission or remuneration payable to or chargeable by any administrator), in the same manner as the administrator, for the purpose of ascertaining the net present value, might lawfully deduct debts and other liabilities contracted by the deceased person during his lifetime.

(2) **Where debt secured by mortgage over land outside South Australia**

Notwithstanding subsection (1) of this section, there shall not be deducted, in any statement referred to in that subsection, the amount of any debt secured by a mortgage, charge or encumbrance (whether registered or not) over land situated outside South Australia, except a debt or such portion thereof as has, at the date of the death of the deceased person, become unsecured to the extent that the value of the land is less than the amount of the debt that is then outstanding and which is secured by the mortgage, charge or encumbrance.

### **13A—Costs of solicitor**

- (1) Where a solicitor is appointed by a will as an executor of the will or as a trustee of property passing under the will or both as such executor and trustee and has power under the will to charge for legal professional work done in connection with the will or the trusts thereby created the amount of any charges properly made by the solicitor for such work—
- (a) shall not be deemed to be a legacy and shall not be chargeable with duty under this Act;
  - (b) to the extent to which they are legal expenses incurred in obtaining probate of the will of the deceased and vesting his estate in the executor shall be deemed to be testamentary expenses and shall be deductible under section 13 of this Act.
- (2) This section shall apply in every case where the testator dies after the commencement of the *Succession Duties Act Amendment Act 1951* whether the will was made before or after such commencement.

### **15—Commissioner may extend time for filing statement**

The commissioner may extend the time within which the administrator, trustee or other person is to file the statement, and after the statement has been filed he may permit the administrator, trustee or other person to add to, alter, or vary it. When any such statement, with any such addition, alteration, or variation (if any) shall have been approved of by the commissioner he shall certify his approval in the prescribed form. Any such certificate shall, except as herein otherwise provided, be final and conclusive.

## **16—If statement not filed, or commissioner dissatisfied therewith etc the commissioner may assess duty**

If the administrator of the estate of any deceased person, the trustee or other person required to file the statement shall not file the statement within the prescribed time, or such extended time as the commissioner may allow, or if administration shall not be obtained in respect of the estate of any deceased person within six months after his death, or if the commissioner shall be dissatisfied with any statement filed in respect of the estate of any deceased person, or any property derived from him, the commissioner may assess the duties in the prescribed manner.

### **16A—Duty payable by trustee etc**

- (1) Where, pursuant to subsection (3) of section 12 of this Act, a trustee or other person is directed by the commissioner to file a statement in respect of any property referred to in paragraphs (d) to (p) (inclusive) of subsection (1) of section 8 of this Act, the trustee or other person shall, upon the approval of the statement by the commissioner or upon the assessment of the duties pursuant to section 16 of this Act, as the case may be, and subject to subsection (2) of this section, pay duty on such property.
- (2) Without affecting any obligation imposed on an administrator or other person under this Act, where—
  - (a) any property subject to duty was vested in a trustee, committee or guardian before the death of the person from whom such property was derived; and
  - (b) the trustee, committee or guardian has before such death disposed of all or any of such property pursuant to the trusts to which it was subject,

the liability of such trustee, committee or guardian to pay duty thereon shall be limited to the value of any portion thereof which he has not so disposed of before such death.

### **17—Supply of copies of grants to commissioner**

Forthwith after the grant of any probate or letters of administration with or without a will annexed the Registrar of Probates shall deliver to the commissioner a copy of the said probate or letters of administration.

### **18—Security for payment of duties etc**

- (1) The administrator of the estate of any deceased person, a trustee or other person required to file a statement pursuant to subsection (3) of section 12 of this Act may give security to the commissioner for the due payment of the duties on the said estate or the property vested in the trustee or other person or to which the other person is beneficially entitled, as the case may be. The security given may be by mortgage over the said estate or property or any portion thereof, or by bond with or without sureties, or may be given in any other manner which the commissioner thinks fit.

- (2) Upon payment of the duties or upon the acceptance of any such security, the commissioner shall certify in writing to the Registrar of Probates that the duty has been paid, or security accepted as aforesaid, or, in a proper case, the commissioner shall certify as aforesaid that no duty is payable upon the said estate or property. Upon the receipt of such certificate as aforesaid, and upon payment of the proper court fees, the Registrar of Probates shall deliver the administration to the administrator. In any case where the Public Trustee is the administrator, the Registrar of Probates may deliver the administration to the Public Trustee without having received a certificate as aforesaid.

### **19—As to administration during minority or absence from South Australia**

Every administrator appointed during the minority or absence from South Australia of any person, shall file the said statement and pay the duty.

### **19A—*Donatio Mortis Causa* to vest in administrator**

All property the subject-matter of a gift by way of a *donatio mortis causa* shall, upon the death of the donor, vest in the administrator until the duty shall have been paid and shall have been refunded to the administrator.

### **23—Settlements and deeds of gift to be registered**

Every settlement and every deed of gift shall be registered either within the prescribed time or within such further time as the commissioner may allow, after the duty in respect of any property accruing thereunder shall become chargeable as hereinbefore provided.

### **24—Mode of registering**

- (1) The registration of every settlement and every deed of gift shall be effected by the trustee, or some person interested thereunder, producing the same to the commissioner, and leaving an attested copy thereof with him, which copy the commissioner shall cause to be examined with the original.
- (2) If he shall find the same to be correct he shall endorse and sign a certificate of registration on the original settlement or deed of gift, to the effect that the same was produced to him, and that an attested copy was left with him, and specifying the date when the same was so produced and the attested copy so left with him as aforesaid.
- (3) The commissioner shall charge upon every such registration a fee of one dollar.

### **25—If settlement or deed of gift registered under the *Real Property Act 1886* certified copy to be produced in lieu of original**

In case of any settlement or deed of gift being a registered document under the *Real Property Act 1886* a copy certified under the hand of the Registrar-General, or any deputy or assistant or acting Registrar-General, and the seal of office of the Registrar-General may be produced instead of the original for registration under this Act, and a certificate of registration endorsed thereon shall have the same effect as if endorsed on the original.

### **31—Property conveyed or assigned to evade duty, liable to duty**

- (1) If any person makes any conveyance, assignment, gift, delivery, transfer, declaration of trust, or other non-testamentary disposition, whether in writing or otherwise, of any property, real or personal, or of any money or securities for money, or gives any mortgage or encumbrance, or incurs any debt, with intent to evade the payment of duty under this Act, the said disposition, mortgage, or encumbrance, or the incurring of the said debt, shall be deemed, so far as the circumstances will admit, to be a deed of gift, and any property accruing to any person thereunder shall be liable to duty as if the donor had died within twelve months from the date thereof, but double duty shall be payable in respect of any such property.
- (2) In any case within this section the court may, on the application of the commissioner by summons or petition, declare the disposition, mortgage, encumbrance, or debt in question to have been made, given, or incurred with intent to evade the payment of duty under this Act, and may also declare that double duty is payable in respect of the property accruing thereunder, and may order that some person shall file a statement in respect of the said property and pay the said duty. Upon such a declaration and order being made, all the provisions of this Act shall, so far as circumstances will admit, be applicable to that case as if the said person were trustee of a deed of gift under this Act, and the donor had died within twelve months from the date of the deed of gift, and the said disposition, mortgage, or encumbrance, or the creation of the said debt, were the deed of gift under which he took the property comprised therein.

### **33—Certain increases of benefit and beneficial interests accruing not subject to duty**

Succession duty shall not be chargeable in respect of the increase of benefit or the beneficial interest accruing as mentioned in paragraphs (g), (h), (i), (j), (k) and (l) of subsection (1) of section 8 of this Act by reason only of a bona fide purchase from the person under whose disposition the benefit or interest accrues, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where the purchase was made, or the lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in case of a lease for the use or benefit of any person for whom the grantor was a trustee.

### **38—Commissioner may require payment of duty before he approves statement**

- (1) The commissioner may, if he deems it desirable, require payment of the duty appearing by any statement required under section 12 of this Act to be chargeable from any of the persons filing the same, before he has certified his approval.
- (2) The duty shall thereupon immediately become payable, but the amount thereof shall be subject to adjustment by the commissioner when he has certified his approval of the statement.

### **38A—Commissioner may extend time for payment of duty**

Notwithstanding anything contained in this Act, the commissioner may extend the time for payment of any duty payable under this Act.

