

**JOINT /SELECT  
COMMITTEE REPORTS OF  
LEGISLATIVE ASSEMBLY -  
1949**

**The Estate Duty Bill,  
1948 (Final Report )**

List of Reports of Select Committees presented  
to the Constituent Assembly of India  
(Legislative) in 1949.

S. No.	Short title of the Bill.	Date of presen- tation.	Date of publica- tion.
1.	The Banking Companies Bill, 1948.	1.2.49.	26.2.49.
2.	The Payment of Taxes (Transfer of Property) Bill, 1948.	10.2.49.	26.2.49.
3.	The Public Companies (Limita- tion of Dividends) Bill, 1949.	21.2.49.	16.4.49.
4.	The Chartered Accountants Bill, 1948.	1.3.49.	12.3.49.
5.	The Central Tea Board Bill, 1949.	1.3.49.	12.3.49.
6.	The Indian Penal Code and the Code of Criminal Procedure (Amendment) Bill, 1947.	21.3.49.	16.4.49.
7.	The Ajmer-Merwara Tenancy and Land Records Bill, 1948.	21.3.49.	16.4.49.
8.	The Indian Finance Bill, 1949.	25.3.49.	2.4.49.
9.	The Hindu Marriages Validity Bill, 1948.	25.3.49.	2.4.49.
10.	The Child Marriage Restraint (Amendment) Bill, 1947.	25.3.49.	2.4.49.
11.	The Estate Duty Bill, 1948. (FINAL REPORT)	31.3.49.	16.4.49.
12.	The Indian Railways (Amendment) Bill, 1949.	28.11.49.	3.12.49.
13.	<i>The Indian Judicial Procedure Bill, 1948</i>	<i>28.11.49</i>	<i>3.12.49</i>
14.	The Delhi Road Transport Authority Bill, 1949.	12.12.49.	24.12.49.
15.	The Taxation Laws (Extension to Merged States and Amendment) Bill, 1949.	16.12.49.	24.12.49.

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE).

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C o r r i g e n d u m .

to the Report of the Select Committee on the Estate Duty Bill, 1948,  
together with the Bill as amended.

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At page 5 of the Bill, as amended by the Select Committee, in  
Sub-clause (1) of clause 15 of the Bill, between lines 6 and 7,  
insert the following, namely :-

" deceased would have been insufficient to provide  
the whole of that annuity or "

New Delhi,

M.N. KAUL,

The 20th April, 1949.

S E C R E T A R Y.

'JGB'-1200.

## CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

### REPORT OF THE SELECT COMMITTEE ON THE ESTATE DUTY BILL, 1946.

We, the undersigned, members of the Select Committee to which the Bill to provide for the levy and collection of an estate duty in the Provinces of India was referred, have considered the Bill, and have now the honour to submit this our Report with the Bill as amended by us annexed hereto.

1. We have considered whether a Succession Duty would be preferable to an Estate Duty. In view of the practical administrative difficulties involved in the levy of a Succession Duty and the smaller revenue which it will yield, we are of the view that an Estate Duty instead of a Succession Duty should be imposed.

2. In view of the absence of unanimity of opinion among the Provinces for authorising the Central Government to legislate on their behalf in respect of an Estate Duty on agricultural land, we have confined the Bill as previously proposed to an Estate Duty on property other than agricultural land.

3. We consider that for constitutional and other reasons it is not advisable to include in the estate subject to duty agricultural land situated in Indian States.

4. We have considered the question whether probate should be made compulsory for all in order to facilitate administration of estate duty, but we think that this would be too radical a change and that it is not practicable to insist upon this as a preliminary to taxation. We, however, recommend that when the time is considered ripe, separate legislation should be introduced for this purpose.

5. We have also considered the question of estate duty *vis-a-vis* the Mitakshara Hindu family. Although we are of the opinion that if the draft Hindu Code is passed by the Central Legislature in the form in which it now stands, it would facilitate the adoption of the proposals contained in the Estate Duty Bill, we feel that the passage of the Estate Duty Bill need not be held up further pending the passing of the Hindu Code. We think that amendments to the Estate Duty Bill can, if necessary, be proposed later so as to bring it into line with the ultimate form of the Hindu Code.

6. We consider that, having regard to the limit of exemption in the United Kingdom which is two thousand pounds, the limit of exemption at one lakh of rupees proposed in the Bill is quite liberal and does not require any change. In this connection we have also considered whether any concession could be given in respect of dwelling house by way of either an exemption or a reduction in valuation or a reduction in the rates of estate duty, and we are of the opinion that much will depend upon the rates of estate duty to be prescribed by the annual Finance Acts and this question would more appropriately come up for consideration at the time the Finance Bill is considered each year.

7. Upon the changes proposed by us which are not formal or consequential we note below:—

*Clause 2.*—We have inserted a definition of “legal representative”. See note on clause 49 (old clause 48).

