

Bills Committee on Revenue (Abolition of Estate Duty) Bill 2005

This paper sets out the Administration's response to Members' comments at the Bills Committee meeting held on 9 June.

Comparison of Penalty Provisions

2. At **Annex** is a paper setting out a comparison of the protection afforded to the beneficiaries against the estate of the deceased from being intermeddled with before and after the abolition of estate duty and our latest proposal to introduce a penalty provision against intermeddling.

Schedule of Property

3. We are consulting the Judiciary Administrator on our proposal of annexing a schedule of property as sworn by the personal representative to the grant of representation.

Removal of Documents/Articles Other Than the Will From the Safe Deposit Box

4. We noted Members' concern over the proposed section 60C(5) which empowers the Secretary for Home Affairs (SHA) to authorize the removal from the safe deposit box of documents or articles specified in the certificate for inspection, and Members' suggestion to narrow the scope of items that could be removed.

5. Currently the Estate Duty Office do authorize in some cases the removal of documents other than a will from the safe deposit box. Examples of such documents include marriage certificate, birth certificate and shares that belong to persons other than the deceased. These documents may not only be required to support the application for grant of representation but also for other purposes such as transfer of ownership of properties that do not belong to the deceased. So far, almost all such requests were for removal of documents.

6. In view of the above, we propose to delete the words “or article” from the new section 60C(5). This would be in line with the current practice.

Positive Vetting for Proposed Amendment(s) to the New Section 60G

7. We would introduce Committee Stage Amendment to the proposed section 60G to the effect that the subsidiary legislation on cessation of the new powers of SHA would be subject to positive vetting by the Legislative Council.

Publicity

8. Pamphlets will be distributed to the public through the Probate Registry, Estate Duty Office, Deaths Registries and Public Enquiry Service Centres of the Home Affairs Department to publicize the change in application procedures for grant of representation. A press release will be issued and a spokesman will be available for answering media enquiries. Background briefing for the media would be organized as and when necessary.

*Home Affairs Bureau
10 June 2005*

Intermeddling

Introduction

At the Bills Committee meeting held on 9 June 2005, the Administration was requested to prepare a paper setting out a comparison of the protection afforded to the beneficiaries of an estate against the estate of the deceased from being intermeddled with before and after the enactment of the Revenue (Abolition of Estate Duty) Bill 2005.

The Existing Law

2. Under the existing law, intermeddling of properties of an estate may be dealt with by the following statutory provisions --

- (A) Provision under the *Probate and Administration Ordinance*, Cap. 10

Section 58 – Liability of a person fraudulently obtaining or retaining estate of deceased

If a person, not being an executor, intermeddles with any of the deceased's assets as if he were an executor, he will be made liable under this provision. His liability is limited to the extent of the real and personal estate received or coming to his hands.

- (B) Provisions under the *Estate Duty Ordinance*, Cap. 111

Section 23 - Penalties for dealing with deceased's property not set out in the schedule of property annexed to probate

Section 24 - Penalties for intermeddling

A person will be liable to penalties under the above provisions if he deals with, administers or intermeddles with the properties of the estate in the prescribed circumstances. Section 23 imposes penalty on persons dealing with property not listed in the schedule of property attached to the grant. Section 24 imposes penalties on --

- (a) person (not being executor or person entitled in priority to the administration) for taking possession of or administering the estate without lawful authority or excuse or without first delivering to the Commissioner accounts of the estate (section 24(1)); and
- (b) executor or person entitled in priority to the administration of the estate for taking possession of or administering the estate without delivering without delivering to the Commissioner accounts of the estate (sections 24 (2) and 24(3)).

A person who contravenes sections 23 and 24 is liable to a penalty at level 3 and a further penalty equal to 3 times the amount of estate duty. The Estate Duty Ordinance does not make such activities criminal acts and the relevant penalty is by way of a fine plus heavier tax.