## 42—Increase of succession duties

- (1) In every case where duty becomes chargeable upon any property, the amount of duty payable shall be increased by twenty-five per centum of the amount of duty which would be payable except for the operation of this section: Provided that this section shall not apply to any duty becoming chargeable after the thirtieth day of June, 1935.
- (2) Where duty becomes chargeable on any property between the thirtieth day of June, 1935, and the first day of July, 1936, the amount of duty payable shall be increased by fifteen per centum of the amount which would be payable except for the operation of this section.
- (3) When duty becomes chargeable on any property between the thirtieth day of June, 1936, and the first day of October, 1936, the amount of duty shall be increased by fifteen per centum of the amount which would be payable except for the operation of this section.
- (4) When duty becomes chargeable on any property between the thirtieth day of September, 1936, and the first day of July, 1937, the amount of duty payable shall be increased by fifteen per centum of the amount which would be payable except for the operation of this section.

## 42A—Imposition of duties as varied

When duty becomes chargeable on any property after the passing of the *Succession Duties (Variation of Duties) Act 1939* the duty shall be chargeable according to the appropriate scale in Schedule 2 or 3 to this Act as enacted by the *Succession Duties (Variation of Duties) Act 1939*.

## Part 3—Sales for non-payment of duty

### 43—Property may be ordered to be sold

- (1) The administrator or trustee, or any person required to pay duty under this Act, may, if he shall require the assistance of the court in that behalf, apply to the court for an order that the whole or a sufficient portion of any property subject to duty may be sold to pay the duty.
- (2) If any duty shall not be paid, the commissioner may apply to the court for an order that a sufficient portion of any property subject to the duty may be sold.
- (3) The court may thereupon order that the whole or such portion of the said property as it thinks proper may be sold, at such times, for such prices, and in such manner, and subject to such terms and conditions in all respects, as it may deem advisable, and may make such order as to the costs of and consequent upon the application, proceedings, and sale as it may deem advisable.
- (4) The moneys arising from the said sale shall be applied in the first place towards paying the costs and expenses, if so ordered, of and consequent upon any such application, proceedings, or sale, and in the next place towards the payment of the said duty, and the balance shall, subject to the provisions of the next following subsection, be paid to or held or disposed of by the administrator or trustee upon the same trusts as the property sold would have been held and disposed of.

- (5) The court may make any order that may seem just as to any such surplus moneys, and as to the disposal or investment thereof, and as to the person or persons to whom the same or the interest thereof shall be paid.

#### **44—Purchaser not bound to inquire**

No purchaser from any person required to pay duty under this Act, or from any trustee, in any case where the said person or trustee shall make a sale purporting to be made under section 43, and no purchaser at any sale purporting to be made under any order obtained under this Act, shall be bound or concerned to see or inquire whether the said trustee or person has power to sell, or as to the necessity of the sale, or whether the order was properly obtained or whether the sale is properly made, nor shall he be affected by notice to the contrary; and the remedy of any person aggrieved by an improper sale shall be in damages only against the person or commissioner effecting the same.

#### **45—When land sold under order, court may make vesting order**

- (1) When any real or personal property shall be sold under any order of the court obtained under this Act, the court may make an order vesting the said real or personal property in such person or persons in such manner and for such estate or interest as the court shall think fit.
- (2) Every such order shall have the same effect as if the administrator, trustee, commissioner, or other person obtaining the order had been seized or possessed of or entitled to the real and personal property for the estate or interest vested in the said person or persons by the vesting order, and had been freed from all disability, and had duly executed all proper conveyances and memoranda of transfer, assignments, and assurances of the said real and personal property for the said estate or interest.
- (3) The court may, for the purposes of the *Real Property Act 1886*, direct any transfer of any real property under the provisions of the said Act to be executed by such person as the court shall direct.

### **Part 4—Adjustment of duty**

#### **46—Administrator or trustee to adjust duties**

- (1) Subject to any specific direction appearing in any will, deed of gift, or settlement, to the contrary, every administrator or trustee or person required to pay duty under this Act, shall adjust any duties, and the incidence of any duties payable or paid by him, so as to throw the burden thereof upon the respective properties on which the same shall be ultimately chargeable.
- (2) For the purpose of carrying any such adjustment into effect, or for the purpose of raising money for the payment of any duty, the administrator or trustee or person as aforesaid may sell, or mortgage with a power of sale, all or any part of the real or personal property chargeable with duty, upon such terms and conditions in all respects as in his discretion may seem proper.

- (3) The administrator or trustee or person as aforesaid may also, for the purpose aforesaid, by any instrument in writing, impose any charge upon any property in favour of any person, whether then ascertained or not, entitled contingently or otherwise to any other property. Any such charge as to land not under the provisions of the *Real Property Act 1886* may be in the prescribed form, and may contain a power of sale, and may be upon such terms and conditions as the administrator or trustee or person as aforesaid may think proper. As to land under the provisions of the *Real Property Act 1886* the charge may be effected by memorandum of encumbrance under the said Act, upon such terms and conditions as the administrator or trustee or person as aforesaid may think proper; but notwithstanding the provisions of the *Real Property Act 1886* no covenant by the encumbrancer shall be implied in any such encumbrance.
- (4) The powers and discretions conferred by this section shall be subject to the control and direction of the court as in cases of ordinary trusts, and the court may also, on application by summons or otherwise, make any order which it may deem advisable for the purpose of adjusting the duties and the incidence of the duties payable under this Act.

#### **46A—Additional power of administrator to recover duties in certain cases**

- (1) Subject to any specific direction appearing in any will or non-testamentary disposition of property to the contrary, every administrator who has paid duty on property subject to duty may, to the intent that the burden of such duty shall be thrown upon the property upon which it is chargeable but subject to subsection (2) of this section, recover by action in the court the amount of such duty from—
  - (a) a trustee, committee or guardian in whom such property is or was vested; or
  - (b) a donee or other person who is or was beneficially entitled to such property.
- (2) Where an amount of duty is so recoverable from a trustee, committee or guardian—
  - (a) the provisions of subsection (2) of section 16A of this Act shall apply and have effect in relation to the amount of duty so recoverable; and
  - (b) the provisions of Part 3 of this Act shall apply and have effect in relation to the property on which such amount of duty was chargeable,as if such amount of duty were still chargeable on such property and payable to the commissioner.
- (3) The provisions of this section shall be construed as in addition to and not in derogation from the provisions of section 46 of this Act.

#### **47—Power of court to make order when duties not adjusted**

Where, by reason of there being no trustee of any settlement or deed of gift, or because of the neglect of any administrator or trustee, or for any other reason, no adjustment of duties shall be made within a reasonable time, the court may, upon the application of any person interested, by summons or otherwise, make such order as to the adjustment of duties and the incidence of duties, and as to the costs of the application and adjustment, and for sale or charge or encumbrance of any part of the real or personal property concerned, for the purpose of the said adjustment and for the payment of the said costs as shall be just.

#### **48—When limited interest taken, duty thereon payable out of *corpus***

Subject to any specific direction to the contrary in any will or other testamentary instrument, deed of gift, settlement or non-testamentary disposition of property made chargeable with duty under paragraph (n) or paragraph (o) of subsection (1) of section 8 of this Act, every administrator or trustee or other person whose duty it is to adjust the incidence of any duties payable or paid by him shall, in carrying out such adjustment—

- (a) charge upon and pay out of the *corpus* of any property in which any limited interest is taken under the said will or other testamentary instrument, deed of gift, settlement, or non-testamentary disposition mentioned in paragraph (n) or paragraph (o) of subsection (1) of section 8 of this Act, all duties paid or payable in respect of the said limited interest and the remainders or the reversion expectant thereon, and the corpus so diminished shall thereafter as between the respective persons entitled thereto, be deemed to be the property in which the said interests are taken:
- (b) charge the duty payable on any annuity on the property or fund out of which the same is derived or which may be invested or may require to be invested to produce the said annuity, and abate the annuity itself by the same percentage at which the duty in respect thereof is assessed.

#### **49—Pending appeal not to delay payment of duty**

- (1) The fact that an appeal is pending against an assessment shall not in the meantime interfere with or affect the assessment appealed from; and duty may be levied and recovered on the assessment as if no appeal were pending.
- (2) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as duty unpaid.
- (3) Interest shall be paid at the rate fixed pursuant to subsection (4) of this section which is for the time being current, upon the amounts so refunded from the date of payment of the same up to the date when the same are refunded, or upon the amounts so recovered from the date of the assessment appealed against up to the date when the same are recovered, as the case may be.
- (4) The Treasurer may from time to time, by notice published in the Government Gazette, fix the rate of interest per centum per annum payable under subsection (3) of this section, and may, in like manner, vary any such rate fixed as aforesaid.