*Clause 6.*—We accept the principle as stated in the existing clause, but in view of the high rate of infant mortality in India, we consider that an exception should be made in the case of the interest in ancestral property passing on

the death of a member of a Mitakshara family before attaining the age of eighteen years if he has a male ascendant living. We also think that the provisions of this clause in their application to a joint Hindu family should apply *mutatis mutandis* to Marumakkattayam and Aliyasantana families subject to the modification that the condition regarding a living male ascendant should be omitted from the exception, that is to say, in the case of a Marumakkattayam or Aliyasantana family the exception will apply to a person dying below the age of eighteen years whether there is a male ascendant living or not for the reason that the male ascendant is not a member of the tarwad, tavazhi, kutumba or kavaru governed by the Marumakkattayam or Aliyasantana rule of inheritance. We have accordingly inserted the new sub-clauses (2) and (3) in this clause and have made other consequential modifications therein.

*Clause 7.*—We have added an *Explanation* to this clause to make it clear that the expression "gift made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925.

*Clause 8.*—We feel that a time limit of six months before death in the case of gifts to public charity and a time limit of two years in the case of other gifts would suffice and we have accordingly made necessary changes in this clause. We have also substituted for the expression "public or charitable purposes" the expression "public charitable purposes" in the proviso to this clause to restrict the application of the proviso only to gifts to public charity.

*Clause 9.*—We have made it clear in the main part of this clause that property taken under any gift shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

We have also changed the words "three years" to "two years" in the proviso to this clause as we have done in clause 8.

*Clause 10.*—We have also made certain changes in this clause similar to those which we have suggested in clause 8.

*Clause 12.*—We have recast this clause to make it clear that the liability of the whole property to duty under this clause will arise only in the case where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person. The clause will not therefore apply to a case where the transferor was entitled only to a portion of the property or of the funds with which the property was purchased.

*Clause 16.*—In our opinion, all rules made under sub-clause (4) of this clause should be laid before the Legislature not less than fifteen days before the date of their final publication, and we have accordingly added a proviso to that effect to that sub-clause.

*Clause 19.*—We are of opinion that for the purpose of determining the liability of any property to duty under this clause, both "domicile" and "residence" of the deceased or the settlor, as the case may be, should be taken into consideration, and that for the said purpose, the expression "residence" should have the same meaning as that assigned to it in section 4-A of the Indian Income Tax Act, 1922. We have modified this clause accordingly. We also consider that property, whether movable or immovable (not being agricultural land), within an Indian State should, as far as possible, be subjected to duty. We have, therefore, provided in this clause that all property, movable

or immovable (not being agricultural land), in an Acceding State is liable to estate duty in any case where the deceased or the settlor was domiciled or resident in any Province of India at the time of death or settlement.

*Clause 20.*—For greater clarity we have redrafted this clause by incorporating the proviso in the body of the main clause itself.

*Clause 21.*—We think that a provision similar to that contained in section 47 of the United Kingdom Finance Act of 1938 should be inserted as *Explanation (2)* to this clause to make it clear that a residuary interest under a will within an estate whose administration is not complete will not be regarded as a case of failure of interest before becoming an interest in possession. We have accordingly inserted a second *Explanation* for the purpose.

*Clause 28.*—The clause as at present drafted may not be quite fair to India, in that it may enable a foreign country to take an unduly large share of estate duty in respect of movable property in India belonging to persons of foreign domicile. We therefore consider that a provision for the avoidance or relief of double taxation on the basis of agreement entered into by India with other countries on the lines of the agreements entered into between the United Kingdom and the United States of America under section 54 of the United Kingdom Finance (No. II) Act of 1945 will be more suitable than the existing provisions of this clause. We have recast this clause accordingly. We desire that before any agreement contemplated by this clause as redrafted is ratified, it should be placed before the Standing Finance Committee.

*New clause 30.*—This clause is new. We think that there should be complete exemption of duty in respect of a coparcenary interest devolving upon the members of the coparcenary or any of them upon the death of a Hindu widow if she dies within seven years of the death of her husband and if estate duty had been levied in respect of the same on her husband's death. We have accordingly inserted this new clause.

*Clause 46 (old clause 45).*—We consider that the operation of this clause should be confined to territories other than those covered by clause 28 as revised by us. We also consider that a discretion should be conferred on the Board to make an allowance of the whole or any part of the duty payable in any such territories. This clause has been modified accordingly.

*Clause 49 (old clause 48).*—We have redrafted sub-clause (1) of this clause for defining more clearly the liabilities of the different categories of persons who will be accountable for the estate duty. We have made it clear that a legal representative of the deceased shall be accountable for the whole of the estate duty on the property passing on the death of the deceased but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received. We have also made it clear that a trustee, guardian, committee or other person in whom any interest in the property passing on the death of the deceased or the management thereof is at any time vested and every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title shall be also accountable for the whole of the estate duty on the property passing on the death, but any such person shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received.

