

CHAPTER 350

ESTATE DUTY

Act No. 13 of 1980. AN ACT TO PROVIDE FOR THE LEVY AND COLLECTION OF ESTATE DUTY ON THE VALUE OF THE ESTATES OF PERSONS DYING ON OR AFTER NOVEMBER 15, 1978; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[20th February, 1980.]

Short title. 1. This Act may be cited as the Estate Duty Act. made under section 17 for any debt or encumbrance referable to such property.

CHAPTER I

CHAPTER II

IMPOSITION OF ESTATE DUTY

PROPERTY PASSING ON DEATH

Imposition of estate duty. 2. Except as hereinafter provided, there shall be levied and paid upon the value of the estate of every person, dying on or after November 15, 1978, a duty called estate duty computed in accordance with the provisions of section 3.

4. Property passing on the death of a deceased person shall be deemed to include the following:— Property deemed to pass on death.

Amount of estate duty. 3. (1) The amount of estate duty payable upon the value of the estate of any person dying on or after November 15, 1978, shall be computed at the appropriate rates specified in the Schedule to this Act.

(a) property which the deceased was competent to dispose of at the time of his death;

(2) For the purpose of estimating the value of the estate of any deceased person, all property forming part of his estate shall be aggregated so as to form one estate.

(b) property taken as a donatio mortis causa made by the deceased ;

(3) Property passing on any death shall not be aggregated more than once for the purpose of estimating the value of the estate of the deceased, nor shall estate duty be levied more than once on any property on the same death.

(c) property which the deceased, having been absolutely entitled thereto, has caused to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, (including also any purchase or investment effected by the deceased alone, or in concert or by arrangement with any other person), so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person;

(4) The estate duty payable in respect of any property forming part of the estate of a deceased shall be such proportion of the estate duty computed in accordance with subsection (1), payable upon the value of that estate as is equal to the proportion which the value of that property bears to the value of that estate. In determining the value of that property a deduction shall be made of an amount equal to an allowance

(d) money received under a policy of insurance effected by the deceased on his life where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premium paid by the deceased, where the policy is partially kept up by the deceased for such benefit;

(e) any annuity or other interest purchased or provided by the deceased, 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.

established for public officers or for officers in the Local Government Service, nor in respect of any pension or annuity payable by the Government of any foreign country to the widow or child of any deceased officer of such Government notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

CHAPTER III

EXEMPTIONS

property held by trustee,

5. Property held by the deceased as trustee for another person under a disposition enforceable at law not made by the deceased or under a disposition enforceable at law made by the deceased, being a disposition under which possession and enjoyment of the property was bona fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise, shall be deemed not to pass on the death of the deceased.

Exemption from estate duty in case of small annuities.

6. Estate duty shall not be payable in respect of one or more annuities not exceeding ten thousand rupees in the aggregate purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person.

Exemption of properties bequeathed to the Government, &c.

7. Estate duty shall not be payable in respect of any property bequeathed by the deceased to the Government of Sri Lanka or any university or public library in Sri Lanka or the Ceylon National Library Services Board established by the Ceylon National Library Services Board Act or any local authority and accepted by such Government, university, library, board or local authority.

Approved pensions.

8. Estate duty shall not be payable in respect of any pension granted to the widow or child of the deceased under the Widows' and Orphans' Pension Fund Ordinance or under any pension fund or scheme

9. Where a member of a Hindu undivided family dies, no estate duty shall be payable—

Hindu undivided families.

(a) on any movable property which is proved to the satisfaction of the Commissioner-General to have been the joint property of that family; or

(b) on any immovable property, where it is proved to the satisfaction of the Commissioner-General that such property, if it had been movable property, would have been the joint property of that family.

10. Estate duty shall not be payable in respect of the estate of any person who was, on the date of his death, a resident guest as defined in the Resident Guest (Tax Exemption) Act.

Resident guests.

11. Where property passing on the death of any person includes any residential premises, a sum of three hundred thousand rupees of the value of one such premises, if the value of such premises is equal to or exceeds three hundred thousand rupees, or the value of such premises, if the value of such premises does not exceed three hundred thousand rupees, shall be exempt from the payment of estate duty.

Exemption for one residential premises.

12. Where under the last will of a deceased person a sum not exceeding thirty thousand rupees in the aggregate is directed to be paid to one or more persons who were bona fide employees of the deceased in Sri Lanka, such sum shall be exempt from the payment of estate duty, if no exemption has been granted in respect of that sum under section 6.

Legacies to bona fide employees.

13. Where under the last will of a deceased person a sum not exceeding one hundred thousand rupees in the aggregate is

Legacies to approved charities.

directed to be paid to one or more charitable institutions declared by the Minister, by notice published in the Gazette, to be an approved charity for the purposes of section 31 (9) (a) of the Inland Revenue Act (No. 28 of 1979) such sum shall be exempt from the payment of estate duty.

- (ii) the price which in the opinion of the Assessor, that property would have fetched if sold in the open market on the date of the death of the deceased,

whichever price is the lower; and

Exemption for household goods not exceeding twenty-five thousand rupees in value.

14. Where property passing on the death of a person includes any household goods or jewellery, a sum not exceeding twenty-five thousand rupees or the value of such goods and jewellery, whichever is less, shall be exempt from the payment of estate duty.

- (b) if such property was acquired by the deceased after March 31, 1977, be estimated to be—

- (i) the price which in the opinion of the Assessor that property would have fetched if sold in the open market on the date on which such property was acquired by the deceased, increased by an amount equal to the cost of the improvements, alterations and additions, if any, made to such property after the date on which such property was acquired by the deceased and prior to the date of death of the deceased; or

- (ii) the price which in the opinion of the Assessor, that property would have fetched if sold in the open market on the date of death of the deceased,

whichever price is the lower.

CHAPTER IV

DETERMINATION OF VALUE OF PROPERTY

Value of property.

15. (1) Subject as hereinafter provided, the value of any property shall be estimated to be the price which, in the opinion of an Assessor, such property would fetch if sold in the open market at the date of death of the deceased, and 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 satisfaction of an Assessor that the value of the property has been depreciated by reason of the death of the deceased, the Assessor shall, in estimating the value of such property, take such depreciation into account:

Provided further that where the property to be valued is immovable property, the value of such property shall—

- (a) if such property was acquired by the deceased on or before March 31, 1977, be estimated to be—

- (i) the price which in the opinion of the Assessor that property would have fetched if sold in the open market on March 31, 1977, increased by an amount equal to the cost of improvements, alterations and additions, if any, made to such property after March 31, 1977 and prior to the date of death of the deceased : or

(2) Where income in respect of any property has accrued due but has not been received by the deceased prior to his death, the value of that property for the purposes of this Act shall be the aggregate of the price estimated under subsection (1) and the amount of such income.

(3) Where the property to be valued is an undivided share in any land, the value of that undivided share shall be the proportionate amount of the value of the whole land as estimated under subsection (1) reduced by an amount equivalent to ten *per centum* of such proportionate amount.

(4) (a) Where the property to be valued consists of shares (not being preference shares) in any company which by its articles restricts the right to transfer its

shares or which is a company controlled by not more than five persons, and the Commissioner-General is satisfied that the shares have not, within the period of twelve months immediately preceding the death of the deceased, been quoted in the official list of a recognized stock exchange or in a list of a like nature issued in Sri Lanka by any association of brokers approved by the Secretary to the Treasury for the purposes of this subsection, the value of such shares for the purpose of this Act may, notwithstanding anything in subsection (1), be estimated by reference to the value of the total assets of the company.

(b) For the purposes of paragraph (a)—

" company controlled by not more than five persons " means a company in which more than half the total shares issued are held by not more than five persons, their wives, or minor children, either directly or through nominees;

" preference share" means a share the holder of which is entitled to a dividend at a fixed rate only ;

" share " includes any interest whatsoever in a company, by whatsoever name it is called, analogous to a share;

" value of the total assets of a company " means the value, estimated in accordance with the provisions of subsection (1), of all the assets of the company as a going concern, including goodwill, after deducting therefrom—

- (i) the par or redemption value, whichever is the greater, of any debenture stock and preference shares of the company;
- (ii) all debts of the company incurred or created bona fide for consideration in money or money's worth;
- (iii) such sum as on a Just and fair computation represents any future or contingent liabilities

of the company or any liabilities thereof which are uncertain in amount;

- (iv) the amount of any reserve fund separately invested which is bona fide intended to be applied in payment of pension to employees or otherwise for the benefit of employees or their dependants or relatives, and in no other manner.

