1973

`c 109 The Succession Duty Amendment Act, 1973`

Ontario
CHAPTER 109

An Act to amend The Succession Duty Act

Assented to November 15th, 1973
Session Prorogued March 5th, 1974

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

1. Clause h of subsection 1 of section 5 of The Succession Duty Act, being chapter 449 of the Revised Statutes of Ontario, 1970, as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 1, is repealed.

2. — (1) Subsection 2 of section 7 of the said Act is repealed and the following substituted therefor:

(2) Notwithstanding subsection 1, no duty shall be levied on any property situate in Ontario passing on the death of the deceased to or for the benefit of a dependant or on him where the sum of the value of property passing on the death of the deceased to the dependant or for his benefit and of the value of all dispositions to him that do not come within clause g of subsection 1 of section 5 does not exceed his individual dependant allowance.

(2) Subsection 3 of the said section 7 is amended by striking out “dependant” in the second line and inserting in lieu thereof “dependent child” and by striking out “or of his increased individual dependant reduction, if the greater” in the tenth, eleventh and twelfth lines.

(3) Subsection 4 of the said section 7 is repealed and the following substituted therefor:

(4) After the reduction provided for in subsection 3 is made, the duty levied on property passing on the death of the deceased to or for the benefit of a dependant and on him shall be reduced to an amount equal to one-half of the amount by which the sum of the value of the property passing on the death of the deceased to or for the benefit of such dependant and of all dispositions to him, that do not come within clause g of subsection 1 of section 5, exceeds his individual dependant allowance.
(4) Clause b of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed.

(5) Clause c of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971, chapter 98, section 4, is repealed and the following substituted therefor:

(c) "dependent child" means,

(i) a legitimate child of the deceased,

(ii) a person adopted by the deceased, or

(iii) a person to whom the deceased or the spouse of the deceased stood in loco parentis during the infancy of such person,

who, at the time of the death of the deceased, was under twenty-six years of age or was dependent upon the deceased or the spouse of the deceased or both for financial support by reason of any permanent mental or physical infirmity rendering that person incapable ordinarily of pursuing any substantial gainful occupation.

(6) Clauses d and e of subsection 11 of the said section 7 are repealed and the following substituted therefor:

(d) "individual dependant allowance" means,

(i) in the case of the spouse of the deceased, an amount equal to the sum of the value of the property passing on the death of the deceased to or for the benefit of the spouse, plus the value of all dispositions to such spouse that do not come within clause g of subsection 1 of section 5,

(ii) in the case of a dependent child where the deceased is survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying $2,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,
(iii) in the case of a dependent child where the deceased is not survived by a spouse and where the dependent child is, at the death of the deceased, under the age of twenty-six years, an amount equal to the product of multiplying $4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become twenty-six years of age,

(iv) in the case of a dependent child who, at the death of the deceased, is dependent on the deceased or the spouse of the deceased or both by reason of any permanent mental or physical infirmity, an amount in addition to any individual dependant allowance to which such dependent child is entitled under subclause ii or iii equal to,

A. where the deceased dies after the twenty-fifth birthday of the dependent child, the product of multiplying $4,000 by the number of full years in the period commencing on the day of the death of the deceased and ending on the day on which the dependent child will, if ever, become seventy-one years of age, or

B. where the deceased dies on or before the dependent child’s twenty-fifth birthday, the product of multiplying $4,000 by the number of full years in the period commencing on the day of the anniversary of the death of the deceased that next precedes the day following the day on which the dependent child will, if ever, become twenty-six years of age and ending on the day on which the dependent child will, if ever, become seventy-one years of age;

(c) "individual dependant reduction" means an amount equal to one-tenth of the individual dependant allowance applicable to a dependent child with respect to whom the expression is being used.

(7) Clause f of subsection 11 of the said section 7, as amended by the Statutes of Ontario, 1971 (2nd Session), chapter 3, section 2, is repealed.
(8) Clause d of subsection 11 of the said section 7, as re-enacted by the Statutes of Ontario, 1971, chapter 15, section 2, and amended by 1971 (2nd Session), chapter 3, section 2, is repealed.

3. Subsection 2 of section 9a of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 17, section 4, is amended by striking out “to the successor” in the sixth line.

4. (i) Subsection 1 of section 11 of the said Act is amended by striking out “any member of the family of the deceased either alone or jointly with any person or where the deceased or any member of his family had access or right of access, directly or indirectly, to any such safety deposit box or other repository” in the eighth, ninth, tenth, eleventh and twelfth lines and by inserting in lieu thereof “the spouse of the deceased”.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

(3) Notwithstanding subsection 1, there may be removed from any repository mentioned in subsection 1 at any time without the consent of the Minister or his representative, the will or other testamentary writing of the deceased, any birth certificate or marriage licence, any title deed, lease, agreement for sale or deed of mortgage or hypothec relating to real property, or any deed, record or other document required in connection with the burial of the deceased.

