《2005年收入(取消遺產稅)條例草案》對立法會助理法律顧問所提問題的回應

以下是政府當局對助理法律顧問在二零零五年五月二十五日來信所提問題的綜合回應。

一般意見

1. 遺產稅在有效制衡逃稅方面起着重要的作用。在取消遺產稅後, 政府當局是否有其他政策協助稅務局查出逃稅個案?

遺產申報誓章所披露的龐大財產如與死者生前提交的報稅表所申報的不符,儘管有時可能會提供一些線索,有助調查某人根據《稅務條例》而可能負有的繳稅法律責任,但這類資產的存在並非該人在報稅表短報入息/利潤的直接證明。

近年稅務局採用了一些新方法,以確定可能逃稅的個案,盡快進行調查。其中一個方法是利用電腦程式選取逃稅風險較高的個案,分析當中每年遞交的報稅表所填報的數據資料。因此,稅務局對遺產申報誓章作為確定逃稅個案的資料來源的依賴程度,在過去數年已大大減少。現時遺產申報誓章只屬於一個次要的間接資料來源。

此外,在取消遺產稅後,稅務局會繼續收到入境事務處每月提供的本地死亡個案報告,以及遺產承辦處提供關於授予申請的資料及就授予書提出的再加蓋印章申請的資料(根據《遺囑認證及遺產管理條例》

(第 10 章)擬議第 24A 及 49AA 條)。在收到該等資料後,稅務局會檢討有關死者的稅務檔案,確保可以依時發出所有尚未發出的評稅,以及對懷疑短報入息/利潤的個案展開補徵稅款調查。根據《稅務條例》第 54 條的擬議修訂條文,由某人去世的課稅年度結束後起計,稅務局須在三年內,,向該人發出評稅通知書。

2. 條例草案如獲通過,擅自處理在條例生效前或生效後去世的人士的遺產,是否屬於犯罪(及有何罰則)?如不屬犯罪,則根據甚麼法律依據把稅務局局長的權力轉授予民政事務局局長?

為保障在現行稅制下遺產稅的稅收,凡任何人在領取遺產稅清妥證明書前處理或管有死者的任何遺產,即可處以罰款(《遺產稅條例》第23及24條)。因此,死者的資產會在當局發出遺產稅清妥證明書前一直凍結。為方便收取稅款,以及在死者的資產被凍結期間協助其家屬,《遺產稅條例》賦權稅務局局長查閱任何文件或物品,特別是可以授權代表視察死者存放在銀行保險箱的物品,並且授權從遺產中發放殮葬死者或供養其生前受養人的費用。

在取消遺產稅後,當局便再沒有需要對擅自處理在條例生效當日或之 後去世的人士的遺產者判罪(及處以罰則)。為確保死者家屬或遺屬不 會因稅務局局長失去《遺產稅條例》所賦予的權力而受到影響,政府 當局建議授權民政事務局局長履行在上一段所提及的職能,並以行政 方式轉委稅務局局長執行,預計為期一年,以確保向市民提供的便利 在取消遺產稅後的一段期間內基本上維持不變。此外,當局會研究由 私人機構執行部分與剩餘權力有關的職能的可行性。 3. 在條例草案刊憲成為條例當日凌晨零時(香港時間)去世的人士, 其遺產是否須課繳遺產稅?

如證實某人在條例開始實施當日凌晨零時去世,其遺產無須繳納遺產稅,因為條例在那時候已生效。

條例草案第6條 已故納稅人的遺屬執行人的法律責任

4. 限定在死者去世後三年內必須作出評稅,有何理據?假如在死者去世後三年內沒有收到遺囑認證書或遺產管理書申請,有何對策?

根據現行《稅務條例》第 54 條,任何就死者去世前的時段作出的評稅,不得在該去世日期起計一年後或遞交遺產申報誓章日期起計一年後向遺囑執行人作出,兩個日期以較遲的為準。《稅務條例》第 60 條就某一課稅年度的評稅進一步訂出時限,一般個案的期限為該課稅年度屆滿後六年,至於蓄意逃稅個案,則為該課稅年度屆滿後十年。

在遺產稅取消後,遺屬執行人或管理人無須遞交遺產申報誓章。因此,我們有需要就死者去世前期間的評稅期限的計算方法,作出修訂。

我們參考了英國和新加坡的做法。在新加坡,任何就死者去世前的入 息作出的評稅或補加評稅,必須在該人去世的課稅年度後三年內向有 關的遺囑執行人作出(見附錄 1《入息稅法令》(Income Tax Act)第 58(2)條的摘錄)。在英國,則不能在緊接死者去世的課稅年度的一月三十一日起計三年後作出上述評稅(見附錄 2《1970 年稅務管理法令》(Tax Management Act 1970)第 40(1)條的摘錄)。