16. Where the property passing on the death of a person consists of the proceeds from an insurance policy effected by the deceased on his life or from any Tax Reserve Certificate purchased by the deceased, the value of such proceeds shall be deemed to be the amount of such proceeds reduced by—

Valuation of proceeds from insurance policy or Tax Reserve Certificates.

- (a) such part of that amount as is available for payment of estate duty; or
- (b) the amount of estate duty that would become payable had the entirety of such amount formed part of the estate of the deceased,

whichever amount is the lower.

17. (1) In determining the value of the estate of a deceased person, allowance shall be made, subject as hereinafter provided, for reasonable funeral expenses and for debts and encumbrances incurred or created by the deceased or which, having been charged upon any property forming part of the estate prior to its acquisition by the deceased, whether by way of inheritance, gift, transfer, purchase or otherwise, continued to be so charged at the date of death but an allowance shall not be made—

Deduction for debts, funeral expenses and taxes.

- (a) for debts incurred by the deceased, or encumbrances created by the deceased, unless such debts or encumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest; or

CHAPTER V

RELIEFS

- (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained; or
- (c) more than once for the same debt or encumbrance charged upon different portions of the estate ; or
- (d) for any debts incurred outside Sri Lanka (other than a debt contracted to be paid in Sri Lanka or secured on property situated in Sri Lanka), except to the extent of the amount of the value of the property, if any, of the deceased situated outside Sri Lanka and forming part of the estate of the deceased,

and any debt or encumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

(2) In determining the value of the estate of a deceased person, allowance shall also be made—

- (a) for any income tax, gifts tax, wealth tax or other like tax, which is payable, under any written law in force in Sri Lanka, by any executor, administrator or other person administering the estate of the deceased, in respect of the profits or income or gifts or wealth of the deceased for any period prior to the date of his death ; and
- (b) for any tax which is payable under any written law in force in any other country in respect of the profits and income for any period of the deceased for any period prior to his death arising or derived from any property forming part of his estate.

18. Where the Commissioner-General is satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, passing on the death of any person, and that subsequently within five years estate duty has again become payable on the same property, or any part thereof, passing upon the death of the person to whom the property passed on the first death the amount of estate duty payable on the second death, in respect of the property so passing shall be reduced as follows :—

Relief in respect of quick succession where property consists of land or a business.

- (a) where the second death occurs within one year of the first death, by fifty *per centum*;
- (b) where the second death occurs within two years of the first death, by forty *per centum*;
- (c) where the second death occurs within three years of the first death, by thirty *per centum*;
- (d) where the second death occurs within four years of the first death, by twenty *per centum*;
- (e) where the second death occurs within five years of the first death, by ten *per centum*;

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

19. Where property forming part of the estate of the deceased is situated in a foreign country and the Commissioner-General is satisfied that any duty is payable on the

Relief in respect of foreign estate duty.

death of the deceased in that country in respect of that property, he shall in determining the value of such property, allow a deduction of an amount equal to—

- (a) *the* amount of the duty payable in that country; or
- (b) such proportion of the estate duty payable under this Act upon the value of that estate as is equal to the proportion which the value of the property situated in that country bears to the value of the estate,

whichever amount is the lower.

CHAPTER VI

LIABILITY FOR ESTATE DUTY

Liability of executor.

20. (1) The executor of the estate of the deceased shall pay the estate duty in respect of all property of which the deceased was competent to dispose at his death and may pay the estate duty in respect of any other property passing on such death, if the persons liable to pay the duty in respect thereof request him to make such payment; but an executor shall not be liable for any duty in excess of the assets which he has received as executor, or might, but for his own neglect or default, have received.

(2) Where property passes on the death of the deceased, and his executor is not liable to pay the estate duty in respect of such property, every person to whom any property so passes or is deemed to pass and to the extent of the property actually received or disposed of by him, every trustee, guardian, curator, manager or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be liable to pay the estate duty on the property, and shall within the time required by this Act, or such later time as may be allowed, deliver to the

Commissioner-General a declaration of property:

Provided that nothing in this section shall render a person liable to pay estate duty who acts merely as agent for another person who is resident in Sri Lanka.

21. (1) Subject to the provisions of subsection (2)—

Duty to be a charge on property passing on death of deceased.

(a) the estate duty payable by an executor shall be a first charge on all the property of which the deceased was competent to dispose at his death and such charge may be enforced against any such property for the recovery of the whole or any part of such estate duty ;

(b) the estate duty payable by any person other than the executor in respect of any property shall be a first charge on that property.

(2) Subject as hereinafter provided, the first charge referred to in subsection (1) shall rank in priority over all alienations, leases and encumbrances effected or created before or after the death;

Provided that—

(a) such charge shall not extend to any property sold prior to the date of its seizure in execution of such charge to a bona fide purchaser thereof for valuable consideration without notice;

(b) as regards immovable property, such charge shall not rank in priority over any lease or encumbrance created bona fide for value by an instrument registered prior to the date of death;

(c) as regards movable property, such charge shall not rank in priority over any mortgage or hypothecation of such property created bona fide for value by an instrument registered prior to the date of the death.

(3) Nothing in this Act shall be deemed to create a charge for estate duty on any property situate outside Sri Lanka.

Power to raise estate duty by sale, mortgage or terminable charge.

22. (1) A person authorized or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise with the consent of the appropriate District Court, the amount of such duty and any interest and expenses properly incurred or paid by him in respect thereof, by the sale or mortgage of, or a terminable charge on, that property or any part thereof.

(2) A lessee or mortgagee of any property, who pays the estate duty in respect of that property, shall be entitled to the like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him.

Apportionment of burden of estate duty paid.

23. As between the several persons beneficially interested in the property of a deceased person on which the executor is, under the provisions of this Act, authorized or required to pay estate duty, all such duty paid in respect of such property shall be regarded as a debt incurred by the deceased person, and shall, unless such deceased person has otherwise directed by his will, if any, be apportioned among such persons in proportions to the values of their interests in the property of such deceased person.

(2) Where the executor is not liable to pay estate duty in respect of any property passing on the death of a deceased person, the person liable to pay such duty shall, within six months from the date of death of the deceased, deliver to the Commissioner-General a declaration of property containing a full and true statement of particulars relating to such property including the value thereof in such form as may be specified by the Commissioner-General.

25. Where at any time it comes to the notice of any executor or other person liable to pay estate duty that in any declaration of property delivered by him there is an error in that—

Further declaration in case of error.

- (a) property liable to estate duty has been omitted therefrom; or
- (b) property liable to estate duty has been undervalued therein; or
- (c) a deduction has been claimed which is not authorized under this Act,

he shall forthwith deliver to the Commissioner-General a further declaration setting out particulars of such error.

CHAPTER VII

DECLARATIONS

Declarations.

24. (1) The executor of every estate in respect of which the grant of probate or letters of administration is compulsory under the Civil Procedure Code shall, and the executor of any other estate may, within six months from the date of death of the deceased, deliver to the Commissioner-General through the appropriate District Court, a declaration of property containing a full and true statement of particulars relating to the estate of the deceased including the value thereof in such form as may be specified by the Commissioner-General ; and together with such declaration of property he shall deliver to the Commissioner-General a certified copy of the will, if any, of the deceased.

26. (1) An Assessor may give notice in writing to any person who, in his opinion, is able to give information regarding the affairs of any deceased person requiring him within the time specified in such notice, to furnish such particulars as the Assessor may deem necessary for the purpose of making an assessment under this Act.

Assessor may require particulars in certain cases.

(2) An Assessor may give notice in writing to any person who is required by this Act to make a declaration of property or to whom a notice has been addressed under subsection (1) calling upon such person within the time specified in such notice to produce at the time and place fixed by the Assessor any deeds, plans, instruments, books, accounts or documents which the Assessor may deem necessary for the purpose of making an assessment under this Act.

CHAPTER VIII

ASSESSMENTS

Assessments.

27. An Assessor may at any time, whether the declaration of property has been delivered or not, assess the estate duty payable in respect of the estate of a deceased person, and shall issue to the person or persons whom he considers liable to pay such estate duty a notice of such assessment.

Time for making assessments and additional assessments.

28. (1) An Assessor shall, within one year after the receipt by him of such particulars as he may deem necessary to assess the estate duty in respect of the estate of a deceased person, assess the estate duty payable in respect of the estate and determine the person or persons by whom such duty is payable.

