

New Zealand.



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1921, No. 21.

AN ACT to make Better Provision for the Payment of Duties on the Estates of Deceased Persons and on Property disposed of by way of Gift. Title.
[22nd December, 1921.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Death Duties Act, 1921. Short Title.

2. In this Act, unless a contrary intention appears,— Interpretation.

“Administration” means any probate, letters of administration, rule or order of any Court, or any other document whereby any person becomes entitled at law to administer the estate of a deceased person or any part of his estate; and includes all probates or letters of administration granted out of New Zealand, and all exemplifications thereof, if those probates, letters of administration, or exemplifications have been resealed in New Zealand under the provisions of the Administration Act, 1908: 1909, No. 10, sec. 2

“Administrator” means any person to whom probate or letters of administration have been granted, or who is entitled by virtue of any other administration to administer the estate of a deceased person or any part of his estate:

“Child” includes a stepchild, and also includes the widow of a son or adopted son:

“Commissioner” means the Commissioner of Stamp Duties appointed under the Stamp Duties Act, 1908, and, save in excepted cases, includes a Deputy Commissioner under that Act:

- “Death duty” means estate duty or succession duty as imposed by this Act :
- “Debt” includes any pecuniary liability, charge, or encumbrance :
- “Deceased person” or “the deceased” means a person dying after the commencement of this Act :
- “General power of appointment” includes any power or authority which enables the donee or other holder thereof, or would enable him if he was of full capacity, to appoint or dispose of any property, or to charge any sum of money upon any property, as he thinks fit for his own benefit, whether exercisable by instrument *inter vivos* or by will, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1908, or as mortgagee :
- “Personal property” does not include leaseholds or other chattel interests in land :
- “Real property” includes leaseholds and other chattel interests in land :
- “Will” includes any testamentary instrument.

PART I.

ESTATE DUTY.

Estate duty imposed.
1909, No. 10, sec. 3

Graduated rate of estate duty.
Ibid., sec. 4

Property subject to estate duty.
Ibid., sec. 5
1911, No. 9, sec. 3
1915, No. 39, secs. 90,
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3. In the case of every person who dies after the commencement of this Act, whether in New Zealand or elsewhere, and wherever the deceased was domiciled, there shall be payable to the Crown on the final balance of the estate of the deceased, as determined in accordance with this Act, a duty (hereinafter called estate duty) at the rate and in accordance with the provisions prescribed by this Act.

4. Estate duty shall be charged and assessed as a percentage of the amount of the final balance of the estate, in accordance with the graduated scale of percentages set out in the First Schedule hereto.

5. (1.) In computing for the purposes of this Act the final balance of the estate of a deceased person his estate shall be deemed to include and consist of the following classes of property :—

- (a.) All property of the deceased which is situated in New Zealand at his death, and to which any person becomes entitled under the will or intestacy of the deceased, except property held by the deceased as trustee for another person :
- (b.) Any property comprised in any gift, within the meaning of Part IV of this Act, made by the deceased within three years before his death, and whether before or after the commencement of this Act, if the property was situated in New Zealand at the time of the gift :
- (c.) Any property comprised in any gift, within the meaning of Part IV of this Act, made by the deceased at any time, whether before or after the commencement of this Act, unless *bona fide* possession and enjoyment has been assumed by the beneficiary not less than three years before the death

of the deceased, and has been thenceforth retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise, if the property was situated in New Zealand at the time of the gift :

- (d.) Any property comprised in a *donatio mortis causa* made by the deceased at any time, whether before or after the commencement of this Act, if the property was situated in New Zealand at the time of the gift :
- (e.) Any property which the deceased has at any time, whether before or after the commencement of this Act, caused to be transferred to or vested in himself and any other person jointly, so that the beneficial interest therein passes or accrues by survivorship to any person on the death of the deceased, if the property was situated in New Zealand at the time of such transfer or vesting as aforesaid :
- (f.) Any money payable under a policy of assurance effected by the deceased on his life, whether before or after the commencement of this Act, where the policy is wholly kept up by him for the benefit of a beneficiary (whether nominee or assignee), or a part of that money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit, if (in either case) the money so payable is property situated in New Zealand at the death of the deceased :
- (g.) Any annuity or other interest purchased or provided by the deceased, whether before or after the commencement of this Act, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, if that annuity or other interest is property situated in New Zealand at the death of the deceased :
- (h.) Any property situated in New Zealand at the death of the deceased over or in respect of which the deceased had at the time of his death a general power of appointment :
- (i.) Any estate tail, whether legal or equitable, vested in the deceased at the time of his death in land situated in New Zealand, whether that estate is in possession or not :
- (j.) Any property comprised in any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act, and situated in New Zealand at the death of the deceased,—
 - (i.) By which an interest in that property, or in the proceeds of the sale thereof, is reserved either expressly or by implication to the deceased for his life or for the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or
 - (ii.) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or

(iii.) By which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof.

(2.) The estate of a deceased person computed and constituted as provided in this section is in this Act referred to as his dutiable estate.

(3.) Property shall not be subject to estate duty under paragraph (j) of subsection one hereof by reason of the reservation or assurance of, or any contract for, any interest or benefit, or by reason of the reservation of any right to restore or reclaim the property or the proceeds of the sale thereof, if by any release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition of such interest, benefit, or right, the interest, benefit, or right (together with any interest, benefit, or right, whether of the same or of any different kind, which may have been substituted therefor) has wholly ceased to exist or to be vested in the deceased at any time more than ten years before the death of the deceased (and whether before or after the commencement of this Act); but otherwise than as aforesaid no such release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition (whether before or after the commencement of this Act) shall have any effect in preventing the operation of this section in the same manner as if the interest, benefit, or right continued to be vested in the deceased at the date of his death.

(4.) For the purposes of this section the property comprised in any settlement, trust, or disposition of property shall be deemed to include the proceeds of the sale or conversion thereof, and all investments for the time being representing the same, and all property which has in any manner been substituted for the property originally comprised in such settlement, trust, or disposition.

Final balance of estate.
1909, No. 10, sec. 6

6. (1.) The final balance of the estate of the deceased shall be computed as being the total value of his dutiable estate after making such allowances as are hereinafter authorized in respect of the debts of the deceased and in respect of other charges.

(2.) All such property shall be valued as at the date of the death of the deceased, save that where by the last preceding section it is provided that the local situation of any such property shall be determined as at any other date, the value of that property shall be determined as at the same date.

Personal property of persons domiciled in New Zealand to be liable to estate duty wherever situated.
Ibid., sec. 7

7. Where the deceased was domiciled in New Zealand at the date by reference to which the local situation of any personal property forming part of his dutiable estate is to be determined, such personal property shall be deemed for the purposes of this Act to be situated in New Zealand at that date.

Mode of determining situation of property.
Ibid., sec. 8

8. Subject to the provisions of the last preceding section, the local situation of property shall be determined for the purposes of this Act in manner set forth in this section, in respect of the classes of property hereinafter in this section referred to:—

(a.) A seagoing ship, or any share or interest in such a ship, shall be deemed to be property situated in New Zealand if the ship is registered in New Zealand, and in all other cases shall be deemed to be property situated out of New Zealand.

- (b.) Property at sea (other than a seagoing ship) shall be deemed to be situated in New Zealand if in course of transit, directly or indirectly, to New Zealand, and in other cases shall be deemed to be situated out of New Zealand.
- (c.) The local situation of a debt payable under a bond or other deed shall in no case be determined by reference to the local situation of the bond or deed.
- (d.) A debt owing by a corporation, whether incorporated in New Zealand or elsewhere, shall be deemed to be property situated in New Zealand if the debt was incurred or is payable in New Zealand, and the corporation has any office or place of business in New Zealand, and in other cases shall be deemed to be property situated out of New Zealand.
- (e.) A debt owing by any person or persons other than a corporation shall be deemed to be property situated in New Zealand if the debtor or any of the debtors is resident in New Zealand, and in other cases shall be deemed to be property situated out of New Zealand.
- (f.) A debt owing by the Crown in respect of the Government of New Zealand shall be deemed to be property situated in New Zealand if it is incurred or payable in New Zealand, and in other cases shall be deemed property situated out of New Zealand.
- (g.) Notwithstanding anything hereinbefore in this section contained, a debt represented by an instrument which is negotiable in New Zealand shall be deemed to be property situated in the country in which the instrument is or is deemed to be situated.
- (h.) Notwithstanding anything hereinbefore in this section contained, a debt which is secured by mortgage, charge, or otherwise on any property situated or deemed to be situated in New Zealand shall itself be deemed to be property situated in New Zealand; but if the value of the security is less than the value of the debt, the debt shall not by reason of the existence of the security be deemed to be situated in New Zealand except to the extent of the value of the security.
- (i.) Shares in a company incorporated in New Zealand shall be deemed to be property situated in New Zealand, save in the case of shares registered in a branch register in any other place in His Majesty's dominions in accordance with the Companies Act, 1908.
- (j.) Shares in a company incorporated out of New Zealand shall be deemed to be property situated out of New Zealand, save in the case of shares registered in a colonial or branch register in New Zealand under the Imperial Companies (Consolidation) Act, 1908, or under any other law in force in any other part of His Majesty's dominions.