#### **50—Property not to be disposed of until duty paid**

- (1) After any duty has become chargeable upon any property, there shall not be any disposition of that property, or any part of it, until the duty thereon has been paid, or the commissioner certifies that he holds security for the payment of the duty sufficient to permit any specified part of the property to be disposed of.
- (2) Any administrator, trustee, or other person who disposes of any property in contravention of this section shall, without prejudice to the recovery of the duty by any other means, be personally liable for the duty.

### **51—Interest on duty**

- (1) Subject to subsection (3) of this section, interest at the rate fixed pursuant to subsection (2) of this section which is for the time being current, shall be charged on all duty payable under this Act from and after the expiration of six months from the time when the duty first became chargeable until the duty is paid, and shall be deemed part of the duty imposed by this Act.
- (2) The Treasurer may from time to time, by notice published in the Government Gazette, fix the rate of interest per centum per annum payable under subsection (1) of this section, and may, in like manner, vary any such rate fixed as aforesaid.
- (3) The commissioner may, in any case where reasonable cause exists for doing so—
  - (a) postpone for such period as he thinks fit the date from which interest is chargeable under this section; or
  - (b) remit wholly or in part the interest chargeable under this section.

### **52—Duty deemed a debt due to Crown**

- (1) Duty when it becomes payable under this Act shall be deemed a debt due to His Majesty, and shall be payable to the commissioner.
- (2) Any duty unpaid may be sued for, and recovered, in any court of competent jurisdiction by the commissioner suing in his official name.

### **53—Power to compromise duties**

Where, in the opinion of the commissioner, any property shall be of such a nature, or so disposed of or circumstanced, that the value thereof is not fairly ascertainable under this Act, or where, from the complication of circumstances affecting the value of any property, or the assessment or recovery of the duty thereon, he shall think it expedient to exercise the power conferred on him by this section, he may compound the duty on that property upon such terms as he shall think fit, and may give a discharge to the administrator or trustee, or any other person interested in the property, upon payment of the duty according to the said composition.

### **54—When too little duty paid**

If, after any assessment of duty has been made, it shall be discovered that the duty thereby fixed is too small, or if after a statement has been filed it shall be discovered that any net value thereby shown is too small, or if the commissioner shall be dissatisfied on any ground with the statement filed, the person by whom the statement shall or should have been filed and the duty paid, or the person whose duty at the time of the discovery it would be, either with or without the direction or requirement of the commissioner, to file the said statement or pay the said duty if not already filed or paid, shall immediately upon such discovery being made, amend the statement, and shall pay such duty or additional duty as may be assessed by the commissioner: Provided that if any such discovery shall have been made after the commissioner has given his certificate of final approval of the statement any administrator, trustee, or other person shall only be liable for such duty, or additional duty, to the extent of any property then under his control, or which can be applied by him for the payment of the said duty, unless it shall be owing to any fraud or gross negligence on his part that the proper amount of duty was not paid at first, in which case he shall be personally liable for the said duty or additional duty.

## 55—When too much duty paid

- (1) If after any duty has been paid under this Act it shall be found that too much duty has been paid, the commissioner, upon being satisfied, by examination of the parties or otherwise, as he may think fit, that too much duty has been paid, shall order that the amount overpaid together with interest at the rate fixed pursuant to subsection (2) of this section from the time of payment of the duty shall be returned to the person entitled to receive the same, and upon any such order the Treasurer shall pay the same out of the general revenue: Provided that if in any case duty has been paid in respect of any personal property in respect of which duty has been paid in any reciprocating State and in consequence thereof any duty under this Act is refunded, no interest as aforesaid shall be payable in respect of any amounts so refunded.
- (2) The Treasurer may, from time to time, by notice published in the Gazette, fix the rate of interest payable under subsection (1) of this section.

## Part 4A—Remission of duty on estates of persons dying on active service

### 55A—Application of Part

- (1) The provisions of this Part shall apply to the following persons:
  - I Any person who during the present war is engaged whether inside or outside the Commonwealth on service as a member of any naval, military, or air force of the Commonwealth or of any other part of His Majesty's Dominions, and who (whether before or after the passing of the *Succession Duties Act Amendment Act 1940*) dies whilst on such service or dies from wounds inflicted, accident occurring, or disease contracted whilst on such service and within twelve months before death:
  - Ia Any person who during the present war is engaged whether inside or outside the Commonwealth on service as a member of any naval, military, or air force of any country allied or associated with His Majesty for the purpose of the prosecution of the present war and who (whether before or after the passing of the *Succession Duties Act Amendment Act 1942*) dies whilst on such service or dies from wounds inflicted, accident occurring or disease contracted whilst on such service and within twelve months before death:
  - II Any person who in connection with the present war is engaged on service whether inside or outside the Commonwealth in any work of any red cross society or ambulance association or any other body with similar objects and who (whether before or after the passing of the *Succession Duties Act Amendment Act 1940*) dies whilst on such service or dies from wounds inflicted, accident occurring, or disease contracted whilst on such service and within twelve months before death:
  - III Any person who, in connection with the present war, is a prisoner of war in an enemy country or is interned in the country of a neutral power and who (whether before or after the passing of the *Succession Duties Act Amendment Act 1940*) dies whilst so imprisoned or interned from wounds inflicted, accident occurring or disease contracted whilst so imprisoned or interned and within twelve months before death:

IV Any person being the master or the member of the crew of a British ship who dies (whether before or after the passing of the *Succession Duties Act Amendment Act 1940*) from wounds inflicted, accident occurring or disease contracted as the result of enemy action against that ship and within twelve months before death.

(2) In this Part—

*the present war* means the war which commenced on the third day of September, 1939; and for the purpose of this Part the present war shall be deemed to continue until the day declared by the Governor by proclamation to be the day on which that war shall be deemed to cease.

### **55AA—Application of Part 4A to Korean war and certain other operations**

(1) The provisions of this Part shall also apply to the following persons:

- (a) Any person who has died from wounds inflicted, accident occurring or disease contracted while he was on active service in the Korean war as a member of a naval, military or air force of the Commonwealth or any other part of His Majesty's Dominions, or of any country associated with His Majesty in the Korean war:
- (b) Any person who has died from wounds inflicted, accident occurring or disease contracted while he was engaged in Korea in the work of providing ambulance services, medical attention, recreational facilities, entertainment, accommodation, or sustenance, for members of any naval, military, or air force of the Commonwealth or of any other part of His Majesty's Dominions while such members were on active service in the Korean war:
- (c) A master or member of the crew of any British ship who dies from wounds inflicted, accident occurring or disease contracted as the result of action against that ship during the Korean war by the enemies of the United Nations:
- (d) Any person who has died from wounds inflicted, accident occurring, or disease contracted while he was a member of a naval, military or air force of the Commonwealth operating under a British Commander for the suppression of unlawful violence in Malaya:
- (e) Any person who has died of wounds inflicted, accident occurring, or disease contracted while—
  - (i) on active service as a member of a naval, military or air force of the Commonwealth of the United Kingdom or of any other part of Her Majesty's Dominions; or
  - (ii) engaged in the work of providing ambulance services, medical attention, recreational facilities, entertainment, accommodation or sustenance for any such members on active service as provided by subparagraph (i) of this paragraph,

in any area outside Australia or in any naval, military or air force operation that is declared by proclamation (which the Governor is hereby empowered to make) to be an area or (as the case may be) a naval, military or air force operation for the purposes of this paragraph, where such wounds were inflicted, such accident occurred or such disease was contracted within twelve months before death:

- (f) Any person who has died of wounds inflicted, accident occurring, or disease contracted while engaged by, or with the authority of, the Commonwealth, in the work of providing ambulance services, medical attention, nursing services or advisory services to the civil population in any area outside Australia that is declared by proclamation under paragraph (e) of this subsection to be an area for the purposes of that paragraph, where such wounds were inflicted, such accident occurred, or such disease was contracted within twelve months before death.
- (2) In this section—
- Korean war* means the war in Korea which commenced on the twenty-fifth day of June, 1950. For the purposes of this section the said war shall be deemed to end on the day on which a proclamation is issued by the Governor declaring that the Korean war has ceased.
- (3) This section shall apply to every such person as mentioned in subsection (1) whether his death occurred before or after the enactment of this section or before or after he had ceased to be on active service or to be engaged or occupied as mentioned in subsection (1) of this section.

