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c 14 The Succession Duty Amendment Act, 1975

Ontario

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CHAPTER 14

An Act to amend The Succession Duty Act

Assented to May 2nd, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 7 of *The Succession Duty Act*, ^{s. 7 (1), amended} being chapter 449 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2 and amended by 1974, chapter 40, section 1, is further amended:
 - (a) by inserting after “value,” in the ninth line “after making the deduction provided for in subsection 7,”; and
 - (b) by adding thereto the following clause:
 - (a) exceeds 1 dollar and does not exceed \$150,000—
—11 per cent of the amount of the aggregate value.
- (2) Clause *bb* of subsection 1 of the said section 7 is repealed ^{s. 7 (1) (bb), re-enacted} and the following substituted therefor:
 - (bb) exceeds \$250,000 and does not exceed \$300,000—
6½ per cent plus 1/50 of 1 per cent for each full \$2,000 by which the amount exceeds \$250,000.
- (3) Subsection 5 of the said section 7, as amended by the ^{s. 7 (5), amended} Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2 and 1974, chapter 40, section 1, is further amended by inserting after “value,” in the fourteenth line “after making the deduction provided for in subsection 7,”.
- (4) Clause *a* of subsection 5 of the said section 7, as re-enacted ^{s. 7 (6) (a), re-enacted} by the Statutes of Ontario, 1974, chapter 40, section 1, is repealed and the following substituted therefor:
 - (a) exceeds 1 dollar and does not exceed \$200,000—24 per cent of the amount of the aggregate value.

s. 7 (5) (aa),
repealed

- (5) Clause *aa* of subsection 5 of the said section 7, as re-enacted by the Statutes of Ontario, 1974, chapter 40, section 1, is repealed.

s. 7 (5) (bb),
repealed

- (6) Clause *bb* of subsection 5 of the said section 7, as re-enacted by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed.

s. 7 (5) (cc),
re-enacted

- (7) Clause *cc* of subsection 5 of the said section 7, as re-enacted by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed and the following substituted therefor:

(cc) exceeds \$250,000 and does not exceed \$300,000—
8½ per cent plus 1/50 of 1 per cent for each full
\$2,000 by which the amount exceeds \$250,000.

s. 7 (6),
amended

- (8) Subsection 6 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2 and 1974, chapter 40, section 1, is further amended by inserting after "value," in the sixth line "after making the deduction provided for in subsection 7,".

s. 7 (6) (a),
re-enacted

- (9) Clause *a* of subsection 6 of the said section 7, as re-enacted by the Statutes of Ontario, 1974, chapter 40, section 1, is repealed and the following substituted therefor:

(a) exceeds 1 dollar and does not exceed \$200,000—
35 per cent of the amount of the aggregate value.

s. 7,
amended

- (10) The said section 7 is amended by adding thereto the following subsection:

Reduction
in aggregate
value for
rate
purposes

- (7) For the purpose of determining the applicable rate of duty under clauses *a* to *l* of subsection 1, clauses *a* to *f* of subsection 5 and clauses *a* to *h* of subsection 6, the expression "aggregate value" in subsections 1, 5 and 6 means the aggregate value determined in accordance with clause *a* of section 1, minus the lesser of,

(a) the amount of such aggregate value so determined;
and

(b) \$250,000.

s. 7 (8) (c) (i),
amended

- (11) Subclause *i* of clause *c* of subsection 8 of the said section 7, as amended by the Statutes of Ontario, 1974, chapter 40, section 1, is further amended by striking out "\$150,000" in the amendment of 1974 and inserting in lieu thereof "\$250,000".

- 2.—(1) Subclause *vi* of clause *b* of subsection 1 of section 17*a* <sup>s. 17*a* (1) (b),
amended</sup> of the said Act, as enacted by the Statutes of Ontario, 1974, chapter 40, section 2, is amended by inserting after “partnership” in the second line “, 95 per cent of the assets of which are farming assets,”.
- (2) Clause *f* of subsection 1 of the said section 17*a*, as enacted <sup>s. 17*a* (1) (f),
amended</sup> by the Statutes of Ontario, 1973, chapter 109, section 6, is amended by striking out “deceased then been living” in the seventh line and inserting in lieu thereof “death of the deceased then occurred”.
- (3) Subsection 4 of the said section 17*a* is amended by striking <sup>s. 17*a* (4),
amended</sup> out “1/25” in the second line and inserting in lieu thereof “1/10” and by striking out “24” in the fourth line and inserting in lieu thereof “9”.
- (4) Clause *b* of subsection 11 of the said section 17*a* is repealed <sup>s. 17*a* (11) (b),
re-enacted</sup> and the following substituted therefor:

(b) \$75,000.

3. The said Act is amended by adding thereto the following <sup>s. 17*c*,
enacted</sup> section:

17*c*.—(1) In this section,

Interpre-
tation

- (a) “forgivable business duty” means,
- (i) the duty levied on shares of a small active business corporation that are property passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada, and
 - (ii) the duty levied on a member of the family of the deceased ordinarily resident in Canada or payable by him with respect to shares of a small active business corporation that are property passing to him on the death of the deceased or that are included in a disposition to him made by the deceased that does not come within clause *g* of subsection 1 of section 5,

but where forgivable business duty as hereinbefore defined is only part of the duty payable as a result of the death of the deceased by a member of the family of the deceased ordinarily resident in Canada, “forgivable business duty” means the proportion of

the total duty payable by that person that the value of the shares in the small active business corporation that are dutiable to him bears to the value of all property passing to him on the death of the deceased and of all dispositions to him from the deceased that do not come within clause *g* of subsection 1 of section 5;