9. (1.) In computing the final balance of the estate of the deceased, allowance shall, save so far as otherwise provided by this Act, be made for all debts owing by the deceased at his death.

Allowance to be made for debts. 1909, No. 10, sec. 9

(2.) No such allowance shall be made—

- (a.) For debts incurred by the deceased otherwise than for full consideration in money or money's worth wholly for his own use and benefit; or
- (b.) For debts in respect whereof there is a right of reimbursement from any other estate or person, except to the extent to which reimbursement cannot be obtained; or
- (c.) More than once for the same debt charged upon different portions of the estate; or
- (d.) For contingent debts or any other debts the amount of which is, in the opinion of the Commissioner, incapable of estimation.

(3.) If any debt for which by reason of the provisions of paragraph (d) of this section an allowance has not been made becomes at any time within three years after the death of the deceased actually payable or, in the opinion of the Commissioner, capable of estimation, an allowance shall be made therefor, and a refund of any estate or other duty paid in excess under this Act shall be made to the person entitled thereto, but no action for the recovery of any such refund shall be commenced except within three years after the payment of the duty so paid in excess.

Apportionment of debts between dutiable estate and foreign assets.
1909, No. 10, sec. 10

10. (1.) The allowance so to be made for debts shall extend to all debts whether incurred or payable in New Zealand or elsewhere, save that where there are any foreign assets the total debts of the deceased in respect of which an allowance would otherwise be made shall be apportioned between those foreign assets and the dutiable estate of the deceased in proportion to their respective values, and an allowance shall be made only in respect of the proportion so apportioned to the dutiable estate.

(2.) In this Act the term "foreign assets" means any property which is available or which the deceased might by his will have made available for the payment of his debts upon his death, but which by reason of its local situation is not part of the dutiable estate of the deceased.

(3.) The apportionment provided for in this section shall be irrespective of the fact that the debts of the deceased, or any of them, are charged by mortgage or otherwise upon any part of the dutiable estate or foreign assets, and the apportionment shall in any such case be made in the same manner as if no such charge existed.

Funeral and administration expenses.
Ibid., sec. 11
1911, No. 9, sec. 4

11. In computing the final balance of the estate of the deceased, or the value of any succession, an allowance shall be made for the reasonable expenses of the funeral of the deceased, in the same manner and to the same extent as if those expenses constituted a debt of the deceased; but no allowance shall be made in respect of the expenses of the administration of the estate, or in respect of commission or other remuneration payable to an administrator, or in respect of the amount of estate or other duty payable under this Act.

Certain estates exempted from estate duty.
1909, No. 10, sec. 12
1920, No. 42,
sec. 3 (2)

12. No estate duty shall be payable on any estate the final balance of which does not exceed one thousand pounds; and the estate duty payable on any estate the final balance of which exceeds one thousand pounds shall not exceed the amount by which that final balance exceeds one thousand pounds.

13. (1.) In the case of any estate the final balance of which does not exceed ten thousand pounds, the value of any succession (within the meaning of Part II of this Act) acquired by the wife of the deceased in respect of his dutiable estate shall, to the extent of five thousand pounds, but no more, be deducted from the final balance of that estate, and estate duty shall be payable on the residue only.

Value of interest acquired by widow of the deceased not exceeding £5,000 to be deducted from final balance of estate.

1909, No. 10, sec. 13

(2.) The rate of estate duty so payable on the residue shall nevertheless be determined by the total amount of the said final balance without any such deduction as aforesaid.

14. For the purposes of estate duty subsections one to five of section twenty-one hereof shall, with all necessary modifications, apply to every contingency affecting the interest of the deceased in any property forming part of his dutiable estate, in the same manner in which those subsections apply to contingencies affecting a succession, and every reference to succession duty shall be read as a reference to estate duty accordingly.

Valuation of contingent interests for purposes of estate duty.

1915, No. 39, sec. 94

PART II.

SUCCESSION DUTY.

15. On the death of any person who dies after the commencement of this Act, whether in New Zealand or elsewhere, and wherever the deceased was domiciled, there shall, except as otherwise provided in this Act, be payable, in addition to the estate duty imposed on the final balance of his estate by Part I of this Act, a further duty, in this Act called succession duty, in respect of every interest acquired or possessed by any person as the successor of the deceased within the meaning of this Act.

Succession duty imposed.

1909, No. 10, sec. 14

16. (1.) In this Act the term "successor" means, with respect to any deceased person, any person who on the death of the deceased—

Property liable to succession duty.

Ibid., sec. 15

1911, No. 9, sec. 5

(a.) Acquires under the will of the deceased, whether by way of pecuniary legacy, the exercise of a power of appointment, or otherwise howsoever, a beneficial interest in the dutiable estate of the deceased; or

(b.) Acquires any beneficial interest in the dutiable estate of the deceased under his complete or partial intestacy; or

(c.) Is beneficially entitled in default of appointment to any property which forms part of the dutiable estate of the deceased and over which the deceased possessed and has failed to exercise a general power of appointment; or

(d.) Is beneficially entitled under a voluntary bond or covenant, or in any other manner whatever, to any debt which is payable out of the dutiable estate of the deceased, and the payment of which by the deceased himself would have constituted a gift within the meaning of Part IV of this Act; or

(e.) Becomes beneficially entitled to any moneys payable under any policy of life assurance effected by the deceased on his own life, so far as those moneys are included in the dutiable estate of the deceased; or

(f.) Becomes beneficially entitled by way of survivorship to any property included in the dutiable estate of the deceased; or

(g.) Is beneficially entitled to an interest in the dutiable estate of the deceased by virtue of any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act,—

(i.) By which an interest in that property, or in the proceeds of the sale thereof, for the life of the deceased or of any other person, or for any other period determined by reference to the death of the deceased or of any other person, is reserved either expressly or by implication to the deceased ; or

(ii.) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or

(iii.) By which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof ; or

(h.) Acquires by inheritance from the deceased an estate tail forming part of the dutiable estate of the deceased ; or

(i.) Has become entitled to any property forming part of the dutiable estate of the deceased as a beneficiary under any gift or *donatio mortis causa*.

(2.) In this Act the term “ succession ” means the interest to which a successor is entitled as such.

(3.) Property shall not be subject to succession duty under paragraph (g) of subsection one of this section by reason of the reservation or assurance of, or any contract for, any interest or benefit, or by reason of the reservation of any right to restore or reclaim the property or the proceeds of the sale thereof, if by any release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition of such interest, benefit, or right, the interest, benefit, or right (together with any interest, benefit, or right, whether of the same or of any different kind, which may have been substituted therefor) has wholly ceased to exist or to be vested in the deceased at any time more than ten years before the death of the deceased (and whether before or after the commencement of this Act); but otherwise than as aforesaid no such release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition (whether before or after the commencement of this Act) shall have any effect in preventing the operation of this section in the same manner as if the interest, benefit, or right continued to be vested in the deceased at the date of his death.

(4.) For the purposes of this section the property comprised in any settlement, trust, or disposition of property shall be deemed to include the proceeds of the sale or conversion thereof, and all investments for the time being representing the same, and all property which has in any manner been substituted for the property originally comprised in such settlement, trust, or disposition.

17. (1.) Except as otherwise provided in this Act, succession duty shall be payable on every succession, and shall be a percentage of the value of the succession, varying in manner provided in this section.

(2.) If the successor is the wife of the deceased, succession duty shall be payable as follows :—

(a.) If the value of the succession does not exceed ten thousand pounds, no succession duty shall be payable in respect thereof :

(b.) If the value of the succession exceeds ten thousand pounds, but does not exceed twenty thousand pounds, the rate of succession duty shall be two per centum thereof, save that the succession duty payable shall not in any case exceed the amount by which the value of the succession exceeds ten thousand pounds :

(c.) If the value of the succession exceeds twenty thousand pounds, the rate of succession duty shall be four per centum thereof.

(3.) If the successor is the husband of the deceased (whether or not he is also a relative of the deceased by blood), succession duty shall be payable as follows :—

(a.) If the value of the succession does not exceed five hundred pounds, no succession duty shall be payable in respect thereof :

(b.) If the value of the succession exceeds five hundred pounds, but does not exceed one thousand five hundred pounds, the rate of succession duty shall be one per centum thereof, save that the succession duty payable shall not in any case exceed the amount by which the value of the succession exceeds five hundred pounds :

(c.) If the value of the succession exceeds one thousand five hundred pounds, but does not exceed two thousand five hundred pounds, the rate of succession duty shall be two per centum thereof :

(d.) If the value of the succession exceeds two thousand five hundred pounds, the rate of succession duty shall be three per centum thereof.