5. (i) Subsection 1 of section 13 of the said Act is amended by striking out “three” in the fourth line and inserting in lieu thereof “six”.

(2) Subsection 4 of the said section 13 is amended by striking out “shall” in the second line and inserting in lieu thereof “may be required to”.

6. The said Act is amended by adding thereto the following sections:

17a.—(1) In this section,

(a) “farming” includes tillage of the soil, the breeding, raising or grazing of livestock of all kinds, the raising of poultry and the production of poultry products, fur farming, dairy farming, fruit growing, the growing of food for human consumption or for the feeding of livestock, and the keeping of bees;

(b) “farming assets” means,
(i) land, buildings, equipment, machinery and livestock that are used chiefly in farming,

(ii) any right or licence granted or issued under any Act of the Legislature that permits or regulates the production or sale of any commodity or thing produced, raised or grown through farming,

(iii) the building in which a person resides who is engaged in farming if that building is on land that is or is contiguous to land used by that person in farming, and

(iv) shares in a farming corporation;

(c) "farming corporation" means a corporation,

(i) every share of which that confers on the holder thereof the right to vote is, at the date of the death of the deceased and at all times following that death during which any forgivable duty that might be reduced and discharged by the operation of this section remains owing, owned either by the deceased or by a member of his family ordinarily resident in Canada,

(ii) 95 per cent of the assets of which are farming assets, and

(iii) which continues to carry on the business of farming in Ontario through the employment of members of the family of the deceased actually engaged in the operation of the farm;

(d) "farming land" means those farming assets that are land that passes on the death of the deceased or that is included in a disposition made by him that does not come within clause g of subsection 1 of section 5, or that is owned by a farming corporation that uses it for farming;

(e) "forgivable duty" means the duty that is levied by this Act on farming assets passing on the death of the deceased to a member of the family of the deceased ordinarily resident in Canada or to a farming corporation, and includes duty levied on or payable by any member of the family of the deceased.
ordinarily resident in Canada or any farming corporation, with respect to farming assets, to whom farming assets pass on the death of the deceased or to whom the deceased made a disposition of farming assets that does not come within clause g of subsection 1 of section 5, but where the whole 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 or by a farming corporation is not forgivable duty as hereinbefore defined, "forgivable duty" means the proportion of the total duty payable by that person that the value of the farming assets that are dutiable to him bears to the dutiable 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;

(f) "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 deceased then been living.

(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 farming assets, the forgivable duty referable to those farming assets 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 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.

(4) Subject to subsection 10, the forgivable duty shall be reduced and discharged by an amount equal to 1/25 of that forgivable duty on each of the first anniversary of the death of the deceased and the 24 next succeeding anniversaries of his death, and all interest owing at the time of any reduction and discharge of forgivable duty is cancelled by the reduction of duty, provided that, during the year preceding any reduction or discharge of forgivable duty, the farming land has been used in farming by members of the family of the deceased, either as the owners thereof
or as the employees of a farming corporation that owns such farming land, who were ordinarily resident in Canada throughout that year.

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

(a) farming ceases to be carried on by members of the family of the deceased on any part of the farming land; or

(b) the farming land or any part of it ceases to be owned by members of the family of the deceased or by a farming corporation,

the part of the forgivable 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 10, 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 10, 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 duty owing by the person with respect to whom any such event occurred is immediately payable with interest as hereinbefore provided in this section notwithstanding that a part of that forgivable duty was discharged by the operation of subsection 4.

(7) For the amount of any forgivable duty from time to time owing on or with respect to farming assets, the Minister has a first lien and charge on all farming land notwithstanding that such farming land was not property passing on the death of the deceased, but such first lien and charge on farming land is effective only where notice of the existence of such lien and charge is registered against the farming land in the proper land registry office.

(8) Where farming land owned by a farming corporation has been encumbered after the death of the deceased and before the registration by the Minister of a notice of lien and charge for forgivable duty as provided for in subsection 7, the Minister may, unless he is given priority over the encumbrance, declare that no forgivable duty arises on the death of the deceased, and where such a declaration is made in writing to the farming corporation owning the farming land that has been encumbered, this section does not apply to reduce or discharge the duty owing by any person, and the duty is payable in accordance with section 16.
(9) 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 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 duty owing by him that is then unpaid and undischarged, and upon the demand in writing being made, the forgivable 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.