We have inserted a definition of "legal representative" in clause 2 on the lines of that contained in the Code of Civil Procedure, 1908; but we have made it clear that where the deceased was a coparcener of a Hindu family the expression would include the manager for the time being of the family.

We think that where an heir-at-law proves to the satisfaction of the Board that some other person is in adverse possession of any assets of the deceased.

he should not be accountable for the portion of the estate duty payable in respect of such assets and that he should become so accountable if, and to the extent that, he subsequently recovers possession of such assets. We have accordingly inserted a new sub-clause (2) to this effect in place of the old sub-clause (2) of this clause.

We have omitted the old sub-clause (2) of this clause in view of the provision which we have included in the new clause 64 proposed by us for "charging" the estate duty on all immovable property passing on the death of the deceased.

We think that where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they should be liable jointly and severally for the whole of the estate duty on the property so passing. We have modified sub-clause (5) of this clause accordingly.

*Clause 64 (old clauses 63 and 64).*—We consider that there should be a first charge for estate duty on all immovable property passing on the death of the deceased (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances allowable under Part VI of the Bill. We think that it should be also provided that any private transfer or delivery of such property would be void against any claim in respect of such estate duty. We do not consider that any exemption from this charge need be provided in the case of a *bona fide* purchaser for value without notice, because nobody can legitimately plead want of notice in regard to a charge imposed by the operation of a law. As regards movable property, we consider that there should be a first charge on the movable property passing to a beneficiary under a will, not being an heir-at-law, to the extent of a rateable part of the estate duty on the lines of section 9(1) of the United Kingdom Finance Act, 1894. We also think that there should be no charge on movable property acquired by a *bona fide* purchaser for value without notice. We consider, however, that the Board should have power to release from charge the whole or any part of any property (whether movable or immovable) in such circumstances and on such conditions as it thinks fit. We have accordingly proposed a new clause 64 in place of the old clauses 63 and 64.

8. The Bill was published in Part V of the *Gazette of India*, dated the 3rd April, 1948.

9. We think that the Bill has not been so altered as to require circulation under rule 49(5) of the Rules of Procedure and Conduct of Business, and we recommend that it be passed as now amended.

JOHN MATTHAI.

K. SANTHANAM.

RAM SAHAI.

T. A. RAMALINGAM CHETTIAR.

R. K. SIDHVA.

S. M. GHOSE.

S. V. KRISHNAMOORTHY RAO.

NAZIRUDDIN AHMAD.

SATYANARAYAN SINHA.

BISWANATH DAS.

M. ANANTHASAYANAM AYYANGAR.

NEW DELHI;

The 31st March, 1949.

[AS AMENDED BY THE SELECT COMMITTEE]

(Words *sidelined* or *underlined* indicate the amendments suggested by the Committee; *asterisks* indicate omissions.)

A

BILL

to provide for the levy and collection of an estate duty in the Provinces of India.

WHEREAS it is expedient to provide for the levy and collection of an estate duty in the Provinces of India;

It is hereby enacted as follows:—

PART I.—INTRODUCTORY

1. **Short title, extent and commencement.**—(1) This Act may be called the Estate Duty Act 1949.

(2) It extends to all the Provinces of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint. \* \*.

2. **Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(1) "affidavit of valuation" means the affidavit of valuation made under section 19-I of the Court-fees Act, 1870 (VII of 1870), in connection with an application for the grant of representation;

(2) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924); and, if in respect of any matter, the Central Government has empowered any officer or authority to discharge the functions of the Board, includes that officer or authority in respect of that matter;

(3) "company" includes any body corporate wheresoever incorporated;

(4) "controlled company" means a company which is deemed to be controlled by virtue of the rules made under sub-section (4) of section 16;

(5) "deceased person" and "the deceased" mean a person dying after the commencement of this Act;

(6) "estate duty" means estate duty under this Act;

(7) "executor" means the executor or administrator of a deceased person and includes, as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof;

(8) "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee;

(9) "incumbrances" includes mortgages and terminable charges;

(10) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases;



(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and also includes, in the case where the deceased was a coparcener of a Hindu family, the manager for the time being of the family;

(12) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner;

(13) "prescribed" means prescribed by rules made under this Act;

(14) "property" includes any interest in property, movable or immovable, and the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale.

*Explanation.*—(1) The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression "property" shall include the debt or right created.

(2) The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right;

(15) "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death";

(16) "representation" means probate of a will or letters of administration;

(17) "settled property" means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act; and "settlement" means any disposition, including a dedication or endowment, whereby property is settled.

### 3. Interpretation.—(1) For the purposes of this Act—

(a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property;

(b) a person shall be deemed to dispose of property to which he has acquired title, even if he has acquired title to it in one form and disposes of it in another;

(c) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required;

(d) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose;

(e) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), on the subject applied to him.