(4.) If the successor is a child, grandchild, or other lineal descendant of the deceased, succession duty shall be payable as follows :—

(a.) If the value of the succession does not exceed one thousand pounds, no succession duty shall be payable in respect thereof :

(b.) If the value of the succession exceeds one thousand pounds, but does not exceed five thousand pounds, the rate of succession duty shall be one per centum thereof, save that the succession duty payable shall not in any case exceed the amount by which the value of the succession exceeds one thousand pounds :

(c.) If the value of the succession exceeds five thousand pounds, but does not exceed ten thousand pounds, the rate of succession duty shall be two per centum thereof :

(d.) If the value of the succession exceeds ten thousand pounds, but does not exceed fifteen thousand pounds, the rate of succession duty shall be three per centum thereof :

(e.) If the value of the succession exceeds fifteen thousand pounds, but does not exceed twenty thousand pounds, the rate of succession duty shall be three and a half per centum thereof :

- (f.) If the value of the succession exceeds twenty thousand pounds, the rate of succession duty shall be four per centum thereof.
- (5.) If the successor is the father or mother or the stepfather or stepmother of the deceased, or the brother or sister or the half-brother or half-sister of the deceased, succession duty shall be payable as follows :—
- (a.) If the value of the succession does not exceed five hundred pounds, no succession duty shall be payable in respect thereof :
- (b.) If the value of the succession exceeds five hundred pounds, but does not exceed twenty thousand pounds, the rate of succession duty shall be five per centum thereof, save that the succession duty payable shall not in any case exceed the amount by which the value of the succession exceeds five hundred pounds :
- (c.) If the value of the succession exceeds twenty thousand pounds, the rate of succession duty shall be ten per centum thereof.
- (6.) If the successor is any other relative of the deceased in any degree not more remote than the fourth, succession duty shall be payable as follows :—
- (a.) If the value of the succession does not exceed five hundred pounds, no succession duty shall be payable in respect thereof :
- (b.) If the value of the succession exceeds five hundred pounds, but does not exceed ten thousand pounds, the rate of succession duty shall be five per centum thereof, save that the succession duty payable shall not in any case exceed the amount by which the value of the succession exceeds five hundred pounds :
- (c.) If the value of the succession exceeds ten thousand pounds, the rate of succession duty shall be ten per centum thereof.
- (7.) In all other cases succession duty shall be payable as follows :—
- (a.) If the value of the succession does not exceed five hundred pounds, no succession duty shall be payable in respect thereof :
- (b.) If the value of the succession exceeds five hundred pounds, but does not exceed twenty thousand pounds, the rate of succession duty shall be ten per centum thereof, save that the succession duty payable shall not in any case exceed the amount by which the value of the succession exceeds five hundred pounds :
- (c.) If the value of the succession exceeds twenty thousand pounds, the rate of succession duty shall be twenty per centum thereof.
- (8.) In addition to the rates of succession duty payable as aforesaid, there shall be payable as succession duty an amount equal to ten per centum of all moneys exceeding one thousand pounds payable to any person domiciled out of New Zealand, not being the wife or husband of the deceased or a relative of the deceased within the third degree of consanguinity.

18. No succession duty shall be payable on any property left by the will of the deceased or otherwise acquired and held on any charitable trust in New Zealand.

Charitable trusts exempt from succession duty. 1909, No. 10, sec. 17

19. For the purposes of succession duty illegitimate relationship shall be recognized as equivalent to legitimate relationship in all cases in which the successor is entitled, on the intestacy of the deceased, to succeed by virtue of that illegitimate relationship to any part of the estate of the deceased, or would have been so entitled if the deceased had died intestate.

Illegitimate relationship to be taken into account for succession duty. *Ibid.*, sec. 19

20. For the purposes of succession duty an adoption under the Infants Act, 1908, or any other Act relating to the adoption of children, shall be deemed to constitute the relation of parent and child between the adopting parent and the adopted child; but shall not be deemed to destroy that relation as between the natural parents and that child, or to create or destroy any other relationship between any persons.

Effect of adoption on succession duty. *Ibid.*, sec. 20

21. (1.) For the purposes of succession duty every contingency affecting the succession shall be deemed to have determined in the manner in which, in the opinion of the Commissioner, it probably will determine, and the succession shall be valued and succession duty assessed and paid accordingly.

Valuation of contingent interests for purposes of succession duty. *Ibid.*, sec. 21
1911, No. 9, sec. 6

2.) An appeal to the Supreme Court by way of case stated shall lie from any decision of the Commissioner under the last preceding subsection in the same manner as if that decision was the determination of a question of law, and all the provisions hereinafter contained as to appeals to the Supreme Court shall apply accordingly. If no such appeal is commenced and duly prosecuted, the decision of the Commissioner shall be final and conclusive.

(3.) If in the actual event at any time thereafter the contingency determines in a manner different from that so assumed as the basis of assessment, succession duty shall thereupon be reassessed by the Commissioner on the basis of the actual event, and as of the date of the death of the deceased.

(4.) If on that reassessment it appears that too much has been paid by way of succession duty, a refund of the excess, together with compound interest thereon computed with annual rests at the rate of four per centum per annum from the date of payment of the duty, shall be made to the person who would have been entitled to recover the excess of duty had it been paid in error.

(5.) If on any such reassessment as aforesaid it appears that too little succession duty has been paid, the deficiency, together with compound interest thereon computed with annual rests at the rate of four per centum per annum as from the date upon which the duty originally paid became due, shall thereupon become due and payable, and shall for all purposes be deemed to be succession duty which has remained unpaid in error:

Provided that the administrator shall not be personally liable for any such additional duty by reason of having administered and distributed the estate of the deceased before the determination of the said contingency without retaining assets sufficient to satisfy that duty.

(6.) Subject to the provisions of this Part of this Act, the value of any succession shall be deemed and taken to be the present value thereof at the death of the deceased:

Provided that the value of any succession acquired by way of gift and liable to succession duty under paragraph (i) of section sixteen of this Act shall be deemed and taken to be the present value thereof at the date of that gift.

Valuation of property subject to encumbrances for purposes of succession duty. 1909, No. 10, sec. 22

22. For the purpose of computing the value of any succession no deduction shall be allowed in respect of any mortgage, charge, encumbrance, or liability affecting or incident to the property comprised in the succession, if and so far as the successor is entitled as against any other person or property to any available right of contribution or indemnity in respect of that mortgage, charge, encumbrance, or liability.

Apportionment of successions between the dutiable estate and foreign assets. Ibid., sec. 23

23. (1.) If the interest of a successor consists in a pecuniary legacy or other pecuniary claim which may be lawfully paid or satisfied either out of the dutiable estate of the deceased or out of foreign assets, the value of that interest shall, for the purpose of succession duty, be apportioned between the dutiable estate so available to satisfy the same and the foreign assets so available to satisfy the same in proportion to their relative values, and succession duty shall be assessed and payable only on that part of the interest which is so apportioned to the dutiable estate.

(2.) The burden of proving the existence and value of any such foreign assets shall lie on the persons who are liable for succession duty, and not upon the Commissioner.

PART III.

ASSESSMENT AND COLLECTION OF ESTATE AND SUCCESSION DUTY.

Death duties to be payable by the administrator. Ibid., sec. 24

24. (1.) The aggregate amount of the death duties payable under this Act shall constitute a debt payable to the Crown out of the estate of the deceased in the same manner as the debts of the deceased, and those duties shall be paid by the administrator accordingly out of all real or personal property vested in him and forming part of the dutiable estate of the deceased, whether that property is available for the payment of the other debts of the deceased or not, and whether the property in respect of which the duty or any part thereof has been assessed is vested in the administrator or not.

(2.) For the purpose of paying such duties the administrator shall have the same power of selling, leasing, or mortgaging any real or personal property vested in him as in the case of a sale, lease, or mortgage for the payment of the debts of the deceased.

Death duties to become due six months after death of deceased. Ibid., sec. 25

25. Death duties shall become due and payable on the assessment thereof by the Commissioner, or if not duly so assessed within six months from the death of the deceased, then on the expiration of that period of six months.

Penalty for default in payment of death duties. Ibid., sec. 26

26. (1.) If the full amount of death duties is not paid within three months after notice has been given to the administrator of the assessment thereof by the Commissioner, or within such extended period as the Commissioner thinks fit to allow on the application of the administrator made before the expiration of the said period of three months, there shall be added by way of penalty a further sum equal to ten per centum of the duty so unpaid, and the additional sum shall be deemed to be estate duty or succession duty, as the case may be, and shall be chargeable and recoverable accordingly.

