

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

### **Intermeddling Provisions**

#### **Introduction**

As requested by the Bills Committee at the meeting of 6 July 2005, this paper sets out the current intermeddling provisions under the Estate Duty Ordinance, Cap. 111 (“EDO”), the proposed arrangements for the interim period before the new probate and administration procedures come into operation and the intermeddling provisions following the abolition of estate duty, as well as the application of the respective provisions.

#### **Intermeddling Provisions under the EDO**

2. Sections 23 and 24 of the EDO provide for offences of intermeddling with the estate of the deceased.
3. Section 23 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.
4. Section 24 applies to –
  - (a) 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;
  - (b) 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 within 6 months of the death of the deceased, and fails within that 6-month period to deliver the accounts as required under section 14 of the EDO; and

- (c) 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, after 6 months from the death of the deceased, without first delivering the accounts as required under section 14 of the EDO.

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.

### **Intermeddling of Estates of Persons who Died before 15 July 2005**

5. Under the Administration's proposal, sections 23 and 24 of the EDO will continue to apply to those cases involving estates of the deceased who died before 15 July 2005, irrespective of the date on which the act of intermeddling takes place. Persons contravening section 23 of the EDO shall be liable to a fine at level 3 or a penalty equal to three times of the amount of estate duty payable on the estates so dealt with at the existing rates and bands. Persons contravening section 24 of the EDO shall be liable to a fine at level 3 and a further penalty equal to three times of the amount of estate duty payable on the estates at the existing rates and bands.

### **Intermeddling of Estates of Persons who Died in the Interim Period**

6. The Administration proposes that estates of persons who died in the interim period, i.e. on or after 15 July 2005 but before the commencement of the new ordinance, which is proposed to be 21 days after gazettal of the new ordinance, be levied estate duty in the nominal amount of \$100 if their assessed value exceeds \$7.5 million. In order to maintain the same level of deterrence against intermeddling, the proposed

retrospective reduction in estate duty should not affect the level of penalty against intermeddling provided in sections 23 and 24 of the EDO. The Administration therefore proposes that provisions in sections 23 and 24 should continue to apply to intermeddling with estates of persons who died in the interim period, notwithstanding that the estate duty liability of the estate is only nominal during this period. In other words, in calculating the penalty in such cases, reference should continue to be made to the amount of estate duty that would be chargeable under the existing duty rates and bands.

### **Intermeddling Provisions following the Abolition of Estate Duty**

7. The intermeddling provisions under the EDO are for revenue protection purposes although the public has come to regard them as measures to protect the beneficiaries' rights in the estates of the deceased where applicable. With the abolition of estate duty, these provisions fall away. In order to safeguard the interest of the beneficiaries and other relevant third parties in the estate of the deceased concerned, we propose to include in the Bill provisions similar to sections 23 and 24 of the EDO against intermeddling *without lawful authority or excuse* with any part of the estate or any part of the income from the estate of the deceased under the Probate and Administration Ordinance, Cap. 10 ("PAO").

8. Apart from prohibition against intermeddling by any party with any part or any part of the income of the estate not shown in the schedule of assets and liabilities verified by affidavit and annexed to the grant, intermeddling with any part or any part of the income of the estate by any person (other than the executor or the person entitled in priority to the administration of the estate) without filing an application for grant supported by a schedule of assets and liabilities verified by affidavit is also prohibited. In the case of the executor or the person entitled in priority to the administration of the estate, intermeddling will take place if he/she deals with any part of the estate or the income thereof –

- (a) within 6 months from the death of the deceased and fails within the said period of 6 month to file an application for grant supported by a schedule of assets and liabilities verified by affidavit; or

- (b) after the expiration of 6 months from the date of the death of the deceased without first filing an application for grant supported by a schedule of assets and liabilities verified by affidavit.

9. 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 reference is to the amount of estate duty payable on the intermeddled property or on the whole estate of the deceased.)

10. The proposed provision will be applicable to cases involving the estate of a deceased person who died on or after the commencement date of the new ordinance.

11. The proposed intermeddling provisions under the PAO may arguably be more stringent than those under the EDO. Under the existing arrangements, the executor or administrator may not apply for grant of representation if no transfer of title is required for any part of the estate of the deceased. The proposed intermeddling provisions to be included under the PAO would oblige them to apply for grant of representation. On the other hand, the implied requirement of filing an application for grant of representation under the proposed intermeddling provisions supported by a schedule of assets and liabilities verified by affidavit may be seen as a substitute for the requirement to file an Affidavit for the Commissioner or a Statement in lieu of Affidavit under the EDO.

### **Application of the Intermeddling Provisions**

12. By virtue of section 2 of the Bill, the EDO shall not apply in the case of persons who died on or after the commencement of the new ordinance. The EDO shall continue to apply in the case of persons who died before that date. Accordingly, if any person who intermeddles at any time with an estate in respect of a person who died before the commencement of the new ordinance, section 23 or 24 of the EDO, as the case may be, will continue to apply. He will be liable to fine at level 3 or/and a further penalty equal to 3 times the amount of estate duty

payable on the estate as proposed in paragraphs 5 and 6 above, i.e. –

- (a) in the case of the estate of a person who died before 15 July 2005, under section 23 or 24 of the EDO; and
- (b) in the case of the estate of a person who died in the interim period (i.e. on or after 15 July 2005 and before the commencement of the new ordinance), under the proposed sections 23(1A) or 24(3B) of the EDO.

If any person intermeddles with the estate of a person who died on or after the commencement of the new ordinance, the proposed section 60H of the PAO will be applicable – he will be liable to a fine at level 3 and an additional penalty equal to the value of the intermeddled property as proposed in paragraphs 7 to 10 above.

13. As far as the application of the different sets of intermeddling provisions is concerned, the deciding factor is to be the date of death of the deceased person in question, irrespective of the date on which the act of intermeddling takes place.

*Home Affairs Bureau*

*11 July 2005*