#### **55B—Remission of duty in case of persons dying on active service**

- (1) Notwithstanding anything contained in this Act, where upon the death of any person to whom this Part applies any property is derived from such deceased person or accrues on his death, the commissioner shall remit, or, in case of duty already paid (whether paid before or after the passing of the *Succession Duties Act Amendment Act 1942*), repay, the following amounts of succession duty payable in respect of property derived from the deceased person by, or accruing on the deceased person's death to, any descendant or ancestor, or any sister or brother, of the deceased person, namely:
- (a) where the net present value of the property so derived by, or accruing to, any of the persons hereinbefore referred to, does not exceed twenty thousand dollars, the whole of the duty payable in respect of such property:
- (b) where the said value exceeds twenty thousand dollars—
- I all duty in excess of the amount which would be payable if the said value had been reduced by twenty thousand dollars:
- II an amount which immediately prior to the death of the deceased would have provided him with a life annuity (calculated in accordance with the regulations under this Act relating to the ascertainment of the net present value of an annuity) equal to four per centum of the duty payable after taking into account the duty remitted or repaid pursuant to subdivision I hereof.
- (2) Notwithstanding anything in this section, no remission or repayment of duty shall be made under this section in favour of any successor who is not domiciled in the Commonwealth of Australia.
- (4) This section as amended by the *Succession Duties Act Amendment Act 1967* shall apply and have effect in relation to any person referred to in paragraph (e) of subsection (1) of section 55AA of this Act (whether he died before or after the commencement of that Act).

### 55C—Remission of duty in case of successive deaths caused by war

- (1) Where the commissioner is satisfied that succession duty has become payable in respect of any property in a case to which section 55B applies, and that subsequently succession duty has again become payable in respect of the same property, or any part thereof, upon its being derived from, or accruing on the death of, some other deceased person, in a case to which the said section 55B applies, the whole of the succession duty thus subsequently becoming payable shall be remitted, or, in case the duty has been paid, repaid; and such property or part shall not be aggregated with any other property derived from or accruing on the death of the last-mentioned person for the purpose of determining the rate of succession duty payable in respect of property derived from him or accruing on his death.
- (2) This section shall apply whether on the death of such last-mentioned person the property was or is derived by, or accrued or accrues to, any descendant or ancestor, or sister or brother, of the deceased person, or by or to any other person.

### 55D—Remission of duty on estates of members of allied forces having foreign domiciles

Notwithstanding anything contained in this Act, where upon the death of any person such as is described in paragraph 1a of subsection (1) of section 55A, any personal property in South Australia (including personal property over which the deceased person had a general power of appointment, exercised by his will) is derived from the deceased person or accrues on his death, that property shall not be liable to any duty under this Act if at the time of his death the deceased person had a foreign domicile. If before the passing of the *Succession Duties Act Amendment Act 1942* any duty was paid in respect of any property which under the foregoing provisions of this section is not liable to duty, the commissioner shall repay such duty.

## Part 4B—Rebate of duty on property passing to ancestors, descendants, brothers and sisters of the deceased

### 55E—Interpretation

In this Part—

*brother* or *sister* in relation to a deceased person includes a person who, in the opinion of the Minister, falls within one of the following categories:

- (a) a person to whom a parent of the deceased acted *in loco parentis*;
- (b) a person whose parent acted *in loco parentis* to the deceased;
- (c) a person to whom a person who acted *in loco parentis* to the deceased also acted *in loco parentis*;

*business of primary production* means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops or the rearing of livestock;

*dwellinghouse* includes a part of a building used as a residence;

*land used for primary production* means land that is used exclusively for the business of primary production, but does not include—

- (a) land given or accruing to an uncertain person or on an uncertain event, not being—
  - (i) land devised by a testator to his child contingently on his attaining a certain age; or
  - (ii) land devised by a testator to a beneficiary contingently on his surviving the testator for a period not exceeding one calendar month;
- (b) land devised for a term of years; or
- (c) an annuity or bequest secured by or charged upon land;

*rural property*, in relation to a deceased person, means land used for primary production in relation to that deceased person, and includes animals, farm produce and plant and machinery used by that person or by a spouse or any descendant or ancestor of that person or by any two or more of them at the time of that person's death exclusively for the business of primary production in connection with that land, but does not include any motor vehicle designed primarily for the conveyance of persons, household furniture, furnishings and appliances.

#### **55F—Rebate to ancestor, descendent, brother or sister**

Subject to this Part, a rebate of duty shall be allowed to any ancestor, descendant, brother or sister of the deceased person of that proportion of the duty otherwise payable in accordance with Schedule 2 to this Act which the general statutory amount determined in accordance with this Part bears to the net present value of all property derived or taken by such ancestor, descendant, brother or sister, as the case may be.

#### **55G—Special rebate for rural property**

Subject to this Part, a rebate of duty shall be allowed to any ancestor or descendant of the deceased person of that proportion of the duty ascertained in accordance with Schedule 2 to this Act and section 55F of this Act which the special statutory amount determined in accordance with this Part bears to the net present value of all property derived or taken by such ancestor or descendant, as the case may be.

#### **55H—General statutory amount**

- (1) Subject to this section, where property is derived from a deceased person by a beneficiary to whom this section applies the general statutory amount is the sum of the following amounts (so far as they may be applicable):
  - (a) where an interest in a dwellinghouse is derived from the deceased person by a beneficiary of the first category and the dwellinghouse was, in the opinion of the commissioner, the principal home of the deceased and of that beneficiary at the date of death of the deceased—an amount determined as follows:
    - (i) if the aggregate value of the property derived from the deceased person by that beneficiary does not exceed \$A the amount is—
      - (A) an amount equal to the value of the interest; or
      - (B) an amount of \$B,
 whichever is the lesser;

- (ii) if the aggregate value of the property derived from the deceased person by that beneficiary exceeds \$A but does not exceed \$C, the amount is—
    - (A) an amount equal to the value of that interest; or
    - (B) an amount equal to one-half of the sum by which \$C exceeds the aggregate value of the property derived, whichever is the lesser; and
  - (b) where property is derived from the deceased person by a beneficiary of the second category, an amount of \$D less—
    - (i) one-half of the sum by which the aggregate value of the property derived exceeds \$C; or
    - (ii) an amount of \$E, whichever is the lesser; and
  - (c) where property is derived from the deceased person by a beneficiary of the third category—an amount of \$F.
- (1a) Where—
  - (a) an interest in a dwellinghouse is derived from a deceased person by a brother or sister who is entitled to the benefit of this section; and
  - (b) the value of property derived by that beneficiary from the deceased (excluding the value of the interest in the dwellinghouse) exceeds \$5 000, the general statutory amount shall be—
    - (c) the amount arrived at under paragraph (a) of subsection (1) of this section; or
    - (d) \$B less four times the excess referred to in paragraph (b) of this subsection, whichever is the lesser.
- (2) Where two or more beneficiaries derive from a deceased person interests in a dwellinghouse that attract the benefit of this section, the amount attributable to each beneficiary in respect of his interest in the dwellinghouse is determined as follows:
  - (a) an amount is first determined as if all such interests had been derived by a single beneficiary; and
  - (b) an apportionment of that amount is then made between those beneficiaries according to the proportion that the value of the interest in the dwellinghouse derived by each bears to the aggregate value of all such interests derived by beneficiaries entitled to the benefit of that paragraph.
- (4) In this section—

\$A = \$35 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$B$  = \$17 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$C$  = \$69 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$D$  = \$18 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$E$  = \$6 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year:

$\$F$  = \$6 000, or where the date of death of the deceased person falls in a calendar year succeeding publication of a notice under this section, the value attributed to that symbol by the notice last preceding the commencement of that calendar year.

- (5) After the thirtieth day of September but before the thirty-first day of December in 1976 1977 and 1978 the Treasurer shall cause to be published in the Gazette a notice attributing values to the symbols referred to in this section and the values so attributed shall be determined as follows (calculating to the nearest \$1 000):

$\$A$  = \$35 000 plus the amount by which  $\$B$  exceeds \$17 000 and the amount by which  $\$D$  exceeds \$18 000:

$\$B$  = \$17 000 multiplied by the factor by which, in the opinion of the Valuer-General, the average market value of residential properties in South Australia as at the thirtieth day of September, 1975, must be multiplied in order to arrive at the average market value of residential properties as at the thirtieth day of September immediately preceding publication of the notice:

$\$C$  = \$69 000 plus the amount by which  $\$D$  exceeds \$18 000 and three times the amount by which  $\$B$  exceeds \$17 000:

$\$D$  = \$18 000 multiplied by the factor (calculated to four decimal places) by which the consumer price index (All Groups for Adelaide) for the September quarter 1975 must be multiplied in order to arrive at the consumer price index for the September quarter last preceding publication of the notice:

$\$E$  =  $\$D$  less \$12 000:

$\$F$  = \$6 000 multiplied by the same factor used to arrive at  $\$D$ .