(2) Where it appears to an Assessor that the amount which any person is liable to pay as estate duty has been assessed at less than the proper amount, the Assessor may, at any time prior to the expiration of two years from the date on which an executor or administrator of a deceased person informs the Assessor in writing that probate or letters of administration has been granted in respect of the estate of that deceased person, make an additional assessment of the amount which such person is, in his opinion, liable to pay and communicate to him in writing the reasons for making the additional assessment:

Provided that—

- (a) where the under-assessment is due to fraud or wilful evasion, such additional assessment may be made at any time;
- (b) an Assessor may assess at any time any liability for additional duty which may be brought to his notice by an executor or by any other person liable to pay estate duty under this Act;
- (c) an additional assessment made under this section shall not affect, or create a charge upon, any property mentioned in a certificate issued under section 40 except in the

circumstances referred to in subsection (4) of section 40.

(3) Where an additional assessment of estate duty has been made under subsection (2), an executor shall not, except in the case of fraud, be personally liable for any estate duty under any such additional assessment by reason of having administered or distributed the estate of the deceased without retaining assets to satisfy the duty.

(4) Where an Assessor does not accept a declaration delivered under section 24 by any person and makes an assessment or additional assessment on such person, he shall communicate in writing to such person his reasons for not accepting that declaration.

CHAPTER IX

APPEALS

29. (1) Any person who is aggrieved by an assessment made under this Act, whether on the ground that he is not liable to pay estate duty or that the assessment is erroneous, may, within a period of thirty days from the date of the notice of assessment, appeal to the Commissioner-General against such assessment;

Appeals to the Commissioner-General.

Provided that the Commissioner-General, upon being satisfied that owing to absence from Sri Lanka, sickness or other reasonable cause, the appellant was prevented from appealing within such period, shall grant an extension of time for preferring the appeal.

(2) Every appeal shall be preferred by a petition in writing addressed to the Commissioner-General and shall state precisely the grounds of such appeal.

(3) Where the assessment appealed against has been made in the absence of a declaration of property, required to be delivered under section 24, the appellant shall deliver a declaration of property together with his petition of appeal.

(4) Every petition of appeal which does not conform to the provisions of subsections (1), (2) and (3) shall not be valid.

(5) The appellant shall, within three months of the date on which he prefers an appeal under subsection (1), transmit to the Commissioner-General a list specifying the documents on which, and the names and designations of the persons upon whose evidence, the appellant proposes to rely in support of his appeal;

Provided that the Commissioner-General may, from time to time, upon application made to him in that behalf by the appellant, extend the period referred to in the preceding provisions of this section.

(6) On receipt of a valid petition of appeal, the Commissioner-General may cause further inquiry to be made by the Assessor, and if in the course of such inquiry an agreement is reached as to the matters specified in the petition of appeal, the necessary adjustment of the assessment shall be made.

(7) Where no agreement is reached between the appellant and the Assessor in the manner provided in subsection (6), the Commissioner-General shall fix a time and place for the hearing of the appeal.

(8) Every appellant shall attend before the Commissioner-General at the time and place fixed for the hearing of the appeal. The appellant may attend the hearing of the appeal in person or by an authorized representative. The Commissioner-General may, if he thinks fit, from time to time adjourn the hearing of an appeal for such time and place as he may fix for the purpose. In any case in which the authorized representative attends on behalf of the appellant, the Commissioner-General may adjourn the hearing of the appeal and may, if he considers that the personal attendance of the appellant is necessary for the determination of the appeal, require that the appellant shall attend in person at the time and place fixed for the adjourned hearing of the appeal. If the appellant or his authorized representative fails to attend at the time and place fixed for the hearing or any adjourned hearing of the appeal, or if the appellant fails to attend in person when required so to attend by the Commissioner-

General, the Commissioner-General may dismiss the appeal;

Provided that if the appellant shall within a reasonable time after the dismissal of an appeal satisfy the Commissioner-General that he or his authorized representative was prevented from due attendance at the hearing or at any adjourned hearing of such appeal by reason of absence from Sri Lanka, sickness, or other unavoidable cause, the Commissioner-General may vacate the order of dismissal and fix a time and place for the hearing of the appeal.

(9) Before making a determination upon any appeal preferred under this section, the Commissioner-General—

(a) may require the appellant to produce for inspection any document included in the list referred to in subsection (5) or call for the evidence of any person mentioned in that list; and

(b) shall consider any evidence which the appellant may desire to adduce before him.

(10) Where the Commissioner-General hears the evidence of the appellant or of any other person in respect of the appeal, he shall maintain or cause to be maintained, a record of such evidence.

(11) In determining an appeal under this section the Commissioner-General may confirm, reduce, increase or annul the assessment appealed against and shall give notice in writing to the appellant of his determination on the appeal.

30. (1) At any time within thirty days after the notification by the Commissioner-General of his determination on an appeal, the appellant may file a petition of appeal in the appropriate District Court, naming the Commissioner-General as respondent to his petition. A copy of such petition shall be served on the Commissioner-General. Appeals to District Court.

(2) Where the appellant having filed a petition of appeal fails to serve a copy thereof on the Commissioner-General within thirty days of the date on which such petition was filed, the District Court shall dismiss such petition.

(3) Except with the consent of the Court and subject to such terms as the Court may determine, the appellant shall not be allowed at the hearing of the appeal—

- (a) to produce any document which is not included in the list referred to in subsection (5) of section 29 or to adduce the evidence of any witness who is not mentioned in that list;
- (b) to produce any document which he has failed to produce before the Commissioner-General when required to do so under subsection (9) of section 29 or to adduce the evidence of any witness whose evidence was not tendered to the Commissioner-General when called for under that subsection.

(4) Upon the filing of the petition of appeal and the service of a copy thereof on the Commissioner-General, the appeal shall be deemed to be, and may be proceeded with, as an action between the appellant as plaintiff and the Commissioner-General as defendant and the provisions of the Civil Procedure Code and of the Stamp Ordinance* shall, subject as hereinafter provided, apply accordingly:

Provided that no pleading other than the petition of the appellant shall be filed in any such action, unless the Court by order made in that action otherwise directs :

Provided, further, that the decree entered in any such action shall specify the amount, if any, which the appellant is liable to pay as estate duty under this Act.

(5) Any party aggrieved by any decree or order of the District Court made on an appeal as hereinbefore provided may appeal against such decree or order in accordance with the provisions of law for the time being in force relating to appeals from judgments and orders of the District Court.

(6) In all proceedings before the District Court or in any other Court as hereinbefore provided, the Commissioner-General shall be deemed to be a Government officer suing or being sued in a suit *virtute officii* and shall not be required to make any deposit or pay any fee or furnish any security prescribed by any written law.

CHAPTER X

FINALITY OF ASSESSMENTS AND PENALTY FOR INCORRECT DECLARATIONS

31. Where no valid appeal has been lodged within the time specified in this Act against an assessment of the estate duty payable in respect of the estate of a deceased person or where an appeal preferred against such an assessment is dismissed under subsection (11) of section 29 or where agreement is reached under section 29 (6) as to the amount of such duty, or where such amount has been determined on appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards such amount;

Finality of assessments.

Provided that nothing in this section shall prevent an Assessor from making an assessment or additional assessment which does not involve reopening any matter which has been determined on appeal.

32. (1) Where in an assessment made in respect of the estate of any deceased person the value put on any property forming part of the estate exceeds the value put on that property in any declaration delivered in respect of that estate and such assessment is final and conclusive under section 31, the Commissioner-General may, unless the person who delivered that declaration proves to the satisfaction of the Commissioner-General that there was no fraud or wilful neglect involved in the disclosure made by him in that declaration, in writing, order that person to pay on or before a specified date a sum not exceeding the aggregate of two thousand rupees and a sum equal to the estate duty on the amount of the excess as a penalty for making an incorrect declaration.

Penalty for incorrect declarations.

(2) Any person in respect of whom an order is made under subsection (1) may, within twenty-one days after the communication of the order to him, appeal therefrom in writing to the appropriate District Court. The appeal shall state the grounds of objection to the order.

(3) The provisions of section 30 shall as far as possible apply to the hearing and

* See also the Stamp Duty Act. No. 43 of 1982.

disposal of any appeal under the preceding provisions of this section. The District Court may confirm, reduce, increase or annul the penalty imposed by the order of the Commissioner-General from which an appeal is made, but any increase of such penalty shall not be in excess of the maximum amount which the Commissioner-General could have imposed under subsection (1) as such penalty.