(2) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or provided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement or

disposition, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

## PART II.—IMPOSITION OF ESTATE DUTY

### *Extent of charge*

**4. Levy of estate duty.**—In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, not being agricultural land, which passes on the death of such person, a duty called "estate duty" at the graduated rates hereinafter mentioned.

### *Property which is deemed to pass*

**5. Property within disposing capacity.**—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

**6. Interests ceasing on death.**—(1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the coparcenary property unless the deceased had completed his eighteenth year, or unless, at the time of his death, his father or other male ascendant in the male line was not a coparcener of the same family.

*Explanation.*—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or a member of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the *tarwad*, *tavazhi*, *kutumba* or *kavaru*, as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

**7. Gifts mortis causa.**—Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death.

*Explanation.*—In this section, the expression "gift made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925 (XXXIX of 1925).

**8. Gifts within a certain period before death.**—Property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on the death:

Provided that in the case of gifts made for public charitable purposes the period shall be six months. \* \* \*

**9. Gifts whenever made where donor not entirely excluded.**—Property taken under any gift, whenever made, shall be deemed to pass on the donor's death, to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death.

**10. Limited interests disposed of within a certain period before death.**—

(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession,—

(a) if apart from the disposition or determination the property in which the interest subsisted would have passed on the death under section 4, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death; or

(b) if apart from the disposition or determination the property in which the interest subsisted would have been deemed by virtue of section 6 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where the relevant disposition or determination was *bona fide* effected or suffered not less than two years before the death (or, if it was effected or suffered for public charitable purposes, not less than six months before the death), the preceding sub-section shall not have effect—

(a) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who had the interest and of any benefit to him by contract or otherwise; or

(b) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

Provided that nothing in this sub-section shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding sub-section.

(3) In the application of sub-section (1) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations (as hereinafter defined in section 25) which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the

value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

**11. Settlements with reservation.**—Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death.

*Explanation.*—A settlor reserving an interest in the settled property for the maintenance of any of his relatives (as defined in section 25) or of himself and any of his relatives shall be deemed to reserve an interest for himself within the meaning of this section.

**12. Joint investments.**—Where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death.

**13. Policies kept up for a donee.**—Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured.

**14. Annuity or other interest purchased or provided by the deceased.**—Any annuity or other interest, including moneys payable under policy of life assurance, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

*Explanation.*—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death.

**15. Annuity or other interest purchased or provided out of property derived from the deceased.**—(1) Section 14 shall have effect in relation to any annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Board that the application of all the property derived from the other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased:

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Board that the disposition of which it, or the property which it represented, was the subject-matter, was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) In this section the following expressions have the meanings hereby assigned to them respectively, namely:—

(a) "property derived from the deceased" means any property which was the subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration;

(b) "disposition" includes any trust, covenant, agreement or arrangement; and

(c) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(3) For the purpose of section 32 the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

*Special provisions relating to transfers to companies*

**16. Property transferred to a controlled company.**—(1) Where the deceased has made to a controlled company a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with subsection (2). \* \* \*

(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years:

**Provided that—**

(a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;

(b) where the company came into existence in the last year but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years.

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased, either—

(a) in or towards satisfaction of rights attaching to shares in or debentures of the company, or

(b) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty or a liability for tort incurred without

collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death:

Provided that this sub-section shall not apply to assets disposed of or distributed by way of payments from which income-tax was deductible, or which were assessable to income-tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

(4) The Board may make rules—

(a) prescribing the class of companies which shall be deemed to be controlled companies and the class of dispositions or operations which shall be deemed to be transfers;

(b) prescribing the matters to be treated as benefits accruing to the deceased from such a company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing;

(c) prescribing the manner in which the net income and the value of the assets of such a company are to be determined;

(d) prescribing the manner in which the accounting year is to be reckoned;

(e) prescribing the manner in which the shares and debentures of such a company passing upon the death of the deceased are to be valued for estate duty;

(f) prescribing the conditions upon which and the extent to which transactions in the name of such a company shall be deemed to be *bona fide* transactions for full consideration; and

(g) generally for the purpose of checking the avoidance of estate duty through the machinery of such a company:

Provided that all rules made under this sub-section shall be laid before the Central Legislature not less than fifteen days before the date of their final publication.

(5) for the purposes of section 32 the deceased shall be deemed to have had an interest in the property deemed by virtue of this section to be included in the property passing on his death.

**17. Duty of company and officers of company to give information to Board on death of transferor.**—(1) Where the deceased has made a transfer of property to a controlled company as described in section 16 the company shall be under obligation to inform the Board within one month from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was an officer of the company at that date, or if the company has been wound up and dissolved before that date, he was an officer of the company at any time, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Board by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding sub-section to give any information to the Board makes default in the performance of that obligation, the Board may impose upon the defaulter a penalty not exceeding one thousand rupees.