- (6) In this section—

*beneficiary of the first category* in relation to a deceased person means—

- (a) an unmarried brother or unmarried sister of the deceased person who shared a common home with the deceased person throughout the period of five years immediately preceding his death; or
- (b) a child of the deceased person who—

- (i) became an orphan child by reason of the death of the deceased; and
  - (ii) was, on the date of death of the deceased, under the age of eighteen years; or
- (c) a child of the deceased person who was, in the opinion of the commissioner, wholly engaged throughout the period of twelve months immediately preceding the deceased person's death in keeping house for the deceased person;

*beneficiary of the second category*, in relation to a deceased person, means—

- (b) a child of the deceased person who was, on the date of death of the deceased, under the age of eighteen years;

*beneficiary of the third category* in relation to a deceased person, means—

- (a) an ancestor of the deceased person; or
- (b) a descendant of the deceased person who is not a beneficiary of the second category;

*unmarried* includes widowed or divorced.

### **55J—Special statutory amount in respect of rural property**

- (1) Subject to subsection (2) of this section, where property derived by an ancestor, or descendant of a deceased person includes any beneficial interest in rural property, the special statutory amount is one-half of the value of that interest.
- (2) Where rural property was held by the deceased person jointly or in common with any other person or persons (whether or not a beneficiary or beneficiaries of the deceased) the special statutory amount attributable to a beneficiary under subsection (1) of this section in respect of that property shall be reduced by the proportion that the value of the interest of that person or those persons bore, immediately before the death of the deceased, to the total value of that rural property.

### **55K—Administrator to apply in certain cases**

- (1) A rebate under this Part in respect of rural property or in respect of a dwelling-house shall be allowable only upon application by the administrator.
- (2) Where property derived by a beneficiary from a deceased person includes both an interest in a dwellinghouse and an interest in rural property, a claim may be made for a rebate under this Part—
  - (a) in respect of the dwellinghouse; or
  - (b) in respect of the rural property,but not in respect of both.
- (3) No rebate shall be allowed under this Part in respect of rural property unless the commissioner is satisfied that the beneficiary in respect of whom the rebate is claimed intends to use the property for primary production.
- (4) The commissioner may for the purposes of this Part require any such beneficiary to make a declaration of such intention and may require any further statement, declaration, or information which he may deem necessary.

### **55L—Valuation of land used for primary production**

For the purposes of this Part, the value of the beneficial interest in any rural property comprised in the estate of the deceased person shall be determined in accordance with the following paragraphs:

- (a) the value of such beneficial interest shall be taken to be the actual value of the beneficiary's share in that rural property less the amount, as at the date of death of the deceased person, of any charge or encumbrance to which such property was subject at that time and subject to which it is derived;
- (b) where the beneficial interest is devised by the will of the deceased person, there shall be deducted from the value thereof—
  - (i) the amount of any charge or encumbrance to which the beneficial interest becomes subject as a condition of the devise; and
  - (ii) the amount by which the value of the beneficial interest is reduced by reason of any obligation imposed on the devisee as a condition of the devise,

and the resultant amount shall be taken to be the value of such beneficial interest.

### **55M—Valuation of dwellinghouse**

In determining the value of any interest in a dwellinghouse for the purposes of this Part, the commissioner shall take into account—

- (a) any charge or encumbrance subject to which the dwellinghouse is derived; and
- (b) the value of any land of an area not exceeding 0.2 hectare on which the dwelling-house is built; and
- (c) the value of any fixtures and fixed improvements on such land,

but shall not take into account the value of any furniture or furnishings in the dwelling-house.

### **55N—Further provisions as to rural property**

- (1) No rebate shall be allowed under this Part in respect of rural property unless the commissioner is satisfied that the land in respect of which the application for rebate is made is of such a size and in such a condition and the circumstances are such that the land is capable of being used for the business of primary production.
- (2) No rebate under this Part in respect of rural property shall be allowed in respect of any beneficial interest which is comprised in property referred to in paragraphs (d) to (h) (inclusive) and paragraphs (m) to (p) (inclusive) of subsection (1) of section 8 of this Act.
- (3) No rebate shall be allowed under this Part in respect of land used for primary production unless the commissioner is satisfied that—
  - (a) the deceased person, or a spouse, descendant or ancestor of the deceased person was using the land for the business of primary production immediately before the death of the deceased person; and

- (b) that person—
  - (i) has used the land for the business of primary production; or
  - (ii) has been solely or principally engaged in the business of primary production,throughout the period of three years immediately preceding the date of death of the deceased person.

## Part 5—General provisions

### 56—Duty on property given to uncertain person etc

- (1) In the case of any property derived from a deceased person which is given or accrues to an uncertain person, or on an uncertain event, duty shall be paid on the net present value of that property, as if the same had been given by way of vested remainder to a certain person, and the said duty shall be the greatest amount of duty applicable on any possible vesting or vestings and on any possible aggregation of that property with any other property derived from the deceased person.
- (2) Upon any such property or any part thereof becoming actually vested in any person or persons who, if he or they had taken the same by way of vested remainder at the time when the duty became payable, would have been chargeable with a smaller duty than that actually paid, the commissioner, upon being satisfied that such is the case, shall order that the difference between the smaller duty aforesaid and the duty actually paid, with interest on the difference at the rate fixed pursuant to subsection (3) of this section from the time of payment of duty under this section, shall be paid to the person entitled to receive the same, and upon any such order the Treasurer shall pay the same out of the general revenue.
- (3) The Treasurer may, from time to time, by notice published in the Gazette, fix the rate of interest payable under subsection (2) of this section.

### 56B—Rate of duty on property derived by children adopted *de facto*

Where—

- (a) a person derives any property from a deceased person with whom he lived and who acted *in loco parentis* to such person; and
- (b) the Minister is satisfied that, although such person was not a legally adopted child of the deceased person, the circumstances are such that he should be treated as such for the purposes of this Act,

the Minister may direct that the duty payable in respect of such property shall be at the same rate as if such person were a legally adopted child of the deceased person, and duty shall be assessed accordingly.

### 57—Legacies to certain public bodies

No duty shall be payable upon any legacy consisting of books, prints, pictures, statues, gems, coins (not being current coins of the realm), medals, specimens of natural history, and other specific articles given or bequeathed to or in trust for any university or any institution under the control of the Government, or board appointed or partly appointed by the Government, in order to be kept and preserved by that university or institution, and not for the purpose of sale.

### **58—Where charge of duty duplicated, only one duty to be payable**

- (2) If any property is chargeable with duty under more than one provision of this Act in respect of the same event and the same interest, only one duty shall be chargeable, but if there is any difference between the amounts thereof the higher shall be payable.

### **59—Estimate of value of property**

In estimating the net present value of any property for the purpose of ascertaining the amount of duty, no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time: Provided that where it is proved to the commissioner that the value of the property has been depreciated by reason of the death of the deceased, any such depreciation shall be taken into account.

### **60—Validity of assessments**

The validity of any assessment shall not be affected by reason that any provisions of this Act have not been complied with.

### **61—Appeal from commissioner**

- (1) There shall be an appeal by any person interested to the court, in the prescribed manner, and within the prescribed time, from or against any assessment of the commissioner; and the court may make such order upon any such appeal as shall seem just.
- (2) Except for the purposes of any such appeal, every assessment of the commissioner under this Act shall be final and conclusive against all persons affected thereby.

### **61A—Objections against assessments**

- (1) Subject to this section, any person interested may within twenty-one days from the date of any assessment of the commissioner lodge with the Treasurer a notice of objection to that assessment.
- (2) Every such notice shall state the grounds on which the objector objects to the assessment and such grounds may be matters of law or fact.
- (3) 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 shall decide every such objection and may confirm or modify the assessment.
- (4) In deciding an objection the Treasurer shall not be bound by any rules of practice, procedure or evidence.
- (5) No appeal against an assessment shall be heard between the time when a notice of objection is lodged and the time when the objection is decided under this section unless the notice of objection is withdrawn.
- (6) When a notice of objection has been lodged, the time within which an appeal may be made under the regulations shall be computed from the day on which the Treasurer's decision on the objection is communicated to the objector.
- (7) Except as provided in subsections (5) and (6) of this section the lodging of a notice of objection shall not affect any right of appeal or the hearing of any appeal.