(4) Where a penalty is imposed on any person under this section he shall not be liable to a prosecution for an offence relating to that declaration under paragraph (a) of section 64.

(3) The value of any immovable property transferred in payment of duty under this section shall be the value of that property as determined for the purposes of this Act.

(4) All fees, charges and expenses incidental to, or connected with, the transfer to the Government of any immovable property in payment of estate duty, the examination of title to, and the execution of the deed of transfer of, such property, shall be borne by the applicant.

35. (1) Government stock may be surrendered to the Secretary to the Treasury in accordance with the following provisions of this section in lieu of the payment of the whole or any part of any estate duty in cash.

Payment by surrender of prescribed stock.

CHAPTER XI

PAYMENT OF ESTATE DUTY

Manner of payment of estate duty.

33. (1) Estate duty shall be paid in the manner directed in a notice of assessment on or before the date specified in such notice.

(2) Estate duty shall be paid notwithstanding any appeal unless the Commissioner-General orders that payment of the duty or any part thereof be held over to a date specified in such order.

(3) Any estate duty not paid on or before the date specified in the notice of assessment or in any order made under subsection (2) shall be deemed to be in default unless the Commissioner-General has agreed to accept payment of estate duty by instalments.

Payment by transfer of immovable property to the Government.

34. (1) Any person liable to pay estate duty under this Act may apply to the Commissioner-General before the date fixed for the payment thereof that immovable property passing on the death of the deceased equivalent in value to the amount of such duty be transferred to the Government of Sri Lanka in lieu of payment of such duty in cash.

(2) No such application shall be granted or refused by the Commissioner-General except with the approval of the Minister.

(2) No stock shall be accepted for the purposes of this section unless—

(a) it is Sri Lanka Government stock which has been issued in Sri Lanka; and

(b) was subscribed for by the deceased himself at the time of its issue, or was purchased by him not less than one year before his death.

(3) Where the stock surrender is fully paid stock, issued and redeemable at par, the surrender of such stock shall be deemed to be equivalent to the payment in cash of an amount equal to the aggregate of—

(a) the face value of such stock ; and

(b) the accrued interest on such stock.

(4) Where the stock surrendered is not fully paid or has been issued below par or is redeemable at an amount above or below par, the surrender of such stock shall be deemed to be equivalent to the payment in cash of an amount equal to the aggregate of—

(a) a sum bearing the prescribed proportion to the face value of such stock; and

(b) the accrued interest on such stock.

In this subsection, "prescribed proportion", in relation to any stock, means such proportion as may be prescribed by the Minister by regulation made under section 74, being a proportion which is not less than the sum originally subscribed for the stock, or the sum payable for the redemption of the stock, whichever of those is the less.

(5) Where the surrender of stock by any person under this section is deemed under subsection (3) or subsection (4) to be equivalent to the payment in cash of an amount which exceeds the estate duty payable by him, the excess shall be disposed of in the following manner:—

- (a) where the amount of the excess is not less than one hundred rupees—
 - (i) each complete sum of one hundred rupees comprised therein shall be reckoned as a unit, and each unit or each group of two or more units, as the Secretary to the Treasury may determine, shall be returned in the form of stock of the same issue as the surrendered stock ; and
 - (ii) any outstanding fraction of a unit shall be returned in cash ; and
- (b) where the amount of the excess is less than one hundred rupees, such amount shall be returned in cash.

Interest on unpaid duty.

36. (1) Simple interest shall be paid at the rate of eight *per centum* per annum upon all estate duty unpaid after the expiration of twelve months from the date of death of the deceased and at the rate of twelve *per centum* per annum upon all estate duty unpaid after the expiration of thirty-six months from such date.

(2) Interest shall be calculated for a full period of three calendar months upon the amount of duty unpaid at the commencement of such a period, the first such period commencing on the first of the month subsequent to the expiration of twelve months from the date of death.

(3) Interest payable under this section shall be recovered as though it formed part of the estate duty in default.

(4) Where any person liable to pay any duty satisfies the Commissioner-General on or before the date he is required to pay such duty or any instalment thereof, that he has made arrangements for the payment of such duty or instalment, as the case may be, from any sum to be repaid to the estate of the deceased by the Government of Sri Lanka or from money lying to the credit of the deceased in the National Savings Bank or from moneys to be paid to the deceased from any pension or provident fund approved by the Commissioner-General, the Commissioner-General may grant such person an extension of time for the payment of such duty or instalment, as the case may be, and such duty or instalment, as the case may be, shall be deemed not to be in default until the expiration of such extended time, and no interest shall be payable on such duty or instalment during the period commencing on the date on which such extension is granted and ending on the expiration of the period of extension.

(5) Where interest is payable on that part of estate duty arising on an additional assessment made under section 28 (2) the Commissioner-General may, having regard to the circumstances in which such additional assessment is made, waive or reduce such interest.

(6) Where estate duty has not been assessed, the executor or other person liable to pay duty may pay the Commissioner-General any sum on account of estate duty thereafter to be assessed; and any sum so paid shall on assessment be appropriated against the estate duty due from such person.

37. Where under this Act any sum is payable by any person by way of interest and estate duty, any payment made by such person shall be appropriated first to interest and then to estate duty. Allocation of payments.

38. (1) If the Commissioner-General is satisfied that the estate of a deceased person consists wholly or mainly of immovable property and that the movable property of Payment by instalments.

the estate available for payment of estate duty is insufficient for such payment, the Commissioner-General may, subject to such terms, conditions and procedure as may be prescribed, accept payment of estate duty in not more than sixteen equal half-yearly instalments, the first of such instalment falling due for payment on a date six months from the date of death of the deceased.

(2) No person shall be permitted to pay estate duty by instalments unless and until he has furnished security for such payment to the satisfaction of the Commissioner-General.

(3) Where a person is permitted to pay estate duty by instalments and fails to pay any such instalment within twenty-eight days after the date on which it falls due, the remaining instalments shall be deemed to be in default and the total amount of estate duty remaining unpaid may be recovered in the manner provided in this Act for the recovery of estate duty in default.

CHAPTER XII

CERTIFICATE OF PAYMENT AND RELEASE

Certificate of payment.

39. (1) When any executor shall have paid or secured to the satisfaction of the Commissioner-General the payment of all estate duty for which he is liable, the Commissioner-General shall issue a certificate to that effect to which shall be attached a copy of the declaration of property in respect of which estate duty has been paid or secured.

(2) Where the Commissioner-General is satisfied that any executor is not liable to pay estate duty under this Act, the Commissioner-General shall issue a certificate to that effect to which shall be attached a copy of the declaration of property in respect of which estate duty is not payable.

Certificate of release.

40. (1) The Commissioner-General on being satisfied that full estate duty has been or will be paid in respect of all property passing on the death of a deceased person for which the executor is liable to pay estate duty under this Act shall, if required by the

executor, give a certificate to that effect, which shall discharge from any further claim for estate duty the property mentioned in that certificate.

(2) Where a person other than the executor is liable to pay estate duty in respect of any property passing on a death such person may, if the executor has not delivered under section 24 a declaration which includes a reference to that property, furnish to the Commissioner-General a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto ; and the Commissioner-General may determine the rate of the estate duty in respect of the property for which the applicant is liable, and on payment of the duty at that rate, that property and the applicant, so far as regards that property, shall be discharged from any further claim for estate duty, and the Commissioner-General shall give a certificate of such discharge.

(3) On the application of the executor or of any person having an interest in any property passing on the death of a deceased person, the Commissioner-General may, on payment of the estate duty payable in respect of that property and the interest thereon together with such additional amount as the Commissioner-General may require him to pay, having regard to the amount of estate duty payable on the other properties forming part of the estate, issue a certificate which shall discharge from any further claim for estate duty the property mentioned in that certificate.

(4) A certificate of the Commissioner-General under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty on such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for:

Provided that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included

in the certificate shall exonerate from the estate duty a bona fide purchaser for valuable consideration without notice, notwithstanding any such fraud or failure.

CHAPTER XIII

RECOVERY OF ESTATE DUTY

Facts stated in Commissioner-General's certificate need not be proved,

41. Any statement made in any certificate issued by the Commissioner-General shall be presumed to be correct until the contrary is proved; and, in the absence of proof to the contrary, a court shall act on any such statement without requiring further proof thereof.

Probate not to be issued until estate duty is paid.

42. No probate or letters of administration shall be granted by the court in respect of the estate of a deceased person until—

- (a) the Commissioner-General has issued the certificate that the estate duty for the payment of which the executor is liable under this Act had been paid or secured, or that the executor is not liable to pay estate duty under this Act; and
- (b) the certificate so issued has been filed in court.