**18. Collection and incidence of duty under section 16.—(1)** The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 16, namely:—

(a) the company;

(b) any person (other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter;

(c) any person who received any distributed assets of the company on their distribution:

Provided that a person shall not,—

(i) by virtue of clause (b), be accountable in respect of any assets for any duty in excess of the value of those assets, or

(ii) by virtue of clause (c), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion that the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section 16.

For the purposes of this sub-section the expressions "distributed assets" and "assets of the company passing on the death" do not include any distributed assets of the company which the deceased received on their distribution; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of clause (c). \* \* \* \*

(2) Where a company incorporated outside the Provinces of India is accountable for any duty by virtue of the preceding sub-section or of this sub-section, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties.

(4) On a winding up of the company, sub-section (1) of section 230 of the Indian Companies Act, 1913 (VII of 1913), shall have effect as if they were included in clause (a) of that sub-section a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 16 of this Act, and section 129 of the Indian Companies Act, 1913 (VII of 1913) shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section 16 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of clause (c) of sub-section (1) \* \* \* any person is accountable in respect of any distributed assets shall be a first charge on those assets:

Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(a) paid by a person accountable therefor by virtue only of clause (c) of sub-section (1); or

(b) raised by virtue of sub-section (5) out of any distributed assets charged therewith;

that person or, as the case may be, the person who was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this sub-section) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said clause (c).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(8) The provisions of sub-sections (1) and (3) of section 49 shall not have effect in relation to the duty payable by virtue of section 16.

### PART III.—EXCEPTIONS FROM THE CHARGE OF DUTY

**19. Foreign property.**—(1) There shall not be included in the property passing on the death of the deceased—

(a) immovable property situate outside India;

(b) immovable property situate within an Acceding Indian State and movable property situate outside the Provinces of India at the time of the death unless—

(i) in the case of any property, whether settled or not, the deceased was domiciled or resident in any Province of India at the date of his death; or

(ii) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled or resident in any Province of India at the date the settlement took effect.

(2) For the purposes of sub-section (1), a person shall be deemed to be resident in the Provinces at the date of his death or at the date the settlement took effect, if he—

(i) was in the Provinces for a period amounting in all to one hundred and eighty-two days or more during the year ending on the date of his death or on the date when the settlement took effect, as the case may be; or

(ii) maintained or had maintained for him a dwelling place in the Provinces for a period or periods amounting in all to one hundred and eighty-two days or more during the year aforesaid, and was in the Provinces for any time in that year; or

(iii) having, within the four years preceding the year aforesaid, been in the Provinces for a period of, or for periods amounting in all to, three hundred and sixty-five days or more, was in the Provinces for any time in that year otherwise than on an occasional or casual visit; or

(iv) was in the Provinces for any time in the year aforesaid and the prescribed authority is satisfied that such person had arrived there during that year with the intention of remaining therein for not less than three years from the date of his arrival.

(3) The Board may make rules prescribing the manner in which the nature and the locality of different classes of assets shall be determined for the purposes of this section.

**20. Property held by the deceased as trustee.**—Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the



original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was bona fide assumed by the beneficiary at least two years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise.

\* \* \* \* \*

**21. Interest falling before becoming an interest in possession.**—In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest

*Explanation.*—(1) Where property is settled by a person on himself for life and after his death on any other person, with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed to pass to the settlor on the death of such other person by reason only that the settlor being then in possession of the property as tenant for life becomes, in consequence of such death, entitled to the immediate reversion or acquires an absolute power to dispose of the whole property.

(2) Where the interest of a person in settled property consists of an interest in the residue or part of the residue of an estate of a testator or intestate and the said estate continues to be under administration until the death of the person, the said interest of the person in the residue or part of the residue shall be deemed to have become an interest in possession on the date as from which the income from the residue or part of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

**22. Property reverting to disponent.**—(1) Where by a disposition of any property an interest is conferred on any person, other than the disponent, for the life of such person or determinable on his death and such person enters into possession of the interest, and thenceforward retains possession of it to the entire exclusion of the disponent or of any benefit to him by contract or otherwise, and the only benefit which the disponent retains in the property is subject to such life or determinable interest and no other interest, even contingent, is created by the disposition, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverting to the disponent in his life time.

(2) Where by a disposition of any property any such interest as is mentioned in sub-section (1) is conferred on two or more persons either severally or jointly or in succession, sub-section (1) shall apply in like manner as where the interest is conferred on one person :

Provided that sub-section (1) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

**23. Income of settled property acquired on death of spouse.**—Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which took effect before the commencement of this Act and on his or her death the survivor becomes entitled to the income of the property (as distinguished from the property itself) settled by such survivor, estate duty shall not be payable in respect of that property until the death of that survivor.

**24. Property passing by reason of a bona fide purchase for full or partial consideration in money.**—(1) Subject to the provisions of sections 25 and 48 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide purchase from the person under

whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

**25. Dispositions in favour of relatives.**—(1) Where a person dying after the commencement of this Act has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of section 24 or section 41 as consideration for the disposition made by the deceased.