## **62—Commissioner to keep books and give receipt for duty**

- (1) Whenever any payment of duty shall be made under this Act the commissioner shall give a receipt in the prescribed form.
- (2) The commissioner shall from time to time deliver to any person interested in any property affected by any such duty, on application to him, for any reasonable purpose, a certificate in the prescribed form of payment of duty as aforesaid, or that no duty is payable in respect of the property.

## **63—Duties of Registrar-General**

- (1) In any case where on the death of the registered proprietor of any estate or interest in land application is made to the Registrar-General by the administrator of the estate of the deceased registered proprietor to be registered as the proprietor of the estate or interest, or in any case where application is made to the Registrar-General requiring him to make an entry in the register book of the death of any registered proprietor of an estate or interest in land, the Registrar-General shall not register the administrator as proprietor as aforesaid, or make the said entry of death except upon a certificate of the commissioner granted under section 63B of this Act.
- (2) In any case where application is made to the Registrar-General to register a memorial of any administration or of any death, the Registrar-General shall not register the memorial except upon a certificate of the commissioner granted under section 63B of this Act.

## **63A—Prohibition of dealing with shares etc**

- (1) In any case where—
  - (a) any shares, stock, debentures, money on fixed deposit, policy of life assurance, or any other property except money on current account at any bank, stand in the books in South Australia of any corporation, company or society carrying on business in South Australia, in the name of any deceased person, either alone or jointly with any other person as owner or trustee; or
  - (b) the proceeds of any policy of assurance on the life of any deceased person standing in the books in South Australia of any such corporation, company or society are payable to some other person as provided by paragraph (j) or (k) of subsection (1) of section 8 of this Act,

no dealing with any such shares, stock, debentures, money on fixed deposit, policy of life assurance, or property shall be registered, recorded, or otherwise given effect to, nor shall any such policy be satisfied (except to the extent of three quarters of the proceeds of any such policy where the proceeds thereof are payable to some other person as provided by paragraph (j) or paragraph (k) of subsection (1) of section 8 of this Act) by such corporation, company or society having notice of the death of the deceased person (whether or not notice was given by the administrator) except upon a certificate of the commissioner granted under section 63B of this Act.

- (1a) In any case where—
  - (a) any safe deposit is held in the name of any deceased person, either alone or jointly, at the premises in South Australia of any corporation, company, or society:

- (b) any property is deposited for safe custody in the name of any deceased person, either alone or jointly, at the premises in South Australia of any corporation, company, or society,

the corporation, company, or society, if it has notice of the death of the deceased person (whether or not notice was given by the administrator) shall not allow or suffer the removal of any property or thing from such safe deposit or of any property deposited for safe custody as aforesaid except upon a certificate of the commissioner granted under section 63B of this Act.

- (2) Any corporation, company, or society to which this section applies which acts in contravention of this section, shall be liable on summary conviction to a penalty not exceeding one hundred dollars.
- (3) For the purposes of this section, moneys on deposit in any Savings Bank shall, subject as hereinafter provided, be deemed not to be moneys on current account: Provided that—
- (a) this section shall in its application to the Savings Bank of South Australia, be subject to section 59 of the *Savings Bank of South Australia Act 1929*;
- (b) it shall be lawful for any Savings Bank in which moneys are held in the name of any deceased person on deposit at interest which moneys with interest do not exceed the sum of two thousand dollars, upon the expiration of one month after the death of that person and if the bank is satisfied after reasonable inquiry that it is unlikely that any steps will be taken to prove the will (if any) of the deceased person or to get letters of administration of the estate or effects of the deceased person, to permit such moneys to be withdrawn by the person or persons being a spouse, ancestor or descendant of the deceased person becoming entitled to it without any such certificate from the commissioner;
- (c) it shall be lawful for any Savings Bank in which moneys are held on deposit in the name of any deceased person jointly with any other person or persons to permit the survivor or survivors of them to continue to withdraw moneys from the account without the commissioner's certificate: Provided that until such certificate has been given the balance of moneys in the account shall not fall below the amount of the beneficial interest in the said moneys accruing to such survivor or survivors by reason of the death of the deceased person.
- (4) Any administrator who omits to give notice of the death of the deceased to any such corporation, company, or society within three months from the grant of administration shall be liable on summary conviction to a penalty not exceeding forty dollars.

(6) **Payments under policies of assurance**

If the amount payable in respect of a policy of assurance on the life of a deceased person who was at the date of his death domiciled in South Australia does not exceed one thousand dollars, or if the total surrender value of a policy or policies on the life of another person and owned by the deceased does not exceed one thousand dollars at the date of the death of such owner, a corporation, company, or society may pay the amount payable in respect of the policy or policies or may allow dealings with the policy or policies without the production of such certificate as aforesaid if the corporation, company, or society is satisfied by a declaration of some person that—

- (a) the gross value of the whole of the estate of the deceased person does not exceed three thousand dollars; and
- (b) under the will or intestacy of the deceased person the whole of the beneficial interest in the policy or policies of assurance passes to a spouse or to any ancestor or descendant of the deceased person, or is divided among such persons, and that the person making the declaration is a person entitled to some part of the said beneficial interest.

**63B—Certificate as to payment of duties etc**

Where the commissioner is satisfied that—

- (a) all duties payable by reason of the death of a deceased person have been paid; or
  - (b) that proper security has been given for the payment of those duties; or
  - (c) that no duty is payable by reason of the death of a deceased person; or
  - (d) that there is other proper cause for the grant of a certificate under this section,
- the commissioner shall certify accordingly in writing in a form approved by him.

**64—Inspection of documents in Lands Titles or General Registry Office**

Where the inspection of any deeds or other documents in the Lands Titles Office or General Registry Office is required by the commissioner for the purposes of this Act, the Registrar-General shall produce the said deeds or documents to the commissioner, or any person appointed by him in writing to make the inspection.

**65—Power to use taxation returns for verification purposes**

The commissioner and any officer authorised by the commissioner for the purpose, may for the purpose of verifying or checking any statement filed pursuant to this Act or the repealed Acts inspect any returns, records, or other documents in the custody of the Commissioner of Taxes pursuant to the *Income Tax Assessment Act 1936* and for the purposes aforesaid may make extracts from or copies of any such returns, records, or other documents.

**66—If any person makes default in delivering statement etc court may order same to be done**

If any person makes default in delivering any statement or account, or in adjusting any duties or the incidence of any duties or in the performance of any duty imposed upon him by this Act, the court may, on the application of the commissioner or any other person affected thereby, order that person to deliver the said statement or account, adjust the said duties or the incidence of the said duties, or perform the said duty.

**67—Persons interested may inspect statements filed and have copies**

Any person who satisfies the commissioner by declaration or otherwise, that he is beneficially interested in any property chargeable with duty under this Act or the repealed Acts shall be entitled, on payment of the fee of twenty-five cents, to inspect the statements filed in respect of that property and, on payment of a charge at the rate of five cents per folio, but not less than fifty cents, to receive a copy of the statements.

**68—Protection to *bona fide* purchaser etc**

Notwithstanding the provisions of the *Real Property Act 1886* the title of a *bona fide* purchaser, transferee, or mortgagee for valuable consideration, whether holding the legal estate or not, shall not be prejudiced by the non-payment of any duty imposed by this Act or by the repealed Acts.

**69—Admissibility in evidence of unregistered settlements and deeds of gift**

No settlement or deed of gift requiring registration under this Act shall be admissible or receivable in evidence, except in criminal proceedings, until the same has been registered and the certificate of registration has been endorsed thereon.

**70—Certificate of registration to be *prima facie* evidence of registration**

A certificate of registration endorsed on any settlement or deed of gift, and purporting to be signed by the commissioner, shall be *prima facie* evidence that the settlement or deed of gift has been duly registered under this Act.

**71—Evidence of assessments**

- (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 statement or assessment shall, for all purposes, be sufficient evidence of the matter therein set forth, without the production of the original.

## **72—Affidavits**

All affidavits or declarations to be made under this Act shall be sworn or made before the commissioner or the deputy commissioner, or a justice, notary public, or commissioner for taking affidavits in the Supreme Court, and any such declaration shall be sufficient if the declarant state therein that he makes the same in pursuance of this Act.

## **73—Person making a false oath guilty of perjury**

Any person who shall knowingly and wilfully make a false oath or declaration under this Act shall be guilty of perjury.