二零零二至零三年度及二零零三至零四年度香港的有關數據顯示,約 有 83%的遺產申報誓章於死者去世後兩年內遞交。為了預留足夠的時 間發出報稅表及查訊遺屬執行人,我們認為應把評稅的時限延長至死 者去世後三年,跟新加坡和英國的做法一致。

根據《稅務條例》第 54 條,遺囑執行人負有就死者生前所賺取入息繳稅的法律責任。根據《稅務條例》第 2 條的定義,"遺囑執行人" 泛指"任何遺囑執行人、遺產管理人或管理死者遺產的其他人,並包括根據信託創立人最後遺囑所設立的信託而行事的受託人"。當局可對符合遺囑執行人定義的人就死者去世日期前的期間作出評稅,即使該人未獲授予遺囑認證。

第7及第8條 對《遺囑認證及遺產管理條例》的有關修訂

5. 司法常務官根據《遺囑認證及遺產管理條例》第 24A 及 49AA 條 須向稅務局局長提供的資料

稅務局擬請求處理遺產事務的司法常務官根據《遺囑認證及遺產管理條例》擬議第 24A 及 49AA 條提供以下資料:

(i) 每月以電子方式提交有關所有在上一個月接獲的授予申請及 授予書蓋章申請的報告,列載死者及申請人的資料(姓名、 身分證號碼及最新地址)、死者的去世日期及申請日期;以 及

(ii) 每月以電子方式提交有關所有在上一個月發出或蓋章的授予 書報告,列載死者及遺囑執行人/遺產管理人的資料。

第9條 加入第 VA 部

6. 在《遺囑認證及遺產管理條例》新訂第 60B(1)(b)條中,為何用 以支付殯殮開支或死者生前受養人生活費的款項限於只可從只以死者 本人姓名開立的銀行帳戶發放?是否有必要查明該帳戶是否信託帳 戶?這規定是否與稅務局局長在《遺產稅條例》第 24(4)條下的現有 權力一致?

目前,稅務局局長根據《遺產稅條例》(第 111 章)第 24(4)條獲授權發放死者遺產或收入的任何部分,以支付死者的殯殮開支或死者生前受養人的生活費。現行條文並沒有限制有關款項只可從只以死者本人姓名開立的銀行帳戶發放。不過,就聯名帳戶而言,尚存的聯名帳戶持有人可繼續在另一名持有人去世後從帳戶提取款項,因此,在新訂第 60B(1)(b)條下的權力無須涵蓋聯名銀行帳戶。

至於信託帳戶,目前的做法是,如有任何資料顯示有關的銀行帳戶是死者以信託方式持有另一人的帳戶,則稅務局局長不會批准從該帳戶發放任何款項。事實上,稅務局甚少接獲從他人以信託方式持有死者的銀行帳戶發放款項的請求。由於核實信託關係的真實性需要相當長

的時間,而在遺產稅廢除後,申請遺產承辦書的時間相信會大為縮短,因此,政府當局認為沒有必要把授權延伸至信託帳戶。

7. 民政事務局局長根據新訂第 60B(3)條在證明書內指明款額時,會考慮甚麼準則?他會否考慮《遺產稅條例》第 13 條?該條就在香港招致的合理殯殮費給予免稅額,如在《 1994 年遺產稅(修訂)條例》生效日期當日或之後去世,則免稅額不超逾 50,000 元。

准許從遺產發放款項以支付殯殮費及生活費的權力,主要是為了濟助 有困難的人士。在現時處理的申請中,幾乎所有都是來自因失去家庭 支柱而面對即時財政困難的市民。

考慮到普遍殯殮套裝的費用,現時從遺產發放款項以支付殯殮費的安排設有 20,000 元的行政上限,以免在法院授予遺產承辦書前發放過多款項。民政事務局局長將按現時的做法,為發放款項以支付殯殮費設定相同的限額。

8. 在新訂第 60 C(3)(b)條,為確定檢視證明書內指明的任何文件或物品是否裝載在有關保管箱內的目的為何?根據《遺產稅條例》第 13(8)條,署長為該條例的施行而可授權任何人視察任何財產並向其報告財產的價值。

市民把其遺囑(如有的話)存放在保管箱內的情況並不罕見。現時,如果在點算保管箱內的物品時發現遺囑,而在場的申請人是遺囑執行

人,該申請人就可取走該遺囑,以便申請遺產承辦書。新訂第 60C 條 旨在保留現時的做法,以免不必要地將遺產承辦書的申請複雜化。

在一些個案中,為支持遺產承辦書的申請或其他目的,有關人士須從 保管箱取走遺囑以外的文件,例如結婚證書、出世紙及不屬於死者的 文件。

9. 銀行現時的做法是否一如在新訂第 60C(4)條所建議,在准許任何人接管有關遺囑或文書前,先複印該遺囑或文書?

