

A HANDBOOK ON THE DEATH DUTIES

B.

H. ARNOLD WOOLLEY

Solicitor of the Supreme Court

A very useful textbook
and reference book, for
which both lawyer and
layman alike should be
grateful.

X72991.3

FG

4958

PUBLISHED BY
1 ADELPHI TERRACE



T. FISHER UNWIN, LTD.
LONDON W.C.2

A HANDBOOK ON
THE DEATH DUTIES

A HANDBOOK ON
THE DEATH DUTIES

By H. ARNOLD WOOLLEY

SOLICITOR OF THE SUPREME COURT

T. FISHER UNWIN LTD, ADELPHI TERRACE, LONDON, W.C. 1
THE SOLICITORS' LAW STATIONERY SOCIETY LTD
22 CHANCERY LANE, W.C.

First published in 1926

(All rights reserved)

PREFACE

THIS small book is intended to deal in a concise yet clear manner with the main features of the death duties as met with in a solicitor's office. It makes no pretensions to rank as an exhaustive work, being designed to serve as an inexpensive secondary book for use in ordinary cases, or where the larger treatise is engaged in another room. The objects being brevity and economy in price, as well as accuracy and lucidity, only those points which more commonly arise are dealt with, and examples, rather than long verbal explanations, are resorted to as much as possible. Illustrative cases are given in Chapter XIII, as well as in the earlier pages. The endeavour has been to avoid detail of a kind which would render the book unreadable by the general business man, and at the same time to retain sufficient to make it a useful reference work to practitioners—a difficult task, but one that, it is hoped, has been successfully accomplished.

The book has, it is believed, the distinction of being the first one on this important subject, at all events of recent years, to be written by a practising solicitor, familiar with everyday cases arising in a busy London office, and that should add in some degree to its helpfulness.

The alterations in the law made by the 1925 Finance and Property statutes are embodied. Except for a heavy raising of the Estate Duty, these alterations are few, and not of great general importance.

6 A HANDBOOK ON THE DEATH DUTIES

The Administration of Estates Act, 1925, although abolishing the distinction between real and personal property as regards devolutions on intestacy, expressly retains the former law as to incidence and collection of the Death Duties. Inquiries by purchasers of real property as to death duties charged thereon will henceforth take a new form (Chapter I).

The rates of Estate Duty in force since 1909 are given in Chapter III; and Table I (single life annuities) of the Succession Duty Act, to which reference is constantly necessary in the course of business, appears in Chapter VIII.

An accurate knowledge of the death duties law is now more than ever important in solicitors' offices, and practitioners and their articulated clerks will do well to make themselves thoroughly acquainted with it, in so far as they may not have already done so. Instances are constantly occurring where a little extra knowledge of intricate points saves large sums to clients. In too many cases claims for duties received from the Estate Duty Office are passed as correct without sufficient scrutiny—due to insufficient intimacy with the law.

I have set myself this task largely in the hope that it will result in increasing popular knowledge of the subject, so that general resistance to further increases in the burdens may be stimulated, and I trust that this book may find a wider public than the learned, but necessarily cumbrous, works which have previously appeared can hope to do. They are written solely for the profession, and deal with all manner of points, many of only rare occurrence.

The heaviness of the duties brings the subject into the front rank of affairs of general practical importance. Mr. Churchill gave the following figures in the House

PREFACE

7

of Commons on 31st March, 1925. They relate to Great Britain alone (excluding Ireland) :—

Year.	Aggregate Net Capital Value of Estates on which Duty was Paid.	Total Death Duties Paid.	
		Amount.	Per Cent. of Capital Value.
	£	£	
1920-21	372,889,609	45,169,064	12·11
1921-22	402,085,234	51,206,473	12·73
1922-23	431,197,524	56,432,906	13·09
1923-24	441,895,962	57,500,191	13·01

The table includes, of course, a very large number of small estates on which only trifling sums were payable for duties. In the case of moderate and large estates the percentage paid in duties is far higher than the percentage indicated, as Chapter XIII will show. For instance, in the case of an estate of from £45,000 to £50,000 the duties amount to nearly 24 per cent. if the whole goes to a beneficiary liable to the highest rate of Legacy and Succession Duty, and to no less than 46 per cent. in the case of an estate of £2,000,000 or more. And if the beneficiary were to die next day and had property of his own, the State might again take the same proportion of the remainder. (See Chapter XIII, Case 7.) The more deaths in a family the worse for the family fortune and the better for the Inland Revenue, but the justice is, at best, problematical.

The Chancellor of the Exchequer in the late Labour Government recently published in a popular journal an outline of the Budget which he would have introduced in 1925, had he been in office. His proposals

8 A HANDBOOK ON THE DEATH DUTIES

included the raising of the death duties to a degree which would make confiscation of private property an accomplished fact—confiscation because the duties would be aimed at an object beyond production of necessary revenue. He stated (in effect) that it is bad for people to inherit property, because it tends to make them idlers. Such views seem to be born of the primitive desire to take from another what one has not got oneself, and they have no justification. A very small proportion only of those who inherit property on the death of parents or others are transformed into idlers thereby. There are more idlers amongst those who do not inherit property. In a large number of cases the principal effect of the acquisition of capital is to enable the recipient to engage in further activities; in others to enable him to better educate his children and give them more suitable openings in life; not infrequently it makes it possible for a man to devote his life to unpaid or little-paid work of the utmost value to the community, such as religion, philanthropy, diplomacy, the fighting services, scientific research, or the Arts.

Further, it is a mistake to maintain taxation of any kind in normal times up to the limit of the taxpayers' capacity to pay. A reserve should be kept in hand for exceptional crises, such as war, and in times of peace as much as possible of the taxpayers' money should be allowed to accumulate in building up the mercantile and financial strength of the country. At the present time this country has no such reserve.

Over-taxation encourages evasion and discourages thrift. (See Chapter XII.)

The law is urgently in need of amendment and simplification—a matter dealt with in Chapter XIV. The chapter is in the nature of an appendix, and I

hope that the best possible reason for its removal will before long arise. The operation will cause no pain.

It is feared that the subject may at first sight appear to be a somewhat dry one from the lay standpoint ; but if the reader will visualize the death duties system as a carefully contrived and ever-growing capital levy scheme, already in full working order, and ready at any moment to be used as a downright confiscatory machine, he will find that the study acquires a certain liveliness. One fears that a class which has its full share of value to the nation is in great danger of annihilation. It has, indeed, already to a large extent disappeared since 1914.

Before closing I desire to offer a small tribute to the Estate Duty Office, with whose officials I have over a considerable period been brought into close business contact. Their work is difficult, and it is done with signal efficiency and courtesy. In proportion to the size of the revenue which the Office collects, it is the smallest-staffed and least expensive of all our Public Departments.

I tender humble apologies in advance for any mistakes of which I may have been guilty in the following chapters. Corrections will be received with gratitude.

I am indebted to my friend, Mr. W. Durham Wilkinson (Messrs. Wilkinson and Son), for very kind assistance in correcting the proofs.

H. ARNOLD WOOLLEY.

HIGH LEA, WEMBLEY,
October 1925.

CONTENTS

(AND SEE INDEX)

	PAGE
PREFACE	5
<i>(The headings are not exhaustive. See Index.)</i>	
CHAPTER	
I. PART 1. BRIEF DESCRIPTION OF DUTIES	13
New Statutes.	
PART 2. ESTATE DUTY	15
Out of what part of the estate payable; When payable; On what payable; Gifts <i>inter vivos</i> ; Property abroad; Exceptions to liability; Works of art, etc.; Timber; Married persons; War Securities; Who liable to the Revenue; Duties a charge on freehold land; Searches by purchasers (new law).	
II. ESTATE DUTY. AGGREGATION FOR ASCERTAINING RATE	32
What is not aggregable; Life estates under pre-1894 settlements; Estates not over £1,000; Reversionary interests; Specimen case.	
III. RATES OF ESTATE DUTY	38
Rates from 1909 to present time; Finance Act, 1925; "Agricultural Property"; Relief for "quick successions" to land or a business; "Fixed Duty" on small estates; How their value is reckoned.	
IV. PERMISSIBLE DEDUCTIONS FOR ASSESSMENT TO ESTATE DUTY	47
Funeral expenses and debts; What cannot be deducted; Foreign debts; Foreign assets and foreign duties thereon; Deduction of Colonial duties from U.K. Estate Duty; List of Colonies, etc., to which Finance Act, 1894, Section 20, is applied; Ireland; Warning as to holding certain securities.	

CONTENTS

11

CHAPTER	PAGE
<p>V. HOW THE ESTATE IS VALUED</p> <p style="padding-left: 2em;">Debts due to deceased; Forgiven debts; Furniture and effects; Stocks and shares; Private companies; Freeholds and leaseholds; Flats; Small "Agricultural Properties."</p>	<p>53</p>
<p>VI. LIFE INTERESTS. INTERESTS IN EXPECTANCY. ANNUITIES</p> <p style="padding-left: 2em;">Estate Duty on life estates; Finance Act, 1914, Section 14; Married persons; Settlement Estate Duty abolished; Reversionary interests explained, and how assessed; Purchasers protected against raising of rate of duty; Annuities arising on the death; Annuities ceasing on the death; When not assessable; How assessed.</p>	<p>60</p>
<p>VII. LEGACY DUTY</p> <p style="padding-left: 2em;">What property liable; Distinguished from Succession Duty; Rates of duty; Tracing "the testator"; Exemptions from the duty; Estates not over £15,000; Settled chattels; Estates not over £1,000; Foreign Domicile; War Securities; Settled legacies; Annuities, how assessed; By whom duty payable; Residuary Legacy Duty Account; Deductions allowed.</p>	<p>70</p>
<p>VIII. SUCCESSION DUTY</p> <p style="padding-left: 2em;">Description; Rates; Tracing "the predecessor"; Reversionary Interests; Creations of successions distinguished from transmissions of same; Charged on freehold land; Life interests; Finance Act, 1925, Section 24; Exemptions; Deductions from gross value allowed; Table for Valuation of Annuities.</p>	<p>82</p>
<p>IX. LIFE ESTATES COUPLED WITH POWER OF APPOINTMENT</p> <p style="padding-left: 2em;">"General" and "special" powers; Tracing "the predecessor"; Life estates, how assessed to the three duties; Illustrations.</p>	<p>91</p>
<p>X. DOMICILE</p> <p style="padding-left: 2em;">Effect of foreign domicile; Distinguished from "Residence"; Evidence; "British Settlements."</p>	<p>96</p>