Restriction on payment of certain moneys passing on the death of a deceased.

43. Where property passing on the death of a deceased consists of—

- (a) money received under a policy of insurance effected by the deceased on his life, being a policy of insurance within the meaning of section 4 (d); or
- (b) money deposited in any bank or institution or with any person, to the credit of the deceased and any other person,

then, notwithstanding anything in any contract, agreement or written law to the contrary, it shall not be lawful for any person to pay—

- (i) any part of the money referred to in paragraph (a); or
- (ii) more than one-half of the money referred to in paragraph (b),

to any person entitled to such money upon the death of the deceased, unless he obtains a certificate of release from the Commissioner-General.

Collection of money or debts on account of estate duty.

44. (1) Where any person proves to the satisfaction of the Commissioner-General that he would, on payment of estate duty, be entitled to probate or letters of administration, and requests the Commissioner-General to collect a sum on account of the estate duty to be paid by such person out of any money or debts forming part of the estate of the deceased, the Commissioner-General may, by notice in writing, require any person or persons who hold such money or owe such debts to pay in the manner and within the period stated in such notice so much of such money or debts as the Commissioner-General may deem sufficient to cover the estate duty payable in respect of the property of the deceased.

(2) Any person to whom a notice is sent by the Commissioner-General in accordance with subsection (1), shall, notwithstanding anything contained in any written law, contract or agreement, comply with such notice to the extent of the money held by him on account of the estate of the deceased, or owed by him to such estate, and is hereby indemnified in respect of any payment made thereunder against all proceedings, civil or criminal.

(3) Nothing in subsection (1) or in subsection (2) shall enable or be deemed to enable the Commissioner-General to collect or recover from any person any debt at any time before the date on which that debt is due to be paid by that person to the estate of the deceased.

(4) Where any sum required to be paid by a notice given under subsection (1) is not paid in accordance with such notice, it shall be recoverable from the person to whom such notice was directed as if such sum were estate duty due from such person and as if such estate duty were in default.

45. (1) Where any duty is in default, the Commissioner-General shall, before proceeding to recover such duty in any

Notice to defaulter.

manner hereinafter provided, issue notice in writing to the defaulter stating—

- (a) the particulars of such duty, and
- (b) that action is being contemplated to recover such duty.

(2) If such defaulter has not appealed within the period specified in section 29, against the assessment in respect of which such duty is charged, he may within thirty days of the date of such notice make any objection to the duty so charged, and the Commissioner-General shall, notwithstanding the provisions of section 31, consider such objections and give his decision thereon which shall be final.

Recovery of estate duty by seizure and sale of movable property.

46. (1) The Commissioner-General may appoint persons to be collectors of estate duty.

(2) (a) Where any estate duty is in default, the Commissioner-General may issue to a Government Agent, Assistant Government Agent or collector of estate duty a certificate containing particulars of such duty and the name and address of the person by whom it is payable, and the officer to whom such certificate is issued shall be empowered and is hereby required to cause the estate duty to be recovered from the person named in the certificate by seizure and sale of the movable property which passed on the death of the person in respect of whose estate the duty is in default.

(b) A seizure of movable property shall be effected in such manner as the said officer shall deem most expedient in that behalf and, as soon as any movable property is seized by such officer, a list of such property shall forthwith be made and signed by him and shall be given to the defaulter and a copy thereof furnished to the Commissioner-General.

(c) Where the property so seized is—

- (i) cash in Sri Lanka currency, it shall be applied in satisfaction of the duty in default;
- (ii) cash in foreign currency, such cash shall be deposited in the Central

Bank of Ceylon and the proceeds therefrom applied in satisfaction of the duty in default;

- (iii) not cash, such property shall be kept for five days at the costs and charges of the defaulter. If the defaulter does not pay the duty together with the costs and charges within the aforesaid five days, the Government Agent, Assistant Government Agent or collector of estate duty shall cause such property to be sold by public auction or, where such property is a negotiable instrument or a share in any corporation or a public company, to be sold through a broker at the market rate of the day.

(d) The sum realized by a sale referred to in sub-paragraph (iii) of paragraph (c) shall be applied—

- (i) firstly, in payment of the costs and charges of seizing, keeping and selling the property ; and
- (ii) secondly, in satisfaction of the duty in default,

and any balance shall be restored to the credit of the testamentary case.

(3) Whenever the Commissioner-General issues a certificate under this section, he shall at the same time issue to the person named in the certificate a notification thereof by personal service, or by registered letter sent through the post or by telegraph ; but the non-receipt of such notification shall not invalidate proceedings under this section.

47. (1) Where any estate duty is in default, the Commissioner-General may issue to the appropriate District Court a certificate, in this Act referred to as a collection certificate, containing particulars of such duty, the name and address of the person by whom it is payable, and a schedule of property by the sale of which the duty may be recovered; the Commissioner-General may also, if he thinks fit, state a price below which the

Recovery of estate duty by seizure and sale of property.

property shall not be sold. The District Court shall thereupon issue a writ to the Fiscal or Deputy Fiscal requiring him to seize and sell the said property or such part thereof as he may deem necessary and at a price that is not below the price, if any, stated by the Commissioner-General, and the provisions of sections 226 to 297 of the Civil Procedure Code, shall, *mutatis mutandis*, apply to such seizure and sale.

(2) The provisions of this section shall have no application in a case in which a decree for the payment of estate duty has been entered by a District Court on an appeal to that court under this Act.

Proceedings for recovery before a Magistrate.

48. (1) Where the Commissioner-General is of opinion in any case that recovery of duty in default by seizure and sale is impracticable or inexpedient, or where the full amount of the duty has not been recovered by seizure and sale, he may issue a certificate containing particulars of such duty and the name and last known place of residence of the defaulter to a Magistrate having jurisdiction in the division in which such residence is situate. The Magistrate shall thereupon summon such defaulter before him to show cause why further proceedings for the recovery of duty should not be taken against him, and in default of sufficient cause being shown, the duty in default shall be deemed to be a fine imposed by a sentence of the Magistrate on such defaulter for an offence punishable with fine only or not punishable with imprisonment and the provisions of subsection (1) of section 291 (except paragraphs (a), (d) and (i) thereof) of the code of Criminal Procedure Act relating to default of payment of a fine imposed for such an offence shall thereupon apply, and the Magistrate may make any direction which, by the provisions of that subsection he could have made at the time of imposing such sentence.

(2) The correctness of any statement in a certificate issued by the Commissioner-General for the purpose of subsection (1) shall not be called in question or examined by the Magistrate in any proceeding under this section and accordingly nothing in that subsection shall authorize a Magistrate to consider or decide the correctness of any

statement in such certificate or to postpone or defer such proceeding by reason only of the fact that an appeal is pending against the assessment in respect of which the duty in default is charged.

(3) Nothing in subsections (2) to (5) of section 291 of the Code of Criminal Procedure Act shall apply in any case referred to in subsection (1) of this section.

(4) In any case where a fine is deemed under subsection (1) to have been imposed on a defaulter, the Magistrate may allow time for the payment of the amount of that fine or direct the payment of that amount to be made by instalments.

(5) The court may require bail to be given as a condition precedent to allowing time under subsection (1) for showing cause as therein provided or to allowing him time under subsection (4) for payment of the fine; and the provisions of Chapter XXXIV of the Code of Criminal Procedure Act shall apply where the defaulter is required to give bail.

(6) Where payment is directed under subsection (4) to be paid in instalments and default is made in the payment of any one instalment, proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

49. (1) Where estate duty payable on the death of a deceased person is in default, and it appears to the Commissioner-General to be probable that any person—

Recovery of estate duty out of debts,&c.

(a) is about to pay any money to an executor for or on account of the estate of the deceased ; or

(b) holds any money for or on account of such estate; or

(c) has authority from some other person to pay any money to an executor for or on account of such estate; or

(d) is liable to pay for or on account of such estate money which, if paid to an executor, is bound to be credited by him to that estate,

the Commissioner-General may give to such person notice in writing requiring him to pay as directed in such notice any such money not exceeding the amount of the estate duty in default. The notice shall apply to such money as is in the hands of the person noticed or is due from him or is about to be paid by him at the date of the receipt of such notice, or comes into his hands or becomes due from him or is about to be paid by him at any time within a period of thirty days after that date.

(2) Any estate duty paid in accordance with this section shall be deemed to have been paid on behalf of another person within the meaning of section 58.