(C) Provision under the *Theft Ordinance*, Cap. 210

Section 9 – Theft

If any person dishonestly appropriates property of the estate with the intention of permanently depriving the estate of it, he will be liable to be prosecuted for theft under section 2. The penalty for such offence is imprisonment for 10 years.

(D) Provisions under the *Crimes Ordinance*, Cap. 200

Section 32 - False statements on oath

Any person being required by law to make any statement on oath for any purpose and wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

Section 36 - False statutory declarations and other false statements without oath

Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, such statement being made in a statutory declaration or in a document which he is required to make by law shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years.

If the intermeddling of the estate by the person involves making false statements, these provisions will be applicable.

App. Extracts of the relevant provisions are appended.

Administration's Proposal to deal with Intermeddling after Abolition of Estate Duty

3. After the abolition of estate duty, the applicable provisions remain the same with the exception that the provisions in the Estate Duty Ordinance will no longer be applicable.

4. To address the concern of the Members that the protection afforded to the beneficiaries might possibly be weakened after the abolition of the estate duty, the Administration proposes to introduce a provision --

(a) similar to the existing section 24 of the Estate Duty Ordinance to penalize any person who, without lawful authority or reasonable excuse, intermeddles with the deceased's property; and

(b) with a penalty at a level that achieves a deterrent effect.

Existing statutory provisions that deal with intermeddling of properties of an estate

Chapter:	10	Title:	PROBATE AND ADMINISTRATION ORDINANCE	Gazette Number:	
Section:	58	Heading:	Liability of a person fraudulently obtaining or retaining estate of deceased	Version Date:	30/06/1997

If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any movable or immovable property of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the property received or coming into his hands, or the debt or liability released, after deducting-

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and
- (b) any payment made by him which might properly be made by a personal representative.

[cf. 1925 c. 23 s. 28 U.K.]

Chapter:	111	Title:	ESTATE DUTY ORDINANCE	Gazette Number:	
Section:	23	Heading:	Schedule of property to be annexed to probate	Version Date:	30/06/1997

(1) A schedule under the hand of the Commissioner of all the property passing on the death of a deceased person upon which estate duty has been paid or is payable on the death, and of all the property of a deceased person which, being trust property, is exempt from duty on the death shall be annexed to the probate or letters of administration, and any person who, without lawful authority or reasonable excuse, in any way deals with any estate of the deceased or any property held by the deceased in trust, which is not set out in such schedule, shall be liable to a penalty at level 3, or to

a penalty equal to 3 times the amount of the estate duty at the rate set out in the applicable Part of Schedule 1 to this Ordinance payable upon the estate so dealt with, at the election of the Commissioner: (Amended L.N. 338 of 1995; 27 of 1996 s. 10) Provided that the disclosure of any trust relating to property in any such schedule shall not constitute notice of the trust as against any purchaser or mortgagee for valuable consideration.

(2) Whenever a further affidavit is delivered, the probate or letters of administration in respect of which such affidavit is delivered shall be lodged with the Commissioner who shall insert in the schedule particulars of the additional property set out in the said affidavit.

(3) Where the Commissioner has granted exemption to an executor under section 14A(1)-

- (a) there shall be annexed to the probate or letters of administration the certificate of exemption issued to the executor under section 14A(2); and
- (b) the penalties referred to in subsection (1) of this section shall apply to any person who, without lawful authority or reasonable excuse, in any way deals with any property-
 - (i) belonging to a deceased; or
 - (ii) held by a deceased in trust for another person, which was not disclosed to the Commissioner under section 14A(1). (Added 21 of 1972 s.6)

Chapter:	111	Title:	ESTATE DUTY ORDINANCE	Gazette Number:	
Section:	24	Heading:	Penalties for intermeddling	Version Date:	30/06/1997

(1) Subject to subsection (3A), every person who, being neither the executor appointed by the will of the deceased nor (in the case of an intestacy) the person entitled in priority to the administration of the estate of the deceased, without lawful authority or excuse or without first delivering to the Commissioner accounts of the estate of the deceased as required by section 14, takes possession of or in any way administers any part of the estate of a deceased person, or any part of the income of any part of such estate, shall be liable to a penalty at level 3 and shall also be liable to a further penalty equal to 3 times the amount of the estate duty at the rate set out in the

applicable Part of Schedule 1 payable upon the whole estate of the deceased.