現時,倘若遺產承辦人在開啟保管箱時取走遺囑或遺囑附件,稅務局局長會複印該文件兩份,分別存放在稅務局有關死者遺產稅的檔案及該保管箱內。稅務局留意到有數間銀行會在遺囑執行人同意的情況下,複印遺囑一份。在移走其他文件方面則沒有類似的安排。

鑑於遺囑及遺囑附件的重要性,當局建議保留現時的做法,在遺囑被取走時複印遺囑,並把該複印本存放在保管箱內。這項安排可能成為附於檢視證明書的條件之一。

10. 根據新訂第 60B(1)(a)及 60C(1)(a)條,向民政事務局局長提出的申請須按照他所指明的方式提出。根據新訂第 60D條,支用款項證明書或檢視證明書須符合局長指明的格式。局長會如何指明申請的方式及證明書的格式?

現時,遺產稅署提供表格,供申請從銀行帳戶發放款項以支付殯殮費 及預約開啟保管箱之用。申請獲批准後,遺產稅署會向有關申請人或 銀行發出"不反對"函件。這些表格和函件均屬行政性質。

就民政事務局局長指明的申請方式而言,當局擬參考現時稅務局局長所採用的申請表格的格式。"不反對"函件將被支用款項證明書和檢視證明書取代,而後兩者的格式會仿照前者。這些新表格和函件同樣都會屬於行政性質。

11. 新訂第 60E(1)條下的證明書會附加何種條件?

附加於證明書的條件會依據現時稅務局局長在准許從銀行帳戶發放款項和開啟保管箱時所指明的條件而訂定,例如:

- (i) 有關銀行須把款項以本票直接付給證明書上指明的殮葬商;
- (ii) 有關銀行須以分期方式,每月向死者生前受養人支付生活費;以 及

- (iii) 如在保管箱內發現遺屬,有關銀行只可准許遺屬執行人接管該遺屬。如申請人並非遺屬內指明的遺屬執行人,則有關銀行不會准許該申請人從保管箱取走該遺屬。
- 12. 新訂第 60G 條規定,第 VA 部在民政事務局局長藉於憲報刊登的公告指定的日期停止有效。預定的有效期為期多久,所述公告又是否附屬法例?

只要來自政府的授權仍屬必要,則新增的第 VA 部仍然有效。舉例來說,我們知悉在新加坡和加拿大卑詩省,開啟保管箱的過程並不需要政府的參與。我們會諮詢有關方面,看看可否在香港採用類似的安排,例如通過銀行與其客戶之間的合約安排。民政事務局局長根據新訂第 60G 條在憲報刊報的公告是附屬法例。

條例草案第11條 遺屬認證司法管轄權

13. 廢除遺囑認證授予書或遺產管理書或將上述文件再加蓋印章的費用有何理據?為何廢除上述費用是相應修訂?

目前,凡申領遺囑認證授予書或遺產管理書,都須就申請或簽發該等文件繳付費用。簽發遺囑認證授予書/遺產管理書的費用(《高等法院費用規則》(第 4D 章)附表 2 第 2 項),是參照財產清單所述明產業的淨值而訂定。財產清單是為評估及保障遺產稅的目的而擬備。在遺產稅取消後,再無須擬備財產清單。在這情況下,簽發遺囑認證授予

書或遺產管理書的費用就不能徵收,因此須作出相應修訂,予以廢除。

財經事務及庫務局

二零零五年六月二日

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Appendix 1

- (c) any owner of such moneys who objects to the share presumed under paragraph (b) shall give notice of his objection in writing to the person declared to be the agent under subsection (1) within 28 days of the receipt of the notice of the agent under paragraph (a) (i), or within such further period as the Comptroller in his discretion may allow, and furnish proof as to his share of the moneys;
- (d) where an objection under paragraph (c) has been received, the person declared to be the agent shall
 - (i) retain the amount of such moneys referred to in paragraph (a) (ii) until such time as the Comptroller by notice under paragraph (e) informs him of his decision on the objection; and
 - (ii) inform the Comptroller of the objection within 7 days of the receipt of the objection;
- (e) the Comptroller shall consider the objection and shall by notice in writing inform the person declared to be the agent of his decision and the agent shall, notwithstanding any appeal under paragraph (f), pay over any tax due from the share of moneys decided by the Comptroller as the amount, not exceeding the amount presumed under paragraph (b) to be the share of the person by whom the tax is payable, held by him for or due by him to the person; and
- (f) any owner of such moneys aggrieved by the decision of the Comptroller under paragraph (e) may appeal against the decision to the Board of Review and the provisions of Part XVIII shall apply, with the necessary modifications, to the appeal.

(6) Any person making any payment to the Comptroller under this section shall be deemed to have been acting under the authority of the person by whom any tax is payable and is hereby indemnified in respect of such payment.

