

OFFICIAL REPORT OF PROCEEDINGS.**Meeting of 17th December, 1958.**

PRESENT:HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR ROBERT BROWN BLACK, K.C.M.G., O.B.E.

HIS EXCELLENCY THE COMMANDER BRITISH FORCES

LIEUTENANT-GENERAL SIR EDRIC MONTAGUE BASTYAN, K.B.E., C.B.

THE HONOURABLE THE COLONIAL SECRETARY

MR. CLAUDE BRAMALL BURGESS, C.M.G., O.B.E.

THE HONOURABLE THE ATTORNEY GENERAL

MR. ARTHUR RIDEHALGH, Q.C.

THE HONOURABLE THE SECRETARY FOR CHINESE AFFAIRS

MR. JOHN CRICHTON McDOUALL.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. ARTHUR GRENFELL CLARKE, C.M.G.

THE HONOURABLE PATRICK CARDINALL MASON SEDGWICK

(Commissioner of Labour).

THE HONOURABLE ALLAN INGLIS

(Director of Public Works).

DR. THE HONOURABLE DAVID JAMES MASTERTON MACKENZIE, C.M.G., O.B.E.

(Director of Medical and Health Services).

THE HONOURABLE COLIN GEORGE MERVYN MORRISON

(Director of Urban Services).

DR. THE HONOURABLE CHAU SIK NIN, C.B.E.

THE HONOURABLE CHARLES EDWARD MICHAEL TERRY, O.B.E.

THE HONOURABLE LO MAN WAI, C.B.E.

THE HONOURABLE NGAN SHING-KWAN, O.B.E.

DR. THE HONOURABLE ALBERTO MARIA RODRIGUES, M.B.E., E.D.

THE HONOURABLE JOHN DOUGLAS CLAGUE, C.B.E., M.C., T.D.

THE HONOURABLE HUGH DAVID MACEWEN BARTON, M.B.E.

MR. MAURICE DEREK SARGANT *(Deputy Clerk of Councils).***ABSENT:**

THE HONOURABLE KWOK CHAN, O.B.E.

MINUTES.

The Minutes of the meeting of the Council held on 3rd December, 1958, were confirmed.

PAPERS.

THE COLONIAL SECRETARY, by Command of His Excellency the Governor, laid upon the table the following papers: —

<i>Subject.</i>	<i>G.N. No.</i>
Sessional Paper, 1958: —	
No. 38—Annual Report by the Government Printer for the year 1957/58.	
Final Report of the Special Committee on Housing, 1956/1958.	
Post Office Ordinance.	
Post Office (Amendment) Regulations, 1958	A. 75.
Births and Deaths Registration Ordinance.	
Births and Deaths Registration (Amendment of First Schedule) (No. 2) Regulations, 1958	A. 76.
Road Traffic Ordinance, 1957.	
Vehicle and Road Traffic (Parking and Waiting) Regulations, 1958	A. 77.

He said: With your permission, Sir, I would like to refer briefly to the Final Report of the Special Committee on Housing. Honourable Members will recall that the First and Second Interim Reports were published in July, 1956, and March, 1957, respectively, and that the preparation of this Final Report was held up while the results of the 1957 Housing Survey were being assembled and analyzed. The Final Report is a very comprehensive document, and I would like to pay special tribute to the work done by the Committee in bringing together so adroitly the various threads of the housing problem. Their valuable Report will of course require a great deal of careful study before Government is in a position to comment on it.

**ILLEGAL STRIKES AND LOCK-OUTS ORDINANCE,
CHAPTER 61.**

THE ATTORNEY GENERAL moved the following resolution: —

Resolved, pursuant to section 8 of the Illegal Strikes and Lock-Outs Ordinance, Chapter 61, that the duration of the said Ordinance be extended for the term of one year with effect from 1st January, 1959.

He said: Sir, the purpose of this Resolution is to extend the life of the Illegal Strikes and Lock-outs Ordinance for a further year, that is to say, until 31st December, 1959. This Ordinance, Sir, has no effect in relation to any strike or lock-out resulting from a genuine trade dispute, but is a measure designed to prevent strikes and lock-outs calculated to coerce the Government, either directly or by inflicting hardship upon the community; and it also provides for the punishment of persons who instigate, incite others to take part in, or otherwise act in furtherance of, any such strike or lock-out. Sir, the Government considers it essential to have adequate power in this behalf, and therefore invites this Council to pass this Resolution.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

SOCIETIES ORDINANCE, CHAPTER 151.