(2) If the deceased has made in favour of a controlled company a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (1), this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Board that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

For the purposes of this sub-section a person who is, or is deemed by virtue of this provision to be, a member of a controlled company which is a member of another such company shall be deemed to be a member of that other company.

(3) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in sub-section (1), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(4) In this section—

(i) "relative" means, in relation to the deceased—

(a) the wife or husband of the deceased,

(b) the father, mother, children, uncles and aunts, of the deceased, and

(c) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue;

(ii) reference to "children" and "issue" include reference to illegitimate children and to adopted children;

(iii) "annuity" includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interest on shares in or debentures of a company shall be treated for the

purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company;

(iv) "associated operations" means any two or more operations of any kind being,—

(a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income; or

(b) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other.

**26. Effect of new or increased rates of duty on certain prior sales and mortgages.**—Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then—

(a) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(b) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

**27. Settled property in respect of which since the date of the settlement estate duty has been paid on the death of the deceased's spouse.**—If estate duty has already been paid in respect of any settled property since the date of the settlement, on the death of one of the parties to a marriage, the estate duty shall not be payable in respect thereof on the death of the other party to the marriage, unless the latter was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time while so competent to dispose of the property.

**28. Agreement for avoidance or relief of double taxation with respect to estate duty.**—The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement.

*Explanation.*—The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the official Gazette, declare to be a reciprocating country.

**29. Allowance for quick succession to land or a business.**—Where the Board is satisfied that estate duty has become payable on any property consisting of land (not being agricultural land) or on a business (not being a business carried on by a company) or any interest in such land or business passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by 50 per cent.;

Where the second death occurs within two years of the first death, by 40 per cent.;

Where the second death occurs within three years of the first death, by 30 per cent.;

Where the second death occurs within four years of the first death, by 20 per cent.;

Where the second death occurs within five years of the first death, by 10 per cent.;

Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

**30. Exemption of coparcenary interest of a Hindu widow dying within seven years of her husband's death.**—Where on the death of a member of a Hindu coparcenary, his interest in the coparcenary property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon the members of the coparcenary or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband.

**31. Exemptions, reductions, and other modifications.**—The Central Government may by notification in the official Gazette make any exemption, reduction in rate or other modification in respect of estate duty in favour of any class of property or the whole or any part of the property of any class of persons.

#### PART IV.—AGGREGATION OF PROPERTY AND RATES OF DUTY

**32. Aggregation.**—(1) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property, so passing, in which the deceased never had an interest, not being a debt or right or benefit that is treated as property by virtue of the *Explanations* to clause (14) of section 2, shall not be aggregated with any other property, but shall be an estate by itself and the estate duty shall be leviable at the proper graduated rate on the principal value thereof.

(2) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(3) Property passing on any death shall not be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.

**33. New rates of duty to be according to Central Act.**—The rates of estate duty shall be according to such scale as may be fixed by an Act of the Central Legislature:

Provided—

(a) that no such duty shall be levied upon estates whose principal value does not exceed one lakh of rupees; and

(b) that by way of marginal adjustment, the amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

#### PART V.—VALUE CHARGEABLE

**34. Principal value how to be estimated.**—(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Board it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Board shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the satisfaction of the Board that the value of the property has been depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

**35. Valuation of shares in a private company where alienation is restricted.**—

Where the Articles of Association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the Articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

**36. Valuation of interests in expectancy.**—Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(a) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

**37. Valuation of benefits from interests ceasing on death.**—The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

**38. Valuation to be made by the Board.**—Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Board in such manner and by such means as it thinks fit and if it authorises a person to inspect any property and to report the value thereof for the purposes of this Act, he may enter upon the property and inspect it at such reasonable times as the Board considers necessary.

**39. Costs of valuation.**—Where the Board requires any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Board.

**40. Board may accept and certify valuation when convenient.**—The Board on application from a person accountable for the duty on any property forming part of an estate shall, where the Board considers that it can conveniently be done, certify the amount of the valuation accepted by the Board for any class or description of property forming part of such estate.

#### PART VI.—DEDUCTIONS

**41. Reasonable funeral expenses and, with some exceptions, debts and incumbrances must be allowed for in determining chargeable value of estate.** **Exceptions.**—In determining the value of an estate for the purpose of estate duty, allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 25, such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor,

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor,

(c) more than once for the same debt or incumbrance charged upon different portions of the estate,

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

**42. Further exceptions.**—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(a) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

(b) if a person whose interest in expectancy in the property so purchased, acquired or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

**43. Further exceptions.**—(1) Any allowance which, but for this provision, would be made under section 41 for a debt incurred by the deceased as mentioned in clause (a) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

(a) property derived from the deceased; or

(b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased:

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (b) of this sub-section, it is proved to the satisfaction of the Board that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (1) of section 15 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) \* \* \* would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied three years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in section 24, be payable in respect thereof accordingly.

