



ANNO DECIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1969

No. 100 of 1969

An Act to amend the Gift Duty Act, 1968.

[Assented to 18th December, 1969.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Gift Duty Act Amendment Act, 1969". Short titles.

(2) The Gift Duty Act, 1968, as amended by this Act, may be cited as the "Gift Duty Act, 1968-1969".

(3) The Gift Duty Act, 1968, is hereinafter referred to as "the principal Act".

2. Section 4 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of "controlled company" and inserting in lieu thereof the following definition :—

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

(b) by inserting after the passage "shares in" in paragraph (a) of the definition of "disposition of property" in subsection (1) the passage "or debentures of" ;

Amendment of
principal Act,
s. 4—
Interpretation.

(c) by inserting after paragraph (e) of the definition of "disposition of property" in subsection (1) the following paragraph :—

(ea) for the purposes only of subsection (12) and (13) of this section, the distribution by a controlled company of a dividend upon shares held in that company or of interest on money advanced to that company whether the dividend or interest be paid to the shareholder or creditor entitled thereto or accumulated or invested on his behalf or credited in his name to a loan account or fund however designated or otherwise held or dealt with on his behalf or as he may permit or direct ;

(d) by striking out from subsection (1) the definition of "share" and "shareholder" ;

(e) by striking out from paragraph (a) of subsection (2) the word "company" firstly occurring therein ;

(f) by striking out paragraph (b) of subsection (3) ;

(g) by striking out from subsection (11) the passage "director or shareholder" and inserting in lieu thereof the passage "director, shareholder or creditor" ;

(h) by striking out from paragraph (a) of subsection (11) the passage "and the person to whom the disposition is made shall be deemed to be the shareholders (other than the person by whom the disposition is made, if he is a shareholder) or, if there are no such shareholders the controlled company" ;

(i) by inserting after the word "members" in paragraph (a) of subsection (12) the passage "or creditors" ;

(j) by striking out from paragraph (a) of subsection (12) the passage "(being a payment of money, whether by way of dividend, interest or otherwise)" and inserting in lieu thereof the passage "(whether by way of dividend, interest or otherwise, but not being an allotment or issue of shares)" ;

(k) by striking out from subsection (12) the passage "the Commissioner is of the opinion that" ;

- (l) by inserting after the word "possessed" in paragraph (c) of subsection (12) the passage " , or by the constitution of the controlled company expressed to be possessed," ;
- (m) by inserting after the word "possessed" in paragraph (d) of subsection (12) the passage " , or by the constitution of the controlled company expressed to be possessed," ;
- (n) by striking out from subsection (12) the passage "unless the disposition is made to all the shareholders of the company in proportion to their respective shareholdings or unless the Commissioner otherwise determines" ;
- (o) by striking out subsection (13) and inserting in lieu thereof the following subsections :—

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

- (a) to the nature and extent of the right or power that could have been exercised by the person or persons by whom the disposition is made, as referred to in that subsection ;
- (b) to any increase in the total estate or the value of the total estate of the person to whom the disposition is made that resulted from the disposition ;
- (c) to the nature and extent of the respective shareholdings of the shareholders of the company ;

and

(d) to any other circumstances that he thinks relevant.

(13a) For the purposes of subsection (13) of this section, the disposition of property shall be deemed to have been made for adequate consideration—

(a) where the disposition (in the case of a distribution of dividend or an allotment or issue of shares) is made, and all such dispositions (if any) made during the previous three years or during the period commencing on the third day of December, 1968, and ending on the day the disposition was made, whichever is the lesser period, were made, to all the shareholders of the company in proportion to their respective paid up shareholdings (not being shareholdings entitled to a fixed rate of dividend) ;

or

(b) to the extent that the person or persons deemed by subsection (12) of this section to be the person or persons by whom the disposition is made disposes or dispose of such property to himself or themselves.