THE ATTORNEY GENERAL moved the following resolution: —

Resolved, pursuant to section 26 of the Societies Ordinance, Chapter 151, that the duration of the said Ordinance be extended for the term of one year with effect from 1st January, 1959.

He said: Sir, the purpose of this resolution is to extend the life of the Societies Ordinance until 31st December, 1959. This Ordinance gives the Commissioner of Police a measure of help in curbing the activities of undesirable organizations, and it is Government's view that the continuance in force of this Ordinance will aid in the maintenance of law and order.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

DUTIABLE COMMODITIES ORDINANCE, CHAPTER 109.

THE FINANCIAL SECRETARY moved the following resolution: —

Resolved, pursuant to section 4 of the Dutiable Commodities Ordinance, Chapter 109, that notwithstanding the resolution made and passed on the 20th day of March, 1957 (G.N.A. 27 of 1957) no duty shall be payable on any methyl alcohol which is shown to the satisfaction of the Director to be intended for use and which is in fact used solely in the testing of aircraft engines.

He said: Two years ago methyl alcohol was brought within the scope of the Dutiable Commodities Ordinance in order to prevent its misuse in the manufacture of Chinese wine, following on several cases of death and blindness which had occurred during the preceding months as the result of drinking adulterated liquor. In March, 1957, we went further, and a resolution was passed by this Council imposing duty on methyl alcohol in order that the financial inducement to use this commodity for adulterating liquor should be removed. This was not a revenue measure; it was rather a public health measure.

When moving the resolution I informed honourable Members that Government had been advised that genuine industrial users of the product would not suffer because of it. It was only after the resolution had been approved that it was found that one industrial use had been overlooked—the testing of aircraft engines. The result has been to place a heavy financial burden on the industry concerned with the maintenance and overhaul of aircraft, for it seems that turbine engines have to be tested on a mixture containing a considerable proportion of methyl alcohol.

Efforts have been made to get round the problem, mainly on the lines of trying to find some denaturant which would make the methyl alcohol unacceptable to malefactors who might want to use it to adulterate liquor, whilst leaving it suitable for use in aircraft engines. These efforts have proved unavailing, and it is therefore proposed by this resolution to exempt from duty the methyl alcohol used for aircraft engines. It should not be a matter of too great difficulty, in the restricted airport area, to enforce controls adequate to ensure that this duty-free methyl alcohol does not become available for improper purposes.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

ESTATE DUTY (AMENDMENT) BILL, 1958.

THE FINANCIAL SECRETARY moved the Second reading of a Bill intituled "An Ordinance to amend the Estate Duty Ordinance, Chapter 111."

He said: This Bill, Sir, was read a first time in this Council on the 1st October, last. The next stage of the Bill was deferred until today at the request of the Unofficial Members in order that its somewhat complex provisions might be fully examined, and I would, Sir, like to pay a very sincere tribute to these Members, who have freely devoted many hours of their time to discussion on various aspects of the Bill, and who have given careful consideration to representations which were put forward by various individuals; by the Chamber of Commerce; and by the Association of Chartered Accountants in Hong Kong. As a result of these discussions I propose, at the Committee stage, to move a number of amendments, material amendments to the Bill, amendments which will, I trust, commend themselves to Council as covering all the points made during the past few weeks which Government has found itself able to accept.

THE COLONIAL SECRETARY seconded.

DR. CHAU SIK NIN: —Your Excellency, I rise to support, on behalf of all the Unofficial Members of Council, the amendments as tabled.

My Hon. Friend, Mr. M. W. Lo, will be speaking at length on the Bill and the proposed amendments. I wish to take this opportunity to say that we are grateful to the Hon. Financial Secretary for deferring to our request that the second reading of the Bill be postponed in order that we could have sufficient time to give this highly technical and very complicated Bill our most careful scrutiny and consideration.

MR. LO MAN WAI: —Your Excellency, I feel it is up to me to get up and say a word or two on the Bill before this Council. For while I, in common with honourable Members, have the highest regard for each other's intelligence, I doubt whether the

complicated provisions of this Bill are intelligible to my Unofficial Colleagues. I trust they will not be offended by this remark. I can assure them that they are in good company. Did we not hear my Honourable friend, the Financial Secretary, say in his speech in introducing this Bill that the new Sections 31 to 43 comprised in Clause 10 of the Bill were almost incomprehensible to laymen like himself? Now I do not suggest that I find this Bill easy reading. On the contrary, in my first attempt to understand it, I felt I was in the same boat. The only thing that is at all clear to me about these provisions is that, like most taxing statutes, they are obscure. But as I am concerned with this Bill in three distinct and separate capacities, *i.e.* as a potential taxpayer, as a practising solicitor, and as a Member of this Council, I felt it my business to attempt to understand it. Now thanks to my Honourable friend's speech which dealt very clearly with the objects which the Bill seeks to achieve, and the subsequent discussions which I had with him and with Mr. Crew of the Inland Revenue Department, who, I would like to say, has been most helpful, I can now say I begin to see a little light.