(b) "member of the family", in addition to its meaning in clause *k* of section 1, includes such people as would be members of the family of the deceased if, at the time when the expression is being applied to them, they would have been members of the family of the deceased within clause *k* of section 1 had the death of the deceased then occurred;

(c) "small active business corporation" means a company,

(i) incorporated under the laws of Canada or a province of Canada,

(ii) that carries on in Canada an active commercial business (other than a business of an investment or financial nature that is not the making of loans or the trading or dealing in stocks, bonds, mortgages, bills, notes or other similar property) from which at least 75 per cent of its income is derived,

(iii) more than 50 per cent of the shares of which that confer on the holder thereof the right to vote are, at the date of the death of the deceased, owned either by the deceased or by a member or members of his family ordinarily resident in Canada, and

(iv) that, for the fiscal year ended immediately prior to the death of the deceased, qualified for a deduction under section 125 of the *Income Tax Act* (Canada) notwithstanding that no deduction is allowed under that section for the fiscal year by reason only that the amount determined under paragraph *a* or *b* of subsection 1 of that section is nil for the fiscal year.

1970-71,
c. 63 (Can.)

Discharge
of
forgivable
business
duty

(2) Where the property passing on the death of the deceased or any disposition made by him that does not come within clause *g* of subsection 1 of section 5 includes shares of a

small active business corporation, the forgivable duty referable to those shares is payable only in accordance with this section and shall be reduced and discharged as hereinafter provided and upon the conditions hereinafter set forth.

(3) On all forgivable business duty that is neither paid nor discharged by operation of this section, interest is payable at the rate applicable to duty payable under subsection 1 of section 16. Interest

(4) Subject to subsection 8, the forgivable business duty shall be reduced and discharged by an amount equal to 1/10 of that forgivable business duty on each of the first anniversary of the death of the deceased and the nine next succeeding anniversaries of his death, and all interest owing at the time of any reduction and discharge of forgivable business duty is cancelled by the reduction of duty, provided that, during the year preceding any reduction or discharge of forgivable business duty, more than 50 per cent of the voting shares of the small active business corporation continued to be held by members of the family of the deceased ordinarily resident in Canada and the corporation continued to carry on an active commercial business as described in subclause ii of clause c of subsection 1. Forgivable
business
duty to
be
discharged

(5) If, while any part of the forgivable business duty remains unpaid and undischarged, Forgivable
business
duty, when
payable

(a) 50 per cent or more of the voting shares of the small active business corporation cease to be held by members of the family of the deceased ordinarily resident in Canada; or

(b) the small active business corporation ceases to carry on an active commercial business as described in subclause ii of clause c of subsection 1,

the part of the forgivable business duty that is unpaid and undischarged at the happening of any event referred to in clause a or b of this subsection is, subject to subsection 8, payable immediately upon the happening of any of the said events, and until fully paid bears interest at the rate applicable to duty payable under subsection 1 of section 16.

(6) Subject to subsection 8, if any event referred to in clause a or b of subsection 5 occurs before the second anniversary of the date of the death of the deceased, all the forgivable business duty owing by the person with respect to whom any such event occurred is immediately payable Exception

with interest as hereinbefore provided in this section and notwithstanding that a part of that forgivable business duty was discharged by the operation of subsection 4.

Information to be furnished to the Minister

(7) The Minister may from time to time require any person to furnish to him information on any matter that, in the opinion of the Minister, is relevant in establishing that all the conditions laid down by this section have been and continue to be fulfilled by all persons by whom forgivable business duty is payable, and where a person who should furnish such information as the Minister requires refuses so to do, the Minister may demand from that person the forgivable business duty owing by him that is then unpaid and undischarged, and upon the demand in writing being made, the forgivable business duty owing is forthwith payable with interest at the rate applicable to duty payable under subsection 1 of section 16, but no demand under this subsection shall be made until the person thereby affected has been afforded an opportunity to appear before the Minister to show why the information was not provided by him as required.

Suspension of forgivable business duty

(8) Where, by reason of the destruction of, damage to, or expropriation of property of a small active business corporation, or by reason of some other event beyond the control of the corporation, it ceases to carry on an active commercial business as described in subclause ii of clause *c* of subsection 1, and the corporation satisfies the Minister that it intends to carry on an active commercial business as described in subclause ii of clause *c* of subsection 1 as soon as it can reasonably do so, the Minister may suspend any further reduction and discharge of the forgivable business duty then payable and undischarged for a period of not more than two years, and if the corporation, within the time during which such suspension is in force, commences to carry on an active commercial business as described in subclause ii of clause *c* of subsection 1, any reduction and discharge of forgivable business duty that might have been made during the period of the suspension shall be made as if no suspension had taken place, but if such active commercial business is not so commenced, the forgivable business duty owing at the beginning of the period of suspension shall be payable forthwith with interest thereon from the end of the period of suspension until the date of payment and at the rate applicable to duty payable under subsection 1 of section 16.

Small active business deduction

(9) Notwithstanding any provision of this Act to the contrary, where shares of a small active business corporation are property deemed to pass on the death of the deceased by subclause *x* of clause *r* of section 1 or are included in a

disposition or dispositions that do not come within clause *g* of subsection 1 of section 5, the aggregate and the dutiable value of such shares shall, for the purpose of computing the duty imposed by this Act, be reduced by an amount equal to the lesser of,

(a) the dutiable value of such shares before making the reduction required by this subsection; or

(b) \$75,000.

4. This Act shall be deemed to have come into force on the 8th day of April, 1975, and applies to every case in which duty is imposed by *The Succession Duty Act* as a result of the death of a person dying on or after that day. Commence-
ment
5. This Act may be cited as *The Succession Duty Amendment Act, 1975*. Short title