(3) The provision of sub-section (2) of section 15 shall have effect for the purpose of this section as they have effect for the purpose of that section.

**44. Debts to persons resident out of the Provinces of India not to be deducted in first instance except from duty-paid property outside the Provinces of India.**

—An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the Provinces of India (unless contracted to be paid in any Province of India or charged on properties situate within any Province of India), except out of the value of any property of the deceased situate out of the Provinces of India in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Board that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

**45. Cost of realising or administering foreign property may be allowed for within certain limits.**—Where the Board is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the Provinces of India, the Board may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

**46. Allowance for duty paid in a non-reciprocating country.**—Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Board is satisfied that by reason of such death any duty is payable in that country in respect of that property, the Board may make an allowance of the whole or any part of the amount of that duty from the value of the property.

*Explanation.*—In this section, the expression "non-reciprocating country" means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act.

#### PART VII.—COLLECTION OF THE DUTY

**47. Duty may be collected by stamps or otherwise.**—Estate duty may be collected by stamps or such other means as the Board may prescribe.

**48. Payment of duty may be accepted in prescribed Government securities.**—The Board may prescribe that Government securities shall be accepted in payment of estate duty on such terms as it thinks fit.

**49. Persons, accountable, and their duties and liabilities.**—(1) Where any property passes on the death of the deceased—

(a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received:

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Notwithstanding anything contained in sub-section (1), where an heir-at-law proves to the satisfaction of the Board that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets:

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possession of such assets.

\* \* \* \*

(3) Every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Board may allow, deliver to the Board and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable.



(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.

**50. Every person believed to be in possession to deliver statement of particulars of property as required by Board.**—Every person accountable for estate duty, every company to which, in the opinion of the Board, a transfer of property has been made by the deceased as mentioned in section 18, every person who is or was at any time an officer or auditor of such a company, and every person whom the Board believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate shall, if required by the Board, deliver to the Board and verify, to the best of his knowledge and belief, a statement of such particulars together with such evidence as the Board may require relating to any property which it has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

**51. Penalty for wilful default.**—A person who wilfully fails to comply with any of the provisions of section 49 or 50 shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the Board may elect:

Provided that the Board shall have power to reduce the penalty in any particular case.

**52. Executor to specify all chargeable property with affidavit of valuation.**—In all cases in which a grant of representation is applied for within six months of the death of the deceased—

(a) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in Court under section 19-I of the Court-fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Board, and

(b) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (a) and has produced a certificate from the Board under section 54 or 57 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

**53. Estate duty when due and how and when to be collected.**—Estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered under \* \* \* section 49 or clause (a) of section 52 or prepared under sub-section (3) of section 55, and amended or modified where necessary as provided in sub-section (1) or sub-section (5) of section 55; and interest at the rate of three per cent. per annum shall be paid on the duty from

the date of the death up to the date of the delivery of the account or the expiration of six months after the death, whichever happens first.

**54. Duty to be paid or security for payment furnished on delivery of account and certificate to be granted thereupon.**—Upon delivery of the account under \* \* \* section 49 or clause (a) of section 52, the person delivering it shall pay to the Board, or furnish security to the satisfaction of the Board for the payment of, the estate duty, if any, payable in respect of the property included in the account, and the Board shall thereupon grant him a certificate that such duty has been or will be paid, or that none is due, as the case may be.

**55. Board's powers in respect of valuations.**—(1) If the Board is of opinion that the person delivering the account has under-estimated the value of the property in respect of which estate duty is payable (whether by placing too low a value on the property included in the account or by omitting to include therein property that ought to have been included), the Board may inquire into the matter in such manner and by such means as it thinks fit and, if still of opinion that the value of the property has been under-estimated, may require him to amend the valuation.

(2) If such person does not amend the valuation to the satisfaction of the Board, the Board may move the High Court to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of one year from the date of delivery of the account under \* \* \* section 49 or clause (a) of section 52.

(3) In any case where no account has been delivered as required by \* \* \* section 49 or clause (a) of section 52, the Board may cause an account of the property passing upon the death of the deceased to be prepared in such manner and by such means as it thinks fit and may call upon any person who in its opinion is accountable for the payment of the estate duty in respect of the property to accept such account.

(4) If such person disputes his accountability or the correctness of the account, the Board may move the High Court to hold an inquiry into the matter.

(5) The High Court when moved under sub-section (2) or sub-section (4) shall hold or cause to be held an inquiry accordingly and shall record a finding on the matters in issue. The Board shall be deemed to be a party to the inquiry.

(6) Any person authorized by the High Court to hold the inquiry may take such evidence on oath as he considers necessary and shall submit to the Court a report of the result of the inquiry together with the evidence taken by him and such report and the evidence so taken shall be evidence in the proceeding.

