

## **Revenue (Abolition of Estate Duty) Bill 2005**

### **Schedule of Property and the Intermeddling Provisions**

#### **Introduction**

At the Bills Committee meeting held on 20 June 2005, the Administration was requested to prepare a paper setting out the different basis for the schedule of property under the Estate Duty Ordinance, Cap. 111 (“EDO”) and the proposed schedule of assets and liabilities following the abolition of estate duty, and the related intermeddling provisions.

#### **The Existing Arrangements under the EDO**

##### *Schedule of Property*

2. The personal representative of the estate (either the executor specified in the will or the intended administrator) is required under section 14(6) of the Estate Duty Ordinance, Cap. 111 (“EDO”) to file an Affidavit for the Commissioner (an estate duty return) to the Estate Duty Office of the Inland Revenue Department (“IRD”), setting out the local assets and liabilities of the deceased person. (The personal representative of a small estate, i.e. one with a value below \$400,000 without landed property, business and unquoted shares, needs only to file Statement in lieu of Affidavit (“SILA”), a simpler return, pursuant to section 14A of the EDO.)

3. After the finalization of the assessment and the receipt of estate duty, if payable, IRD prepares and issues a Certificate of Receipt of Estate Duty or a Certificate of Exemption if the aggregate value of the estate does not exceed the exemption threshold, together with a Schedule of Property. (As regards small estates, IRD issues a Certificate of Exemption and an authenticated copy of the SILA.)

4. When applying for a grant of representation, the personal representative is required by section 15(1) of the EDO and Rule 43 of the Non-Contentious Probate Rules, Cap. 10A to present the Certificate of Receipt of Estate Duty or Certificate of Exemption and the Schedule of Property (or the SILA for small estates) to the Probate Registry. Section

23(1) of the EDO states that the Schedule of Property (or the Certificate of Exemption for small estates) is to be annexed to the grant.

***Amendment to the Schedule of Property***

5. If the personal representative discovers any inaccuracy or omission in the Schedule of Property afterwards, he should file a Corrective Affidavit together with the grant to IRD. IRD will amend the Schedule of Property and forward it together with the grant to the Probate Registry. The Probate Registry will amend the grant and return it to the personal representative upon receipt of the latter's Affidavit.

6. The Affidavit for the Commissioner and Corrective Affidavit, are prescribed forms under a subsidiary legislation of the EDO, whereas the Schedule of Property is not.

7. The preparation and issue of a Schedule of Property under the EDO is to facilitate and ensure the collection of estate duty. However, in practice, the Schedule of Property has been relied on by beneficiaries of estates and other interested parties to establish the link between the deceased and his assets.

***Offence of Intermeddling – sections 23 and 24 of the EDO***

8. Section 23 of the EDO guards against intermeddling, without lawful authority or reasonable excuse, with any part of the estate of the deceased not set out in the Schedule of Property annexed to the grant. An offence under section 23 is liable to a fine at level 3 (currently capped at \$10,000) or a penalty equal to three times the amount of estate duty payable on the estate so dealt with.

9. Section 24 applies to –

- (a) Any person who, being the executor or the person entitled in priority to the administration of the estate, takes possession of or in any way administers any part of the estate or income thereof, without delivering or first delivering the accounts as required under section 14 of the EDO; and
- (b) Any person who, being neither the executor nor the person entitled in priority to the administration of the estate, without lawful authority or excuse or without first delivering the accounts as required under section 14 of the EDO, takes

possession of or in any way administers any part of the estate or income thereof.

An offence under section 24 of the EDO is liable to a fine at level 3, and a further penalty equal to three times the amount of estate duty payable on the whole estate of the deceased.

10. In this connection, it may be worth mentioning the intermeddling provisions in the EDO, sections 23 and 24, are essentially for the protection of revenue. The act of intermeddling hinges on dealing with asset not set out in the Schedule of Property and on “without delivering” or “without first delivering” to the Commissioner accounts of the estate of the deceased as required under the EDO.