(7) In this section —

"joint account" means any account in the names of 2 or more persons but excludes any partnership account, trust account and any account where a minor is one of the joint account holders;

"tax" includes any penalty or any other money which a person is liable to pay to the Comptroller under this Act.

[11/94; 32/95]

Deceased persons

- 58.—(1) Where an individual dies, then as respects income arising before his death all rights and duties which would have attached to him, and any liability to be charged with or to pay tax to which he would have been subject under this Act if he had not died, shall pass to his executor, and the amount of any tax payable by the executor under this section shall be a debt due from and payable out of the estate of the deceased.
- (2) Any assessment or additional assessment on any such income shall not be made later than the end of the third year of assessment following that in which the individual died.
- (3) Where, by reason of the death of the individual, a trade, business, profession, vocation or employment ceases to be carried on or exercised by him or the income from any other source ceases, and section 35 applies, the executor of the individual shall be liable for the tax for which the individual would have been liable if he had not died but, except in the case of dividends, a cessation had taken place at the date of his death.
- (4) In the case of an individual dying during the year preceding the year of assessment, if his executor distributes the estate before the commencement of the year of assessment, such executor shall pay any tax for that year of assessment at the rate or rates in force at the date of distribution of the estate, if the rate of tax for that year of

http://agcvldb4.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=2004-REVED-134&doctitle=INC... 22/03/2005

Assessment and Claims

TMA 1970 s 41A

39 Neglect: corporation tax

Commentary—A3.226.

Amendments—This section repealed by FA 1989 s 149(2), (7) and Sch 17 Pt VIII without affecting the making of assessments for years of assessment before 1983-84 or for accounting periods ending before 1 April 1983.

40 Assessment on personal representatives

- (1) For the purpose of the charge of tax on the executors or administrators of a deceased person in respect of the income, or chargeable gains, which arose or accrued to him before his death, the time allowed by section 34, 35 or 36 above shall in no case extend beyond the end of [the period of three years beginning with the 31st January next following the year of assessment]⁵ in which the deceased
- (2) ... for the purpose of making good to the Crown any loss of tax attributable to the [fraudulent or negligent conduct]³ of a person who has died, an assessment on his personal representatives to tax for any year of assessment ending not earlier than six years before his death may be made at any time before the end of [the period of three years beginning with the 31st January next following the year of assessment]5 in which he died.
- (3) In [this section] "tax" means income tax or capital gains tax.
- (4) Any act or omission such as is mentioned in section 98B below on the part of a grouping (as defined in that section) or member of a grouping shall be deemed for the purposes of subsection (2) above to be the act or omission of each member of the grouping.]

Commentary—A3.227, 1682.

Revenue Internal Guidance-Enquiry Manual 7301 (the time limits under s 40 apply, in particular, to

consequential amendments under s 30B(2) to the self-assessment of deceased partners in partnerships, but does not affect the time limit for amending the partnerships statement).

Simon's Tax Cases—s 40(1), Larter v Skone James [1976] STC 220; Honig v Sarsfield [1986] STC 246.

Definitions—"Chargeable gain", TCGA 1992 s 15(2) by virtue of s 118(1); "year of assessment", TA

Cross references—See FA 1993 s 178(3) (Lloyd's underwriters: payment to a member in respect of his loss under a stop-loss insurance policy or out of High Level Stop Loss Fund: extension of time limit under this section for assessment or further assessment).

FA 1993 Sch 19 para 8 (acts or omissions of underwriting syndicate's managing agent treated as acts or omissions of each member for the purposes of this section).

Amendments—

Words in sub-s (3) substituted by FA 1985 s 93(7), Sch 25 Pt II para 5.

Words in sub-s (2) repealed by FA 1989 Sch 17 Pt VIII. Words in sub-s (2) substituted by FA 1989 s 149(4)(a)(ii), (7).

Sub-s (4) inserted by FA 1990 Sch 11 paras 4(2), 5 with effect from 1 July 1989.

Words in sub-ss (1), (2) substituted by FA 1994 ss 196, 199(1), (2)(a) and Sch 19 para 12 with effect from the year 1996-97.

41 Leave of General or Special Commissioners required for certain assessments

-A3.222, 223. Commentary-

Amendments—This section repealed by FA 1989 s 149(2), (7) and Sch 17 Pt VIII without affecting the making of assessments for years of assessment before 1983–84 or for accounting periods ending before 1 April 1983.

Corporation tax determinations

41A Determination procedure

Commentary-

Amendments-This section repealed by FA 1998 Sch 19 para 19, Sch 27 Part III(28) with effect in relation to accounting periods ending after 30 June 1999 (by virtue of Finance Act 1994, Section 199, (Appointed Day) Order, SI 1998/3173 art 2).

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