12 A HANDBOOK ON THE DEATH DUTIES

CHAPTER	PAGE
XI. SPECIAL METHODS OF PAYING DEATH DUTIES . . .	100
By transfer of land ; War Securities, etc. ; Regulations.	
XII. METHODS OF MITIGATING THE DUTIES	104
"Inter Vivos" Gifts ; Gifts over £100, within time limit, sometimes escape duty ; How gifts valued ; Formation of company ; Foreign domicile ; "Unofficial Wills" and "Secret Trusts" ; Settling chattels.	
XIII. SPECIMEN ESTATES	110
Claims for duties ; Accountable parties ; Amount of duties. Some of the points illustrated are listed in the Index under heading of "Examples."	
XIV. AMENDMENTS REQUIRED IN THE LAW : SINGLE-DUTY SYSTEM ADVOCATED	129
Aggregation ; Cesser of annuities ; Quick successions ; Land let on building leases ; Payment of duties by instalments.	
INDEX	141

A HANDBOOK ON THE DEATH DUTIES

CHAPTER I

PART I

BRIEF DESCRIPTION OF THE DEATH DUTIES

GENERALLY speaking, the net estate of every deceased person, i.e. the gross estate less deceased's debts and less a reasonable sum for funeral expenses, bears the following death duties :—

- (1) Estate Duty on the whole, and also
- (2) Legacy Duty on the moveables, and
- (3) Succession Duty on the immoveables, i.e. freehold and leasehold estates, and interests like freehold rent-charges charged on land, and advowsons (rights of presentation to Church livings).

Moveables are called "personal property" or "personalty," and leasehold estates in land also rank as personalty. Freehold interests in land, rent-charges, and advowsons are called "realty."

The rates of Estate Duty vary according to the size of deceased's estate; for the smallest estates the rate is 1 per cent., and for the largest 40 per cent.

Legacy Duty and Succession Duty vary according to the relationship of the successor to the deceased,

14 A HANDBOOK ON THE DEATH DUTIES

and the rate has no relation to the value of the estate. The rates are 1 per cent., 5 per cent., and 10 per cent.

The theory is that Estate Duty is a tax upon the deceased's estate, and Legacy and Succession Duty a tax upon the successors, but all the duties are in fact, of course, a tax upon the successors. The distinction is quite illusory. The United Kingdom Finance Acts and other Acts dealing with death duties apply to England, Scotland, Wales and the adjacent islands, but not to the Channel Islands, the Isle of Man, nor (since 31st March, 1923) to any part of Ireland, although the Acts apply to Northern Ireland as regards Income Tax.

The estate of a man domiciled (Chapter X) in England who dies leaving personalty in Ireland bears double death duties on such personalty, just as it would in the case of personalty which he owned in, say, Canada or Spain. But some relief can be obtained, as explained in Chapter IV.

Forms required for rendering accounts to the Estate Duty Office can be obtained by personal application or letter at Somerset House (Inland Revenue Office), and at Throgmorton Avenue (City) Post Office, and Head Post Offices outside the Metropolitan Postal District by personal attendance only.

Notices of deaths giving rise to claims for duty, and other communications relative to the duties, should be addressed to The Controller, Estate Duty Office, Somerset House, W.C. 2.

NEW LAW.

The following new Acts affect the death duties. Except the Finance Act, they all commence on 1st January, 1926 :—

Finance Act, 1925, Part III (commences 30th June, 1925).

Law of Property Act, 1925, Sections 16, 17, 18, 205 (1) (iv).

Land Charges Act, 1925, Section 10, class D (i); Section 20 (4).

Land Registration Act, 1925, Section 3 (iii); Section 73 (applicable to land registered at Land Registry only).

Administration of Estates Acts, Section 53 (3); Section 55 (1) (xxiv).

The alterations effected thereby are embodied in this book.

PART II

ESTATE DUTY

(1) OUT OF WHAT PART OF THE ESTATE PAYABLE; WHEN PAYABLE.

Estate Duty, so far as it relates to deceased's own personalty (i.e. excluding settled property) is payable out of the deceased's general residuary estate, i.e. out of the general fund which remains after payment of all pecuniary legacies and after handing over all other specific legacies. Estate Duty on the whole unsettled estate (except on the freehold property, if any) therefore falls on those who take the residuary estate—usually the deceased's widow and children, and the pecuniary and specific legatees are not concerned with the duty. (See examples in Chapter XIII.)

The Estate Duty on the unsettled personalty has to be paid by the executors before obtaining probate of the will, and consequently before they are in a position to deal with the estate and raise the money.

16 A HANDBOOK ON THE DEATH DUTIES

Sometimes the deceased has had the foresight to take out a special life insurance policy payable direct to the Commissioners of Inland Revenue, but in many cases it is necessary to borrow the money for the duty from a bank, and then repay the bank as soon as probate has been obtained, and the necessary sales of securities effected.

The amount needed is often so large that accommodation is a matter of some difficulty to arrange, especially if the bank concerned has reason to suppose that, from lack of marketableness of the assets, or other reasons, it will have to wait a considerable time for repayment.

Interest at 4 per cent. per annum on the duty, as from date of death until actual payment, is payable.

The Estate Duty on the freehold property (if any) need not be paid until after probate has been obtained. It is not payable out of the general residuary estate, but by the beneficiary who actually acquires the particular property, and is a charge upon that property. Advowsons and Church Patronage rights are not subject to Estate Duty at all; nor is timber unless and until sold. In the case of deaths occurring after 1st January, 1926, the executors will be liable jointly with the successor for the death duties on the freehold land, and they will therefore have to either see that the death duties on it are paid before they part with it to the beneficiaries, or else protect themselves by taking a charge upon the land in their own favour. As between the beneficiaries, however, the duty will still come out of the land, and not out of the residuary estate (Administration of Estates Act, 1925, Section 53 (3)).

Estate Duty on freehold property is not due until one year from the date of death, and it can be paid by

eight equal yearly instalments or sixteen half-yearly instalments, the first of which is due one year after the death. Interest at 4 per cent. per annum begins to run from the end of one year after the death on the outstanding duty or instalments of it. In the case of a sale of the property, whether within the year or not, the whole duty becomes immediately payable, and the interest runs from the date of receipt of the purchase money, if that is earlier than one year after the death.

There is no advantage (rather the contrary) in discharging the duty at once, for no discount is allowed by the Revenue for payment in advance. (In the case of Succession Duty discount is allowed.)

(2) ON WHAT PAYABLE.

The net cast by the various Acts is very wide, as will be seen by the following statement. The duty, generally speaking, is leviable upon the principal value of all property, real or personal, settled or not settled, which passes on the death of a person who dies after the 1st August, 1894.

Property so passing includes (*inter alia*) the following :—

I. Property of which the deceased was “competent to dispose” at his death, whether he actually disposed of it by his will or not. That is, his own absolute free property, or property which, under some settlement, he had power to appoint to anyone he chose on his death (whether he actually appointed, or not, being immaterial).

II. Donations *mortis causa*, i.e. gifts made in expectation of death, which would be void if the donor recovered. In practice only gifts valued at over £20

18 A HANDBOOK ON THE DEATH DUTIES

are liable, unless the donee takes additional gifts under the will as well.

III. *Inter vivos* gifts of property made by the deceased within three years of his death, exclusive of gifts which (1) were made for public or charitable purposes more than *twelve* months before the death, (2) were made in consideration of marriage, or (3) are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or (4) which, in the case of any donee, do not exceed in the aggregate £100 in value or amount. (See Finance (1909-10) Act, 1910, Section 59.) These are all alternatives. The marriage is not confined to deceased's own marriage; it might be his child's.

IV. *Inter vivos* gifts made by the deceased at any time, whereof *bona fide* possession was not immediately taken, and thenceforth retained to the entire exclusion of the deceased. (See Chapter XII.)

V. Property which the deceased, having been absolutely entitled thereto, either by himself alone or by arrangement with some other person, caused to be transferred to or vested in himself and some other person jointly, so that the beneficial interest in such property, or in some part thereof, passed or accrued by survivorship on his death to such other person. A form of gift. The whole property (not a share only) is liable.

VI. The deceased's severable share of property of which he was joint tenant or joint owner with another or with others. The value of deceased's share only is liable.

VII. Property which the deceased had an enjoyment of or interest in for life, under a settlement made by

the deceased, or by anyone else. But see exception (13) below, in cases of married persons.

VIII. Policies which the deceased effected on his life, and kept up wholly or partially for the benefit of a donee, whether nominee or assignee. (Policies of the ordinary kind, in deceased's own name, form part of his own estate, of course.)

IX. Annuities (other than those not exceeding £25 per annum) which the deceased, either by himself alone or in concert or by arrangement with some other person, purchased or provided so that a benefit arose or accrued by survivorship or otherwise, on the death of the deceased, e.g. an annuity to deceased for life and on his death to his widow for her life. Duty is payable on the value of the widow's annuity, and is payable by her. The purchase depleted deceased's assets.

X. Property not comprised in any of the foregoing classes in which the deceased or some other person had an interest which ceased on the death of the deceased, to the extent to which *a benefit accrued or arose by the cesser of such interest*, but exclusive of property the interest in which, of the deceased or other person, was only an interest as holder of an office or recipient of the benefits of a charity, or as a corporation sole (e.g. as incumbent of a parish). This catches annuities that *cease* on the death, and issue out of, or are charged upon, other property. (See p. 67, *post*.)

PROPERTY ABROAD.

Immoveable property situate out of Great Britain, devolving as such, is not chargeable with Estate Duty, but if it has become subjected to a trust for sale, it is liable. By English law real property which is

20 A HANDBOOK ON THE DEATH DUTIES

subject to a trust for sale is regarded as personalty, and devolves as such on an intestacy.