(p) by striking out from subsection (15) the passage “Where a gift is made by a controlled company that is incorporated under the law of a State other than this State or of any Territory of the Commonwealth and gift duty is not payable in respect of the gift by reason of paragraph (a) of subsection (1) of section 9 of this Act” and inserting in lieu thereof the passage “Where a gift is made by a controlled company that is incorporated under the law of a State other than this State or of a Territory of the Commonwealth, but is carrying on business in South Australia, and gift duty is payable in respect of the gift by reason of paragraph (b) of subsection (1) of section 9 of this Act” ;

(q) by striking out from subsection (15) the word “shareholding” and inserting in lieu thereof the passage “paid-up shareholding” ;

- (r) by striking out from subsection (15) the passage "issued capital" and inserting in lieu thereof the passage "paid-up capital";
- (s) by striking out from subsection (16) the word "shareholding" and inserting in lieu thereof the passage "paid-up shareholding";
- (t) by striking out from subsection (16) the passage "issued capital" and inserting in lieu thereof the passage "paid-up capital";

and

- (u) by inserting after subsection (17) the following subsection :—

(17a) For the purposes of subsection (17) of this section, a debt, loan or deposit that is payable on demand shall be deemed not to be due and payable unless and until a demand for payment thereof has been made by the person entitled to make the demand addressed to the person by whom the debt, loan or deposit is repayable.

3. Section 9 of the principal Act is amended by inserting after subsection (1) the following subsection :—

Amendment of
principal Act,
s. 9—
Liability to
pay gift
duty.

(1a) Notwithstanding the provisions of paragraph (b) of subsection (1) of this section, gift duty shall not be charged, levied or collected where—

- (a) the property the subject of the gift is situated outside the limits of the Commonwealth;
- (b) at the time the gift is made the donor is domiciled or resident outside the limits of the Commonwealth;

and

- (c) neither the situation of the property nor the domicile or residence of the donor had been removed from the limits of the Commonwealth with the object of avoiding or evading liability to gift duty.

Amendment of
principal Act,
s. 11—
Remission of
gift duty.

4. Section 11 of the principal Act is amended by inserting after subsection (2) the following subsection :—

(3) In ascertaining for the purposes of this section any remission of duty to be made in respect of a gift or any deduction to be made from the value of a gift, all other gifts made by the same donor to the same donee within eighteen months previously and within eighteen months subsequently shall, together with the gift, be regarded as one gift.

Amendment of
principal Act,
s. 13—
Where
property
deemed to be
situated.

5. Section 13 of the principal Act is amended—

- (a) by inserting after the passage “shares in” in paragraph (a) the passage “or debentures of” ;
- (b) by inserting after the word “shares” lastly occurring in paragraph (a) the passage “or debentures” ;
- and
- (c) by inserting after the passage “shares in” in paragraph (b) the passage “or debentures of”.

Amendment of
principal Act,
s. 14—
Exemptions.

6. Section 14 of the principal Act is amended—

- (a) by inserting after the passage “Notwithstanding anything contained in this Act” the passage “but except as provided in subsection (2) of this section” ;
- (b) by striking out from paragraph (b) the passage “the Commissioner is satisfied that” ;
- (c) by inserting after the word “circumstances” in paragraph (b) the passage “and such other relevant facts as may be submitted to or otherwise known to the Commissioner” ;
- (d) by striking out from paragraph (c) the passage “the Commissioner is satisfied that” ;
- (e) by inserting after the word “circumstances” in paragraph (c) the passage “and such other relevant facts as may be submitted to or otherwise known to the Commissioner” ;
- (f) by striking out from paragraph (d) the passage “the Commissioner is satisfied that” ;
- (g) by inserting after the word “circumstances” in paragraph (d) the passage “and such other relevant facts as may be submitted to or otherwise known to the Commissioner” ;

- (h) by striking out from paragraph (j) the word "two" and inserting in lieu thereof the word "five" ;
- (i) by striking out from paragraph (j) the passage "an insurance policy" and inserting in lieu thereof the passage "insurance policies" ;
- (j) by inserting after the present contents thereof, as amended by this section, (which are hereby designated subsection (1) thereof) the following subsection :—

(2) Where any payment, gratuity or bonus referred to in paragraph (b), (c) or (d) of subsection (1) of this section is found to be excessive within the meaning of that paragraph, gift duty shall be payable under this Act only on the part of the payment, gratuity or bonus by which the payment, gratuity or bonus exceeds any part thereof that is found not to be excessive.

7. Section 18 of the principal Act is repealed and the following section is enacted and inserted in its place :—

Repeal of s. 18 of principal Act, and enactment of section in its place—

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

Disposition in consideration of reservation of benefit.

(2) Where a disposition of property is made—

(a) in consideration of a sum payable on demand or at a future date and upon terms agreed between the persons by whom and to whom the disposition is made ;

or

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

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

Amendment of
principal Act,
s. 19—
Returns by
donors and
donees.