(2.) Interest at the rate of six per centum per annum shall be payable on the amount of all death duties unpaid within three months after the death of a deceased person, and shall be computed as from the expiration of the said period of three months. All interest payable under this section shall be deemed to be estate duty or succession duty, as the case may be, and shall be chargeable and recoverable accordingly. Interest under this section shall be payable on the amount of any penalty imposed under the last preceding subsection, and shall be computed as from the date on which such penalty became payable.

27. The estate of a deceased person shall not be exempt from death duties by reason merely of the fact that no grant of administration has been, or need be, or can be made in New Zealand in respect of that estate; and in any such case all the provisions of this Act shall, so far as applicable, apply notwithstanding the fact that there is no administrator of the estate.

Death duties to be payable although no grant of administration.
1909, No. 10, sec. 27

28. (1.) The aggregate amount of death duties payable under this Act shall constitute, as from the death of the deceased, a charge upon the whole dutiable estate of the deceased and upon all property included in that estate, whether vested in the administrator or not, but no such charge shall affect the title of any purchaser for value (whether before or after the death of the deceased) without actual notice of the existence of the charge.

Death duties to be a charge on the dutiable estate.
Ibid., sec. 28

(2.) Any successor or other person whose interest is affected by the realization or enforcement of any such charge shall, save so far as otherwise provided by this Act or by the will of the deceased, have a right of indemnity as against the administrator of the estate to the extent of all assets which are or have been available in the hands of the administrator for the payment of death duties.

29. Without excluding the liability of the administrator under the foregoing provisions, succession duty payable in respect of the interest of any successor shall constitute a debt due to the Crown by that successor, and by any trustee for that successor, save that the successor shall not become so liable in respect of any future interest until it becomes an interest in possession.

Succession duty to be also recoverable from each successor.
Ibid., sec. 29

30. Without excluding the liability of the administrator under the foregoing provisions, the estate duty payable on the dutiable estate of the deceased shall constitute a debt due to the Crown by every successor of the deceased and by the trustee of any such successor:

Proportion of estate duty also to be recoverable from each successor.
Ibid., sec. 30

Provided that each successor and his trustee shall be so liable only for the same proportion of the estate duty as the value of his succession bears to the aggregate value of all the successions:

Provided also that where the interest of any successor is a future interest, he shall not become so liable for estate duty until his interest becomes an interest in possession.

31. (1.) As between the several successors of the deceased, and without affecting the rights and remedies of the Crown under the foregoing provisions of this Act, the provisions of this section shall be applicable.

As between successors, death duties to be paid by each successor in proportion to the value of his interest.

(2.) Estate duty and succession duty shall be payable in accordance with the directions of the will of the deceased so far as regards any property which is subject to the dispositions of that will.

Ibid., sec. 31

(3.) Subject to any such directions, succession duty shall be payable out of the property in respect of which the duty is assessed, whether that

property is vested in the administrator or not, or out of any money, investments, or other property for the time being representing that property.

(4.) Subject to any such directions, estate duty shall be payable out of the property comprised in each succession, whether that property is vested in the administrator or not, or out of any money, investments, or other property for the time being representing that property, in the same proportion that the value of that succession bears to the aggregate value of all the successions.

(5.) If any duty is in the first instance paid by the administrator, or by any successor or the trustee of any successor, otherwise than in accordance with this section, the person by whom duty is so paid may recover the same by action in any Court of competent jurisdiction (together with such interest thereon as the Court thinks just) from the successor or the trustee of the successor out of whose property the duty was payable in accordance with this section :

Provided that where the interest of the last-mentioned successor is a future interest, he shall not become so liable until his interest becomes an interest in possession.

(6.) If any duty is paid in the first instance otherwise than in accordance with this section, every person whose interest is thereby affected shall have a right of indemnity against the property out of which that duty was payable in accordance with this section.

(7.) For the purpose of carrying into effect the provisions of this section the Supreme Court may, on the application of the administrator or of any person interested, make such orders as it deems just with respect to the administration of the dutiable estate of the deceased ; and may by any such order impose on any part of that estate, or on any money, investments, or other property for the time being representing the same, a charge in favour of any person who is entitled to any such right of indemnity as aforesaid, and every such charge shall bear such interest (if any) as the Court thinks just.

(8.) On the application of the administrator or of any person interested for the enforcement of any such charge the Supreme Court may make such order as it thinks just, either for the sale of the property charged or of any part thereof, or for the appointment of a receiver of the rents, profits, or income thereof.

(9.) When any property has been sold under any such order the Supreme Court may make an order vesting the property in the purchaser.

(10.) Every such vesting-order shall have the same effect as if all persons entitled to the property had been free from all disability, and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order, and the order shall be subject to stamp duty accordingly, and in the case of land which is subject to the Land Transfer Act, 1915, the purchaser's title shall be registered accordingly.

(11.) Any application to the Supreme Court under this section may be made by originating summons.

32. (1.) There shall be deducted from the death duty payable in respect of any property situated out of New Zealand at the death of the deceased the amount of any duty which by reason of his death is payable in respect of that property in the country in which it is situated at his death.

Deduction to be made of duty paid in any other country on property situated in that country.

1909, No. 10, sec. 32

(2.) Every such deduction shall be made in the first place from the estate duty (if any) so payable, and thereafter, as to any residue, from the succession duty (if any) so payable.

(3.) For the purposes of this section the local situation of property shall be determined in the same manner as hereinbefore provided in this Act, save that the local situation of property shall not be determined for this purpose by reference to the domicile of the deceased.

(4.) No such deduction as is provided for in this section shall be made until and unless the duty so payable in another country has been actually paid, and in the meantime the full amount of death duty shall be assessed and payable; and on payment of the duty in that other country a refund of the amount thereof shall be made in the same manner as in the case of duty paid in excess, but no such refund shall be made save within three years after the payment of duty in New Zealand.

(5.) For the purposes of this section, and notwithstanding anything hereinbefore contained, the local situation in the United Kingdom of any property shall be determined in accordance with the law of England with regard to the local situation of property within the meaning of section twenty of the Finance Act, 1894 (Imperial).

Mode of determining local situation of property in United Kingdom.
1911, No. 9, sec. 7

33. (1.) In order to ascertain the amount payable as death duty under this Act, every administrator shall, within six months from the grant of administration, deliver to the Commissioner a statement in writing in the prescribed form, containing the prescribed particulars with respect to the dutiable estate of the deceased, and with respect to the interests of the several successors of the deceased, and containing such other particulars (if any) as may be prescribed for the purposes of this Act.

Statements to be delivered to Commissioner by administrator.
1909, No. 10, sec. 33
1915, No. 39, sec. 95

(2.) The Commissioner may, upon application, extend the time within which such statement must be delivered, and may also permit or require the statement to be amended.

(3.) Every such statement and every amendment thereof shall be verified by statutory declaration in the prescribed form and manner.

(4.) Any administrator who fails to deliver a statement to the Commissioner within the time prescribed by this section, or to deliver an amended statement when required by the Commissioner so to do, shall be liable on summary conviction to a fine of fifty pounds.

(5.) No administrator shall be exempt from the requirements of this section on the ground that no death duty is payable.

34. On the delivery of the aforesaid statement by the administrator the Commissioner shall proceed to assess the death duties payable, and shall give notice of his assessment to the administrator. If the Commissioner is of opinion that no such duty is payable, he shall certify to the administrator accordingly.

Death duties to be assessed by Commissioner.
1909, No. 10, sec. 34

35. If the administrator fails to deliver a statement within the time limited by this Act in that behalf, or if no grant of administration is made within six months after the death of the deceased, the Commissioner may proceed to assess the death duties payable, and to recover payment of the duties so assessed, in the same manner, with all necessary modifications, as if a statement had been duly filed by an administrator.

Commissioner may assess duty although no statement delivered by administrator.
Ibid., sec. 35

Administration to
be sent by Court to
the Commissioner.

1909, No. 10, sec. 36

1915, No. 39, sec. 96

36. (1.) Every administration shall immediately upon the grant thereof be sent to the Commissioner by the Registrar or other proper officer of the Court by which the same is granted, and the Commissioner shall issue the same to the person entitled to receive it on payment of the death duties assessed and payable.

(2.) The Commissioner, if he thinks fit, may issue an administration before payment of duty if the administrator gives security, to the satisfaction of the Commissioner, for the payment of the full duty, either by mortgage of some portion of the property affected by the administration sufficient, in the opinion of the Commissioner, to secure the payment of the duty, or by bond to His Majesty the King, either with or without sureties, for the payment of the full duty within six months from the date of the grant of administration or such further time as is agreed to by the Commissioner and set forth in the bond.

(3.) The penalty of any such bond shall be twice the estimated duty, computed upon the approximate value of the dutiable estate and of the interests of the successors, as verified, if the Commissioner so requires, by the statutory declaration of the administrator or of any other person.