Moveable property situate out of Great Britain is not chargeable with Estate Duty where the deceased was the owner and was domiciled *out* of Great Britain at the time of his death. It is chargeable where the deceased was the owner and was domiciled *in* Great Britain at the time of his death. It is, speaking generally, chargeable even in the case of a foreign domicile where the deceased was only interested for life, and at his death the property formed the subject of a British trust or was vested in a British trustee. (See Chapter X, *post*.)

Some Exceptions to Liability.

1. Estate Duty is not payable on property held by the deceased as trustee for another person.

2. Estate Duty is not payable on property passing on the death of the deceased by reason only of a *bona fide* purchase where such purchase was made for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit. When any such purchase was made, for *partial* consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, the value of the consideration is allowed as a deduction from the value of the property (Finance Act, 1894, Section 3). The reason is that the purchaser has paid for the benefit, and therefore does not really benefit by the death, and deceased's assets have been swollen by the purchase money. For instance, A, being in need of money, grants to B for full money consideration the reversion to £10,000 War Stock belonging to A, as from A's death, A in the meantime receiving

the income. On A's death the fund passes to B, and no Estate Duty is payable on it; nor is Succession Duty (see *post*).

3. Estate Duty is not payable on the property of common seamen, marines, soldiers or airmen who are slain or die in His Majesty's Service (and see (17) *infra*).

4. Estate Duty is not payable on any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

5. Estate Duty is not payable in respect of any advowson (even if it is sold). (Attorney-General v. Peek, 1913, 2 K.B. 487.)

6. Estate Duty is not payable where a settlor, who is himself tenant for life under the settlement, acquires by the death, on or after the 1st July, 1896, in his own lifetime, of a subsequent limited owner under the settlement, the immediate reversion, or an absolute power to dispose of the whole property. (See Finance Act, 1896, Section 14.) For example: A settles property on himself for life, then to B, his wife, for life, then to their children, and failing any children, on himself (A) absolutely. B dies without children, and the life interest enjoyed by A thereupon becomes enlarged to an absolute interest. No duty is payable on B's death.

Note, if A had not himself been the settlor, the exemption from duty would not have arisen.

7. Estate Duty is not payable where property reverts to a settlor in his lifetime on the death, on or after the 1st July, 1896, of a person having a limited interest under a settlement, provided that no other interest is created by the settlement, and that the

22 A HANDBOOK ON THE DEATH DUTIES

person having the limited interest had not, prior to the disposition, been competent to dispose of the property. (See Finance Act, 1896, Section 15, (1), (2) and (3).) For example: A settles property on B for life, with remainder to himself absolutely. On B's death in A's lifetime no duty is payable. If, before the date of the settlement, B had already been able to deal with the property, the exemption would not apply, the reason being that, in those circumstances, the whole arrangement would bear the look of a scheme for avoiding duty on B's death on property which had been owned by him.

8. Estate Duty is not payable where the deceased was entitled in right of his wife to the rents of her real estate, and by his death, on or after the 1st July, 1896, she becomes entitled to the property in virtue of her former interest. (See Finance Act, 1896, Section 15 (4).)

9. Where a spouse is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition *which has taken effect before the 2nd August, 1894*, and on his or her death the survivor becomes entitled to the *income* (as distinguished from capital) of the property, settled by such survivor, the Estate Duty is not payable in respect of that property until the death of the survivor. This only applies to interests arising under settlements made before, or wills of persons dying before, 2nd August, 1894.

10. The Treasury may remit the duty on such pictures, prints, books, manuscripts, works of art, or scientific collections, as appear to them to be of national, scientific, or historic interest, and given for national purposes, or to any University, or to any County Council or Municipal Corporation. (See Finance Act, 1894, Section 15 (2).)

11. (i) Objects of national, scientific, or historic interest, admitted by the Treasury to be such, passing on a death on or after the 1st July, 1896, and *before the 30th April, 1909*, and "settled" so as to be enjoyed in succession in kind only, are not to be charged with Estate Duty until they are actually sold, or are in the possession of some person competent to dispose of them. (See Finance Act, 1896, Section 20 (1).)

(ii) Where the deceased died on or *after the 30th April, 1909*, any property—"settled" or not—passing on his death, which consists of such pictures, prints, books, etc., not yielding income as appear to the Treasury to be of national, scientific, historic, or artistic interest, is only chargeable with Estate Duty when the property is sold, and then only in respect of the last death on which the property passed. (See Finance (1909-10) Act, 1910, Section 63.) But sales, on or after the 4th August, 1921, of such objects to certain national or public institutions are exempted from the charge of duty. (See Finance Act, 1921, Section 44.)

If it is desired to obtain the benefit of exceptions 10 or 11, application should be made to the Controller, Estate Duty Office, Inland Revenue, Somerset House, London, W.C. 2. The application should be accompanied by a schedule setting forth the particulars and value of the articles, together with a reference to the section or sections under which exemption is sought. If the articles (or any of them) have been sold, the date of the sale and the gross amount realized should be stated.

If the application falls to be made under the provisions of Section 20 (1) of the Finance Act, 1896, it should, in addition, disclose whether the articles are in the possession of a person competent to dispose thereof.

12. Where an estate, in respect of which Estate Duty is payable on the death of a person dying on or after the 30th April, 1909, comprises land on which

24 A HANDBOOK ON THE DEATH DUTIES

timber, trees, wood or underwood are growing, the value of such timber, trees, wood or underwood is not to be taken into account in *estimating the principal value of the estate or the rate of Estate Duty*, and Estate Duty is not payable on such value, but the Estate Duty, *at the rate due to the principal value of the estate*, is payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood *when felled or cut* during the period which may elapse until the land, on the death of some other person, again becomes liable to Estate Duty. The effect of the words italicized is to fix the *rate* of duty at once, both for the main estate and, in the case of piecemeal sales, for the timber (when sold). In the case of sales of the timber, etc., *as a whole*, see below, and at page 35.

The owners or trustees of the land are to account for and pay the duty as and when the moneys are received, together with interest, from the date of receipt.

If the timber, trees, or wood are sold at any time *as a whole*, either with or apart from the land on which they are growing, Estate Duty is payable upon the principal value thereof, as at the death of the deceased, after deducting any Estate Duty already paid upon the proceeds of the sale of any timber felled and sold since that date. (See Finance Act, 1912, Section 9.)

The procedure, therefore, differs according to whether the timber, etc., is sold piecemeal, or as a whole (as it stands). But in every case no duty is payable until a sale; and then duty is payable, in case of a sale, *as a whole*, on the value of the timber as at the date of death (not on the sale money) at the rate applicable to the estate, including the timber; and in case of piecemeal sales on the net sale proceeds,

at the rate applicable to the rest of the estate, *excluding* the timber.

A life-tenant who receives timber sale money must bear the duty. (*Re Smyth*, [1918] 1 Chan. 118.)

13. It will be seen from (VII) above that even when the deceased had only a life interest, and was unable to dispose of the property either in his lifetime or at his death, the property has to bear Estate Duty on the full capital value.

The Acts, however, give relief where such settled property passes from husband to wife, or vice versa. The exception, and the subject of life estates generally, is explained in Chapter VI.

14. Where the interest of any person under a settlement fails or determines by reason of his death before it comes an interest in possession, and the property passes under the settlement to someone else, the property is not deemed to pass on his death (Finance Act, 1894, Section 5 (3)).

Property is settled on A for life, then to B for life, and then to C absolutely.

B dies before A. No duty payable on B's death.

But note carefully that if there had been no limitation over to C on B's death, and the reversion had passed to B's next of kin or legatees, duty would have been payable.

The difference between the two cases is further illustrated in Chapter VI, under heading "Interests in Expectancy."

15. Certain war securities in the beneficial ownership of persons dying either domiciled or ordinarily resident outside the United Kingdom are exempt from duty. The exemption was granted to encourage such persons to subscribe for War Loans, etc. The difference between "domiciled" and "ordinarily resident" is

26 A HANDBOOK ON THE DEATH DUTIES

shown in Chapter IX. The Irish Free State is not part of the United Kingdom, but Northern Ireland is.

16. Single-life annuities of not exceeding £25 per annum provided wholly or partially by deceased, to arise on his death, are exempt from duty under Finance Act, 1894, Section 15 (1).

17. Special exemptions exist in the case of officers and men killed on active service in time of war. This is in addition to exemption No. 3, *supra*.

3. WHO IS LIABLE TO THE REVENUE FOR THE DUTY.

The executors are liable for the duty on property which comes to them by virtue of their office, viz. : Deceased's own free personal estate, and the duty on such is payable out of deceased's general residuary estate (*Vide* Chapter VI.)

They are not liable in respect of the following, but they may, if they choose, pay the duty, in which event the other accountable parties must recoup them:—

1. Property passing under settlements (see below). The settlement trustees are liable.

2. Gifts *inter vivos* made within three years. The donees are liable.

3. Donations *mortis causa*. The donees are liable.

4. Property in which deceased had no interest (e.g. Nomination Life Policy). The successors or nominees are liable.

5. Freehold property. The successor is liable. But in case of deaths occurring on or after the 1st January, 1926, the executors will be jointly liable with the successor, so far as the Crown is concerned, for the duty on freehold property. They will have to see that the successor pays (see below).

6. Property situate abroad. The beneficiaries or trustees of it are accountable.

In these cases, except No. 6, the Estate Duty is charged upon the specific property passing, and is payable thereout, so far as the beneficiaries are concerned *inter se*; and this will still be so in 1926 and onwards, even in the case of land.

In the case of a settlement of personalty where deceased had, and exercised (either by deed or his will), a *general* power of appointment, or where, in default of his making any appointment, the property actually passed to his next of kin as his own property, it was for long considered that the executors were liable, and the duty came out of the general residuary estate; but the House of Lords decided (*re O'Grady*; *O'Grady v. Wilmot*, [1916] 2 A.C. 231) to the contrary, and the duty is a charge upon the property passing and is payable by the appointee out of the appointed property, and this will apparently remain the law as to leaseholds (which are personalty), notwithstanding Section 3 (2) of Administration of Estates Act, referred to below, so far as the beneficiaries are concerned *inter se*. But the executor will have to pay the duty in the first place and recover from the appointee.