## **74—Penalty for making a false statement, or fraudulent alteration in a statement**

If any person shall make, or assist in making, any false or fraudulent statement, or any fraudulent alteration in any statement required to be made by the repealed Acts or this Act or the regulations thereunder, with intent to evade the payment of duty or to lessen the amount thereof, he shall be guilty of an offence, and shall be liable to imprisonment for any period not exceeding three years and to a fine not exceeding two hundred dollars.

## **75—Penalty for failing or omitting to file statements or accounts**

Any person who—

- (a) fails or neglects to file or amend any statement required to be filed or amended by him under this Act or the repealed Acts; or
- (b) fails or neglects to pay any duty payable by him under this Act or the repealed Acts; or
- (c) fails or neglects to register any settlement or deed of gift requiring registration under this Act or the repealed Acts,

shall, for each offence, be liable to a penalty not exceeding one thousand dollars.

## **77—Non-payment of penalties**

In every case of the imposition of a fine or pecuniary penalty under this Act, and of the non-payment thereof, any special magistrate may commit the person making default in payment to any gaol in South Australia for any time not exceeding three months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as may have been taken for the recovery thereof; but this section shall not affect any remedy under the *Justices Act 1921* for the recovery of any fine or pecuniary penalty.

# **Part 6—Regulations**

## **78—Regulations**

- (1) The Governor may from time to time make regulations for the following purposes, or any of them, that is to say:
  - I Prescribing the duties of all persons employed in the administration of this Act:

- II Regulating the security to be given by any such persons:
  - III Prescribing tables and rules for fixing values of any property:
  - IIIA Prescribing and providing for the recovery of fees for the valuation of property by or on behalf of the commissioner:
  - IV Fixing the value of any property or benefit upon which duty is chargeable under paragraphs (g) to (m) (inclusive) of subsection (1) of section 8 of this Act:
  - V Prescribing forms and contents of statements, and modes of adjustment of duties and the incidence of duties under this Act, and providing for verification of statements by oath or declaration:
  - VI For the compulsory examination under oath or declaration of persons by or on behalf of the commissioner for obtaining information to aid in carrying out the objects of this Act:
  - VII For carrying out the objects and purposes of this Act, and to meet any particular case which may arise:
  - VIII Imposing a penalty not exceeding one hundred dollars for a breach of any regulation.
- (2) In the construction of this section general words shall not be limited or controlled by any particular words.

## Schedule 1—Acts repealed

<b>Reference to Act</b>	<b>Title</b>
No 576 of 1893	<i>Succession Duties Act 1893.</i>
No 1205 of 1915	<i>Succession Duties (Killed in War) Act 1915.</i>
No 1217 of 1915	<i>Succession Duties Act Amendment Act 1915.</i>
No 1308 of 1917	<i>Succession Duties Act Further Amendment Act 1917.</i>
No 1393 of 1919	<i>Succession Duties (Killed in War) Act Amendment Act 1919.</i>
No 1396 of 1919	<i>Succession Duties Act Further Amendment Act 1919.</i>
No 1576 of 1923	<i>Succession Duties Act Further Amendment Act 1923.</i>
No 1799 of 1927	<i>Succession Duties Act Further Amendment Act 1927.</i>
No 1842 of 1927	<i>Succession Duties Act Further Amendment Act (No. 2) 1927.</i>
No 1870 of 1928	<i>Succession Duties Act Further Amendment Act 1928.</i>

## Schedule 2—Amount of duties payable on property chargeable with duty under this Act

- 1 Where the person deriving or taking the property is an ancestor or descendant of the person from whom the property was derived or taken, the duty, subject to any rebates calculated as provided in Part 4B of this Act, shall be as follows:

**Succession Duties Act 1929—24.11.2003 to 30.6.2014—repealed**

## Schedule 2—Amount of duties payable on property chargeable with duty under this Act

<b>Net present value of property derived or taken</b>	<b>Amount of duty</b>
Not exceeding \$20 000	15 per cent
Exceeding \$20 000 but not exceeding \$40 000	\$3 000 plus 17½ per cent of excess over \$20 000
Exceeding \$40 000 but not exceeding \$60 000	\$6 500 plus 20 per cent of excess over \$40 000
Exceeding \$60 000 but not exceeding \$80 000	\$10 500 plus 22½ per cent of excess over \$60 000
Exceeding \$80 000 but not exceeding \$100 000	\$15 000 plus 25 per cent of excess over \$80 000
Exceeding \$100 000 but not exceeding \$120 000	\$20 000 plus 27½ per cent of excess over \$100 000
Exceeding \$120 000 but not exceeding \$140 000	\$25 500 plus 30 per cent of excess over \$120 000
Exceeding \$140 000 but not exceeding \$160 000	\$31 500 plus 32½ per cent of excess over \$140 000
Exceeding \$160 000 but not exceeding \$180 000	\$38 000 plus 35 per cent of excess over \$160 000
Exceeding \$180 000 but not exceeding \$200 000	\$45 000 plus 37½ per cent of excess over \$180 000
Exceeding \$200 000 but not exceeding \$220 000	\$52 500 plus 40 per cent of excess over \$200 000
Exceeding \$220 000	27½ per cent

- 3 Where the person deriving or taking the property from the deceased person is the brother or sister of the person from whom the property is derived or taken or the descendant of any such brother or sister, or a person in any other degree of collateral consanguinity to the person from whom the property is derived or taken the duty, subject to any rebates calculated as provided in Part 4B of this Act, shall be as follows:

<b>Net present value of property derived or taken</b>	<b>Amount of duty</b>
Not exceeding \$1 000	5 per cent
Exceeding \$1 000 but not exceeding \$2 000	\$50 plus 10 per cent of the excess over \$1 000
Exceeding \$2 000 but not exceeding \$20 000	\$150 plus 17½ per cent of the excess over \$2 000
Exceeding \$20 000 but not exceeding \$40 000	\$3 300 plus 20 per cent of the excess over \$20 000
Exceeding \$40 000 but not exceeding \$60 000	\$7 300 plus 22½ per cent of the excess over \$40 000
Exceeding \$60 000 but not exceeding \$80 000	\$11 800 plus 25 per cent of the excess over \$60 000
Exceeding \$80 000 but not exceeding \$100 000	\$16 800 plus 27½ per cent of the excess over \$80 000

<b>Net present value of property derived or taken</b>	<b>Amount of duty</b>
Exceeding \$100 000 but not exceeding \$120 000	\$22 300 plus 30 per cent of the excess over \$100 000
Exceeding \$120 000 but not exceeding \$140 000	\$28 300 plus 32½ per cent of the excess over \$120 000
Exceeding \$140 000 but not exceeding \$160 000	\$34 800 plus 35 per cent of the excess over \$140 000
Exceeding \$160 000 but not exceeding \$180 000	\$41 800 plus 37½ per cent of the excess over \$160 000
Exceeding \$180 000 but not exceeding \$200 000	\$49 300 plus 40 per cent of the excess over \$180 000
Exceeding \$200 000 but not exceeding \$221 600	\$57 300 plus 42½ per cent of the excess over \$200 000
Exceeding \$221 600	30 per cent

4 Where the person deriving or taking the property is a stranger in blood to the person from whom the property is derived or taken the duty shall be as follows:

<b>Net present value of property derived or taken</b>	<b>Amount of duty</b>
Not exceeding \$1 000	10 per cent
Exceeding \$1 000 but not exceeding \$2 000	\$100 plus 20 per cent of the excess over \$1 000
Exceeding \$2 000 but not exceeding \$20 000	\$300 plus 25 per cent of the excess over \$2 000
Exceeding \$20 000 but not exceeding \$40 000	\$4 800 plus 27½ per cent of the excess over \$20 000
Exceeding \$40 000 but not exceeding \$60 000	\$10 300 plus 30 per cent of the excess over \$40 000
Exceeding \$60 000 but not exceeding \$80 000	\$16 300 plus 32½ per cent of the excess over \$60 000
Exceeding \$80 000 but not exceeding \$100 000	\$22 800 plus 35 per cent of the excess over \$80 000
Exceeding \$100 000 but not exceeding \$120 000	\$29 800 plus 37½ per cent of the excess over \$100 000
Exceeding \$120 000 but not exceeding \$140 000	\$37 300 plus 40 per cent of the excess over \$120 000
Exceeding \$140 000 but not exceeding \$160 000	\$45 300 plus 42½ per cent of the excess over \$140 000
Exceeding \$160 000 but not exceeding \$180 000	\$53 800 plus 45 per cent of the excess over \$160 000
Exceeding \$180 000 but not exceeding \$200 000	\$62 800 plus 47½ per cent of the excess over \$180 000
Exceeding \$200 000 but not exceeding \$221 600	\$72 300 plus 50 per cent of the excess over \$200 000
Exceeding \$221 600	37½ per cent

- 6 Upon any property devised, bequeathed or passing under any non-testamentary disposition—
- (a) for the sole or predominant purpose of the advancement of religion, science or education in the State;
  - (b) to a hospital in the State which the Treasurer is satisfied is not carried on for the purposes of profit to individuals; or
  - (c) to a benevolent institution or benevolent society in the State,
- no duty shall be payable.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Repeal of Act

The *Succession Duties Act 1929* was repealed by s 3 of the *Succession Duties Repeal Act 2013* on 1.7.2014.