(4.) Where the Public Trustee is the administrator, it shall not be necessary for him to give any such security; and the Commissioner may, if he thinks fit, issue the administration without payment of duty accordingly.

PART IV.

GIFT DUTY.

Gift duty imposed.

1909, No. 10, sec 37

37. Subject to the exceptions hereinafter provided, a duty (in this Act referred to as gift duty) shall be chargeable in respect of every gift within the meaning of this Act which is made after the commencement of this Act.

Meaning of "gift."

Ibid., sec. 38

38. (1.) In this Act the term "gift" means any disposition of property (as hereinafter defined) which is made otherwise than by will, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth.

(2.) If any such disposition is made for a consideration in money or money's worth which is inadequate, the disposition shall be deemed to be a gift to the extent of that inadequacy.

(3.) In this Act the term "donor" means the maker of a gift, and the term "beneficiary" means any person acquiring any beneficial interest under a gift, and each of those terms includes a body corporate.

Meaning of
"disposition of
property."

Ibid., sec. 39

39. In this Act the term "disposition of property" means—

(a.) Any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:

(b.) The creation of a trust:

(c.) The grant or creation of any lease, mortgage, charge, servitude, license, power, or other right, estate, or interest in or over any property, whether at law or in equity:

(d.) The release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or chose-in-action, or of any right, power, estate, or interest in or over any

property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:

- (e.) The exercise of a general power of appointment in favour of any person other than the donee of the power:
- (f.) Any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person.

40. (1.) In this Act the term "voluntary contract" means a contract entered into, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth. If any contract is made for a consideration in money or money's worth which is inadequate, the contract shall be deemed to be voluntary to the extent of that inadequacy.

Voluntary contracts to be deemed gifts in certain cases.

1909, No. 10, sec. 40

(2.) A disposition of property made in performance or satisfaction of a voluntary contract shall be deemed to be a gift, whether the contract or disposition was made before or after the commencement of this Act.

(3.) A voluntary contract, whether made before or after the commencement of this Act, shall not in itself constitute a gift within the meaning of this Act, but shall become or be deemed to have become a gift so soon and so far as it has attached to and affected the legal or equitable title to any property to which it relates.

41. (1.) No gift duty shall be payable except in respect of property situated in New Zealand at the time at which the gift is made.

No gift duty except on property situate in New Zealand.

Ibid., sec. 41

(2.) For the purposes of gift duty the local situation of property shall be determined in manner following:—

- (a.) If the donor is domiciled in New Zealand at the date of the gift, or is a body corporate incorporated in New Zealand, all personal property comprised in the gift shall be deemed to be situated in New Zealand.
- (b.) Subject to the last preceding paragraph, the local situation of any property shall be determined in the same manner as is provided in section eight of this Act with respect to estate duty.

42. (1.) No marriage settlement made before and in consideration of marriage by either party to the marriage, or made after marriage by either party thereto in pursuance of a binding antenuptial contract, shall be liable to gift duty with respect to any beneficial interest acquired thereunder by the other party to the marriage, or by the children or remoter issue of the marriage.

No gift duty on antenuptial marriage settlements.

Ibid., sec. 42

(2.) Notwithstanding anything in this section, a covenant or contract contained in a marriage settlement, whether before or after the commencement of this Act, to pay money or to make any disposition of future-acquired property shall be deemed to be a voluntary contract; and all the provisions of section forty-one of this Act shall apply thereto, and gift duty shall be payable accordingly.

43. (1.) No gift duty shall be payable on the creation of any charitable trust in New Zealand.

No gift duty on Charitable trusts.

Ibid., sec. 43

(2.) Any payment made by an employer to a fund established for the purpose of providing retiring-allowances for the employees or any

of the employees of the donor shall be deemed to be the creation of a charitable trust within the meaning of this section, and shall be exempt from gift duty accordingly.

Other exemptions.
1915, No. 39, sec. 101

44. (1.) A gift shall not be taken into account as such, either for the purposes of gift duty or for the purposes of death duty, if the Commissioner is satisfied—

(a.) That the gift, together with all other gifts made by the same donor to the same beneficiary in the same calendar year, does not exceed in the aggregate twenty pounds in value and is made in good faith as part of the normal expenditure of the donor; or

(b.) That the gift is made for or towards the maintenance of the wife, husband, or any relative of the donor and is not excessive in amount, having regard to the legal or moral obligation of the donor to afford such maintenance.

(2.) The determination of the Commissioner that a gift is not entitled to exemption under this section shall be final and conclusive.

Single disposition
of property to be
deemed a single gift.
1909, No. 10, sec. 4

45. For the purposes of this Act a single disposition of property shall be deemed to constitute a single gift, although distinct interests are acquired thereunder by different beneficiaries.

Rates of gift duty
and incidental
provisions.

Ibid., sec. 4;
1911, No. 9, sec. 8
1915, No. 39, sec. 102
1920, No. 42, sec. 5

46. (1.) Where the value of a gift, together with the value of all other gifts made at the same time or within twelve months subsequently or previously (whether before or after the commencement of this Act), by the same donor to the same or any other beneficiary, otherwise than by way of charitable trust,—

(a.) Does not exceed one thousand pounds, no gift duty shall be payable on such gift;

(b.) Exceeds one thousand pounds but does not exceed five thousand pounds, the rate of gift duty shall be five per centum of the value of the gift;

(c.) Exceeds five thousand pounds but does not exceed ten thousand pounds, the rate of gift duty shall be seven and a half per centum of the value of the gift;

(d.) Exceeds ten thousand pounds, the rate of gift duty shall be ten per centum of the value of the gift.

(2.) The duty shall be payable on the making of the gift, notwithstanding the fact that the interests of the beneficiaries or of any of them may be future interests.

(3.) Where a gift first becomes liable to gift duty by reason of the making of a subsequent gift, the gift duty upon the first gift shall be payable immediately upon the making of the subsequent gift.

(4.) Where a gift subject to gift duty subsequently becomes liable to a higher rate of gift duty by reason of the making of a subsequent gift, the additional gift duty upon the first gift shall be payable immediately upon the making of the subsequent gift.

(5.) When by reason of any other gift or gifts made previously or subsequently by the same donor a gift not subject to gift duty subsequently becomes dutiable in accordance with this Act, or, being subject to gift duty, subsequently becomes dutiable at a higher rate in accordance with this Act, the references in this Act to the date of the making of the gift shall, so far as may be necessary in their application to any gift so becoming dutiable or becoming dutiable at a higher rate, be

construed as references to the date on which the gift has become dutiable or has become subject to a higher rate of gift duty.

(6.) This section shall apply with respect to gifts made before the passing of this Act in the same manner and to the same extent as if it had been incorporated in and formed part of the Death Duties Amendment Act, 1920, and had been passed in lieu of section five of that Act :

Fixing date on which gift duty becomes payable.

Provided that, in respect of gifts made since the commencement of the said Act and exempt from gift duty thereunder, or assessed for gift duty at a rate less than the rate payable in respect thereof under the provisions of this Act, a reassessment shall be made after the commencement of this Act, and the gift duty or increment of gift duty (if any) payable upon such reassessment shall become payable on the expiration of one month after the giving of notice to the donor of such reassessment.

47. (1.) For the purpose of computing the value of a gift, the interests of beneficiaries, so far as those interests are affected by any contingency, shall be valued in the same manner as the contingent interests of successors in the case of succession duty ; and the provisions of Part II of this Act with respect to reassessment, payment of deficient duty, and refund of duty paid in excess shall extend and apply accordingly to gift duty, with all necessary modifications.

Valuation of contingent interests for purposes of gift duty.

1909, No. 10, sec. 47

(2.) Subject to the provisions of this Part of this Act, the value of a gift shall be deemed and taken to be the present value thereof at the time of the making of the gift.

48. For the purpose of computing the value of a gift no deduction shall be allowed in respect of any mortgage, charge, encumbrance, or liability affecting or incident to the property included in the gift, if and so far as the beneficiary is entitled as against the donor or any other person, or as against any other property, to any available right of indemnity or contribution in respect of that mortgage, charge, encumbrance, or liability.

Valuation of property subject to encumbrances for purposes of gift duty.

Ibid. sec., 48

49. When any gift is made in consideration or with the reservation of any benefit or advantage to or in favour of a donor, whether by way of any estate or interest in the same or any other property, or by way of mortgage or charge, or by way of any annuity or other payment, whether periodical or not, or by way of any contract for the benefit of the donor, or by way of any condition or power of revocation or other disposition, or in any other manner whatsoever, whether that benefit or advantage is charged upon or otherwise affects the property comprised in the gift or not, no deduction or allowance shall be made in respect of that benefit or advantage in computing the value of the gift, and the gift shall be valued and gift duty shall be paid as if the gift had been made without any such consideration or reservation.