(3) Any person to whom a notice has been given under subsection (1) who is unable to comply therewith owing to the fact that the money in question does not come into his hands or does not become due from him within the period of thirty days referred to in that subsection shall, within fourteen days after expiration of that period, inform the Commissioner-General in writing of the facts by reason of which he is unable to comply with such notice.

(4) Where any person to whom a notice has been given under subsection (1) is unable to comply therewith and has failed to inform the Commissioner-General as required by subsection (3), or where he has deducted or could have deducted the estate duty to which the notice relates or any part thereof and has not paid over as directed by the Commissioner-General the amount of such estate duty or part thereof within fourteen days after the expiration of the period of thirty days referred to in subsection (1), he shall be personally liable for the whole of the estate duty which he has been required to deduct, and the amount of such duty may be recovered from him as a debt due to the State.

Recovery from surviving partners.

50. (1) Where a deceased person was at the time of his death a partner in a partnership carrying on business in Sri Lanka, and any estate duty payable in respect of the property passing on the death of such deceased person is in default, the

Commissioner-General may give notice in writing to any person who was at the time of the death a partner in such partnership requiring him to pay as directed in such notice the amount of the estate duty in default or the amount of the deceased person's interest in such partnership, whichever is the less.

(2) Any estate duty paid in accordance with this section shall be deemed to have been paid on behalf of another person within the meaning of section 58.

(3) Where any person fails to comply with a notice given under subsection (1), the amount of the estate duty which is in default, or the amount of the deceased person's interest in the partnership at the time of death, whichever is the less, shall be recoverable from him as if it were estate duty due from him and as if such estate duty were in default.

51. The special procedure prescribed by this Act for the recovery of estate duty from any person shall not affect or abrogate or be deemed to affect or abrogate the right of the State to recover any such duty or part thereof in any other manner or by any other procedure available under any written or other law for the recovery of debts due to the State.

Special procedure not to affect right of the State to recover duty in any other manner.

52. (1) The Commissioner-General may, by notice given in writing to any person, require that person within the period specified in such notice to furnish any information which the Commissioner-General may require for the purpose of recovering any estate duty due from such person or any other person.

Power of Commissioner-General to obtain information and delegate functions.

(2) The Commissioner-General may, by writing under his hand, delegate to any Assessor any of the powers or functions conferred on, or assigned to, the Commissioner-General by this Chapter.

(3) Every Assessor to whom any power or function has been delegated under subsection (2) shall exercise or discharge that power or function, subject to the general or special directions of the Commissioner-General.

Duty to include fines &c.

53. In this Chapter " duty " means estate duty and includes any interest payable on such duty and any fines, penalties, fees, costs or charges incurred under this Act.

until the contrary is proved, that on the date of the issue of that notice or certificate a person bearing that name was entitled to that official designation; and the name and office of that person shall be judicially noticed.

CHAPTER XIV

MISCELLANEOUS

Signature and service of notice.

54. (1) Every notice given by the Commissioner-General, a Commissioner or a Deputy Commissioner or an Assessor under this Act shall bear the name of the Commissioner-General, Commissioner, Deputy Commissioner or Assessor, as the case may be, and every such notice shall, if the name of the Commissioner-General, Commissioner, Deputy Commissioner or Assessor is duly printed or stamped thereon, be as vaild and effectual as if that notice is signed by such Commissioner-General, Commissioner, Deputy Commissioner or Assessor, as the case may be.

55. The secretary, manager, chairman, or other principal officer of every company or body of persons shall be answerable for doing all such acts, matters and things as are required to be done under the provisions of this Act by such company or body of persons,

Principal officer to act on behalf of a company or body of persons.

Provided that any person to whom a notice has been given under the provisions of this Act as representing a company or body of persons shall be deemed to be the principal officer thereof unless he proves that he has no connexion with such company or body of persons, or that some other person resident in Sri Lanka is the principal officer thereof.

(2) Every notice given by virtue of this Act may be served on a person either personally or by being delivered at, or sent by post to, an address furnished by him for the purpose of service of notices or his last known address or place of abode or to any place at which he is or has been carrying on business:

56. (1) Any act or thing required by, or under this Act to be done by any person shall, if such person is an incapacitated or non-resident person, be deemed to be required to be done by the trustee of such incapacitated person or by the agent or such non-resident person, as the case may be.

Agents and trustees.

Provided that a notice of assessment shall be served personally or by being sent "by registered post to any such address or place as aforesaid.

(2) Where a non-resident person dies, any person who was the agent of such non-resident person at the time of death shall, to the best of his knowledge and belief, furnish to the Commissioner-General all such information and particulars as the Commissioner-General may from time to time require for the purpose of the levy of estate duty under this Act.

(3) Any notice sent by post shall be deemed to have been served on the day succeeding the day on which it would have been received in the ordinary course by post.

57. Where two or more persons, whether in partnership or otherwise, act jointly in any capacity, either on behalf of themselves or of any other person, they shall be jointly and severally answerable for doing all such acts, matters and things as would be required to be done under the provisions of this Act by an individual acting in such capacity.

Persons acting jointly.

(4) In proving service by post it shall be sufficient to prove that the letter containing the notice was duly addressed and posted.

(5) Every notice required by or under this Act to be served on a non-resident person may be served on his agent.

(6) Where any notice or certificate bears the name and official designation of any person and purports to have been issued by him under this Act, it shall be presumed,

58. (1) Every person liable to pay estate duty as trustee, or from whom estate duty is recoverable or has been recovered on

Indemnification of representative.

behalf of another person, may retain out of any assets coming into his possession or control, either on behalf of such other person or in his capacity as trustee, so much thereof as shall be sufficient to produce the amount of such duty, and he shall be and is hereby indemnified against any person whomsoever in respect of his retention of such assets.

(2) Where any person acting as trustee has paid estate duty, and no assets of the trust come into his possession or control out of which he could retain the duty so paid, such duty shall be a debt due from the beneficiaries of the trust to the trustee.

(3) Where estate duty has been paid by or recovered from any person liable to pay estate duty on behalf of another person, and no assets of such other person come into his possession or control out of which he could retain the duty so paid, such duty shall be a debt due to him from such other person.

Certain transactions and dispositions to be disregarded.

59. (1) Where an Assessor is of the opinion that any transaction which reduces or would have the effect of reducing the amount of estate duty payable by any person in respect of the estate of a deceased person is artificial or fictitious or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and shall assess such person accordingly.

(2) In this section "disposition" includes any trust, grant, covenant, agreement, or arrangement.

Renunciation of office of executor.

60. A person nominated or appointed as executor in the last will of a deceased person may, if he is unwilling to accept office as executor, apply in writing to the Commissioner-General to be exempted from the obligations and liabilities of an executor under this Act; and the Commissioner-General, if he is satisfied that the applicant has not taken possession of, or intermeddled with, any property of the deceased, may issue a certificate of exemption accordingly:

Provided that any such certificate may be revoked by the Commissioner-General at any time if he is of opinion that the certificate was obtained by fraud or

misrepresentation, or on an incorrect statement of facts, or if the holder of the certificate has at any time after the issue thereof taken possession of, or intermeddled with, the property of the deceased.

CHAPTER XV

REPAYMENT

61. (1) If at any time within three years of the date of issue of notice of assessment a claim in writing containing the grounds of such claim is made to the Commissioner-General for the return of any moneys paid as estate duty and it is proved to the satisfaction of the Commissioner-General that such estate duty has been overpaid, it shall be lawful for the Commissioner-General and he is hereby required to return the amount of duty which has been overpaid :

Refund of Estate duty.

Provided that—

- (i) where by reason of any proceeding at law, any debt due from the deceased which might be allowed as a deduction has not been ascertained, and in consequence thereof the executor was prevented from claiming refund of estate duty as aforesaid within the aforesaid term of three years, it shall be lawful for the Commissioner-General to allow such further time as is reasonable for making such claim;
- (ii) nothing in this section shall confer or be deemed to confer on any person—
 - (a) any right to prefer a claim for the return, or any right to a return, of any moneys paid as estate duty, on any ground which has been or could have been raised by such person by way of appeal under this Act;
 - (b) any right of action against the State for the recovery or return of any moneys overpaid as estate duty.

