

REVENUE (ABOLITION OF ESTATE DUTY) BILL 2005

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A BILL

To

Amend the Estate Duty Ordinance to give effect to the proposal to abolish estate duty in the Budget introduced by the Government for the 2005–2006 financial year and to—

- (a) make related amendments to the Inland Revenue Ordinance and Probate and Administration Ordinance;
- (b) establish a system that allows the Secretary for Home Affairs to facilitate release of money from bank accounts of deceased people and inspection of bank deposit boxes upon the lapse of similar powers under the Estate Duty Ordinance on the abolition of estate duty;
- (c) make consequential amendments to several other pieces of legislation; and
- (d) make saving provision.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Revenue (Abolition of Estate Duty) Ordinance 2005.

PART 2**ABOLITION OF ESTATE DUTY****Amendments to the Estate Duty Ordinance****2. Application**

Section 2 of the Estate Duty Ordinance (Cap. 111) is amended—

- (a) by repealing “dying or who shall have died on or after 1 January 1916” and substituting “who died on or after 1 January 1916 and before the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (of 2005)”;
- (b) by repealing “who shall have died before that date” and substituting “who died before 1 January 1916”.

3. Interpretation

Section 3(1) is amended, in the definition of “applicable Part of Schedule 1”—

- (a) in paragraph (b), by repealing “column 3; and” and substituting “column 3—”;
- (b) by repealing paragraph (c);
- (c) in column 2 of the Table, by adding—
“the commencement of the Revenue
(Abolition of Estate Duty)
Ordinance 2005 (of 2005)”
opposite to “1 April 1998” in column 1 of the Table.

4. Schedule 1 amended

Schedule 1 is amended, in the heading of Part 24, by adding “and before the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (of 2005)” after “1 April 1998”.

Amendments to the Prescription of Forms under Section 28**5. Form amended**

The Prescription of Forms under Section 28 (Cap. 111 sub. leg. B) is amended, in form I.R. Form E.D. 3, in the top right corner, by repealing the address below “INLAND REVENUE DEPARTMENT, ESTATE DUTY OFFICE,” and substituting “HONG KONG.”.

Related Amendments to the Inland Revenue Ordinance

6. Liability of executor of deceased taxpayer

Section 54 of the Inland Revenue Ordinance (Cap. 112) is amended, in the proviso—

(a) in paragraph (b)—

- (i) by adding “where the person died before the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (of 2005),” before “no assessment or”;
- (ii) by repealing “such person’s” and substituting “the person’s”;
- (iii) by repealing everything after “shall be made” and substituting—
“after—
 - (i) the expiry of 1 year from such date of death; or
 - (ii) the expiry of 1 year from the date of filing any affidavit required under the Estate Duty Ordinance (Cap. 111),whichever is the later; and”;

(b) by adding—

“(c) where the person died at any time on or after the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (of 2005) in any year of assessment, no assessment or additional assessment (other than an assessment to additional tax under section 82A) in respect of a period prior to his death shall be made after the expiry of 3 years immediately after that year of assessment.”.

Related Amendments to the Probate and Administration Ordinance

7. Section added

The Probate and Administration Ordinance (Cap. 10) is amended by adding—

“24A. Registrar to provide the Commissioner of Inland Revenue with information in application for grant

Within 1 month of the receipt of an application made under section 24, the Registrar shall provide the Commissioner of Inland Revenue with such information supplied by the applicant for the purposes of the application as the Commissioner may require for the purposes of the Inland Revenue Ordinance (Cap. 112).”.

8. Section added

The following is added after section 49—

“49AA. Registrar to provide the Commissioner of Inland Revenue with information in application for sealing of non-local grants

Within 1 month of the receipt of an application for sealing a grant under section 49, the Registrar shall provide the Commissioner of Inland Revenue with such information supplied by the applicant for the purposes of the application as the Commissioner may require for the purposes of the Inland Revenue Ordinance (Cap. 112).”.