Since the first reading of this Bill on the 1st October, I have heard and read various comments on this Bill. One person said that it would have the effect of driving out private capital from the Colony. Another thought the measures proposed went beyond anything done in U.K. Another told me that while he had not studied the Bill clearly, he took the gloomy view that all private companies would be affected and would be forced into liquidation. Another expressed the view that the provisions relating to controlled companies were not suitable for Hong Kong, being based on the fallacy that the particular circumstances obtaining in England also applied to Hong Kong, which was based upon the principles of an open port, free trade and freedom of investment. I think all these comments are based on a misunderstanding, due to the wide scope and elaborate wording of Clause 10 of this Bill. As this misunderstanding centres round the provisions relating to "controlled companies", I would like to take this opportunity to say how I view these provisions and why I approve of them, subject to one amendment.

I accept the Honourable Financial Secretary's statement that the object of these provisions is to prevent the avoidance of estate duty by means of a "controlled company". It is obvious

that, as he said, nobody likes to pay large sums to tax gatherers. Now a person may seek to escape taxation by methods of evasion, which are illegal according to existing law, or by methods of avoidance which may be perfectly lawful.

Though the Honourable Financial Secretary may not like it, tax avoidance is quite legitimate. There are numerous judicial dicta in support of this proposition. I should like to quote two: —

1. "No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow—and quite rightly—to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Inland Revenue".
2. "Every man is entitled, if he can, to order his affairs so that the tax is less than it otherwise would be, however unappreciative the Commissioner of Inland Revenue or his fellow taxpayers may be of his ingenuity".

But I should also quote what Lord Simon had to say on this matter in a House of Lords' Case. He said, and I quote: "There is of course no doubt that they are within their legal rights, but there is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods if they succeed is, of course, to increase pro tanto, the load of tax on the shoulders of the great body of good citizens who do not desire or do not know how to adopt these manoeuvres. Another consequence is that the legislature has made amendments to our income tax code which aims at nullifying the effectiveness of such schemes".

The intention of these provisions relating to "controlled companies", being as stated by the Honourable Financial Secretary, there can be no objection to these provisions from good citizens. But a law-abiding citizen may properly query why they should be so complicated and framed in such wide language. To understand

this, I think it is worthwhile to quote from a text book of an example of the kind of avoidance of estate duty which is intended to be eliminated by these provisions: —

"If a person were possessed of valuable property, such as a business, investments or a landed estate, on which he desired that estate duty should be avoided on his death, he could achieve his purpose by giving it away in his lifetime, provided that he survived the statutory period for avoiding estate duty on gifts *inter vivos*. This procedure had the disadvantage, however, that he could not retain control over the property, nor could he receive income from it, without attracting duty under the rules relating to gifts *inter vivos* however long he might survive. He might, therefore, instead form a company to which he would transfer the property in consideration of the issue of shares to him. If the matter went no further than that, he would have achieved little, because the shares would be dutiable on his death instead of the property. But a further element in the transaction might be to provide, in the articles of the company and by agreement, that he should be life director of the company and receives fees equal perhaps to the income of the company's property. He could then give away the shares and escape duty thereon if he survived the statutory period, and yet continue to receive the income of his former property in the shape of directors' fees. His fees would not count as a benefit reserved by reference to the gift of the shares, so as to attract estate duty thereon as a gift *inter vivos*, nor would the cessation of the fees on his death attract duty, since they were not charged on any property, and in any event exemption applies to the cessation of an interest as the holder of an office. In that way he would have achieved the very thing which most donors *inter vivos* desire to do, namely, to avoid estate duty on their property, and yet to continue to enjoy the benefit thereof up to the date of their death".

Your Excellency, if I were asked to put into colloquial language what is being done in the example just cited, I should say that it demonstrates the fallacy of the popular saying that you can't have the cake and eat it. Of course, this is the dream of everyone and so it has become a common practice in England and in recent years also in Hong Kong to attempt to indulge in the present legitimate avoidance of estate duty through the

machinery of a company, although the substance of the transaction is a gift, so that on death there would be no property passing or deemed to pass which would attract death duties.