As to Freehold and Leasehold Land. Law as from 1st January, 1926.—Law of Property Act, 1925, Section 16 (1) renders the deceased's personal representative liable for all death duties arising on his death in respect of land, whether settled or not, in which deceased was interested.

In the case of deceased's own absolute property, his personal representative will, as before, be the person to deal with the duties (Administration of Estates Act, 1925, Section 1 (1)), but with this difference, that henceforth the personal representative *must* see that the duties are discharged, whereas hitherto (as we have seen) he has had the option of discharging the

28 A HANDBOOK ON THE DEATH DUTIES

duties on the *freehold* land or of leaving the heir or devisee to do it. Land over which deceased had and exercised a *general* power of appointment by will is to be deemed his own free property (Administration of Estates Act, 1925, Section 3 (2)), and will therefore pass to his general (not the special) personal representative.

In the case of settled land, Administration of Estates Act, 1925, Section 22, provides that the deceased may appoint by his will special executors for the settled land in which he was interested. He may appoint the same persons who are the trustees of the settlement, and if he names no special executors, he will be deemed to have appointed those persons. But apparently he may expressly name other persons if he chooses (see Section 23).

The point to be borne in mind is that the personal representatives, and not (as now) the trustees of the settlement, will henceforth be liable for the duties on settled land, although, as a rule, they will be the same persons simply in another capacity.

In practice the life-tenant will, no doubt, always appoint the same persons who are the settlement trustees as the special executors.

It must again be emphasized that none of the changes in the law alters the incidence of death duties as between the beneficiaries; the new law only alters the persons who are responsible to the Crown for payment (Administration of Estates Act, 1925, Section 53 (3)).

4. ESTATE DUTY AND SUCCESSION DUTY ON FREEHOLDS.

Searches by Purchasers and Mortgagees (Changes in the Law).

This is a subject rather for works on conveyancing, and is therefore only dealt with briefly here.

We have just seen that the Estate Duty payable in respect of freehold land is a specific charge thereon. Succession Duty (where payable) is also a like charge thereon, except when the land is held by the executors, or by settlement trustees, upon a trust for sale. In the lastly named cases the charge for Succession Duty shifts to the proceeds of sale, and purchasers of the land are not concerned to see that the Succession Duty is discharged. Neither duty is a charge upon *leasehold* interests in land.

As against *bona fide* purchasers, and mortgagees, for full value without *express* notice that the duties remain unpaid, the duties cannot be a charge after twelve years from the death (Finance Act, 1894, Section 8).

It therefore follows that purchasers and mortgagees have to carefully inquire as to payment of the duties arising on the death of any former owner that may have occurred within twelve years before the sale or mortgage, and to see that any outstanding duties are discharged.

The following changes in the law will be in force as from 1st January, 1926 :—

1. *Land not Registered at the Land Registry (Law of Property Act, 1925, Sections 16-18).*

a) Purchasers for full value in money or money's worth, and mortgagees, will not take subject to any death duty unless—

(1) The charge for duty is registered in the Land Charges Department by the Commissioners of Inland Revenue under Land Charges Act, 1925, Section 10, or

30 A HANDBOOK ON THE DEATH DUTIES

- (2) The death occurred before 1st January, 1926, and the purchaser or mortgagee had notice of such death.

If he failed to receive actual notice through his own failure to make proper inquiries, he would be deemed to have constructive notice. The definition of "notice" is contained in the Conveyancing Act, 1882, Section 3 (1), replaced as from 1st January, 1926, by Section 199 (1) (ii) (a) of the Law of Property Act, 1925, and this definition will be regarded. See *Bailey v. Barnes* (1894), 1 Chan., at p. 34.

After twelve years, the Revenue would have to prove *express* notice that duty remained unpaid (see last page).

If A is to complete a purchase of freehold land on 25th December, 1926, and a former owner died at any time between 25th December, 1914, and 31st December, 1925, A should call upon the Vendor for a certificate of discharge of Estate Duty under Finance Act, 1894, Section 11 (1), and a receipted Succession Duty Account. From 1st January, 1926, the Land Charges Register will protect him. If a charge appears there, the Vendor must remove it.

- (b) Volunteers (i.e. persons taking the land without full consideration as above) will take subject to the duties, whether registered or not.

2. *Land Registered at Land Registry under the Land Registration Act, 1925 (Land Registration Act, 1925, Section 73).*

- (a) For deaths occurring before 1st January, 1926, the present law remains in force. That is to say, a *bona fide* purchaser or mortgagee for full value in money or money's worth will not take subject to any duties unless they are registered against the title as incumbrances by the Commissioners. If so registered, the purchaser or mortgagee must see that they are discharged.
- (b) A volunteer takes subject to the duties, whether registered or not.

Deaths occurring on or after 1st January, 1926.

- (a) Purchasers and mortgagees for full value (as above) are not concerned with the duties, and will take the property free from them.

The Revenue is protected as follows: it can register a notice of the charge against the title. Before a transfer or charge is completed the Registrar will then give notice to the Commissioners of Inland Revenue, who will take steps to see that the transferor or chargor pays the duty.

- (b) Volunteers will take subject to the duties in any event.

The changes in the law are useful, and will make investigations of title considerably less troublesome in many cases.

CHAPTER II

ESTATE DUTY

Aggregation for Ascertaining Rate of Estate Duty.

It has been shown that a great many classes of property, besides deceased's own absolute property, become liable to duty on his death. All these have to be combined together ("aggregated") for the purpose of arriving at the rate of duty on all and any of them, with the following exceptions, which are explained below :—

- (1) Property in which deceased never had any beneficial interest at all (nor any possibility of it) is to be treated as an estate by itself.
- (2) Generally speaking, settled property in which deceased had only a life interest without a general power of appointment from a settlor who died on or before the 1st August, 1894, is to be treated as an estate by itself. (See Finance Act, 1907, Section 16.)
- (3) Where the net value of the property, real and personal, in respect of which Estate Duty is payable on the death of the deceased—including property over which the deceased had and exercised by will a general power of appointment, and property which by default of exercise of the power of appointment belonged to the deceased absolutely, but exclusive of other property settled otherwise than by the will of the deceased, does not exceed £1,000, such property is not to be aggregated with any other property, but is to form an estate by itself. (Finance Act, 1894, Section 16.)

- (4) Gifts of pictures, prints, books, manuscripts, works of art and scientific collections, of national, scientific, or historic interest, given for national purposes, or to any University, or to any County Council or Municipal Corporation, the Estate Duty whereon has been remitted by the Treasury, are not to be aggregated with any other property. (*Ibid.*, Section 15.)
- (5) (i) Objects of national, scientific, or historic interest, admitted by the Treasury to be such, as passing on a death on or after the 1st July, 1896, and before the 30th April, 1909, and "settled" so as to be enjoyed in succession in kind only, are to form an "Estate by itself." (See Finance Act, 1896, Section 20 (1).)
- (ii) Where the deceased died on or after the 30th April, 1909, any property—"settled" or not—passing on his death which consists of such pictures, prints, books, etc., not yielding income as appear to the Treasury to be of national, scientific, historic, or artistic interest, is not to be aggregated with other property, but is to form an "Estate by itself." (See Finance (1909-10) Act, 1910, Section 63.)

The following example serves to explain the principle of aggregation, and also to illustrate the kinds of property which are liable to duty.

A dies on 31st August, 1925, and the following items pass by reason of his death :—

	£	s.	d.
(a) His own absolute property (personalty)	500	0	0
(b) Nomination Life Policy in favour of his wife (the money can only be paid to her)	300	0	0
(c) Freehold House settled by himself on his marriage. Life estate to himself, then to his wife (who survives) for life, and on her death to such of their children as he shall by will appoint. He appoints to B	1,000	0	0
(d) Stocks and Shares settled by will of A's Aunt, who died in 1910, on A for life, and upon his death to his brother for life, and on latter's death to latter's children absolutely	10,000	0	0

84 A HANDBOOK ON THE DEATH DUTIES

	£	s.	d.
(e) Freehold Land, including timber valued at £500, settled by will of A's father, who died in 1892, on A for life and then to such of A's children as A should by deed or will appoint, or in default of any such appointment to his eldest child absolutely. A appointed by will to his second son	5,200	0	0
(f) A sum of Consols settled by A's mother-in-law by deed on A's wife, so that the wife is to receive the income as long as A is living, and on his death the capital to pass to the children (of whom there are some)	2,000	0	0
(g) A vested interest under a settlement contained in a cousin's will in a fund of £10,000, expectant upon the death of A's aunt, aged seventy. The £10,000 is invested in a 5 per cent. mortgage. The present value of the expectancy is £10,000 less the value of the life interest (which for a life aged seventy is £3,387 5s.), making £6,612 15s. A bequeaths the interest to his sister	6,612	15	0
(h) A gift made to a son two and a half years before the death, to purchase hunters	187	5	0
(i) Books and paintings, certified by the Treasury to be of national, scientific, historic, or artistic interest, settled by his father's will on himself and eldest child as heirlooms	7,000	0	0
Total	£32,800	0	0

The total value of all the property passing on the death is £32,800. If all the items were aggregable together for the purpose of arriving at the rate of duty, the rate on the whole would be 11 per cent. But let us consider the position.

(a), (b), and (h) are property which come within exception 3 set out above. Their total value is

ESTATE DUTY. AGGREGATION 85

£987 5s., and being less than £1,000, they form an estate by themselves, and are liable (subject to next paragraph) at the rate of 2 per cent. only. Item (g) is regarded as settled otherwise than by B's will, although it is doubtful whether the reversionary interest *as such* (which is all that is valued for duty if the duty is paid at once) is really settled at all. In practice the Revenue allow such a reversionary interest to be treated as part of A's free estate, or as settled property at the option of his executors. In this example it would not pay the executors to aggregate it, because its value alone is well over £1,000.

(b) is an estate by itself, because deceased never had an interest in it, and the rate is 1 per cent. only.

(c), (d), and (g) are fully aggregable with one another. Their total value is £17,612 15s., and the rate on all of them is 7 per cent. only. With regard to (g), it is pointed out that if the reversionary interest had not belonged to A absolutely, but passed on his death to someone else by virtue of the settlement, no duty would be payable at all on A's death in respect of it. (See Chapter I, exception No. 14.)