No deduction to be made from value of gift in respect of benefit to donor.

1911, No. 9, sec. 9

50. (1.) Gift duty shall constitute a debt due and payable by the donor to the Crown on the making of the gift.

Gift duty to be a debt due by the donor and a charge upon the property.

1909, No. 10. sec. 49

(2.) The duty shall also constitute a charge on all property comprised in the gift.

(3.) Unless it is otherwise provided by the terms of the gift, a beneficiary shall be entitled to be indemnified by the donor against the operation of any such charge.

(4.) No such charge shall prevail against the title of a purchaser for value and in good faith without actual notice of the existence of the charge.

Gift duty to be also a debt due by the beneficiary.
1909, No. 10, sec. 50

51. (1.) Without excluding the liability of the donor under the foregoing provisions, gift duty shall constitute a debt due to the Crown by the beneficiary on the making of the gift :

Provided that where there is more than one beneficiary under the same gift, each of them shall be liable only for the same proportion of the gift duty as the value of his interest bears to the total value of the gift :

Provided also that where the interest of a beneficiary is a future interest he shall not become personally liable until it becomes an interest in possession.

(2.) Unless it is otherwise provided by the terms of the gift, a beneficiary shall be entitled to be indemnified by the donor against all liability under this section.

And by a trustee for a beneficiary.
Ibid., sec. 51

52. (1.) When a gift has been made by way of trust for any beneficiary the gift duty shall, without excluding the liability of the donor or beneficiary under the foregoing provisions, constitute a debt due to the Crown by the trustee on the making of the gift.

(2.) Unless it is otherwise provided by the terms of the gift, the trustee shall be entitled to be indemnified by the donor against all liability under this section.

Statement to be delivered by the donor to the Commissioner.
Ibid., sec. 52
1915, No. 39, sec. 97

53. (1.) Within one month after the making of any gift the value of which exceeds three hundred pounds the donor shall deliver to the Commissioner a statement in the prescribed form, verified by statutory declaration in the prescribed form and manner, and containing all such particulars with respect to the gift as are necessary to enable the Commissioner to determine whether the gift is dutiable and to assess the duty thereon (if any) ; and the Commissioner shall thereupon proceed to assess and recover gift duty accordingly.

(2.) If the gift has been created or is evidenced by any written instrument, the donor shall deposit with the Commissioner, along with the statement aforesaid, the said instrument, or a copy thereof verified as a true copy by statutory declaration.

(3.) After the delivery of the aforesaid statement it shall be the duty of the donor, and of every beneficiary or trustee of a beneficiary, to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Act with respect to the gift.

Stamp duty on instruments of gift.
1909, No. 10, sec. 53

54. (1.) Notwithstanding anything to the contrary in the Stamp Duties Act, 1908, the stamp duty chargeable on any instrument of gift in respect of which gift duty is payable shall be ten shillings, but this stamp duty shall be in addition to and not in substitution for any other stamp duty to which the instrument is liable so far as it operates otherwise than as an instrument of gift exclusively.

(2.) When an instrument is presented to the Commissioner for stamping under the Stamp Duties Act, 1908, and is an instrument creating or evidencing a gift chargeable with gift duty under this Act, the Commissioner shall impound the instrument until the full amount of gift duty has been paid in accordance with this Act.

Beneficiary to deliver statement in default of donor.
Ibid., sec. 54

55. If the donor makes default in delivering the prescribed statement of particulars to the Commissioner within one month after the making of the gift, it shall be the duty of every beneficiary, and of the

trustees (if any) of any beneficiary, within fourteen days after such default, to deliver the same statement which the donor ought to have delivered, and also to deposit with the Commissioner the instrument of gift (if any), or a copy thereof verified by statutory declaration, and at all times thereafter to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Act with respect to the gift.

56. The provisions of this Act as to gift duty shall apply to every gift, whether made in New Zealand or elsewhere; but if the gift is made out of New Zealand the period of three months from the making thereof shall be substituted for the period of one month from the making thereof wherever the last-mentioned period is fixed for any purpose in this Act.

Gift made out of New Zealand to be liable to gift duty. 1909, No. 10, sec. 55

57. If a donor, beneficiary, or trustee of a beneficiary makes default in delivering to or depositing with the Commissioner any statement or other document which he is hereby required to deliver or deposit, or in furnishing the Commissioner with any evidence which he is hereby required to furnish, he shall be liable on summary conviction to a fine not exceeding two pounds for every day during which he so makes default, or one hundred pounds in the whole.

Penalty on failure to deliver statement. *Ibid.*, sec. 56

58. (1.) If a donor, with intent to evade or delay the payment of gift duty, makes default in delivering to the Commissioner any statement or document required by this Act to be so delivered, or in furnishing the Commissioner with any evidence which he is lawfully required to furnish, or if, with the like intent, he continues any such default, the gift duty payable shall, by way of penalty, be increased by one-half, and this additional duty shall be assessable and recoverable in all respects as ordinary gift duty.

Additional duty to be paid in case of default with intent to evade duty. *Ibid.*, sec. 57

(2.) The said penalty shall be in addition to and not in substitution for any fine to which the donor or any other person is liable under this Act.

59. If a donor makes default in delivering to the Commissioner, within one month after the making of the gift, the statement required by this Act to be so delivered, the Commissioner may thereupon proceed to assess and recover the duty payable on the gift in the same manner as if the statement had been duly delivered.

Commissioner may assess gift duty although no statement delivered. *Ibid.*, sec. 58

60. (1.) When the same property is liable both to gift duty and also (upon the death of the donor) to death duty, the amount paid or payable by way of gift duty shall be deducted from the sum which would otherwise be payable in respect of that property by way of death duty, and only the residue (if any) of that sum shall be payable as death duty.

Gift duty to be deducted from death duty payable on same property. *Ibid.*, sec. 59

(2.) Every such deduction shall be made in the first place from any succession duty payable in respect of that property, and thereafter, as to the residue, from the estate duty.

(3.) This section shall extend and apply to deed-of-gift duty under any former Act relating to deed-of-gift duty, in the same manner as to gift duty under this Act.

PART V.

MISCELLANEOUS.

61. (1.) Where in pursuance of any Act payment is made out of the estate of a deceased person without probate or letters of administration having been obtained, notice of such payment shall be given in

Notice of payments without probate to be given to Commissioner. 1915, No. 39, sec. 98

the prescribed form to the Commissioner by the person making the payment.

(2.) Every person making any such payment who fails within fourteen days after payment to give the prescribed notice is liable to a fine not exceeding five pounds.

Appeal to Supreme Court from assessment of Commissioner.

62. (1.) Any administrator who is dissatisfied in point of law with any assessment of death duty made by the Commissioner, and any donor who is dissatisfied in point of law with any assessment of gift duty so made, may, within twenty-one days after notice of the assessment has been given to him, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.

(2.) The Commissioner shall thereupon state and sign a case accordingly setting forth the facts, the question of law to be decided, and the assessment made by him, and shall deliver the case so signed to the administrator or donor (hereinafter referred to as the appellant). In this subsection the term "Commissioner" does not include a Deputy Commissioner.

(3.) The appellant shall, within fourteen days after receiving the case, transmit the same to a Registrar of the Supreme Court in such judicial district as the appellant thinks fit; and the Registrar shall thereupon enter the case for hearing at the first practicable sitting of the Court, and shall give notice thereof to the appellant and to the Commissioner.

(4.) On the hearing of the case the Supreme Court shall determine the question submitted, and the Commissioner shall thereupon assess the duty payable in accordance with that determination.

(5.) The Supreme Court may, if it thinks fit, cause the case to be sent back to the Commissioner for amendment, and thereupon the case shall be amended accordingly; and the Court shall thereupon proceed to hear and determine the question so submitted.

(6.) The costs of any such appeal to the Supreme Court shall be in the discretion of the Court, having regard to the extent to which the Commissioner's assessment exceeds the amount admitted by the appellant before the appeal commenced, and the extent to which the Commissioner's assessment is upheld or varied.

Commissioner may obtain inquiry before a Magistrate. Ibid., sec. 61

63. (1.) In any case in which the Commissioner deems it necessary to hold an inquiry for the purpose of obtaining information respecting any claim for duty under this Act, he may make application in writing to a Magistrate to hold an inquiry under the provisions of this section.

(2.) For the purposes of the inquiry the Magistrate may summon before him, and examine on oath touching any matter which is relevant to the claim for duty, all persons whom the Commissioner or any other person interested requires to be so called and examined.

(3.) The Magistrate shall have all such jurisdiction and authority touching the summoning and examination of any such person as he would have in respect of a witness in a civil action within his ordinary jurisdiction; and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as he would have and be subject to if he was such a witness as aforesaid.

