

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

This paper sets out the Administration's latest position on the commencement date of the Ordinance, the proposal to require a schedule of property as sworn by the personal representative to be annexed to the grant of representation after abolition of estate duty and related issues, as well as our response to Members' comments at the Bills Committee meeting held on 14 June.

Commencement Date

2. In response to Members' comments that sufficient time should be allowed so that all involved parties could make preparations for the new probate administration procedures after the abolition of estate duty, we propose that the abolition of estate duty and the new arrangements should start to have effect as from 1 October 2005, that is, the Estate Duty Ordinance (Cap. 111) (EDO) will not apply to persons who died at or after 00:00 hours of 1 October 2005. The existing procedures regarding estate duty clearance and probate administration will continue to apply to persons who died before then.

3. However, with a view to extending the benefit of abolition of the estate duty to cases of death occurring at or after 00:00 hours of the day of gazettal of the ordinance but before 1 October 2005, we propose that only a nominal duty of \$100 be charged on such estates if the assessed value of such estates exceeds \$7.5 million. The charging of a nominal duty will ensure that all existing legislative provisions and legal documents making reference to actual charging or payment of estate duty will not be put in doubt. To ensure that the same level of deterrence against intermeddling will apply to such cases, the penalty will be calculated under the existing formula but making reference to the amount of estate duty that would be chargeable under the existing duty rates and bands.

Schedule of Property

4. The Administration proposes to make it a mandatory requirement to have a schedule of property as sworn by the personal representative annexed to the grant of representation. This requirement will apply in cases where the deceased died on or after the commencement of the Revenue (Abolition of Estate Duty) Bill 2005.

5. In applying for grant of representation, the personal representative will be required to attach a schedule of property as sworn by him/her as an exhibit of the affidavit by the personal representative. The schedule should set out the assets and liabilities (without valuation except for cash) of the deceased in a specified form, and its contents should be declared by the personal representative. The specified form will state clearly that the schedule of property has not been vetted by the Probate Registry or any governmental authority. The schedule will eventually be annexed to the grant of representation issued by the Court.

6. In case there is a need to amend the schedule of property –

- (a) where the grant has not been issued at the time the amendment is required, a supplemental affidavit with a supplemental/amended schedule should be filed with the Court. The Court will annex the original and the supplemental/amended schedules to the grant;
- (b) where the grant annexing the original schedule has already been issued, a supplemental affidavit and supplemental/amended schedule, together with the grant itself, should be filed with the Court. The Court will amend the grant accordingly and annex the original and supplemental/amended schedules to it.

7. New provisions will be introduced to the Probate and Administration Ordinance (Cap. 10) and/or subsidiary legislation to effect the procedures in paragraphs 3 and 4 above as well as to empower the Registrar of the High Court to specify forms for the above purposes by general notice published in the Gazette. For the avoidance of doubt, notwithstanding Rule 5(1) of the Non-Contentious Probate Rules (Cap. 10A), the Registrar of the High Court should be specifically empowered to seek further information, including the value of property, for the purpose of the

grant.¹

Penalty on Intermeddling

8. To address Members' concern that the protection afforded to the beneficiaries might be weakened after the abolition of estate duty, the Administration proposes to introduce provision(s) similar to the existing sections 23 and 24 of the EDO to penalize any person who, without lawful authority or reasonable excuse, intermeddles with the deceased's property. In order to maintain the current deterrent effect, the penalty will be a fine at level 3, plus 100% of the value of the intermeddled property.

Eligibility of Former Dependants for Maintenance Payments

9. We propose to amend section 60B to the effect that the Secretary for Home Affairs (SHA) will only authorize disbursement from the estate for maintenance of former dependants "who have an interest in the estate" of the deceased.

Purpose of Powers in the Proposed Section 60C

10. We propose to make it clear in the legislation that the purpose of empowering SHA to authorize the inspection of safe deposit boxes under the proposed section 60C is to facilitate –

- (i) applications for grant of representation and related matters;
and
- (ii) the retrieval of any documents –
 - (a) by a person who is legally entitled to the document;
 - (b) the retrieval of which is proved to be of urgent necessity;
and

¹ In processing applications for grant, the Judiciary only needs to know the aggregate value of the deceased's assets in a very limited number of instances, viz. –

- (a) where summary administration is sought on the basis that the value of the estate is below \$150,000; and
- (b) where (i) the deceased died intestate; (ii) infants' interests are involved; and (iii) only one administrator is sought to be appointed. (1 administrator can be appointed if the estate is less than \$500,000. Where the estate is more than \$500,000, 2 administrators will be required.)

- (c) the retrieval of which will not prejudice the interest of any other person who is beneficially interested in the deceased's estate.

The exact wording of the additional provision will be further considered by the Law Draftsman. The policy is to continue the existing practice of the Inland Revenue Department.

Inspection of Safe Deposit Box

11. The Administration noted Members' concern that there should be adequate measures to assist and protect members of the public, especially those who are not represented by solicitors, in the new procedures for inspection of the safe deposit box of the deceased. In this connection, we undertake to retain the current practice of having two officers from the Government present at the inspection of a safe deposit box. This will ensure that there is an independent third party to witness the inspection process. The officers will also be able to assist in the inventory-taking procedure if necessary.

Publicity

12. Besides distributing pamphlets, issuing a press release and providing background briefings for the media, we will brief the Hong Kong Association of Banks and the Law Society of Hong Kong on the change in application procedures for grant of representation and the new arrangements under the proposed sections 60B and 60C.

*Home Affairs Bureau
16 June 2005*