(10) Where the occurrence of any event referred to in clause a or b of subsection 5 results in the immediate payment of any forgivable duty, the Minister may accept in lieu of such immediate payment the whole or any part of such sum as he considers to have been realized as a result of the occurrence of any of the said events, and upon his accepting such payment, this section continues to apply as if the event had not occurred, but any payment so accepted shall be applied to reduce the total amount of forgivable duty payable by the person from whom such payment was accepted, and this section shall thereafter be construed as though the forgivable duty were the amount remaining after the application of such payment accepted by the Minister in accordance with this subsection.

(11) Notwithstanding any provision of this Act to the contrary, where farming assets 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 farming assets 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 farming assets before making the reduction required by this subsection; or

(b) $50,000.

17b.—(1) In this section,

(a) "eligible 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, and

(iii) more than 50 per cent of the voting shares in which are held at the death of the deceased by the deceased, the deceased and members of his family ordinarily resident in Canada, or members of the family of the deceased ordinarily resident in Canada;

(b) "family business duty" means,

(i) the duty levied on shares of an eligible 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 an eligible 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 family 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, "family business duty" means the proportion of the total duty payable by that person that the value of the shares in the eligible 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.

(2) Where shares of an eligible corporation pass on the death of a deceased to a member of his family ordinarily resident in Canada or are included in a disposition that is
made by the deceased to a member of his family ordinarily resident in Canada and that does not come within clause g of subsection 1 of section 5, the family business duty and the interest thereon from time to time owing may, if the person by whom such duty and interest are payable so elects in writing within six months after the death of the deceased, be paid either,

(a) in equal semi-annual or quarterly instalments commencing on the first anniversary of the death of the deceased and payable over the six years immediately following the first anniversary of the death of the deceased and so calculated as to discharge all such duty and interest by the payment of the final instalment, but all interest on such duty shall be computed at the rate and from the time applicable to interest on duty payable under subsection 1 of section 16, and no discount shall be allowed for the prepayment of any instalment of such duty and interest; or

(b) by transferring to the Treasurer the absolute ownership of shares, of a class and quantity acceptable to the Treasurer, in the eligible corporation that have a fair market value at the time of such transfer of not less than the family business duty and interest then owing by the person by whom or on whose account such shares are transferred,

and where a person by whom family business duty is payable does not make the election provided for in this subsection, the family business duty payable by him is payable in accordance with section 16.

(3) Subject to subsections 4, 5, 6 and 7, the Treasurer shall not sell or dispose of any shares transferred to him under clause b of subsection 2 unless, within the six months preceding such sale, he has offered the same number and class of shares at the same or a lesser price to the members of the family of the deceased living at the time such offer is made, and the offer has not been accepted by the person to whom it is made or by that person's parent or guardian where that person is a minor.

(4) An offer made to comply with subsection 3 shall take into account the number of shares of the class of shares offered for sale that is already owned by members of the family of the deceased ordinarily resident in Canada to whom the offer is made, and the shares of each class shall be offered
to each person in such number as will maintain, as nearly as may be between the members of the family of the deceased ordinarily resident in Canada, the ratio of their ownership of shares in the class in question, but no failure to preserve such ratio of ownership prevents or invalidates a sale of any shares sold pursuant to an offer under subsection 3.

(5) An offer made to comply with subsection 3 shall be open for acceptance for at least thirty days from the day on which it is made, and such offer shall be deemed to be made on the day when it is sent by registered mail to the address of the offeree or, if his address is unknown, to such address as, upon reasonable inquiry, appears to the Treasurer to be the offeree's last known address.

(6) Where, in order to comply with subsection 3, an offer is made to a member of the family of the deceased ordinarily resident in Canada who is a minor, the offer may be accepted on the minor's behalf by his parent or guardian, in which case the shares specified in the offer shall be transferred by the Treasurer to the parent or guardian accepting the offer on behalf of the minor and in trust to be transferred to the minor absolutely when he attains his majority.

(7) No provision in the by-laws or articles of association of an eligible corporation that restricts or prevents the transfer of shares that have been transferred to the Treasurer under clause b of subsection 2 is applicable or effective to prevent the Treasurer from selling in accordance with this section any such shares or to prevent the purchaser from the Treasurer from being registered as a shareholder of the eligible corporation or from exercising the rights attaching to the class of shares purchased from the Treasurer.

(8) The Treasurer may in writing delegate to any person the management and custody of any shares transferred to him under this section and the performance of the powers and duties conferred and imposed upon the Treasurer by this section, and any such delegation may from time to time be altered or revoked by the Treasurer.

7. This Act comes into force on the day it receives Royal Assent but applies to every case in which duty is imposed by The Succession Duty Act as a result of the death of a person dying after the 12th day of April, 1973.

8. This Act may be cited as The Succession Duty Amendment Act, 1973.