(e) is not aggregable because it was settled by a will which came into operation before the Finance Act of 1894 (which first imposed aggregation), and A was not competent to dispose. He had a special power only. The value of the timber is not to be reckoned, and the value on which duty is payable is £4,700, and the rate is 3 per cent. If and when the timber is sold, duty will then become payable at the rate of 3 per cent. on the proceeds of sale from time to time. It will be remembered that the *rate* does not depend, in the case of piecemeal sales, upon the value of the timber at all, but is fixed at the rate applicable

36 A HANDBOOK ON THE DEATH DUTIES

to the land minus timber (viz. £4,700). If the timber were sold all at one time, the duty would be on £500 at the rate applicable to £5,200, viz. 4 per cent. (*vide* page 24).

(f) is not aggregable, for A never had any interest whatever in the capital or income. The duty will be 3 per cent. on the £2,000, and comes out of it.

(i) is not aggregable. Duty will be payable on the amount realized, if and when the articles are sold.

This example is given for illustration only; it seldom happens in practice that a single estate is made up in quite such a way. As a rule deceased's own free property forms a larger proportion of the whole, and there are fewer settled funds passing, and in the majority of cases everything that passes on the death is fully aggregable and subject to full rate of duty accordingly. Further examples are given in Chapter XIII.

It is specially to be noted that only property on which Estate Duty is *leviable* on the particular death is aggregable. See *Attorney-General v. Earl Howe* (Court of Appeal), *Law Times*, 11th July, 1925. W.N., 1925, p. 199.

So that, for instance, if a settled fund passing on a widow's death is exempt from Estate Duty under Section 14 of the Finance Act, 1894 (being on the ground that it has already borne duty on the husband's death), it is not aggregable with the rest of the property passing on her death for the purpose of fixing the rate on the latter.

Land or *Chattels* settled by Royal Grants so that no one of the successive owners can alienate same is to be valued as the interest of the *successor*, and is

ESTATE DUTY. AGGREGATION 37

to be valued for Estate Duty in the same way as for Succession Duty. Nor is such property aggregable. (Finance Act, 1894, Section 5 (5).) As to meaning of chattels for this purpose, see *Re Exmouth's Annuity*, 1925, 1 Chan. 280, and 133 L.T. Reports, 39.

Solicitors constantly receive complaints, which are fully justified, that, owing to the aggregation of trust funds with other property which comes from an entirely different source and goes to an entirely different class of beneficiary, the rate of the duty on the trust funds is inflated. In the example just given, the rate of duty on (*d*) is 7 per cent., and might be as high as 40 per cent., although the rate applicable to £10,000 by itself is only 4 per cent. Why should A's brother (who may be very poor) suffer for the sin of A in possessing a large estate?

CHAPTER III

RATES OF ESTATE DUTY

“ Quick Successions ” to Land or a Business.

In the case of persons dying on or after the 30th April, 1909, and before the 16th August, 1914, the rates of Estate Duty are according to the following scale. (See Finance (1909-10) Act, 1910, Section 54, and the Second Schedule to that Act.)

Principal Value of the Estate.				Rate per Cent.
£		£		£
		Does not exceed	100	0
Exceeds	100	and does not exceed	500	1
”	500	”	1,000	2
”	1,000	”	5,000	3
”	5,000	”	10,000	4
”	10,000	”	20,000	5
”	20,000	”	40,000	6
”	40,000	”	70,000	7
”	70,000	”	100,000	8
”	100,000	”	150,000	9
”	150,000	”	200,000	10
”	200,000	”	400,000	11
”	400,000	”	600,000	12
”	600,000	”	800,000	13
”	800,000	”	1,000,000	14
”	1,000,000	.. .. .	.. .. .	15

RATES OF ESTATE DUTY

89

In the case of persons dying after the 15th August, 1914, and before 31st July, 1919, the rates of Estate Duty are according to the following scale. (See Finance Act, 1914, Section 12, and the First Schedule to that Act.)

Principal Value of the Estate.			Rate per Cent.
£		£	£
	Does not exceed	100	0
Exceeds	100 and does not exceed	500	1
"	500 "	1,000	2
"	1,000 "	5,000	3
"	5,000 "	10,000	4
"	10,000 "	20,000	5
"	20,000 "	40,000	6
"	40,000 "	60,000	7
"	60,000 "	80,000	8
"	80,000 "	100,000	9
"	100,000 "	150,000	10
"	150,000 "	200,000	11
"	200,000 "	250,000	12
"	250,000 "	300,000	13
"	300,000 "	350,000	14
"	350,000 "	400,000	15
"	400,000 "	500,000	16
"	500,000 "	600,000	17
"	600,000 "	800,000	18
"	800,000 "	1,000,000	19
"	1,000,000 .. .. .	.. .. .	20

In the case of persons dying on or after the 31st July, 1919, and before the 30th June, 1925, the rates of Estate Duty are according to the following scale. (See Finance Act, 1919, Section 29, and the Third Schedule to that Act.)

40 A HANDBOOK ON THE DEATH DUTIES

Principal Value of the Estate.				Rate per Cent.
	£	Does not exceed	£	£
Exceeds	100	and does not exceed	500	1
"	500	"	1,000	2
"	1,000	"	5,000	3
"	5,000	"	10,000	4
"	10,000	"	15,000	5
"	15,000	"	20,000	6
"	20,000	"	25,000	7
"	25,000	"	30,000	8
"	30,000	"	40,000	9
"	40,000	"	50,000	10
"	50,000	"	60,000	11
"	60,000	"	70,000	12
"	70,000	"	90,000	13
"	90,000	"	110,000	14
"	110,000	"	130,000	15
"	130,000	"	150,000	16
"	150,000	"	175,000	17
"	175,000	"	200,000	18
"	200,000	"	225,000	19
"	225,000	"	250,000	20
"	250,000	"	300,000	21
"	300,000	"	350,000	22
"	350,000	"	400,000	23
"	400,000	"	450,000	24
"	450,000	"	500,000	25
"	500,000	"	600,000	26
"	600,000	"	800,000	27
"	800,000	"	1,000,000	28
"	1,000,000	"	1,250,000	30
"	1,250,000	"	1,500,000	32
"	1,500,000	"	2,000,000	35
"	2,000,000	.. ..	.. ..	40

RATES OF ESTATE DUTY

41

Finance Act, 1925.

In the case of persons dying *on or after 30th June, 1925*, the rates are as follows :—

PRINCIPAL VALUE OF ESTATE.

Exceeding £.	Not Exceeding £.	Rate per Cent.
—	10,000	as in last table
10,000	12,500	5
12,500	15,000	6
15,000	18,000	7
18,000	21,000	8
21,000	25,000	9
25,000	30,000	10
30,000	35,000	11
35,000	40,000	12
40,000	45,000	13
45,000	50,000	14
50,000	55,000	15
55,000	65,000	16
65,000	75,000	17
75,000	85,000	18
85,000	100,000	19
100,000	120,000	20
120,000	140,000	21
140,000	170,000	22
170,000	200,000	23
200,000	250,000	24
250,000	325,000	25
325,000	400,000	26
400,000	500,000	27
500,000	750,000	28
750,000	1,000,000	29
1,000,000	1,250,000	30
1,250,000	1,500,000	32
1,500,000	2,000,000	35
2,000,000 ..	.. ..	40

(except that agricultural property remains subject to

42 A HANDBOOK ON THE DEATH DUTIES

the lower rates existing before that date so far as its value as purely agricultural land is concerned). If the land has any additional selling value, the new rates will apply to such additional value. For instance, an estate is valued at £10,000 on the basis that it cannot be used for any other purpose than agriculture ; but it could, in fact, be sold for building or other purposes for £15,000. The old rates of duty will apply to the first £10,000, and the 1925 rates to the next £5,000.

The following is the clause in the 1925 Act relating to agricultural land :—

(1) Where an estate in respect of which Estate Duty is payable on the death of a person dying after the commencement of this Act comprises or consists of agricultural property, the Estate Duty payable in respect of the agricultural property shall, instead of being charged on the principal value thereof at the appropriate rate payable under this Act, be charged as follows, that is to say, the Duty shall be charged on the agricultural value of the property at the appropriate rate payable under the scale of rates set out in the Third Schedule to the Finance Act, 1919, and shall be charged on the amount by which the principal value of the agricultural property exceeds the agricultural value thereof (in this Act referred to as " the excess principal value ") at the appropriate rate payable under the scale set out in the Fourth Schedule to this Act.

(2) For the purposes of this section the agricultural value of agricultural property shall be taken to be the value which the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, decreased by the value of any timber, trees, wood, or underwood growing thereon.

(3) Where any agricultural property is subject to a mortgage, debt, or incumbrance in respect of which an allowance is by law to be made for the purposes of Estate Duty, the mortgage, debt or incumbrance shall, for the purposes of this section, be apportioned between the agricultural value of the property and the excess principal value of the property in proportion to the amounts of those two values respectively.

(4) In this section the expression "agricultural property" means agricultural property within the meaning of paragraph (g) of Sub-section (1) of Section 22 of the Finance Act, 1894, and the expression "appropriate rate" means the rate of Estate Duty appropriate to the principal value of the estate passing on the death of the deceased.

The definition of "agricultural property" contained in the Finance Act, 1894, Section 22 (1) (g) is "Agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property."

Special provision is made by the Finance Act, 1919, to prevent loss to estates which are only slightly over the limit at which the rate of duty is raised. Thus, where the net principal value of an estate is £5,025, the duty will be £175, viz. 3 per cent. on £5,000, plus the odd £25. But for this provision, the duty would be 4 per cent. on £5,025, viz. £201, so that an estate valued at £4,999 would be worth more to the beneficiaries than one valued at £5,050. The result of this special provision is that (to give an instance) for an estate valued at between £5,000 and £5,052 ls. 8d., the rate is 3 per cent. on £5,000, and the whole surplus of the estate above £5,000 is added to the duty. For estates between £5,052 ls. 8d. and £10,000 the rate is 4 per cent. on the whole estate. This rule applies to all the steps in the rates of duty.

"Quick Successions" to Land or a Business.