PART 3

POWERS OF THE SECRETARY FOR HOME AFFAIRS

Amendments to the Probate and Administration Ordinance

9. Part VA added

The Probate and Administration Ordinance (Cap. 10) is amended by adding—

“PART VA

**POWERS OF THE SECRETARY FOR HOME AFFAIRS AS REGARDS MONEY
IN BANK ACCOUNTS AND INSPECTION OF BANK DEPOSIT BOXES**

60A. Interpretation of Part VA

In this Part—

- “bank” (銀行) has the same meaning as in the Banking Ordinance (Cap. 155);
- “certificate for inspection” (檢視證明書) means a Certificate for Necessity of Inspection of Bank Deposit Box issued under section 60C(1);
- “certificate for release of money” (支用款項證明書) means a Certificate for Necessity of Release of Money issued under section 60B(1);
- “Secretary” (局長) means the Secretary for Home Affairs.

60B. Certificate for releasing money from bank account of deceased

- (1) The Secretary may—
- (a) upon an application made—
 - (i) in respect of the estate of a deceased person who died on or after the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (of 2005); and
 - (ii) in a manner specified by the Secretary;
 - (b) upon being satisfied by the applicant that the deceased person maintained an account in his sole name with a bank immediately before his death; and
 - (c) upon such proof as he considers sufficient,
- issue to the applicant a Certificate for Necessity of Release of Money in respect of the estate.
- (2) An application made under subsection (1)(a) in respect of the estate of a deceased person—
- (a) subject to paragraph (b), shall be made by a person who intends to apply for a grant in respect of the estate; and
 - (b) may, where it is made only for the purpose described in subsection (3)(a), be made by any person who appears to the Secretary to be a fit and proper person to be the holder of the certificate applied for.
- (3) A certificate for release of money issued in respect of the estate of a deceased person shall certify that the Secretary is satisfied that the amount of money specified in the certificate is needed for any or both of the following purposes—
- (a) meeting the funeral expenses of the deceased person;
 - (b) maintenance of any person who was dependent on the deceased person immediately before his death.
- (4) If—
- (a) the Secretary issues a certificate for release of money relating to a bank account in respect of the estate of the deceased person; and

(b) the holder of the certificate—
 (i) presents the certificate to the bank concerned; and
 (ii) produces sufficient proof of his identity to the bank,
the presentation of the certificate shall be regarded as a request for withdrawal of the amount of money specified in it from the account duly made by the deceased person as if he were alive and the bank shall, subject to the condition attached to the certificate under section 60E(1) (if any), make payment to the holder of the certificate accordingly.

60C. Certificate for inspection of safe deposit box kept by deceased

(1) The Secretary may—
 (a) upon an application made—
 (i) by a person who intends to apply for a grant in respect of the estate of a deceased person who died on or after the commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005 (of 2005); and
 (ii) in a manner specified by the Secretary;
 (b) upon being satisfied by the applicant that the deceased person kept a safe deposit box in his sole name or jointly with any other person at a bank immediately before his death; and
 (c) upon such proof as he considers sufficient,
issue to the applicant a Certificate for Necessity of Inspection of Bank Deposit Box in respect of the estate.

(2) If—
 (a) the Secretary issues a certificate for inspection relating to a safe deposit box in respect of the estate of the deceased person; and
 (b) the holder of the certificate—
 (i) presents the certificate to the bank concerned; and
 (ii) produces sufficient proof of his identity to the bank,
the bank shall allow the holder of the certificate to inspect, subject to the condition attached to the certificate under section 60E(1) (if any), all items contained in the box only for any or both of the purposes prescribed in subsection (3).

(3) The prescribed purposes referred to in subsection (2) are—
 (a) ascertaining whether there is any will of the deceased person or similar instrument in the safe deposit box;
 (b) ascertaining whether any document or article specified in the certificate for inspection is contained in the safe deposit box.

(4) Where a will of the deceased person concerned or similar instrument is found in a safe deposit box inspected pursuant to subsection (2), the bank shall, after taking copy of the will or instrument, allow the holder of the certificate for inspection to, subject to the condition attached to the certificate under section 60E(1) (if any), take possession of the will or instrument.

(5) Where any document or article specified in a certificate for inspection is found in a safe deposit box inspected pursuant to subsection (2), the bank shall allow the holder of the certificate to, subject to the condition attached to the certificate under section 60E(1) (if any), take possession of the document or article.