In England, the original provisions designed to prevent this avoidance of death duties were contained in Sections 34 to 38 of the Finance Act, 1930, but as these were found to be inadequate, they were supplemented by the new provisions in the Finance Act, 1940, and subsequent Finance Acts. It will be seen therefore that Parliament in England had found it necessary to enact these complicated provisions to check avoidance of death duties through the machinery of a company. Now it seems to me that unless we were to allow this avoidance of death duties to continue unchecked, we have no alternative but to make use of and adopt these provisions, however complex they may be. After all, our Estate Duty Ordinance was founded on the Finance Act 1894, which imposed estate duty in England for the first time, and which remains the basis of the present day charge of estate duty in England. These provisions are no doubt framed in obscure language of the widest and most general scope. But who is to be blamed for this? I would place it at the doors of those members of my profession whose task is to assist persons minded to avoid payment of duty by ways and means which are devious and obscure.

To those who criticize these provisions as being so complicated as to be beyond the understanding of the ordinary citizen, I would remind them that this criticism could also be applied to our existing Estate Duty Ordinance. Can it seriously be suggested this Ordinance is plain to a layman?

Let me take two expressions from this Ordinance, one "property passing on the death", the other "property deemed to pass on death". These expressions may look simple but I venture to say that they convey little meaning to the layman. Even lawyers have difficulties in understanding them and there have been numerous legal fights over them. Many cases have been brought in the law courts on the interpretation of these words. Sir, the truth of the matter is that no effective estate duty enactment can be in simple language. A layman rightly fights shy of a taxing Ordinance and looks to his professional adviser for enlightenment and advice on matters of taxation.

Sir, while I approve these provisions despite their complexity, it is clear that they confer on the Commissioner of Inland Revenue wide powers. Section 32 is drawn in such wide terms as to apply to cases which are not within the mischief which the Bill seeks to cure and I would like to have an assurance from the Honourable Financial Secretary that the Commissioner of Inland Revenue intends to apply these provisions in a reasonable manner. I say this, because there had been cases in the past where the officials in charge of estate duty had been over zealous. I can still remember a case in which I was personally involved, although it was a long, long time ago. I was asked by my client to go to his shop as the then Deputy Commissioner was there with a couple of police officers and demanded that the safe in the shop be opened. I went there and advised my client that the Deputy Commissioner had not the power to require the opening of the safe. The Deputy Commissioner threatened to put me under arrest. I can't quite remember how I escaped being arrested, but it was a narrow escape. (*Laughter*).

I understand that the practice in U.K. is to apply Section 46 of the Finance Act on which Section 32 is based only to evasion cases. From my discussions with the Honourable Financial Secretary and with Mr. Crew, I am happy to learn that the same practice would be adopted in Hong Kong. This should eliminate all private companies formed solely for genuine business purposes from the operation of this section. And in order that these innocent companies should not be left in a state of uncertainty in regard to this section, all the Unofficial Members of this Council have recommended to the Honourable Financial Secretary that there should be an amendment to this section. The object of this amendment is to enable such companies to obtain a clean bill from the Commissioner in a proper case. It is a matter of real gratification to us that the Honourable Financial Secretary has accepted our amendment. For I hope this amendment will go a long way to dispel the misgivings which have arisen over the effect of this section on so many private companies. With this amendment, I have come to the conclusion that the number of companies actually affected by this section is not many and that the main effect of these elaborate provisions is to stop in the future the incorporation of private companies to avoid payment of estate duty.

Sir, I would now speak shortly on the three other amendments recommended by the Unofficials and also accepted by the Honourable Financial Secretary. The first is to make no change as regards gifts *inter vivos*. The second is to revise the rates of estate duties so that the rates would be roughly half of those obtaining in U.K. The third is to allow a period of 8 years for payment of estate duty in respect of leasehold properties.

While the first and second amendments represent a departure from U.K. legislation and the third is more in line with U.K. legislation, all of them are called for by local conditions. We all know that the ulterior effects of Sir William Harcourt's famous Death Duties Act of 1894 were to bring about the gradual break up of large landed estates and with the gradual increase in the rates of duty, this has been practically achieved in U.K. But we have no large landed estates in Hong Kong. Neither are we a Welfare State which requires a high rate of taxation.

We are dependent upon outside capital and in order to attract and keep this capital we have to keep our taxation low. Furthermore with a reasonable low rate, the urge to evade duty is lessened.