(4.) The Commissioner and every person who is interested in the claim for duty may be represented by counsel or solicitor, who may examine, cross-examine, and re-examine, in accordance with the ordinary practice, any person so summoned.

(5.) The statement of every person so examined shall be taken down in writing, and signed by him in the presence of the Magistrate.

(6.) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may criminate or tend to criminate him or render him liable to any penalty or forfeiture.

(7.) No statement made by any such person in answer to any question put to him shall in criminal proceedings be admissible in evidence against him, except upon a charge of perjury against him in respect of his testimony upon that examination.

64. (1.) In lieu of applying to a Magistrate under the last preceding section for an inquiry, the Commissioner may himself, if he thinks fit, make inquiry for the purpose of obtaining information respecting any claim for duty, and for the purposes of the inquiry may summon before him and examine on oath any person whom the Commissioner deems capable of giving information as aforesaid.

Commissioner may
conduct inquiry
personally.
1915, No. 39, sec. 99

(2.) On any such inquiry the Commissioner shall have all the powers conferred on Commissions by the Commissions of Inquiry Act, 1908, and the provisions of that Act shall apply accordingly.

65. (1.) All public officers and all other persons and bodies corporate whatsoever having in their custody or possession any rolls, books, records, registers, papers, or other documents the inspection whereof may tend to secure the payment of any duty under this Act, or to the proof or discovery of any fraud or omission in relation to any such duty, shall at all reasonable times, notwithstanding anything to the contrary in any other Act, permit any person thereunto authorized by the Commissioner to inspect all such rolls, books, records, registers, papers, and documents, and to take such notes, copies, or extracts thereof or therefrom as he may deem necessary, without fee or reward.

Commissioner to
inspect books,
registers, &c.
1909, No. 10, sec. 61

(2.) Every person or body corporate refusing to permit or obstructing any such inspection or any such taking of notes, copies, or extracts is liable on summary conviction to a fine of fifty pounds.

66. (1.) If any person makes default in delivering to the Commissioner any statement required by this Act to be so delivered for the purposes of any duty under this Act, the Commissioner may apply to the Supreme Court by originating summons for an order directing the person so in default to deliver the statement within such period as the Court may order; and on the hearing of the application the Court may make such order in that behalf as is thought just, and any order so made for the delivery of a statement may be enforced by attachment in accordance with the practice of the Supreme Court.

Supreme Court may
order statement to
be delivered.
Ibid., sec. 63

(2.) The Commissioner may apply to the Supreme Court for such an order as is referred to in the last preceding subsection, although the time allowed by this Act for the delivery of the statement has not expired; and if the Court is of opinion that sufficient reason has been shown for requiring delivery of the statement before the said time has expired it may make an order accordingly.

Delivery of false statement an offence.
1909, No. 10, sec. 64

Commissioner may compromise a claim for duty.
Ibid., sec. 65

Duty chargeable at the higher rate in case of coincident provisions.
Ibid., sec. 66

Valuation of land for the purposes of duty under this Act.
Ibid., sec. 67

67. Every person who, with intent to evade the payment of any duty under this Act, delivers to the Commissioner any document which that person knows to be false in any particular shall be guilty of an indictable offence, punishable by imprisonment with or without hard labour for any period not exceeding three years, or by a fine not exceeding five hundred pounds.

68. (1.) Where by reason of the complexity or uncertainty of the facts, or from any other cause, it is difficult or impracticable to ascertain exactly the amount of any duty payable under this Act, or so to ascertain the same without undue delay or expense, the Commissioner may, with the consent of the Minister of Stamp Duties, assess by way of composition for the duty so payable such sum as the Commissioner thinks proper under the circumstances, and may accept payment of the sum so assessed in full discharge of all claims for that duty.

(2.) No such composition shall constitute a good discharge from duty if it has been procured by fraud or by a wilful failure to disclose material facts.

69. Where by reason of coincident provisions in this Act the same description of duty may be assessed and charged in different ways, it shall be assessed and charged in that manner which is estimated to produce the greatest amount of duty.

70. (1.) For the purpose of assessing death duty or gift duty the value of any land forming part of the dutiable estate of the deceased, or being the subject-matter of a gift, may be determined either by agreement between the Commissioner and the administrator in the case of death duty, or between the Commissioner and the donor in the case of gift duty, or in either case by a valuation made on the requisition of the Commissioner by the Valuer-General in accordance with the Valuation of Land Act, 1908, as of the date at which the value of that land is to be determined for the purpose of the assessment of the said duty.

(2.) Subject to the right of appeal provided by this section, every such agreement or valuation shall be final and conclusive.

(3.) Whenever a valuation of land is made by the Valuer-General under this section, notice of the amount of that valuation shall be given by him in accordance with the Valuation of Land Amendment Act, 1908,—

- (a.) To the administrator in the case of a valuation for the purposes of death duty ; or
- (b.) To the donor in the case of a valuation for the purposes of gift duty ; or
- (c.) If there is no administrator or donor in New Zealand, to such person interested in the payment of the duty as the Valuer-General thinks fit.

(4.) Any person to whom notice is so given may within one month thereafter appeal against the valuation to a Magistrate's Court, in accordance with the Valuation of Land Amendment Act, 1908, and all the provisions of that Act shall extend and apply to any such appeal accordingly.

(5.) In this section the term "land" has the same meaning as in the Valuation of Land Act, 1908, and the term "value" means capital value as defined by that Act.

(6.) For the purposes of any duty under this Act an estate tail shall be valued as if it were an estate in fee-simple.

(7.) There shall be payable by the administrator in the case of death duty, or by the donor in the case of gift duty, in respect of any valuation made pursuant to this section such fee as may be prescribed by regulations.

Valuation fee.
1915, No. 39, sec. 100

71. Subject to the provisions of the last preceding section, the value of any property shall, for the purpose of assessing any duty under this Act, be ascertained by the Commissioner in such manner as he thinks fit:

Valuation of other property.
1909, No. 10, sec. 68

Provided that in ascertaining the value of shares in a company, including a private company, no account shall be taken by the Commissioner of the effect upon such value of any restrictive provisions as to the alienation or transfer of such shares contained in the memorandum or articles of association of the company.

72. (1.) Notwithstanding any assessment or payment of any duty under this Act, or any certificate of the Commissioner that no such duty is payable, it shall be lawful for the Commissioner at any time thereafter, if it is discovered that any duty payable has not been fully assessed and paid, to make a further assessment of the duty so unpaid, and to recover the same in the same manner as if no previous assessment or payment had been paid.

Further claim may be made in case of payment of too little duty.
Ibid., sec. 69

(2.) Except in the case of fraud, an administrator shall not be personally liable for any death duty under any such further assessment by reason of having administered or distributed the estate of the deceased without retaining sufficient assets to satisfy the duty.

(3.) Nothing in this section shall affect the operation of any settlement of a claim for duty expressed to be made by way of composition under the provisions of this Act in that behalf.

73. Any duty under this Act may be recovered by the Commissioner, on behalf of the Crown, by action in his official name in any Court of competent jurisdiction against any person liable to pay the same.

Duty recoverable by Commissioner in his official name.
Ibid., sec. 70

74. (1.) Any claim for a refund of duty paid in excess under this Act may be enforced by action against the Commissioner in his official name as nominal defendant on behalf of the Crown, in any Court of competent jurisdiction, and not otherwise.

Refund of duty paid in excess.
Ibid., sec. 71

(2.) Save where otherwise provided in this Act, no such action shall be brought after the expiration of three years from the date of payment of the duty so paid in excess.

(3.) In this and the last preceding section the term "Commissioner" does not include a Deputy Commissioner.

75. At any time within three years after the payment of any duty the Minister of Stamp Duties may, on proof to his satisfaction that the duty has been paid in excess, order that the amount overpaid be returned to the person entitled thereto.

Minister may refund duty paid in excess.
Ibid., sec. 72

76. All moneys payable under this Act by way of refund of duty shall, without further appropriation than this Act, be paid by the Minister of Finance out of the Consolidated Fund.

Refunds of duty payable out of Consolidated Fund.
Ibid., sec. 73

77. (1.) When any death duty or gift duty constitutes a charge on any real property, the Commissioner may file with the District Land Registrar or the Registrar of Deeds, as the case may require, a memorandum under the hand of the Commissioner setting forth the

Registration of charge for duty.
Ibid. sec. 74

description of the land so charged and the amount of duty payable ; and the said Registrar shall, without fee, register the memorandum against the title of the land charged.

(2.) Upon the registration of any such memorandum it shall be deemed and taken to be actual notice to all persons of the existence of the charge, and the charge shall have operation and priority accordingly.

(3.) When any such charge has been satisfied, the Commissioner shall deposit with the said Registrar a memorandum of satisfaction, and the Registrar shall, without fee, register the same against the title to the land.