(7) The Central Government shall, within twelve months after the commencement of this Act and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purpose of this Act and shall fix a scale of charges for the remuneration of such persons and the High Court may refer any question of disputed value under this section to the arbitration of any person so appointed and the costs of any such arbitration shall be part of the costs in the case.

(8) An appeal shall lie to the Federal Court from any judgment of the High Court delivered on a motion made under this section in any case which the High Court certifies to be a fit case for appeal to the Federal Court.

**Explanation.**—"High Court" in this section means the High Court to which, or to a Court subordinate to which, an application for a grant of representation has been made, or where no such application has been made, the High Court which would have jurisdiction to entertain such an application.

**56. Grant of representation not to be delayed by Board's motion.**—Where any grant of representation has been applied for, it shall not be delayed by reason of any motion made by the Board under section 55.

**57. Certificate of payment of duty, and penalty for non-payment.**—

(1) Where the valuation is amended by the person accountable upon the Board's requisition under sub-section (1) of section 55, or is enhanced by the High Court upon the Board's motion under sub-section (2) of section 55, and in any case where the original valuation has been discovered to be too low, such person shall within one month of the amendment or enhancement or discovery pay the deficit duty which is payable in respect of the property upon the amended or enhanced or full valuation and the Board shall thereupon grant him a certificate accordingly.

(2) Where the valuation is reduced by the High Court on the Board's motion under sub-section (2) of section 55, the Board shall refund to the person accountable any excess duty paid by him and shall grant to him a certificate that the full duty payable in respect of the property has been paid.

(3) In any case where no account has been delivered as required by \* \* \* section 49 or clause (a) of section 52, the person who is called upon to accept the account prepared by the Board under sub-section (3) of section 55 shall, within one month of his acceptance or, as the case may be, of the final disposal of the motion made under sub-section (4) of section 55, pay the full duty payable in respect of the property and the Board shall thereupon grant him a certificate accordingly.

(4) If the person accountable does not pay the amount of duty due from him under sub-section (1) or sub-section (3) within the period specified therein, he shall be liable to a penalty of one thousand rupees or a sum equal to five times the amount due according as the Board may elect.

(5) Where a person accountable for the estate duty in respect of any property passing on a death applies to the Board at any time and delivers and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Board may determine the estate duty payable in respect of the property and on payment of that duty, the Board shall give him a certificate accordingly.

**58. Commutation of duty in respect of interests in expectancy.**—The Board in its discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and, for determining that sum, shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum the Board shall give a certificate accordingly.

**59. Assessment in complicated cases.**—Where by reason of the number of deaths upon which property has passed, or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty

and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full payment of all claims for estate duty in respect of such property or interest, and shall give a certificate accordingly.

**60. Board may allow postponement of payment on terms.**—Where the Board is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, it may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such other terms as it may think fit.

**61. Board may remit duty and interest outstanding after twenty years from death.**—If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

**62. Forms.**—All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 51.

**63. Recovery of duty and penalties.**—Any estate duty or deficit duty and any interest or penalty payable under this Act may, on the certificate of the Board, be recovered from the person liable thereto as if it were an arrear of land-revenue by any Collector in any Province of India.

#### PART VIII—CHARGE OF ESTATE DUTY ON PROPERTY AND FACILITIES FOR RAISING IT

**64. Estate duty a first charge on property liable thereto.**—(1) Subject to the provisions of section 18, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances allowable under Part VI of this Act; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(2) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession in movable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest:

Provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(3) The Board may release the whole or any part of any property, whether movable or immovable, from charge under this section in such circumstances and on such conditions as it thinks fit.

**65. Discharge from estate duty in certain cases.**—A certificate granted by the Board under section 57 or section 59 shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty, but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate:

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

**66. Person accountable to be repaid by trustees and owners in certain cases.**—If a person accountable under section 49 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.

**67. Facilities for paying duty or raising amount already paid.**—(1) A person authorized or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(2) A person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

#### PART IX.—MISCELLANEOUS

**68. Jurisdiction of Courts barred save as expressly provided.**—Save as provided in this Act, nothing done or in good faith purporting to be done by the Board under this Act shall be called in question in any Court.

**69. Discharge of functions of Board by officers and authorities empowered by the Central Government.**—(1) The Central Government may, by notification in the official Gazette, empower any officer or authority to discharge the functions of the Board under this Act or the rules made under this Act in respect of any specified matter.

(2) Where under this Act or the rules made under this Act the opinion, belief or state of mind of the Board is relevant in any matter, the opinion, belief, or state of mind of the officer or authority empowered in respect of such matter under sub-section (1) shall be deemed to be that of the Board.

**70. Rule-making powers of the Board.**—Subject to the condition of previous publication, the Board may make rules not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

THE CONSTITUENT ASSEMBLY OF INDIA  
(LEGISLATIVE)

Report of the Select Committee on the Bill to provide for the  
levy and collection of an estate duty in the Provinces of India.

*(As amended by the Select Committee.)*