Sir, I wish to make a last remark on this Bill. I think we would be under a delusion if we were to assume with the passing of this Bill, all evasions of duty will be put an end to. We have one singular usage to contend with. I refer to the common practice of a person using so many aliases. I have no doubt that the Commissioner is very much handicapped by the unrestricted use of names under which a person is permitted to use for commercial transactions and in acquiring property. Sir, believe me or not, I have come across an authentic case of a Probate which required two pages to set out all the names of the testator. I defy my honourable Members to guess the number. Would my honourable Members believe me if I were to say that the number was 81? Sir, I can see no good reasons why a person should be permitted to use more than one name at any one time in commercial transactions, or in acquiring property. I suggest that Government might look into the matter. (*Applause*).

THE FINANCIAL SECRETARY: —At the beginning of this debate, I ventured to express my appreciation of the work that has been done by the Unofficial Members of this Council since the first reading, and I would like to add to that expression of appreciation my very warm thanks to my honourable Friend

Mr. Lo for the interest he has taken in this piece of legislation and for the help he has afforded Government in pointing out its defects and in checking our work on the proposed amendments which will be moved at the committee stage. His interest in the Bill and his knowledge of estate duty law have indeed been made clear in his speech, and the view he expressed that we have no alternative but to adopt these complex provisions is most reassuring.

Mr. Lo mentioned an unhappy meeting that he had once with a Deputy Estate Duty Commissioner. I rather suspect that I know who was the officer concerned—it was a long while ago—but I do hope that it has been his experience that Government officials of that type are the exception and not the rule. I understand that when legislation similar to this Bill was enacted in the United Kingdom, an assurance was given to the Law Society by the Commissioners of Inland Revenue that it would only be invoked where there was an element of evasion. The Estate Duty Commissioner's intentions here are similar; and he has, I understand, issued written instructions to this effect to his staff. This policy has Government's full approval. The new provisions are directed against the individual, who making use of the company structure, seeks so to order his affairs that the tax is less than it otherwise would be. They are not directed against controlled companies as such. At the committee stage I propose therefore to move an amendment whereby as desired by my honourable Friend any controlled company may apply to the Commissioner for an assurance as to its position under the new legislation.

If I might just deal with the last part of the speech of my honourable Friend, I should say that the question of aliases has been attracting more attention recently, and has been brought into even greater prominence by this Bill. The misuse of aliases is not confined of course to the sphere of estate duty. Aliases may well be used for the purpose of avoiding earnings and profits tax, and I suspect too that they may also be used for avoiding commercial obligations, such as in the case of a man who may have judgment given against him for a debt, and who is ostensibly unable to meet that debt, whereas in actual fact he may have a great deal of property in another name. The problem of the misuse of aliases is therefore a general one, and although it has a bearing on this legislation, any measures designed to discourage the practice would be somewhat out of place here. I can however tell my honourable Friend, and this Council, that investigations

have already commenced with a view to finding how best to attack the problem, and I understand that my honourable and learned Friend the Attorney General is very willing to make the results of the preliminary discussions available to Mr. Lo, if indeed he has not already done so. The matter will not be lost sight of.

Sir, as I mentioned earlier in this debate, Government has been able to meet most of the points raised by honourable Members, and at the committee stage I shall outline very briefly the purpose of the various amendments as they come up.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clause 1.

THE FINANCIAL SECRETARY: —Sir, I move that this clause be amended as set forth in the paper before honourable Members. The amendment is to provide that the Bill should come into force on 1st February next year.

Proposed Amendment.

1. Leave out the words "the day of ,1958." and substitute the following—

"the 1st day of February, 1959."

Clause 1, as amended, was agreed to.

Clause 2.

THE FINANCIAL SECRETARY: —Sir, I move that this clause also be amended as set forth in the paper.

Proposed Amendments.

2. In the new section 3, subsection (1), definition of "applicable Schedule", leave out the words "the day of , 1958" wherever they appear and substitute the following—

"the 1st day of February, 1959".

Clause 2, as amended, was agreed to.

Clause 3.

THE FINANCIAL SECRETARY: —Sir, I move that this clause be amended in three places as set forth in the paper. There are three separate amendments the last of which is a consequential relettering of paragraphs: The first gives effect to the decision that it is perhaps inadvisable in local circumstances to extend the limitation period for gifts from three years to five: a similar amendment will appear in subsequent clauses. The second relaxes the rigour of the law in the matter of gifts made by a deceased such as reasonable allowances to members of his family and Christmas presents. Hitherto such payments have normally been limited in value to a thousand dollars, but in line with other changes in the law now proposed, this amendment raises the figure to five thousand.