60D. Form of certificate

A certificate for release of money or a certificate for inspection shall be in a form specified by the Secretary.

60E. Secretary may attach condition

(1) The Secretary may attach such condition as he thinks fit to a certificate for release of money or a certificate for inspection.

(2) A condition attached to a certificate shall be endorsed on the certificate.

60F. Protection of bank staff and bank

As long as an employee of a bank through whom the bank performed its function under section 60B(4) or 60C(2), (4) or (5) has acted in good faith and has exercised due care, the employee and the bank shall not incur any civil liability for—

- (a) making payment to the holder of the certificate for release of money pursuant to section 60B(4); or
- (b) allowing the holder of the certificate for inspection to take possession of anything under section 60C(4) or (5).

60G. Validity period of provisions of Part VA

Section 60A, 60B, 60C, 60D, 60E or 60F shall cease to have effect on a date appointed by the Secretary by notice published in Gazette.”.

PART 4**CONSEQUENTIAL AMENDMENTS****Specification of Public Offices****10. Schedule amended**

The Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) is amended by adding—

“Secretary for Home Affairs Probate and Administration Ordinance
(Chapter 10), sections 60B, 60C, 60D
and 60E.”.

High Court Fees Rules**11. Probate Jurisdiction**

The Second Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) is amended by repealing item 2.

Probate and Administration Ordinance**12. Schedule 1 amended**

Schedule 1 to the Probate and Administration Ordinance (Cap. 10) is amended, in paragraph 8(b) of Part II, by adding “(if any)” after “estate duty”.

Non-Contentious Probate Rules**13. Rule substituted**

Rule 43 of the Non-Contentious Probate Rules (Cap. 10 sub. leg. A) is repealed and the following substituted—

**“43. Application for grant to be supported by
documents required under the Estate
Duty Ordinance**

Where the Estate Duty Ordinance (Cap. 111) applies in relation to the estate of a person, an application for the grant in respect of the estate shall be supported by such documents as may be required under that Ordinance.”.

Intestates' Estates Ordinance

14. Succession to estate on intestacy

Section 4 of the Intestates' Estates Ordinance (Cap. 73) is amended—

- (a) in subsection (3), by adding “(if any)” after “death duties”;
- (b) in subsection (4), by adding “(if any)” after “death duties”.

Matrimonial Causes Rules

15. Further proceedings on application under rule 101

Rule 102(3)(a) of the Matrimonial Causes Rules (Cap. 179 sub. leg. A) is amended by adding “(if any)” after “estate duty”.

Inheritance (Provision for Family and Dependants) Ordinance

16. Interpretation

Section 2(1) of the Inheritance (Provision for Family and Dependants) Ordinance (Cap. 481) is amended, in paragraph (a) of the definition of “net estate”, by adding “(if any)” after “estate duty”.

17. Provisions as to trustees in relation to sections 12 and 13

Section 15(1) is amended by adding “(if any)” after “estate duty”.

18. Effect, duration and form of orders

Section 21(1) is amended by adding “(if applicable)” after “estate duty”.

PART 5

SAVING PROVISION

19. Saving provision for item 2 of the Second Schedule to the High Court Fees Rules

The Second Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) as in force immediately before the commencement of this Ordinance shall continue to apply in relation to the estate of any person who dies before such commencement as if section 11 had not been enacted.

Explanatory Memorandum

In his 2005–2006 Budget Speech, the Financial Secretary has proposed to abolish estate duty imposed under the Estate Duty Ordinance (Cap. 111) (“the principal ordinance”). This Bill proposes to amend the principal ordinance to give effect to the proposal and to make related and consequential amendments.

2. The Bill is divided into 5 parts.

Part 1 of the Bill

3. Clause 1 specifies the short title of the Bill.

Part 2 of the Bill

4. Clause 2 amends section 2 of the principal ordinance to give effect to the proposal. Estates of people who die after the commencement of this Ordinance will not be subject to estate duty. This Ordinance, if enacted, will come into operation on the day on which it is published in the Gazette. In practical terms, the estate of a person who dies after 00:00 hours, Hong Kong time, on the date on which this Ordinance is published in the Gazette will not be chargeable to estate duty.