8. Section 19 of the principal Act is amended by striking out from subsection (2) the passage “in a form approved by him” and inserting in lieu thereof the passage “in a manner approved by him”.

Amendment of
principal Act,
s. 20—
Power to
require
valuation.

9. Section 20 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “approved of by him” ;

(b) by striking out from subsection (1) the passage “or with the person who is making or has made the same,” ;

(c) by inserting before the word “valuation” lastly occurring in subsection (1) the word “proper” ;

and

(d) by inserting before the word “valuer” lastly occurring in subsection (1) the word “competent”.

Amendment of
principal Act,
s. 25—
Amendment
to assessment.

10. Section 25 of the principal Act is amended by striking out subsection (2) and inserting in lieu thereof the following subsection :—

(2) Where by reason of any amendment of an assessment a person's liability to pay gift duty under this Act is reduced, the Commissioner shall refund any gift duty overpaid.

Enactment of
s. 28a of
principal Act—

11. The following section is enacted and inserted in the principal Act immediately after section 28 thereof :—

Donor not
liable for duty
if diminution
of his estate
occurred
without his
knowledge.

28a. (1) Notwithstanding any other provision of this Act, where a gift is made and that gift is a disposition of property whereby the total estate or the value of the total estate of the donor of the gift is diminished, the donor shall not be liable for the payment of gift duty on the gift if the diminution of his total estate occurred without his knowledge and contrary to his intention or if it occurred with his knowledge in any case where he took all reasonable and practicable measures to prevent its occurrence.

(2) Subsection (1) of this section does not limit or affect the liability of the donee of the gift for the payment of gift duty on the gift.

(3) Without limiting the generality of the application of section 52 of this Act, where, in the opinion of the Commissioner, the value of a gift, as determined for the purposes of gift duty under this Act, is unreasonable in the circum-

stances, the Commissioner may assess by way of composition for the duty so payable, such sum as the Commissioner thinks proper under the circumstances and may accept payment of the sum so assessed in full discharge of all claims for such duty.

12. Section 30 of the principal Act is amended—

(a) by striking out the passage “two months” wherever it occurs in subsection (1) and inserting in lieu thereof in each case the passage “four months” ;

and

(b) by striking out the passage “three months” wherever it occurs in subsection (1) and inserting in lieu thereof in each case the passage “six months”.

Amendment of principal Act, s. 30—
Additional duty for late payment.

13. Section 34 of the principal Act is amended by inserting in subsection (1) after the passage “Any person required to pay gift duty” the passage “, and any person required under section 42 of this Act to pay additional gift duty amounting in any particular case to one hundred dollars or more,”.

Amendment of principal Act, s. 34—
Objections and appeals.

14. Section 38 of the principal Act is amended—

(a) by inserting after the passage “paid on the personal property” in subsection (1) the passage “, or stamp duty on any instrument of conveyance effecting the gift has been lawfully paid,” ;

and

(b) by inserting after the passage “equal to the gift duty” in subsection (1) the passage “or stamp duty”.

Amendment of principal Act, s. 38—
Rebate in case of double gift duty.

15. Section 42 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “an amount equal to the gift duty payable by him” and inserting in lieu thereof the passage “such amount as the Commissioner determines not exceeding the gift duty payable by him” ;

and

(b) by striking out from subsection (2) the passage “an amount equal to” and inserting in lieu thereof the passage “such amount as the Commissioner determines not exceeding”.

Amendment of principal Act, s. 42—
Additional duty in certain cases.

16. Section 43 of the principal Act is amended by striking out subsections (1) and (2) and inserting in lieu thereof the following subsections :—

Amendment of principal Act, s. 43—
Failure to furnish returns and information, etc.

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

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

Amendment of
principal Act,
s. 51—
Valuation of
shares.

17. Section 51 of the principal Act is amended—

- (a) by inserting after the passage "shares in" in subsection (1) the passage "or debentures of";
- (b) by inserting after the passage "share register" in subsection (1) the passage "or debenture register";
- (c) by inserting after the passage "shares of any class in" in subsection (3) the passage "or debentures of any class of";

and

- (d) by inserting after the word "shares" lastly occurring in subsection (3) the passage "or debentures".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. W. HARRISON, Governor.