Proposed Amendments.

3. 1. Leave out the expression "five years" wherever this occurs and substitute therefor the following—

"three years".

2. After paragraph (c) add the following—

"(d) by the deletion from the first proviso to paragraph (c) of subsection (1) of the words "one thousand dollars" and substitute the following—

"five thousand dollars;"

3. Renumber paragraphs (d), (e), (f), (g), (h), (i) and (j) as paragraphs (e), (f), (g), (h), (i), (j) and (k) respectively.

Clause 3, as amended, was agreed to.

Clause 4.

THE FINANCIAL SECRETARY: —Sir, I rise to move that this clause be amended as set forth in the paper before honourable Members.

Proposed Amendment.

4. In the new section 6A, subsection (4), definition of "relative", leave out paragraph (e) and substitute the following—

"(e) concubine recognized as such by the law appropriate to the marriage;"

Clause 4, as amended, was agreed to.

Clause 5.

THE FINANCIAL SECRETARY: —Sir, I rise to move that this clause be amended as set forth in the paper. I should say, Sir, that the need for this amendment was pointed out to us by a member of the accounting profession, to whom I must express my thanks. By raising the exemption limit from \$5,000 to \$50,000, and by providing that certain types of insurance policy are not aggregable with the estate, we open another loophole by inviting any wealthy person, for example, to take out as many such policies as he wishes, each of \$50,000, and each of which would under present proposals be exempt from duty, although the aggregate figure might run into millions. The amendment seeks to guard against this contingency.

Proposed Amendment.

5. in paragraph (c), leave out the quotation mark and the full stop at the end, and add the following—

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e. 44, s. 33. (4) Where the property which passes on a death, but in which the deceased never had an interest, includes any policies of assurance on his life, or moneys received under such a policy, or interests in such a policy or moneys, then the rate of estate duty to be paid on any such policy, money or interest so included (hereinafter referred to as "a life insurance") shall be determined as follows—

- (a) in respect of the value of any life insurance or interest in a life insurance to which immediately after the death any one person is absolutely and indefeasibly entitled for his own benefit otherwise than by virtue of a purchase for consideration in money or money's worth, whether of that life insurance or interest or of the policy or otherwise, the rate shall be that appropriate to the value or aggregate value of that life insurance or interest and of any other life insurance or interest in a life insurance to which he is so entitled;

- (b) subject to the foregoing paragraph the rate shall be that appropriate to the aggregate value of all the life insurance or, if there is only one, to the value of that life insurance:

Provided that for the purposes of this subsection—

- (i) where any life insurance or interest in a life insurance is immediately after the death subject to a mortgage or charge, the mortgage or charge shall be disregarded and the life insurance or interest shall be valued accordingly; and
- (ii) in relation to life insurances and interests therein which then form part of the unadministered estate of a deceased person this subsection shall have effect as if that person had been then living and entitled to those life insurances and interests.

(5) For the purposes of paragraph (a) of subsection (4) the value of any interest in a policy of assurance or moneys received under such a policy shall be arrived at by apportioning the total value of the policy or moneys according to the respective values of the interest in question and of the interest a person would have if, except for the interest in question, he were absolutely and indefeasibly entitled to the policy or moneys. ”.

Clause 5, as amend, was agreed to.

Clauses 6 to 9 were agreed to.

Clause 10.

THE FINANCIAL SECRETARY: —I rise to move, Sir, that this clause be amended as set forth in the paper. There are quite a number of amendments to this long clause, serially numbered on the sheet before honourable Members. Numbers 1 and 2 are necessitated by the reduction in the gift period from 5 years to 3 and the

consequent deletion of the proposed new Section 43. The third amendment is technical, and was discussed with the representatives of the Chartered Accountants. Indeed they pointed out to me the drafting defect which necessitates the amendment (a), but I was glad to be able to tell them that the Government experts had already discovered this flaw. The fourth point is, I think, adequately explained, and the purposes of Numbers 5 and 6 are evident.

Proposed Amendments.

10. 1. Leave out the expressions "five years" or "five accounting years" wherever these occur except in subsection (8) of the new section 41 and substitute therefor the words "three years" or "three accounting years" as the case may be.

2. In the new section 32—

(a) subsection (2), proviso (b) —

(i) second and third lines, leave out the words "last but three, or in the last but two, or in the";

(ii) sixth and seventh lines, leave out the words "four, the last three, the last";

(b) subsection (4), leave out the figures "43" and substitute the following—

“42”.