### Principal Act and amendments

Year	No	Title	Assent	Commencement
1929	1898	<i>Succession Duties Act 1929</i>	5.9.1929	5.9.1929
1929	1921	<i>Succession Duties Act Amendment Act 1929</i>	27.11.1929	27.11.1929
1930	1981	<i>Succession Duties Act Amendment Act 1930</i>	20.11.1930	20.11.1930
1932	2094	<i>Succession Duties Act Amendment Act 1932</i>	30.11.1932	30.11.1932
1933	2119	<i>Succession Duties Act Amendment Act 1933</i>	2.11.1933	2.11.1933
1934	2179	<i>Succession Duties Act Amendment Act 1934</i>	29.11.1934	29.11.1934
1935	2234	<i>Succession Duties Act Amendment Act 1935</i>	12.12.1935	12.12.1935
1936	2286	<i>Succession Duties Act Amendment Act 1936</i>	1.10.1936	1.10.1936
1936	2293	<i>Statute Law Revision Act 1936</i>	8.10.1936	8.10.1936
1939	21	<i>Succession Duties (Variation of Duties) Act 1939</i>	30.11.1939	30.11.1939
1940	62	<i>Succession Duties Act Amendment Act 1940</i>	5.12.1940	5.12.1940
1942	23	<i>Succession Duties Act Amendment Act 1942</i>	12.11.1942	12.11.1942
1943	28	<i>Succession Duties Act Amendment Act 1943</i>	16.12.1943	16.12.1943
1949	50	<i>Succession Duties Act Amendment Act 1949</i>	1.12.1949	1.12.1949
1950	35	<i>Succession Duties Act Amendment Act 1950</i>	30.11.1950	30.11.1950

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1951	49	<i>Succession Duties Act Amendment Act 1951</i>	13.12.1951	13.12.1951
1952	42	<i>Statute Law Revision Act 1952</i>	4.12.1952	4.12.1952
1952	51	<i>Succession Duties Act Amendment Act 1952</i>	4.12.1952	4.12.1952
1954	49	<i>Succession Duties Act Amendment Act 1954</i>	16.12.1954	16.12.1954
1955	57	<i>Succession Duties Act Amendment Act 1955</i>	8.12.1955	8.12.1955
1959	52	<i>Succession Duties Act Amendment Act 1959</i>	22.12.1959	22.12.1959
1962	32	<i>Banks Statutory Obligations Amendment Act 1962</i> as amended by 77/1973	1.11.1962	1.11.1962
1963	53	<i>Succession Duties Act Amendment Act 1963</i>	28.11.1963	28.11.1963
1967	31	<i>Succession Duties Act Amendment Act 1967</i>	31.8.1967	31.8.1967
1970	56	<i>Succession Duties Act Amendment Act 1970</i>	10.12.1970	10.12.1970
1971	24	<i>Succession Duties Act Amendment Act 1971</i>	15.4.1971	15.4.1971
1973	77	<i>Statute Law Revision Act 1973</i>	6.12.1973	6.12.1973
1975	90	<i>Succession Duties Act Amendment Act 1975</i>	20.11.1975	20.11.1975
1976	72	<i>Succession Duties Act Amendment Act 1976</i>	2.12.1976	1.7.1976: s 2
1977	11	<i>Succession Duties Act Amendment Act 1977</i>	5.5.1977	5.5.1977
1979	67	<i>Succession Duties Act Amendment Act 1979</i>	15.11.1979	15.11.1979
1994	59	<i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>	27.10.1994	1.1.1995 ( <i>Gazette 8.12.1994 p1942</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )

### 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 10 of The Public General Acts of South Australia 1837-1975 at page 590.

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

Provision	How varied	Commencement
Pt 1		
s 3	<i>amended by 72/1976 s 3</i>	<i>1.7.1976</i>
	<i>amended by 11/1977 s 2</i>	<i>5.5.1977</i>

	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
s 4C	inserted by 72/1976 s 4	1.7.1976
s 4D	inserted by 11/1977 s 3	5.5.1977
s 4E	inserted by 67/1979 s 2	15.11.1979
Pt 2		
<i>heading preceding s 7</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
s 8		
s 8(1c)	<i>deleted by 72/1976 s 5</i>	1.7.1976
s 8A	inserted by 72/1976 s 6	1.7.1976
s 12		
s 12(1)	substituted by 72/1976 s 7	1.7.1976
s 18		
s 18(2)	amended by 72/1976 s 8	1.7.1976
<i>heading preceding s 19A</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>heading preceding s 23</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>heading preceding s 31</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>heading preceding s 33</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>heading preceding s 38</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>heading preceding s 42</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
Pt 4A		
s 55B		
s 55B(1)	amended by 72/1976 s 9	1.7.1976
s 55C		
s 55C(2)	amended by 72/1976 s 10	1.7.1976
Pt 4B		
	heading amended by 72/1976 s 11	1.7.1976
	heading amended by 11/1977 s 4	5.5.1977
s 55E		
brother or sister	inserted by 11/1977 s 5	5.5.1977
s 55F	amended by 72/1976 s 12	1.7.1976
	amended by 11/1977 s 6	5.5.1977
s 55G	amended by 72/1976 s 13	1.7.1976
s 55H		
s 55H(1)	amended by 72/1976 s 14(a)	1.7.1976
	amended by 11/1977 s 7(a)	5.5.1977
s 55H(1a)	inserted by 11/1977 s 7(b)	5.5.1977
s 55H(2)	amended by 11/1977 s 7(c)	5.5.1977
s 55H(3)	<i>deleted by 72/1976 s 14(b)</i>	1.7.1976

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s 55H(5)	amended by 11/1977 s 7(d)	5.5.1977
	amended by 67/1979 s 3	15.11.1979
s 55H(6)		
beneficiary of the first category	amended by 72/1976 s 14(c)	1.7.1976
	amended by 11/1977 s 7(e)	5.5.1977
beneficiary of the second category	(a) deleted by 72/1976 s 14(d)	1.7.1976
unmarried	inserted by 11/1977 s 7(f)	5.5.1977
s 55J		
s 55J(1)	amended by 72/1976 s 15	1.7.1976
Pt 5		
s 56		
s 56(2)	amended by 72/1976 s 16(a)	1.7.1976
s 56(3)	inserted by 72/1976 s 16(b)	1.7.1976
s 63		
s 63(1)	amended by 72/1976 s 17(a)	1.7.1976
s 63(2)	amended by 72/1976 s 17(b)	1.7.1976
s 63(3)	<i>deleted by 72/1976 s 17(c)</i>	<i>1.7.1976</i>
s 63A		
s 63A(1)	amended by 72/1976 s 18(a)	1.7.1976
s 63A(1a)	amended by 72/1976 s 18(b), (c)	1.7.1976
s 63A(3)	amended by 72/1976 s 18(d)	1.7.1976
s 63A(5)	<i>deleted by 72/1976 s 18(e)</i>	<i>1.7.1976</i>
s 63A(6)	amended by 72/1976 s 18(f)	1.7.1976
s 63B	inserted by 72/1976 s 19	1.7.1976
s 74	amended by 59/1994 Sch 2	1.1.1995
s 76	<i>deleted by 59/1994 Sch 2</i>	<i>1.1.1995</i>
Pt 6		
s 78		
s 78(1)	amended by 72/1976 s 20	1.7.1976
Sch 2		
cl 1	amended by 72/1976 s 21(a)	1.7.1976
cl 3	amended by 11/1977 s 8	5.5.1977
cl 5	<i>deleted by 72/1976 s 21(b)</i>	<i>1.7.1976</i>
cl 6	amended by 72/1976 s 21(c), (d)	1.7.1976

## Historical versions

Reprint No 1—15.1.1992

Reprint No 2—1.1.1995