Where the Commissioners of Inland Revenue are satisfied that Estate Duty has become payable on any property consisting of land or a business (not being a business carried on by a company) or any interest

44 A HANDBOOK ON THE DEATH DUTIES

in land or such a 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 (if that death occurs after 31st July, 1914) 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. (See Finance Act, 1914, Section 15.)

Before any deduction under this section can be allowed, it will be necessary to satisfy the Commissioners of Inland Revenue that the requirements of the section have been complied with. Particulars of the property in respect of which the deduction is claimed, together with the full name and exact date of death of the person upon whose decease the earlier payment of duty was made, should be stated in a schedule to be annexed to the Inland Revenue affidavit.

The matter can be more conveniently dealt with if application for repayment is made after the grant of representation to the deceased has been obtained.

See Case 7, Chapter XIII, for an illustration of the working of the above.

“Fixed Duty” on Small Estates.

Where the gross value of the property real and personal on which Estate Duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, exceeds £100, but does not exceed £300, a fixed duty of 30s. *may be* paid, and where it exceeds £300 but does not exceed £500, a fixed duty of 50s. *may be* paid. Where the fixed duty of 30s. or 50s. has been paid, and it is afterwards discovered that the gross value of the property exceeds £500, the *ad valorem* duty according to the true value is payable; but if the Commissioners are satisfied that there were reasonable grounds for the original estimate of the value of the property, an allowance may be made for the duty paid at first. If the fixed duty is paid within a year after the death, no interest is charged on it.

If the gross value of the estate does not exceed £500, it will generally be found more convenient to pay the duty in this way (rather than *ad valorem* at 1 per cent.), because the Court fees payable on applying for probate will also be fixed, viz. 15s. In most cases, if the ordinary *ad valorem* duty is paid, the Court fees will be considerably more than 15s., particularly if there is a long will. There is a saving of time in obtaining probate, for the affidavit is not examined until later.

It will be seen that in order to arrive at the value of £500 or £300, as the case may be, the *gross* value has

46 A HANDBOOK ON THE DEATH DUTIES

to be taken, and no deduction can be made for ordinary debts or funeral expenses, but a mortgage or debt specifically charged on the property may be deducted. So that if the gross value is £800 (including a house on which there is a mortgage for £300), the estate is within the limit for the fixed duty of 50s. But the mortgage or charge must either have been on the property when deceased acquired it, or created by deceased himself for the purpose of *providing the purchase money* for the property.

Money owing for furniture on a hire-purchase agreement can be deducted from the gross value of the furniture; or money advanced on a life policy to enable the premiums to be paid can be deducted from the policy moneys, and so forth. (Finance Act, 1894, Section 16 (1), and Finance (1909-10) Act, 1910, Section 61 (2).)

CHAPTER IV

PERMISSIBLE DEDUCTIONS FOR ASSESSMENT TO ESTATE DUTY

Deductions for Colonial and Foreign Death Duties.

1. A reasonable sum can be deducted from the value of the gross estate for funeral expenses, i.e. the usual items included in an undertaker's bill.

2. Debts and mortgages. If a mortgage was already on the property when the deceased acquired it, it can be deducted in any case, but so far as mortgages created by deceased himself (and his other debts) are concerned, they are only deductible if they were contracted by the deceased—(1) *bona fide* for full consideration in money or money's worth, and (2) wholly for his own sole use and benefit, and (3) there is no right to reimbursement from any other estate or person (unless it is proved that such reimbursement cannot be obtained). (Finance Act, 1894, Section 7.)

So that a debt due as surety for someone else cannot be deducted, nor a sum covenanted to be paid to the trustees of his own or a child's marriage settlement.

The House of Lords has decided that where a man covenanted in his own marriage settlement to pay in his lifetime a sum of money to the settlement trustees, and such sum remained unpaid at his death, the debt could not be deducted (although, of course, it had to

48 A HANDBOOK ON THE DEATH DUTIES

be paid to the trustees), because it was not for deceased's own sole use and benefit, nor contracted for full consideration in money or money's worth. The consideration was the marriage.

In such a case the trustees of the marriage settlement would be entitled to receive the sum in full, without deduction of any duty, as in the case of any ordinary debt, and the executors would pay the Estate Duty out of the general estate. But where A covenants in a settlement to pay £10,000 to trustees at once, but stipulates that the trustees are not to force him to pay in his lifetime if he does not do so, or where A simply covenants to pay the £10,000 on his death, in both these cases, if the £10,000 remains unpaid until the death, the law is that A's executors bear the Estate Duty and the trustees bear the Succession Duty. The latter is payable because the benefit arises by the death, and it comes out of the £10,000. *Lord Advocate v. Alexander's Trustees*, 1905, 7 S.S.C., 5th Series, 367. *Re Maryon Wilson* (1900), 1 Chan. 565, and other cases.

Foreign Debts.

An allowance is not made in the first instance for debts due from the deceased to persons resident out of Great Britain unless contracted to be paid in Great Britain or charged on property situate within Great Britain, except out of the value of any personal property of the deceased situate out of Great Britain on which Estate Duty is paid. No repayment of Estate Duty is made in respect of any such debts except to the extent to which the personal property of the deceased situate out of Great Britain is shown to be insufficient for their payment. (See Section 7 (2) Finance Act, 1894.)

One of the first duties of an executor after the death is to make a schedule of all the debts owing to tradesmen and others by the deceased. It generally happens that some further debts come to light after the affidavit has been sworn. These can be dealt with after probate has been obtained in a "Corrective Affidavit." There will in many cases have to be a corrective affidavit to adjust values of the assets, and the additional debts can be dealt with at the same time.

Never forget to deduct a proportion of any Income Tax, Super Tax, Rates, Rent, etc., that may have accrued due, but be unpaid, as at date of death. This is often a substantial amount.

Deductions from Foreign Assets.

3. Where the Commissioners are satisfied that any additional expense in administering or in realizing foreign property has been incurred by reason of the property being situate out of Great Britain, an allowance for such expense not exceeding 5 per cent. on the value of the property is made. (See Section 7 (3) Finance Act, 1894.)

4. Where the Commissioners are satisfied that by reason of the deceased's death any duty in respect of foreign property is payable in the country where the property is situate, an allowance of the amount of the duty is made from the value of the property. (See Section 7 (4) Finance Act, 1894.)

Deduction from United Kingdom Duties.

5. Certain deductions can be made against the duty (not against the value of the estate merely) for duty paid out of Great Britain, as follows :—

(i) In the case of moveable property situate in a British possession, and passing on the death of a person dying

50 A HANDBOOK ON THE DEATH DUTIES

domiciled in Great Britain, if any duty in respect thereof is payable in the British possession, a sum equal to the amount of that duty is to be deducted from the Estate Duty payable in respect of that property on the same death; but only where by the law of such possession either no duty is chargeable in respect of property situate in Great Britain when passing on death, or a like allowance as against the duty chargeable in such possession is made in respect of any duty payable in Great Britain. This provision only applies to such British possessions as are from time to time brought within its scope by Order in Council. (Finance Act, 1894, Section 20.)

The section is operative in regard to the following possessions: Australia (Commonwealth), Australia (South), Australia (Western), Bahamas, Barbadoes, Bermudas, British Columbia, British Guiana, Ceylon, Falkland Islands, Fiji, Gambia, Gibraltar, Gold Coast, Grenada, Hong Kong, India (not including the Feudatory Native States), Jamaica, Labuan, Leeward Islands, Manitoba, Mauritius, New Brunswick, Newfoundland, New South Wales, New Zealand, Nigeria, Nova Scotia, Ontario, Papua, Quebec, Saint Lucia, Sierra Leone, Straits Settlements, Tasmania, Trinidad and Tobago, Victoria and the Yukon Territory (Dominion of Canada).

It will be seen that several Colonial States such as Queensland and Transvaal are not named. This is because they have refused to grant a reciprocal arrangement, and therefore Section 20 of the Act cannot be applied to them. Any duty paid in those States can only therefore be treated as a deduction against the assets (not against the United Kingdom duty).

(ii) Under the *Foreign Jurisdiction Act*, 1913, the section is also operative in regard to: East Africa Protectorate, Gambia Protectorate, Nyasaland Protectorate, Southern Rhodesia, Swaziland, Uganda Protectorate, Weihaiwei, Zanzibar.

(iii) In the case of deaths since the 21st November, 1921, where Estate Duty is payable in Northern Ireland in respect of property there situate an allowance may be claimed of a sum equal to the amount of that duty against the Estate Duty payable in Great Britain in respect of that property on the same death. (See Government of Ireland Act, 1920, Section 28.)

COLONIAL AND FOREIGN DUTIES 51

(iv) Where Estate Duty is payable in the Irish Free State by reason of a death of a person dying on or after the 1st April, 1923, in respect of any property situate in the Irish Free State and passing on such death, a sum equal to the amount of that duty is allowed to be deducted from the Estate Duty payable in Great Britain in respect of that property on the same death. (See the Irish Free State (Consequential Provisions) Act, 1922, Section 5, and Part II of the Schedule to the Relief in respect of Double Taxation (Irish Free State) Declaration, 1923.)

Before the allowances for colonial duty can be obtained, it is necessary to pay the colonial duty and produce a receipt for it to the Estate Duty Office here. It therefore follows that, as a rule, the deduction cannot be made when the original duty is paid here, and that a refund has to be claimed later.

It is thought advisable to warn British investors as to the incidence of colonial and foreign death duties. For instance, well-known securities, such as Canadian Pacific Railway Shares and Canadian Government and Provincial and Municipal Loans, are subject to heavy duties in the Dominion. In Quebec Province the rates of duty are high, and the assessment is a particularly troublesome matter. In Australian States, such as Queensland, there are high duties. Queensland State Loans, and shares in the well-known pastoral companies, come within the net. Having regard to the fact that most, or (where it does not exceed the United Kingdom duty) all of the colonial duty can be deducted from the United Kingdom duty on the same assets in the cases of the countries named in (5) above (as explained earlier in this chapter), the payment of the duty is not a very serious matter in itself, but the delay involved is extremely troublesome, for the securities cannot in most cases be dealt with until all the formalities of assessing and paying the

52 A HANDBOOK ON THE DEATH DUTIES

duty abroad have been completed, and meanwhile there may be a severe fall in the price. In some Colonies and in all foreign countries, such as the U.S.A., the duty paid there cannot be recovered here, except to the extent of its being treated as a deduction from the *estate*.