3. In the new section 35—

(a) subsection (1) leave out the last five lines and substitute the following—

"period:

Provided that—

(a) there shall be excluded from the ascertainment of such assessable profits any profits which were not *bona fide* acquired in the ordinary course of business nor the produce of income yielding assets; and

(b) in determining such assessable profits no account shall be taken of the provisions of sections 19 and 26 of the Inland Revenue Ordinance.”;

(b) leave out subsection (2) and substitute the following—

"(2) The net profits of the company for the purpose of this Ordinance for any accounting year shall be determined by adding to the assessable profits for that year computed in accordance with subsection (1) the amount of any interest on debentures in the company deduction for which has already been made under the Inland Revenue Ordinance in assessing the assessable profits of the company. "

4. In the new section 38, subsection (2) leave out paragraph (b) and the three lines following and substitute therefor the following—

"(b) another person being the owner of the beneficial interest involved,

then the conditions as to the entire exclusion of the person referred to in paragraph (b) above, shall not be treated for the purpose of the aforesaid provisions as having been satisfied if it can be".

5. In the new section 39—

(a) subsection (1), first line, leave out the words "The Company" and substitute the following—

“A company to which section 32 applies”;

(b) subsection (2), first line, leave out the word "the" and substitute the following—

“such”.

6. Leave out the new section 43.

Clause 10, as amended, was agreed to.

Clause 11.

THE FINANCIAL SECRETARY: —Sir, I move that this clause be amended as set forth in the paper.

Proposed Amendment.

11. Leave out the words "before the day of , 1958" and substitute the following—

"before the 1st day of February, 1959."

Clause 11, as amended, was agreed to.

Clause 12.

THE FINANCIAL SECRETARY: —I rise to move that this clause be amended as set forth in the paper and I apologize, Sir, for a typographical error in the heading to the new Schedule 6. 1st February, 1958 should, of course, be 1st February, 1959. The main amendment here is for the purpose of revising the rates of duty. The old rates and the United Kingdom rates are shown for comparative purposes. It will be seen that the exemption limit is now raised from the existing \$5,000, not to \$25,000 as proposed some weeks ago, but to \$50,000, so freeing from liability the individual who has sunk most of his savings in buying a flat for any sum up to that amount. The maximum rate now proposed is 40%, and the rates generally are just about half of those now in force in the United Kingdom. I have tried to find out why the present high rates were adopted in 1941, but I have been unable to discover anything beyond the fact that they were introduced in order to increase revenue. The arguments that have been put forward for some concession on the rates of duty have been many, and Government has been particularly impressed by the representation that high rates are a direct inducement to avoidance or evasion, as is indeed borne out by the fact that a rate in excess of 40% has been applied only twice. It would, Sir, have been applied only once if the individual concerned had not had the misfortune to die just a few months too soon. Now that the main loophole is being blocked, the new schedule of reduced rates as proposed should not affect revenue unduly over the years.

It is proposed to add an additional paragraph 7 to the Seventh Schedule, providing, as suggested by my honourable Friend that a company which is in doubt as to its position under the new legislation may apply to the Commissioner for an assurance; the Eighth Schedule is deleted as unnecessary following on the reduction in the gift period from five years to three.

Proposed Amendments.

12. 1. Leave out the Sixth Schedule and substitute the following—

"SIXTH SCHEDULE.

[ss. 3, 5, 11, 13,
14, 20, 21 & 24.]

Persons dying on or after the 1st day
of February 1959, and until this
Schedule is superseded.

Where the principal value of the estate						Estate duty shall be payable at the rate <i>per cent</i> of	
	\$				\$		
Exceeds	50,000	and	does	not	exceed	100,000	2
"	100,000	"	"	"	"	200,000	3
"	200,000	"	"	"	"	300,000	5
"	300,000	"	"	"	"	350,000	7
"	350,000	"	"	"	"	400,000	8
"	400,000	"	"	"	"	450,000	9
"	450,000	"	"	"	"	500,000	10
"	500,000	"	"	"	"	550,000	11
"	550,000	"	"	"	"	600,000	12
"	600,000	"	"	"	"	700,000	14
"	700,000	"	"	"	"	800,000	15
"	800,000	"	"	"	"	900,000	16
"	900,000	"	"	"	"	1,000,000	17
"	1,000,000	"	"	"	"	1,500,000	18
"	1,500,000	"	"	"	"	2,000,000	19
"	2,000,000	"	"	"	"	3,000,000	20
"	3,000,000	"	"	"	"	4,000,000	23
"	4,000,000	"	"	"	"	5,000,000	27
"	5,000,000	"	"	"	"	7,000,000	30
"	7,000,000	"	"	"	"	10,000,000	33
"	10,000,000	"	"	"	"	15,000,000	35
"	15,000,000						40