5. The principal ordinance continues to apply in relation to people who die before the commencement of this Ordinance.

6. Clauses 3 and 4 make consequential amendments to section 3(1) of and Schedule 1 to the principal ordinance.

7. Clause 5 deletes the full address of the Estate Duty Office from an administrative form.

8. Clause 6 amends section 54 of the Inland Revenue Ordinance (Cap. 112). The section provides for liability to tax of the executor of a deceased taxpayer. Filing of an affidavit required under the principal ordinance is relevant to the determination of the time for raising tax assessments. As no such affidavit will be filed after the abolition of estate duty, a fixed period is made the substitute time indicator (clause 6(b)).

9. To ensure that the Inland Revenue Department is timely notified of an application for grant of probate or letters of administration of the estate of a person who dies after the abolition of estate duty, clause 7 amends the Probate and Administration Ordinance (Cap. 10) to require the Probate Registry to pass necessary information to the Commissioner of Inland Revenue within 1 month from the date of receiving the application. Clause 8 adds a similar provision for application for resealing of grants by non-local courts.

Part 3 of the Bill

10. Part 3 of the Bill adds a new part to the Probate and Administration Ordinance (Cap. 10).

11. At present, the Commissioner of Inland Revenue has a power under the principal ordinance to authorize release of funds from any bank account kept by a deceased person to cover funeral expenses and maintenance of the dependants. The Commissioner of Inland Revenue also has a power to require inspection of properties that may form part of the estate and, accordingly, may be chargeable to estate duty.

12. After the abolition of estate duty, there will no longer be any need for the Commissioner of Inland Revenue to retain the above powers as there is no estate duty revenue to protect.

13. The proposed Part VA of the Probate and Administration Ordinance (Cap. 10) (clause 9) confers a power on the Secretary for Home Affairs to facilitate release of money from bank accounts and inspection of bank deposit boxes.

14. The proposed section 60A defines several expressions used in the proposed Part VA.

15. The proposed section 60B empowers the Secretary for Home Affairs to issue a certificate in respect of the estate of a deceased person. The certificate constitutes sufficient legal authority for a bank to release money from the bank account of the deceased person to cover his funeral expenses or for the maintenance of his dependants. This arrangement ensures that before the Court grants a probate or letters of administration, money that is urgently needed can be released from bank accounts.

16. The proposed section 60C empowers the Secretary for Home Affairs to issue a certificate which constitutes legal authority for a bank to allow inspection of a safe deposit box kept by a deceased person for the purposes of searching for a will or any document or article specified in the certificate. If a will or the document or article is found, the bank shall also allow the holder of the certificate to, subject to the conditions attached to the certificate by the Secretary for Home Affairs, take possession of it.

17. The proposed section 60D empowers the Secretary for Home Affairs to determine the form of the certificates. He may impose conditions under the proposed section 60E.

18. The proposed section 60F affords a protection against civil liability to banks and bank staff in relation to performance of functions under the proposed sections 60B and 60C.

19. The proposed section 60G provides that the other provisions of the proposed Part VA cease to have effect on a date appointed by the Secretary for Home Affairs.

Part 4 of the Bill

20. Clause 10 amends the Specification of Public Offices (Cap. 1 sub. leg. C). This would allow the Secretary for Home Affairs to delegate his new powers under the Probate and Administration Ordinance (Cap. 10) to other public officers.

21. Clauses 11 to 18 make consequential amendments to—

- (a) the High Court Fees Rules (Cap. 4 sub. leg. D);
- (b) the Probate and Administration Ordinance (Cap. 10);
- (c) the Non-Contentious Probate Rules (Cap. 10 sub. leg. A);
- (d) the Intestates' Estates Ordinance (Cap. 73);
- (e) the Matrimonial Causes Rules (Cap. 179 sub. leg. A); and
- (f) the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481).

Part 5 of the Bill

22. Clause 19 makes saving provision for the consequential amendment to the High Court Fees Rules (Cap. 4 sub. leg. D) in clause 11. The fees concerned shall continue to apply in relation to the estate of a person who dies before the commencement of this Ordinance.