(2) Where any person is entitled to a refund of the amount of any estate duty paid by him and if such amount has not been refunded to him by the Commissioner-General—

- (a) if such refund arises in consequence of the reduction of the amount of an assessment on an agreement with an Assessor under subsection (6) of section 29 or on the final determination of an appeal in respect of an assessment, within a period of six months from the date of such agreement or from the date on which such determination was communicated to such person; or
- (b) in any other case, within a period of six months from the date on which the claim in writing was made by such person to the Commissioner-General for such refund,

then, such person shall be entitled to interest on the amount of the refund which remains unpaid, calculated at the rate of one *per centum* for each complete period of one month for which such amount remains unpaid after the period of six months referred to in paragraph (a) or (b).

CHAPTER XVI

OFFENCES AND PENALTIES

62. Every person who fails to deliver a declaration of property or any other statement whatsoever required to be delivered or furnished by him under this Act shall be guilty of an offence and shall for each such offence be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding five hundred rupees.

63. Every person who fails to comply with a notice issued under section 26, section 49 or section 52 or section 77 shall be guilty of an offence and shall for each such offence be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding five hundred rupees.

Penalty for failure to furnish information, &c.

64. Every person who without reasonable excuse—

Penalty for making incorrect statements, &c.

- (a) omits or understates the value of any property which is or should be included in a declaration of property or in any other statement whatsoever required to be delivered or furnished under this Act; or
- (b) makes any incorrect statement in connexion with a claim to an allowance under section 17; or
- (c) gives any incorrect information in relation to any matter or thing affecting the liability of himself or any other person to pay estate duty,

shall be guilty of an offence and shall for each such offence be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding the total of two thousand rupees and the amount of estate duty, if any, which has been undercharged in consequence of such offence or which would have been so undercharged if such offence had not been detected.

65. Any person who with intent to evade or to assist any other person to evade payment of estate duty—

Provisions relating to fraud.

- (a) omits from any declaration delivered under this Act, any property which should have been included in that declaration; or
- (b) makes any incorrect statement in connexion with a claim to an allowance under section 17; or
- (c) signs any declaration, statement or return delivered or furnished under this Act without reasonable grounds for believing the same to be true; or
- (d) gives or furnishes any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of this Act; or

- (e) prepares or maintains or authorizes the preparation or maintenance of any false book of account or other document; or
- (f) makes use of, or authorizes the use of, any fraudulent device, art, or contrivance,

shall be guilty of an offence under this Act and shall be liable on conviction after summary trial before a Magistrate to a fine consisting of—

- (i) a sum equal to twice the amount of estate duty so evaded or attempted to be evaded for which he, or as the case may be, the other person so assisted is liable under this Act; and
- (ii) a sum not exceeding ten thousand rupees,

or to imprisonment of either description for any term not exceeding six months or to both such fine and imprisonment.

- 66.** Every person who—
- (1) being a person required to take an oath of secrecy under section 73 (2), acts under this Act without taking such oath; or
 - (ii) acts in contravention of the provisions of section 73 (1) or to an oath taken under section 73 (2); or
 - (iii) aids, abets, or incites any other person to act contrary to the provisions of this Act,

shall be guilty of an offence and shall for each such offence be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding one thousand rupees, or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment.

67. Every person who contravenes the provisions of section 43 shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine equal to the

amount of the money paid out in contravention of the provisions of that section.

68. The Commissioner-General may, having regard to the circumstances in which the offence was committed and at any time before judgment in a prosecution instituted in respect of that offence, compound any offence under this Act.

69. The prosecution of any person for an offence under this Act, the conviction of any person of any such offence or the imposition on any person of any penalty, fine, or imprisonment under this Act, shall not affect the liability of any person to be assessed for estate duty or to pay such duty.

70. No prosecution in respect of any offence under this Act shall be instituted except at the instance of, or with the written sanction of, the Commissioner-General.

71. Where any statement is made, or document is produced, in relation to any matter arising under this Act, by any person who is liable to estate duty under this Act or by his authorized representative, to the Commissioner-General or a Commissioner or a Deputy Commissioner or Assessor, then notwithstanding anything in any written law, such statement or document shall be admissible in evidence in any proceedings against such person in respect of any offence referred to in sections 63, 64 or 65 of this Act.

CHAPTER XVII

ADMINISTRATION

72. (1) The Commissioner-General shall be in charge of the administration of this Act.

(2) The Commissioner-General may authorize, either generally or specially, any Commissioner or Deputy Commissioner or Assessor, to exercise, perform or discharge any power, duty or function conferred or imposed on, or assigned to the Commissioner-General by any provisions of this Act.

Power of Commissioner-General to compound offences.

Estate duty to be payable notwithstanding proceedings for penalties.

Prosecution not to be entered except with sanction of Commissioner-General.

Admissibility of statements or documents.

Breach of secrecy and other matters to be an offence.

Contravention of section 43 to be an offence under this Act.

(3) A Commissioner, Deputy Commissioner or Assessor exercising, performing or discharging any power, duty or function conferred or imposed on, or assigned to the Commissioner-General by this Act shall until the contrary is proved, be deemed for all purposes to be authorized to exercise, perform or discharge that power, duty or function.

(4) A Commissioner or Deputy Commissioner may exercise, perform or discharge any power, duty or function conferred or imposed on, or assigned to, an Assessor by this Act.

Official
secrecy.

73. (1) Except in the performance of his duties under this Act, every person who has been appointed under or who is or has been employed in carrying out or in assisting any person to carry out the provisions of this Act, shall preserve and aid in preserving secrecy with regard to all matters relating to the estate of any deceased person that may come to his knowledge in the performance of his duties under this Act, and shall not communicate any such matter to any person other than (he executor of such deceased person or the authorized representative of such executor or to the Minister or the Secretary to the Ministry nor suffer or permit any person to have access to any records in the possession, custody or control of the Commissioner-General.

(2) Every person appointed under or employed in carrying out the provisions of this Act shall before acting under this Act, and the Minister and the Secretary to the Ministry may, before acting under this Act, take and subscribe before a Justice of the Peace an oath of secrecy in the prescribed form.

(3) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court any declaration, document or assessment delivered or furnished under this Act or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Act, except as may be necessary for the purpose of carrying into effect the provisions of this Act or of any other

written law administered by the Commissioner-General.

(4) Notwithstanding anything contained in this section, any officer of the Department of Inland Revenue may communicate any matter which comes to his knowledge in the performance of his duties under this Act or under any other written law administered by the Commissioner-General—

- (a) to any other officer of that Department, if the communication is necessary for the performance of any duty under this Act or any such other written law, and
- (b) to the Estate Duty Authority of any country to such extent as is necessary to enable such Authority to grant relief from estate duty payable in that country in respect of the estate of a deceased person,

and the Commissioner-General may, produce or cause to be produced in any court in any proceedings under this Act a copy of any particulars contained in any declaration or document delivered or furnished to him under this Act or under any written law administered by him, certified by him or on his behalf to be a correct copy of such particulars and such copy shall, notwithstanding anything in the Evidence Ordinance relating to the proof of documents, be received in evidence ;

Provided that the Commissioner-General may produce or cause to be produced the original of any such declaration or document in any case where it is necessary to prove the handwriting or the signature of the person who wrote, made, signed or furnished such declaration or document, but only for the purpose of such proof:

Provided, further, that the Commissioner-General shall not in any case be compelled to produce in any court either the original of such declaration or document or a copy of any particulars contained in such declaration or document.

(5) Notwithstanding anything in the preceding provisions of this section the Commissioner-General shall—

- (a) produce in any court in which testamentary proceedings relating to the estate of a deceased person have been instituted, any declaration, return or assessment relating to such estate which has been delivered or furnished to him under this Act, if required to do so by such court; and
- (b) furnish all information available to him under this Act relating to the affairs of any person, if required to do so by any such Commission or officer as is referred to in subsection (5) or subsection (6) or subsection (7) or subsection (8) or subsection (9) or subsection (10) or subsection (11) of section 158 of the Inland Revenue Act (No. 28 of 1979).

CHAPTER XVIII

GENERAL

Regulations.

74. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act, and in respect of any matter which is required or authorized by this Act to be prescribed.

(2) A contravention of, or failure to comply with, a regulation made under subsection (1) shall be an offence under this Act triable summarily by a Magistrate and punishable with a fine not exceeding five hundred rupees.

(3) No regulation made under this section shall have effect until it has been approved by Parliament. Notification of such approval shall be published in the Gazette.

Forms.

75. The Commissioner-General may from time to time prescribe forms to be used for all or any of the purposes of this Act.

Public officer to assist Commissioner-General.