## **Proposed Way Forward Following the Abolition of Estate Duty**

### ***Schedule of Assets and Liabilities***

11. It is not necessary for the Court to be empowered to require a schedule of property for processing an application for a grant of representation. However, to safeguard the interests of beneficiaries of estates, the Administration proposes to make it a requirement under the Probate and Administration Ordinance, Cap. 10 (“PAO”) for –

- (a) the personal representative to prepare, swear to and file a schedule of assets and liabilities of the deceased in support of his application for a grant; and
- (b) the Probate Registry to annex the schedule of assets and liabilities to the grant.

The schedule of assets and liabilities would serve as a reference for beneficiaries of estates and other interested parties to ascertain their entitlements, including their rightful interests.

12. Same as in the case of the Schedule of Property prepared on the basis of the Affidavit for the Commissioner, the proposed schedule of assets and liabilities only sets out the assets and liabilities (including liabilities contracted outside Hong Kong but charged on Hong Kong assets) of the deceased in Hong Kong as at the date of his death. The personal representative is not required to put a value on the assets stated therein except in respect of the amount of cash. We do not propose to

have the value of the assets stated and verified as this would mean a resource call on the estate and the worth of the contents is likely to vary over time. Neither would the contents of the schedule be vetted by the Probate Registry or any governmental authority. To avoid any misunderstanding, a note to the effect would be included in the specified form for the schedule of assets and liabilities.

### ***Amendment to the Schedule of Assets and Liabilities***

13. If the personal representative discovers any inaccuracy or omission before the issue of the grant, he should file a supplemental schedule of assets and liabilities verified by affidavit together with the grant with the Probate Registry. The Probate Registry would amend the grant if necessary and annex the supplemental schedule thereto.

14. The Registrar is to be empowered to specify by General Notice in the Gazette the necessary forms for the above purposes, including the schedule of assets and liabilities, the affidavit, the supplemental schedule of assets and liabilities and its supporting affidavit.

### ***Penalties on Intermeddling***

15. In order to address the Bills Committee's concern that the protection afforded to the beneficiaries might be weakened after the abolition of estate duty, the Administration has undertaken to provide in the Bill intermeddling provisions similar to those in sections 23 and 24 of the EDO. In order to safeguard the interest of the beneficiaries and other relevant third parties in the estate concerned, we now propose to include in the Bill a provision against intermeddling with any part of the estate or any part of the income from the estate without lawful authority or excuse. The executor or the administrator is also prohibited from intermeddling without lawful authority or excuse with --

- (a) any part or any part of the income of the estate before the grant of probate or letters of administration;
- (b) any part or any part of the income of the estate not shown in the schedule of assets and liabilities.

Penalty for the offence is a fine at level 3, with an additional penalty equal to the value of the intermeddled property. Under the EDO, the latter is 3 times the duty on the whole estate.

16. The proposed intermeddling provisions basically mean that the estate of the deceased is to be frozen until the issue of the grant. Although as pointed out by the Bills Committee, the grant of probate is related back to date of death of the deceased, the proposed legal position is that he/she should not deal with the estate until the Court has issued the grant. We appreciate that this may cause inconvenience in some cases, e.g. the surviving renter of a safe deposit box jointly leased with the deceased will not be able to remove anything from the safe deposit box except for urgently needed documents not in the name of the deceased and of non valuable consideration. It is a case of balancing the interests of various parties involved, and we consider that priority should be given to that of the beneficiaries of the estate.

### **Consultation with Relevant Parties**

17. We will continue to consult the Law Society of Hong Kong on the proposed requirements of a schedule of assets and liabilities. As mentioned in our earlier paper on the safe deposit box with joint renters, we will also consult the Hong Kong Association of Banks and the Law Society on the inspection arrangements and the intermeddling provisions.

*Home Affairs Bureau*

*5 July 2005*