CHAPTER V

HOW THE ESTATE IS VALUED

(1) Debts Due to Deceased.

These must be valued at their full face value even if they are likely to prove irrecoverable; but if the debtor has been adjudged a bankrupt, only the dividend declared by the trustee need be brought in.

It must always be borne in mind that the date for ascertaining the value is the date of deceased's death. It does not therefore follow that if a debtor is declared bankrupt a *considerable* time after the creditor's death the Revenue will agree to treat the dividend subsequently declared as being the value of the debt at the date of death.

But in practice the Revenue usually adopts a very reasonable attitude in such cases. (See *Attorney-General v. Brunning*, 8 H.L.C. 243.)

If a debtor is expressly forgiven his debt by the will, the debt must, nevertheless, be treated as part of the estate, and will be treated as a legacy, on which the forgiven debtor must pay legacy duty—a very unpleasant surprise for him as a rule. It is thought that he is also liable for the Estate Duty, since the asset does not come to the executors' hands, and executors are only liable for the duty on property coming to them as executors.

(2) Furniture and Effects

must be valued by a licensed valuer. Any such valuer can be employed by the executors, and his

54 A HANDBOOK ON THE DEATH DUTIES

valuation is usually accepted by the Revenue without question. Only articles valued at more than £20 need be separately shown in the valuation, and the remaining articles need not be particularized. If any of the effects are sold shortly after the death and realize more than the valuation figure, the Revenue must be informed and duty paid on the amount of the increase. *Per contra*, if less than the valuation is obtained (at a *bona fide* sale), duty can be reclaimed.

(3) Stocks and Shares

are valued as follows. If the closing price of a stock, on the day of death, is 100-102, the price to be taken is $100\frac{1}{2}$, viz. "a quarter up" from the lower figure. If the closing price is 180-185, the figure to be taken is $181\frac{1}{4}$, and so on.

If the price is "ex dividend," and the dividend was not received by deceased, or not cashed by him in his lifetime, such dividend must be added. If the Stock Exchange was closed on the day of death, the prices of the last preceding open day, or the first succeeding open day, are to be taken. Executors are reminded that the day's prices usually appear in the next day's papers, not those of the same day.

In the case of private companies, or unquoted securities, the greatest difficulty in agreeing to a figure with the Office is often encountered, and it is here that some of the hardest battles between the Revenue and the estate solicitors are fought.

In the first place a stockbroker's valuation is accepted, but after probate has been obtained a string of questions will often arrive from the Estate Duty Office.

Usually copies of the three last balance sheets of the company are asked for, and the Office then proceeds to make its own estimate of the value of the assets, less liabilities, and of the prospects of the particular trade engaged in by the company.

If *bona fide* sales, at arm's length, have taken place a short time before or after death, the price paid is, *prima facie*, the value which will be taken.

The solicitors will properly argue that in a small company, or one where there is no free market in the shares, the shares could not (if deceased held a large block) be sold without seriously lowering the price, and the Office will generally take this into account to some extent, although they are not bound to do so. (See Finance (1909-10) Act, 1910, Section 60.)

The solicitors should also take the line that an investor looks for a larger return on shares of a not-readily-marketable kind than on shares which can be easily disposed of on the Stock Exchange. Take a small country town brewery company, which for some years has paid 12 per cent. per annum on its ordinary £1 shares. The Revenue will produce statistics to show that the average yield from *quoted* brewery ordinary shares at the time of the death was, say, 8 per cent. on the market quotation for the shares, so that a share yielding 12 per cent. dividends would be priced at £1 10s. per £1 share. The Revenue will maintain that deceased's shares in the local company were therefore worth £1 10s. each, but this should be firmly resisted, and a value of par only contended for. There is far greater speculative risk in holding a share in a small local company than in a large, well-known one, because if the company's fortunes declined the investor could not "get out" easily—perhaps not at all.

56 A HANDBOOK ON THE DEATH DUTIES

He could obtain 12 per cent. on his money with less risk by investing in one of several well-known gold-mining companies possessing ample funds and assured long lives. A contention of this kind, in which many thousands of pounds in duties were at stake, has recently been made by a prominent firm, and after some two years of argument a communication was received from the Estate Duty Office as follows: "The Office is not prepared to carry the matter further."

On no account should the executors or their advisers make a hasty capitulation, but, on the other hand, it is best to be perfectly open and fair, and to disclose all material points to the Revenue.

It should always be remembered that the officials have carefully kept records, and may sometimes possess knowledge of the company which they are not suspected of having.

In these cases, and in private businesses, the valuation of "goodwill" is often a difficult matter. If no goodwill appears in the balance sheet, the Office will seek to add a substantial figure for it, especially if the company is doing well.

In some private companies the Articles provide that a member may not sell his shares without first offering them to existing members at a named price, often below the real value. Nevertheless, the shares must be valued as though freed from this right of pre-emption. (*Attorney-General v. Jameson* (1905), 2 Ir.R. 218.)

(4) Freehold and Leasehold Property.

In the first place the executors should, as a rule, obtain a surveyor's valuation. In due course this will be considered by the Government valuer for the district in which the property lies, and he will probably

report that the original valuation is too low. Here again stern fights often become necessary.

In simple cases the executors can dispense with a professional valuation, and make their own estimate. In the case of reversions to houses, let at a ground rent on the usual terms, with a long period of the term unexpired, the valuation is simply a matter of arithmetic. For instance, deceased owned the ground rent of a house let on a building lease at ground rent of £20 per annum for 99 years, of which over 30 years have still to run. The value of the capital necessary to produce £20 per annum at 5 per cent. per annum is £400, and this is the approximate value of the ground rent. The falling in of the reversion is too far distant to affect the value.

The following case has recently occurred. The deceased owned a large flat in a fashionable London square. He paid full rack rent, and the rent was fixed a few years before, at a time when fancy rents were obtained.

In their original affidavit the executors disclosed no value for the lease, and later they received a demand for duty on £600 for the value of the unexpired term. The solicitors pointed out that several other flats in the same building were empty and could not be let at all, and that rents generally had become lower than when this rent was fixed; but the Government valuer was adamant. So were the solicitors, and after more than eighteen months of arguing, the matter was allowed to drop, and no more was heard of it. The official seemed imbued with the idea that, whenever a deceased flat-owner died, his death automatically, so to speak, increased the rental value of the flat! In this case the flat was in fact a troublesome liability—not an asset at all.

58 A HANDBOOK ON THE DEATH DUTIES

In the case of landed estates, if a sale occurs within a reasonable period after the death, the purchase money can be taken as the basis of assessment.

In a case several years since, a deceased's freehold country estate was valued by the executor's own valuer at about £20,000, and the figure was accepted by the Revenue and the duty paid on it. So long as five years after the date of death the estate was sold for about £15,000 (previous attempts to sell having been made), and on this being pointed out to the Revenue, they made a repayment of the duties on the difference of £5,000.

The principal value of any property passing on a death is the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death. Provided that in the case of small estates not exceeding £1,000 net value consisting of any agricultural property, i.e. agricultural land, pastures, and woodland, and such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property—where no part of the principal value is due to the expectation of an increased income from such property—the principal value shall not exceed twenty-five times the annual value, as assessed under Schedule A of the Income Tax Acts, after making such deductions as have not been allowed in that assessment, and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding 5 per cent. of the annual value so assessed. In the case of deaths before 29th April, 1909, this proviso applied to agricultural property *of any value*.

The Commissioners, in estimating the principal value of any property, are to fix the price according to the

HOW THE ESTATE IS VALUED 59

market price at the time of death, without allowing any reduction on the ground that the whole property is to be placed on the market at one and the same time, unless it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, in which case such depreciation is to be taken into account. (See Finance (1909-10) Act, 1910, Sections 60 and 61.)

The true market value is the price the property would fetch if sold in the most advantageous manner. (*Ellesmere v. C.I.R.* (1918), 2 K.B. 735.)

CHAPTER VI

LIFE INTERESTS. INTERESTS IN EXPECTANCY. ANNUITIES

THESE interests are of such frequent occurrence and are, at the same time, subject to such intricate death-duty law, that it is thought best to devote a separate chapter to them.

The main points alone can be touched upon.

Life Interests.

The Finance Act, 1894, which imposed Estate Duty, provided that all the property passing on a death, even when deceased had a mere life interest, should bear the duty on the full capital value, but it made an exception in the case of life estates, when the owner of the life estate was not "competent to dispose" of the capital at his death. (See Section 5 (1).)

This exception was wiped away by Section 14 of the Finance Act, 1914, except where the property passes from husband to wife, or vice versa.

For deaths occurring since 15th August, 1914, the law is therefore as explained by the following example.

A settled £10,000 by deed on his son B on his marriage to C. B to receive the income for his life, then C (if surviving B) for her life, and on her death the

fund to be divided between the children of B and C equally.

B dies first, and there are children living. On B's death Estate Duty is payable on the full capital, but on C's death no Estate Duty at all is payable on the fund. C had a mere life interest, and was not able to dispose of the capital on her death.

If under the terms of the settlement C had had a *general* power of appointment over the capital as from her death, her estate would have been outside the exemption, for she would have been "competent to dispose" of the property, and the duty would have been payable again on her death.

In order that the property should be exempt on the death of the surviving party to the marriage the following conditions are necessary :—

1. Estate Duty must have been paid on the capital on the death of the other spouse, or if that occurred before the Finance Act, 1894, then whatever duty existed at that date (Probate Duty, etc.) must have been paid.
2. The surviving spouse must only have a life interest and not be competent to dispose of the property. The survivor may have a special power of appointment, but not a general one.

Settlement Estate Duty.

By way of compensation to the Revenue for exempting life estates from duty, the Finance Act of 1894 (Section 5) provided that a further duty called Settlement Estate Duty should be paid on the death when the limitations began at the rate of 1 per cent. on the capital. For deaths occurring between 30th May, 1909, and 12th May, 1914, the rate was 2 per

62 A HANDBOOK ON THE DEATH DUTIES

cent. But the duty was not payable if the *only* life estate created was given to a husband or wife of deceased.

