

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

We provide herewith information regarding the commencement date and retrospective effect of the ordinance requested by Members at the Bills Committee meeting held on 20 June 2005.

Retrospective effect

2. On 17 June 2005, the Financial Secretary (FS) announced that we would resume Second Reading debate of the captioned Bill upon resumption of the Legislative Council in October but that the Bill would have retrospective effect back to July.

3. As set out in our paper of 16 June 2005, under the original proposal of resuming Second Reading debate of the Bill on 6 July 2005, only a nominal duty of \$100 would be chargeable on estates of cases of death occurring on or after the original gazettal date (i.e. 15 July 2005) but before 1 October 2005 if the assessed value of the estates exceed the current exemption threshold of \$7.5 million. The purpose of the proposal was to extend the benefit of abolition of the estate duty to cases of death occurring on or after the Ordinance is gazetted.

4. Under the latest proposal to resume Second Reading debate of the Bill after summer recess, as the FS has announced, we propose that upon the commencement of the Ordinance, the estate duty chargeable in

respect of deaths occurring on or after 15 July 2005 but before the commencement date (“the interim period”) would be reduced to \$100 for estates of assessed value exceeding \$7.5 million with retrospective effect. Any estate duty overpaid would be refunded. As for the need for the nominal duty, as the Department of Justice has advised earlier on, the nominal duty is necessary for ensuring that all existing legislative provisions and legal documents making reference to actual charging or payment of estate duty would not be put in doubt.

5. As regards the new probate and administration procedures, the Administration considers it inappropriate to apply them retrospectively. This is because the estate duty assessment and probate and administration procedures for cases of death occurring during the interim period might have started before the commencement date, and hence retrospective application of the new procedures to such cases would lead to uncertainty and confusion.

Penalty against intermeddling for cases of death occurring during the interim period

6. In line with our earlier proposal that the same level of deterrence against intermeddling should apply to cases of death occurring during the interim period, we propose that the retrospective reduction in estate duty should not affect the level of penalty against intermeddling provided in sections 23 and 24 of the Estate Duty Ordinance (“EDO”), including that which is calculated by reference to the amount of estate duty payable. We

propose that in calculating the penalty in such cases, reference should be made to the amount of estate duty that would be chargeable under the existing duty rates and bands.

Commencement date of the Revenue (Abolition of Estate Duty) Ordinance 2005 (“the Ordinance”)

7. To ensure that there would be sufficient time for relevant parties to publicize and to get prepared for the new probate and administration procedures applicable after the abolition of estate duty, we propose that the Ordinance should commence three weeks after its gazettal. This effectively means there would be a period of around 30 days between passage of the Bill and commencement of the Ordinance. The new probate and administration procedures would apply to cases of death that occurred on or after commencement of the Ordinance.

Financial Services and the Treasury Bureau (Treasury Branch)

2 July 2005