Enforcement of
charge for duty by
the Supreme Court.
1909, No. 10, sec. 75

78. (1.) If any death duty or gift duty is in arrear and unpaid, and constitutes by virtue of this Act a charge on any property, the Commissioner may apply by originating summons to the Supreme Court for the enforcement of that charge ; and the Court may make such order in the premises as it thinks just, either for the sale of that property or any part thereof, or for the appointment of a receiver of the rents, profits, or income thereof, and for the payment of the duty and the costs of the Commissioner out of the proceeds of the sale or out of the said rents, profits, or income.

(2.) Where any property has been sold under any such order, the Supreme Court may, on the application of the purchaser or the Commissioner, make an order vesting the property in the purchaser.

(3.) Every such vesting-order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order, and the order shall be subject to stamp duty accordingly ; and in the case of land which is subject to the Land Transfer Act, 1915, the purchaser's title thereto shall be registered accordingly.

Duties to be
denoted by stamps.
Ibid., sec. 76

79. (1.) The payment of all duties under this Act shall be denoted by adhesive stamps affixed by the Commissioner and impressed with the seal of the Minister of Stamp Duties.

(2.) When the duty is paid in respect of the property included in any administration, instrument of gift, or succession order, the said stamps shall be affixed to that administration, instrument of gift, or order, or to a copy or duplicate thereof delivered to the Commissioner in accordance with this Act.

(3.) When there is no such administration, instrument of gift, or succession order, the said stamps shall be affixed to the statement delivered to the Commissioner in pursuance of this Act in respect of the duty so paid ; or if there is no such statement, then to the written certificate of the Commissioner as to the duty payable, or to a copy or duplicate of that certificate.

Governor-General
may remit penalties.
Ibid., sec. 77

80. The Governor-General may, in his discretion, remit the whole or any part of any fine or penalty incurred under this Act.

Statutory
declarations exempt
from stamp duty.

81. (1.) Every statutory declaration required or authorized by this Act or by any regulations thereunder shall be exempt from stamp duty.

Ibid., sec. 78

(2.) The Commissioner is hereby empowered to take any such declaration.

Regulations.

Ibid., sec. 81

82. The Governor-General may from time to time, by Order in Council, make regulations, consistent with this Act,—

(a.) Prescribing the duties of the Commissioner and all other officers acting under this Act :

- (b.) Prescribing forms of statements and other documents required or authorized by this Act :
- (c.) Prescribing the procedure to be adopted in the assessment and collection of any duty under this Act :
- (d.) Making any other provisions which he deems necessary in order to give full effect to this Act.

Native Succession Duty.

83. (1.) Notwithstanding anything in this Act to the contrary, no death duty shall be payable in respect of any property included in a succession order made by the Native Land Court or Native Appellate Court on the death of a Native, nor shall any such property be included as part of the dutiable estate of the deceased Native.

Native succession
duty.
1909, No. 10, sec. 80

(2.) When any succession order is so made in respect of the property of a deceased Native, the property included in that succession order shall be subject to a duty (hereinafter called Native succession duty) payable to the Crown.

(3.) Native succession duty shall be assessed and payable at the rate of two per centum of the value of the property included in the succession order.

(4.) No Native succession duty shall be payable on any succession order if the property included therein is of a less value than two hundred pounds.

(5.) A duplicate of every succession order made by the Native Land Court or Native Appellate Court shall be forthwith sent by the Registrar of that Court to the Commissioner, who shall thereupon proceed to assess the Native succession duty payable in respect thereof, and to certify under his hand (upon the face of the order) the amount of the duty so assessed and payable, and shall return the order to the Registrar.

(6.) Native succession duty shall, as from the death of the deceased, constitute a charge upon the property in respect of which it is payable ; and at any time after the assessment of that duty in manner aforesaid the Native Land Court may, on the application of the Commissioner, enforce the charge by the appointment of a receiver in respect of the property so charged. A receiver so appointed shall have the same rights, powers, duties, and liabilities as a receiver appointed by the Supreme Court in the exercise of its jurisdiction in that behalf.

(7.) No duplicate of a succession order shall be transmitted by the Native Land Court or Native Appellate Court for registration, or issued to any successor, until and unless the Native succession duty has been assessed and certified in manner aforesaid ; and every duplicate so transmitted or issued shall have written on the face thereof a statement of the amount of duty so assessed.

(8.) No succession order which bears upon the face thereof any such statement of duty payable thereon shall be registered under the Land Transfer Act, 1915, until and unless there has been delivered to the District Land Registrar a certificate under the hand of the Commissioner that all such duty has been paid.

(9.) Every certificate of assessment of Native succession duty made by the Commissioner shall be final and conclusive, both as to questions of law and fact, save that at any time within two months after the

certificate has been received from the Commissioner by the Native Land Court any person interested therein may appeal from the assessment of the Commissioner to the Native Appellate Court, which may vary the assessment so made, and the order of the Native Appellate Court on any such appeal shall be final and conclusive as against all persons, whether parties to that appeal or not.

(10.) Every such appeal shall be brought and prosecuted in the manner and shall be subject to the conditions prescribed by regulations under this Act; and, so far as such regulations do not extend, every such appeal shall be subject to the same rules as an appeal to the Native Appellate Court from the Native Land Court.

(11.) The Governor-General may from time to time, by Order in Council, make such regulations as he thinks necessary for the purpose of carrying into full effect the provisions of this section.

Soldiers' Estates.

84. (1.) This section shall apply to the estate of any person—

- (a.) Who has since the fourth day of August, nineteen hundred and fourteen, died while on active service out of New Zealand with any of His Majesty's Military or Naval Forces in the late war; or
- (b.) Who dies or has since the day aforesaid died of wounds, accident, or disease suffered or contracted while on such service out of New Zealand; or
- (c.) Who dies or has since the day aforesaid died of wounds, accident, or disease suffered or contracted by him while an officer, non-commissioned officer, or man of any Expeditionary Force raised in New Zealand for service in the late war.

(2.) In the case of any estate to which this section applies the value of any succession (within the meaning of Part II of this Act) acquired by the wife of the deceased or by any lineal ancestor or lineal descendant of the deceased in respect of his dutiable estate shall to the extent of five thousand pounds, but no more, in the case of each such successor be deducted from the final balance of that estate, and estate duty shall be payable on the residue only.

(3.) The rate of estate duty so payable on the residue shall, nevertheless, be determined by the total amount of the said final balance without any such deduction as aforesaid.

(4.) The aforesaid deduction in the case of the wife of the deceased shall be in substitution for, and not in addition to, the deduction allowed by section thirteen of this Act.

(5.) In the case of any estate to which this section applies no succession duty shall be payable on any succession acquired by the father, mother, or other lineal ancestor of the deceased and not exceeding five thousand pounds in value; and if any succession so acquired exceeds five thousand pounds in value, succession duty shall be payable at the appropriate rate on the total value thereof, save that the succession duty so payable shall not in any case exceed the amount by which the value of the succession exceeds five thousand pounds.

(6.) The determination of the Commissioner that any estate is not one to which this section applies shall be final for all purposes.

Exemption from estate duty and succession duty in the case of soldiers' estates.
1915, No. 39, sec. 93

Repeals.

85. The enactments mentioned in the Second Schedule hereto are hereby repealed to the extent therein specified, but the provisions thereof shall, in so far as they relate to death duties, continue to apply to the estates of all persons who have died before the commencement of this Act.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Final Balance of Estate.		Rate per Cent.
Exceeding £1,000, but not exceeding £2,000	1
.. £2,000 ..	£3,000 ..	2
.. £3,000 ..	£4,000 ..	3
.. £4,000 ..	£6,000 ..	4
.. £6,000 ..	£8,000 ..	5
.. £8,000 ..	£10,000 ..	6
.. £10,000 ..	£15,000 ..	7
.. £15,000 ..	£20,000 ..	8
.. £20,000 ..	£25,000 ..	9
.. £25,000 ..	£30,000 ..	10
.. £30,000 ..	£35,000 ..	11
.. £35,000 ..	£40,000 ..	12
.. £40,000 ..	£45,000 ..	13
.. £45,000 ..	£50,000 ..	14
.. £50,000 ..	£60,000 ..	15
.. £60,000 ..	£70,000 ..	16
.. £70,000 ..	£80,000 ..	17
.. £80,000 ..	£90,000 ..	18
.. £90,000 ..	£100,000 ..	19
.. £100,000	20

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Title of Enactment.	Extent of Repeal.
1909, No. 10.—The Death Duties Act, 1909 ..	The whole Act.
1911, No. 9.—The Death Duties Amendment Act, 1911 ..	The whole Act.
1915, No. 39.—The Finance Act, 1915 ..	Part IV.
1920, No. 42.—The Death Duties Amendment Act, 1920 ..	The whole Act.