

Revenue (Abolition of Estate Duty) Bill 2005

**Response to questions raised by Hon Chan Kam-lam
in his letter of 25 May 2005**

The Administration's response to the questions raised is set out below.

1. Grateful for the Administration's clarification as to whether the certificate for release of money would only be issued once or for multiple times. (paragraph 2 of letter)

The proposed addition of section 60B to the Probate and Administration Ordinance (Cap. 10) (PAO) imposes no restriction on the number of times that a the certificate for release of money may be issued.

Currently the Commissioner of Inland Revenue (CIR) would, in respect of each deceased person, write to the bank concerned only once to authorize the release of money from the estate to meet funeral expenses. In respect of maintenance payments, depending on individual circumstances, CIR may, in respect of each deceased person, write to the bank concerned more than once to authorize the release of money from the estate for maintenance of former dependants of the deceased.

Following the abolition of estate duty, in order to maintain the services currently provided to the public, the Secretary for Home Affairs (SHA) would follow the current practices of the Inland Revenue Department (IRD) and issue the Certificate for Release of Money once or more than once, depending on the purpose of application for release of money from the estate and the need for this.

2. For people who could not afford the funeral and maintenance expenses and thus need to apply to SHA for the Certificate for Release of Money, they may also have a problem paying the legal costs for application for probate, etc. Would the Administration consider amending s.60B(3) to include payment of the relevant legal costs or for purposes considered by SHA to be necessary? (paragraph 3 of letter)

The proposed addition of section 60B to the PAO aims at maintaining the services currently provided by the CIR, the retention of which is considered necessary to ensure that the family or dependants of the deceased persons would not be adversely affected.

Section 24(4) of the Estate Duty Ordinance (Cap. 111) empowers CIR to authorize the release of money from the estate of a deceased person to meet funeral expenses, the maintenance of former dependants of the deceased, or the preparation of accounts of the estate. Such power aims at providing immediate assistance to former dependants of the deceased, and does not cover those expenses that are not urgent, including legal costs for application for probate.

The application procedure for grant of representation would be much simplified after the abolition of estate duty. The time taken for former dependants of the deceased to obtain a grant of representation and take possession of the estate would be shortened. If the proposal to repeal the charging of court fees in accordance with the value of the estate is endorsed, the application fees for grant of representation would be significantly reduced. An applicant for grant of representation would have to pay only \$265 upon filing the application. Under rule 2 of the High Court Fees Rules (Cap. 4D), the “Registrar may reduce, remit or defer payment of any fee specified in the First or Second Schedule as he may think fit in any particular case...”, including the above-mentioned fee to be paid upon filing an application.

We do not therefore propose to include legal costs as one of the purposes for application for release of money from the estate under the proposed section 60B(3).

3. Under the proposed s.60B(1)(c) of the Probate and Administration Ordinance, SHA may issue to the applicant a Certificate for release of money upon such proof as he considers sufficient (in addition to fulfilment of the conditions or s.60B(1)(a) and (b)). Grateful for Administration’s clarification as to whether this includes, in the case of death occurring in the Mainland, a death certificate issued in the Mainland and authentication by the Consular Department of the Ministry of Foreign

Affairs. If so, since the procedures take time and the cost is not low, would the Administration consider accepting other information to replace authentication by the Consular Department of MFA? (paragraph 4 of letter)

Currently, when accepting applications for release of money from the estate or opening of safe deposit boxes, CIR would require the applicant to submit the original copy of one of the following documents to prove that the deceased person had passed away –

- (i) the death certificate of the deceased;
- (ii) the burial certificate of the deceased (in case the deceased was buried in Hong Kong); or
- (iii) an affidavit to swear to the death of a person made under rule 52 of the Non-Contentious Probate Rules (Cap. 10A).

We understand that documents originating from the Mainland should be authenticated by the Consular Department of the Ministry of Foreign Affairs under the legalization of documents arrangements. The relevant department is looking into the concerns arising from the authentication of death certificates issued by the Mainland authorities and will consider whether and how the present procedures could be improved.

Apart from the above-mentioned documents, CIR would, depending on the circumstances, request the applicant to supply the original copy of documents such as the quotation for funeral services, marriage certificate, birth certificate, will of the deceased and evidence showing that the deceased used to provide for the dependants.

SHA would follow the current practice and request the applicant to produce sufficient proof when considering the relevant application.

4. Does SHA has any mechanism to appropriately handle the situation where there is information to indicate that the applicant for the certificate for release of money may abuse the estate of the deceased and cause

unfairness to the other beneficiaries who are minors? (paragraph 5 of letter)

SHA would follow the existing practice, and set ceilings for application for release of money from the estate for funeral expenses of the deceased and maintenance of former dependants of the deceased respectively. Currently, the relevant ceilings are as follows –

- (i) Funeral expenses: If the applicant is the spouse or children of the deceased, the maximum amount allowed for application is half the value of the estate of the deceased, but the amount shall not exceed \$20,000. If the applicant and the deceased are of relationships other than the above, the maximum amount allowed for application is half the value of the estate of the deceased, but the amount shall not exceed \$10,000.
- (ii) Maintenance: The applied amount shall not exceed the dependant's interests in the estate of the deceased. If the amount applied by the dependant exceeds his/her interests in the estate of the deceased, or the dependant does not have any interests in the estate of the deceased, the dependant may apply for a court order by way of section 3 of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481).

We consider these guidelines and ceilings can guard against abuses that result in the benefits of other beneficiaries being adversely affected.

5. Is there any mechanism in the legislation to cater for the situation where a person provides false information to SHA or falsely pretends to be a person maintained by the deceased person? If so, what are the details? (paragraph 6 of letter)

SHA would follow the current practice and take appropriate measures to guard against fraud. Such measures include requiring the applicant to produce original copies of documents such as the burial certificate, quotation for funeral

services, marriage certificate, birth certificate, will of the deceased, or evidence showing that the deceased used to provide for the dependants. If the money is to meet funeral expenses, SHA would require the bank to make payment to the funeral service supplier direct by cashier's order. If the money is for maintenance of former dependants, SHA would require the bank to make a monthly payment to the applicant for a maximum period of three months. If the grant of representation has not been obtained after three months, the applicant may apply again.

In cases of fraud or provision of false statement, SHA may, depending on the circumstances of the case in question, consider legal action under section 36 of the Crimes Ordinance (Cap. 200) and/or section 16A of the Theft Ordinance (Cap. 210). The Administration is not aware of any fraud cases in the past.

6. Does the applicant have any right of administrative appeal if he disagrees with SHA's decision (including objection to other applications by persons claiming to be maintained by the deceased person)? (paragraph 7 of letter)

If the applicant does not agree with a decision of SHA, he/she may apply for judicial review.

7. The Bill proposes to amend s.4(3) and (4) of the Intestates' Estate Ordinance. It seems that the term "death duties" referred to in the above provisions are not defined in section 2 of the Ordinance. Grateful for Administration's clarification and consideration as to whether revisions should be made. (paragraph 8 of letter)

The term "death duties" is a general term which refers to taxes related to inheritance of estate, including estate duty or inheritance tax paid to foreign countries in respect of the estate of a deceased person. Thus the Administration considers it unnecessary to interpret the term "death duties" under section 2 of the Intestates' Estate Ordinance (Cap. 73).

Financial Services and the Treasury Bureau
2 June 2005