76. (1) Where the Commissioner-General is of opinion that any public officer is in a position to furnish information

which the Commissioner-General may require for the purposes of this Act, he may by written application request such public officer to furnish such information ; and every such public officer shall furnish the information so required to the best of his knowledge and belief.

(2) Every public officer having in his custody any registers, books, records, papers, documents or proceedings the inspection of which may tend to secure any duty under this Act or to prove or lead to the discovery of any fraud or omission in relation to any such duty, shall at all reasonable times permit any person authorized in writing by the Commissioner-General to inspect for such purpose, any such register, book, record, paper, document and proceeding, and to take such notes and extracts therefrom as he may deem necessary, without the payment of any fee or charge.

(3) In this section, " public officer" includes any officer in the employ of a local authority or a public corporation.

77. The Commissioner-General may, by notice in writing, require any person having the care, control, custody, management or possession of any property whether movable or immovable forming part of the estate of a deceased person to permit any public officer named in such notice to inspect such property ; and the person to whom any such notice is addressed shall, upon the receipt thereof, give the public officer named in such notice all facilities for inspecting the property to which that notice relates.

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

" agent", when used with reference to a non-resident person, includes—

- (a) an attorney, factor or receiver or manager in Sri Lanka; and
- (b) any person in Sri Lanka who has the care, custody, possession, management or control of any property on behalf of such non-resident person;

Inspection of property.

Interpretation.

"appropriate District Court" means the District Court of Colombo and includes any other District Court having jurisdiction to administer the estate of the deceased or any other District Court by which probate or letters of administration granted outside Sri Lanka have been resealed under the Civil Procedure Code;

" Assessor " means an Assessor of Inland Revenue appointed for the purpose of the Inland Revenue Act (No. 28 of 1979) and includes a Senior Assessor of Inland Revenue;

" authorized representative ", when used with reference to a person who is liable to pay estate duty, means an attorney-at-law, a member of the Institute of Chartered Accountants of Sri Lanka, an accountant approved by the Commissioner-General or an individual registered as an Auditor under the Companies' (Auditors) regulations made under the Companies Ordinance* and is approved by the Commissioner-General;

"body of persons " includes any local or public authority, any body corporate or collegiate, and any fraternity, fellowship, association, or society of persons, whether corporate or unincorporate;

" Commissioner-General" means the Commissioner-General of Inland Revenue appointed for the purposes of the Inland Revenue Act (No. 28 of 1979);

" Commissioner " means a Commissioner of Inland Revenue appointed for the purposes of the Inland Revenue Act (No. 28 of 1979);

"company" means any company incorporated or registered under any law in force in Sri Lanka or elsewhere,

" deceased " or " deceased person " means any person dying on or after November 15, 1978;

" declaration of property" means a declaration delivered under this Act by an executor or other person liable to pay estate duty, for the purpose of the assessment of such duty;

" Deputy Commissioner " means Deputy Commissioner of Inland Revenue appointed for the purposes of the Inland Revenue Act (No. 28 of 1979);

" encumbrance" includes mortgages, hypothecations, and terminable charges;

" estate " means—

(a) in the case of a deceased person who at the time of his death was domiciled in Sri Lanka, all property which passes on his death wherever situate except immovable property not situate in Sri Lanka; and

(b) in the case of a deceased person who at the time of his death was not domiciled in Sri Lanka, all property in Sri Lanka, which passes on his death;

"estate duty " or " duty " means the duty imposed under this Act;

" executor" means the executor or administrator of the estate of the deceased person, and includes, as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the property of a deceased person, and any person who has applied or is entitled to apply to a District Court for the grant or resealing of probate or letters of administration in respect of the estate of a deceased person;

* Repeated and replaced by the Companies Act, No. 17 of 1982.

"incapacitated person" means any minor or person of unsound mind ;

"local authority" means any Municipal Council, Urban Council, Town Council or Village Council, and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to, the powers, duties and functions exercised, performed and discharged by any such Council;

"non-resident" means not resident in Sri Lanka;

"person", except when used with reference to a deceased person includes a company or body of persons;

"property" includes movable or immovable property of every kind, and the proceeds of sale thereof, and any money or investment or other asset for the time being representing the proceeds of sale ;

"property passing on the death" includes properly deemed to pass on the death and property passing either immediately on the death or after any interval either certainly or contingently, and either originally or by way of substitutive limitation, but does not include property which is exempt from the payment of duty; and the expression "on the death" includes "at a time ascertainable only by reference to the death";

"public corporation" means any corporation, board or body which was or is established by or under any written law other than the Companies Ordinance*, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise ;

"trustee", when used with reference to an incapacitated person, includes any

guardian, curator, manager or other person having the direction, control, or management of any property on behalf of such incapacitated person.

(2) For the purposes of this Act—

(a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself;

(b) a disposition taking effect out of the interest of a deceased person shall be deemed to have been made by him, whether the concurrence of any other person is or was not required ;

(c) money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

79. Nothing in the Estate Duty Ordinance shall apply to, or in relation to, the levy and payment of estate duty upon the value of the estate of any person dying on or after November 15, 1978. Application of the Estate Duty Ordinance.

80. (1) Notwithstanding anything in the Estate Duty Ordinance, — Modification of certain provisions of the Estate Duty Ordinance.

(a) the Commissioner-General may reduce or waive any interest incurred on the amount of any estate duty payable under the Estate Duty Ordinance, if he considers that such reduction or waiver is just and equitable in all the circumstances of the case ; and

* Repealed and replaced by the Companies Act, No. 17 of 1982. See List of Enactments omitted from the Revised Edition.

(b) the value, for the purpose of computing the estate duty payable under that Ordinance upon the value of the estate of any person dying on or after April I, 1977, but prior to November 15, 1978, of any immovable property forming part of any such estate, shall—

(i) if that property had been acquired by the deceased prior to March 31, 1977, be deemed to be the price, which in the opinion of an Assessor, that property would have fetched if sold in the open market on March 31, 1977, increased by an amount equal to the value of any improvements, alterations and additions, if any, made to that property after March 31, 1977, and prior to the date of death of the deceased; and

(ii) if that property had been acquired by the deceased on or after March 31, 1977, but prior to November 15, 1978, be deemed to be the price which in the opinion of an Assessor that property would have fetched if sold in the open market on the date on which it was acquired by the deceased increased by an amount equal to the value of any improvements, additions

and alterations, if any, made to that property after the date on which it was acquired by the deceased and prior to the date of death of the deceased.

(2) Notwithstanding anything in section 49 of the Estate Duty Ordinance*, where any estate duty payable under the Estate Duty Ordinance* upon the value of the estate of a person dying prior to November 15, 1978, is in default on November 15, 1979, simple interest at the rate of eight *per centum* per annum shall be paid upon the amount of duty in default from November 15, 1979, to November 15, 1981, or the date of payment, whichever date is earlier, and where any such duty is in default on November 15, 1981, simple interest at the rate of twelve *per centum* per annum shall be paid upon the amount of duty in default from November 15, 1981, to the date of payment.

(3) Where any estate duty payable under the Estate Duty Ordinance* upon the value of the estate of a person dying prior to November 15, 1978, is in default on the date of commencement of this Act, the amount of such duty may, notwithstanding anything in the Estate Duty Ordinance*, be collected and recovered under this Act as if such amount were estate duty in default under this Act.

(4) In subsections (2) and (3) "estate duty" includes interest whether incurred under the Estate Duty Ordinance* or by virtue of this section.

[Section 3.]

SCHEDULE

<i>Column I</i> (Value of the Estate)	<i>Column II</i> (Rate of Duty)
On the first Rs. 100,000 of the value of the estate	nil
On the next Rs. 100,000 of the value of the estate	5 per centum
On the next Rs. 100,000 of the value of the estate	10 per centum
On the next Rs. 100,000 of the value of the estate	15 per centum
On the next Rs. 100,000 of the value of the estate	20 per centum
On the next Rs. 100,000 of the value of the estate	25 per centum
On the next Rs. 200,000 of the value of the estate	30 per centum
On the next Rs. 200,000 of the value of the estate	35 per centum
On the next Rs. 200,000 of the value of the estate	40 per centum
On the next Rs. 200,000 of the value of the estate	45 per centum
On the next Rs. 200,000 of the value of the estate	50 per centum
On the next Rs. 300,000 of the value of the estate	55 per centum
On the next Rs. 500,000 of the value of the estate	60 per centum
On the next Rs. 500,000 of the value of the estate	65 per centum
On the balance of the estate	70 per centum

* See List of Enactments omitted from the Revised Edition.