2. In the new Seventh Schedule—
- (a) leave out the expression "five years" wherever this occurs and substitute therefor the following—
"three years";
 - (b) leave out the figures "43" from the heading and substitute the following—
"42";
 - (c) paragraph 1, sub-paragraph (7), fifth and sixth lines, leave out the words "land or buildings or land and buildings" and substitute the following—
"leasehold property";
 - (d) after paragraph 6, add the following—
"Grant of prior assurances."

7. Where at any time a transfer of property has been made by any person to a company to which section 32 applies the company may apply to the Commissioner for an assurance that the provisions of that section will not be applied on the death of such person by reason only of such transfer and the Commissioner may if he is satisfied that the transfer and any associated operations were effected *bona fide* for commercial reasons and such transfer and any associated operations have not been effected with the purpose of avoiding estate duty payable upon such death, give such an assurance."

3. Leave out the new Eighth Schedule.

Clause 12, as amended, was agreed to.

Clause 13 was agreed to.

New Clauses.

THE FINANCIAL SECRETARY: —Sir, I rise to move that two new clauses, 14 and 15, be added to the Bill. Clause 14 seeks to amend section 9 of the principal Ordinance by giving to the executor of an estate comprising leasehold property the right to pay the duty appertaining to that property by instalments over

eight years. If he chooses to exercise that right, then the new clause 15 provides that the Commissioner may register a charge on that property in the Land Office.

Proposed Amendment.

"Amend-
ment of
section 9. **14.** Section 9 of the principal Ordinance is amended by
the insertion after subsection (7) of the following new
subsection—

“(7A) A rateable part of the estate duty on an estate in proportion to the value of any leasehold property held solely by the deceased may at the option of the person delivering the account be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of eight per cent per annum from the date at which the first instalment is due, and the first instalment shall be due at the expiration of six months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold shall be paid on completion of the sale, and if not so paid shall be duty in arrear.”

"Amend-
ment of
section 15. **15.** Section 15 of the principal Ordinance is amended
by the deletion of subsection (1) and the substitution
therefor of the following—

“(1) Subject to subsection (1A) —

(a) a rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which estate duty is leviable;

- (b) a rateable part of the estate duty on an estate paid by instalments under subsection (7A) of section 9, in proportion to the value of any leasehold property held solely by the deceased, shall be a first charge on the property:

Provided that the property shall not be chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(1A) Notice of any charge on any leasehold property constituted by subsection (1) may be given by the Commissioner registering in the Land Office against the property affected thereby a Memorial signed by him specifying the subsection under which the charge is constituted, the name, description, and date of death of the deceased in respect of whose estate the claim to estate duty arises, and particulars of the property charged.

(1B) A notice in writing of any charge under subsection (1) or (1A) may be entered in the Land Office as an instrument affecting land."

The two new clauses were agreed to.

Council then resumed.

THE FINANCIAL SECRETARY: —Sir, I have to report that the Bill now before Council has passed through Committee with amendments, and, with Your Excellency's leave, to say that, pursuant to Standing Order 28, it will be published in its amended form in the *Gazette* prior to the Third reading, which will be taken at the next meeting.

H. E. THE GOVERNOR: —Leave is granted for the Third reading to be taken at the next meeting of Council.

**MEDICAL REGISTRATION (AMENDMENT)
(NO. 3) BILL, 1958.**

DR. D. J. M. MACKENZIE moved the Second reading of a Bill intituled "An Ordinance to amend the Medical Registration Ordinance, 1957".

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Second time.

Council then went into Committee to consider the Bill clause by clause.

Clauses 1 and 2 were agreed to.

Council then resumed.

DR. D. J. M. MACKENZIE reported that the Medical Registration (Amendment) (No. 3) Bill, 1958 had passed through Committee without amendment and moved the Third reading.

THE COLONIAL SECRETARY seconded.

The question was put and agreed to.

The Bill was read a Third time and passed.

ADJOURNMENT.

H. E. THE GOVERNOR: —Gentlemen, that concludes the business for today. When is it your pleasure that we should meet again?

ATTORNEY GENERAL: —May I suggest this day three weeks?

H. E. THE GOVERNOR: —Council stands adjourned until this day three weeks.