(Amended 21 of 1972 s. 7; L.N. 338 of 1995; 27 of 1996 s. 11)

(2) Subject to subsection (3A), every person who, being the executor appointed by the will of the deceased or (in the case of an intestacy) the person entitled in priority to the administration of the estate of the deceased, takes possession of or in any way administers any part of the estate of a deceased person or any part of the income of any part of such estate, within 6 months of the death of the deceased, and fails within the said period of 6 months to deliver to the Commissioner accounts of the estate of the deceased as required by section 14, shall be liable to a penalty at level 3, and shall also be liable to a further penalty equal to 3 times the amount of the estate duty at the rate set out in the applicable Part of Schedule 1 payable upon the whole estate of the deceased. (Amended 21 of 1972 s. 7; L.N. 338 of 1995; 27 of 1996 s. 11)

(3) Subject to subsection (3A), every person who, being the executor appointed by the will of the deceased or (in the case of an intestacy) the person entitled in priority to the administration of the estate of the deceased, takes possession of or in any way administers any part of the estate of a deceased person, or any part income of any part of such estate, after the expiration of 6 months from the death of the deceased, without first delivering to the Commissioner accounts of the estate of the deceased as required by section 14, shall be liable to a penalty at level 3 and shall also be liable to a further penalty equal to 3 times the amount of estate duty at the rate set out in the applicable Part of Schedule 1 payable on the whole estate of the deceased. (Amended 21 of 1972 s. 7; L.N. 338 of 1995; 27 of 1996 s. 11)

(3A) Subsections (1), (2) and (3) shall not apply in any case where the Commissioner has granted exemption to an executor under section 14A(1). (Added 21 of 1972 s. 7)

(4) The Commissioner shall have power to allow in writing the use of any specified part of the estate of a deceased person, or of any specified part of the income of any such estate, for the purpose of the burial of the deceased or for the purpose of the maintenance of the former dependants of the deceased notwithstanding the non-delivery of the accounts required by section 14, or for the purpose of preparing such accounts, and such authorized use of the estate or income as the case may be shall not render the person in question liable to any of the penalties provided by this section.

(5) The recovery of any penalty provided in this section shall be without prejudice to the liability of the accountable person to the payment of estate duty on the estate of the deceased. (Amended 27 of 1996 s. 11)

(5A) The amount of the estate duty and any penalty provided in this section is not in any case to exceed 4 times the rate set out in the applicable Part of Schedule 1.

(Added 27 of 1996 s. 11)

(6) For the purposes of this section, no account shall be deemed to have been delivered until the duty which reasonably appears to be payable in respect thereof has been paid, unless the Commissioner shall have allowed payment of the estate duty in respect of the said account to be postponed.

Chapter:	210	Title:	THEFT ORDINANCE	Gazette Number:	
Section:	9	Heading:	Theft	Version Date:	30/06/1997

THEFT, ROBBERY, BURGLARY, ETC.

Any person who commits theft shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

[cf. 1968 c. 60 s. 7 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	32	Heading:	False statements on oath made otherwise than in a judicial proceeding	Version Date:	30/06/1997

If any person being required or authorized by law to make any statement on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

(21 of 1922 s. 4 incorporated)

[cf. 1911 c. 6 s. 2 U.K.]

Chapter:	200	Title:	CRIMES ORDINANCE	Gazette Number:	
Section:	36	Heading:	False statutory declarations and other false statements without oath	Version Date:	30/06/1997

Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, such statement being made-

- (a) in a statutory declaration; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorized or required to make, attest or verify, by any enactment for the time being in force; or
- (c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any enactment for the time being in force,

shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years and to a fine.

(21 of 1922 s. 7 incorporated. Amended 5 of 1924 Schedule)

[cf. 1911 c. 6 s. 5 U.K.]