So that in the case above Settlement Estate Duty would not have been payable on B's death, because C, who succeeded, was his wife, and hers was the only life interest under the settlement.

If the limitation of the settlement had been to B for life, then to D (a brother) for life, and then to D's children absolutely, Settlement Estate Duty would have been payable on the £10,000 at 2 per cent. (or 1 per cent.) on B's death, besides the ordinary Estate Duty; and on D's death no Estate Duty would again be payable (if he died before 15th August, 1914).

The Settlement Estate Duty on B's death was, in effect, a kind of payment in advance for the exemption from duty on D's future death, and by way of compensation to the Revenue for the loss.

The Finance Act, 1914, Section 14, abolishes Settlement Estate Duty, and provides that on the first occasion on which Estate Duty becomes payable in respect of a life interest (which but for that Act would have been exempt), any Settlement Estate Duty which has been paid shall be allowed against the Estate Duty. In other words, because the 1914 Act abolished the exemption which the estate had already paid for in advance by payment of Settlement Estate Duty, the latter duty is to be repaid to the estate, with interest on such duty at 3 per cent. per annum as from 15th August, 1914, up to the date of the death, when the newly imposed Estate Duty became payable.

So that, in the last example, if D died after 15th August, 1914, Estate Duty would be payable on the capital of the fund, but the Settlement Estate Duty paid on B's death, with interest, would have to be

refunded by the Revenue. If the value of the securities forming the fund had depreciated since B's death, it is quite possible that the repayable Settlement Estate Duty would be more than the Estate Duty payable, and that a balance of duty would have to be paid over by the Revenue to B's children. The *interest* on the Settlement Estate Duty would apparently belong to D's estate (not the settled fund), as income.

It is accordingly advisable when a life estate forms part of a deceased's property to ascertain whether Settlement Estate Duty was paid on an earlier occasion, and if it was, to claim a deduction in respect of it against the Estate Duty.

As a rule the Estate Duty Office will not need this reminder, but cases have occurred where the deduction was overlooked until claimed.

Interests in Expectancy (Reversionary Interests).

A settles a fund of £10,000 on B for life, and on B's death to C absolutely.

So long as B is living, C has an interest in expectancy, and if C dies before B, such interest passes to C's next of kin or legatees, who will in due course receive the fund.

B never had actual benefit from the fund, but his interest had monetary value, and could have been sold or mortgaged. It was a vested interest which must, sooner or later, viz. on B's death, have fallen into actual possession of C or his successors.

If the settlement had been on B for life, then to B's children absolutely, and failing any such children then to C absolutely, and at C's death B still had no children (but might thereafter have some), then C's

64 A HANDBOOK ON THE DEATH DUTIES

interest would be a "contingent" interest in expectancy. It would have some market value, although less than the vested interest. (This case must be carefully distinguished from the one mentioned in Chapter I, where the deceased never had any interest at all to pass on under his will or intestacy, because the interest passed under the settlement to someone else.)

In such cases C's interests have to be valued as at the date of his death, but payment of the Estate Duty thereon can be deferred until the expectancy falls into actual possession.

Where an estate includes an interest in expectancy (and this expression covers every future interest, whether vested or contingent, but does not include reversions expectant upon the determination of leases), Estate Duty in respect of that interest is to be paid at the option of the person accountable for the duty either with the duty on the rest of the estate, or when the interest falls into possession. If the duty is not paid with the Estate Duty on the rest of the estate, then for the purpose of *determining the rate of Estate Duty in respect of the rest of the estate*, the value of the interest is to be its value at the date of the *death of the deceased*. The rate of the Estate Duty upon the interest when it falls into possession is to be calculated according to its value at that time, together with the value of the rest of the estate as previously ascertained. In the example given in Chapter II, item (g), if the option to defer payment were exercised, duty would be payable on the aunt's death on the full £10,000 (not on £6,612 15s. only), and the rate would be 8 per cent. instead of 7 per cent. The rate for the £10,000 would be the rate appropriate to an estate of £21,000 (not £17,612). On the other hand, the beneficiary has had the duty in his pocket.

The Commissioners, in their discretion, upon application by a person entitled to an interest in expectancy, may 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 they will put a present value upon that duty, regard being had to the contingencies affecting the liability to, and rate and amount of, such duty. (Finance Act, 1894, Section 12.)

Interests of this kind are very common, and they are frequently dealt with by way of sales and mortgages.

The various Acts increasing the Death Duties expressly provide that when at the date of the Act making such increase interests in expectancy which have not yet fallen into possession and not paid duty, have already been *bona fide* sold or mortgaged for full consideration in money or money's worth, no further duties are to be payable on the interest when it falls into possession than would have been payable under the Acts in force *at the date of such sale or mortgage*. In the case of the increases under the Finance Act, 1925, such transactions are protected if made before 28th April, 1925.

These provisions are necessary to protect the purchaser or mortgagee, who, of course, had to calculate the amount of his consideration or advance on the basis that some given sum (and no more) will have to be deducted from the fund on the death of the tenant-for-life. In the case of a mortgage, the mortgagor's liability is not affected, but the higher duty is to rank as a charge subsequent to that of the mortgagee.

A had a reversionary interest in a fund expectant on B's death, and mortgaged his reversion to C, to secure an advance of £1,000, in January 1914. At

66 A HANDBOOK ON THE DEATH DUTIES

that time the rate of duty presumptively payable out of the fund when B should die was 8 per cent. But the Finance Act, 1914, raised the rate to 9 per cent., and the Act of 1919 to 14 per cent. In 1920 B dies, and the reversion falls into possession. A has not been able to redeem the mortgage and C has foreclosed, so that he is now the absolute owner. He receives the fund, less Estate Duty at 8 per cent. If A had redeemed the mortgage, or were in a position to redeem it out of the fund when it falls in, A would have had to pay at 14 per cent. The same principle applies to Succession Duty and Legacy Duty.

Annuities.

It is necessary to carefully distinguish between annuities (a) which arise on deceased's death and (b) which cease on his death. The latter do not usually give rise to a claim if they were granted for full money's worth. (Finance Act, 1894, Section 3 (1).)

To take the ordinary case of a purchase by a man from an insurance company of an annuity of £500 for his wife to begin at his death. His death gives rise to the benefit of the annuity to his wife, and she has to pay Estate Duty on the value of such benefit. The value is calculated according to the table annexed to the Succession Duty Act, 1853, and if she is aged 70 at the date her husband dies, the value will be £3,387 5s., and the rate of duty will be 3 per cent. The £3,387 5s. will not be aggregable with other property for the purpose of arriving at the rate of duty, because deceased never had an interest in it. (*Vide* Chapter II.) The duty can be paid by four equal annual instalments, the first being due a year after

death. Interest at 4 per cent. per annum on all outstanding duty is added to the second, third, and fourth instalments.

The following is an ordinary example of an annuity *ceasing* on a death and giving rise to a claim for duty. Deceased A bequeaths an annuity of £100 a year to a sister, B, who is paid the annuity until she dies. On B's death, even though it may occur immediately after A's death, Estate Duty becomes payable out of A's (not B's) estate on the full capital necessary to provide the annuity, which will be about £2,000. The theory upon which the duty is based is that when the annuity to B ceases, a corresponding advantage occurs to the persons who have acquired A's residuary estate. In other words, they become £100 per annum better off because of B's death. (*Attorney-General v. Watson*, [1917] 2 K.B. 427.)

If A's executors had forthwith purchased an annuity for B from an insurance company, of course no benefit would arise on B's death. There would be no property on which the annuity was charged and no duty would become payable, but, on the other hand, the capital would have disappeared.

It is essential that, if Estate Duty is to arise on the cesser of an annuity, there must be some property which benefits by the cesser, for the whole theory of the Estate Duty is that it is a duty on someone's property—not upon any individual. Hence, if A is under covenant to pay B an annuity of £1,000 a year for B's life, on B's death no duty is payable because no property (as distinct from A personally) is benefited by the cesser. If, however, A's covenant was further secured by charging the annuity on his land, duty would become payable to the extent to which the land benefited by ceasing to have to bear the

68 A HANDBOOK ON THE DEATH DUTIES

annuity to B (unless B had bought the annuity for full consideration)—an absurd distinction.

The duty would be assessed as follows: The land (we will suppose) produced £3,000 a year (or is assessed at that figure), and its capital worth is valued at £100,000. The value on which duty is payable is $\frac{1,000}{3,000}$ of £100,000 = £33,333 6s. 8d. This is an altogether exorbitant figure; the real value of the benefit accruing is explained in Chapter XIV, paragraph 2.

The subject of annuities is a particularly involved one, and if a case of any intricacy has to be dealt with, reference should be made to a larger work.

One of the most frequent difficulties that occur in practice arises from the Revenue's idea of the value of the capital necessary to produce the ceased annuity. If a definite investment had been purchased by A's executors (see last page) specially to meet the annuity; if, for instance, they had purchased £2,000 5 per cent. War Stock and instructed the Bank of England to remit the dividends direct to B, the Estate Duty Office would be obliged to accept the value as at B's death of the stock as the figure for duty on B's death.

But if no such appropriation was made, and the annuity was paid out of the general income of A's residuary estate, the Office endeavours to insist that the income arises from a fund invested on trustee securities, with the following result. The average yield from trustee securities at the present time is about $4\frac{1}{2}$ per cent. per annum, and the capital necessary to produce £100 per annum at that rate is £2,222 4s. 5d. So, say the Office, duty must be paid on this figure. If the average yield were 4 per cent., the capital would be £2,500.

In a case recently under treatment, the investment clauses in the will were wide and the residuary estate out of which the annuity was payable was invested outside the limits of "trustee securities," and an average yield of 6 per cent. was obtained. It was claimed on behalf of the executors that, on the cesser of an annuity of £100 per annum, the capital liable to duty was the sum which at 6 per cent. per annum would produce the annuity—viz. £1,666 13s. 4d.—instead of £2,222 4s. 5d. (or thereabouts) claimed by the Office. As the rate of duty was very high, the difference in value was of importance. The Office took a great deal of convincing that the investments were ones authorized by the will, and that the average yield was more than $4\frac{1}{2}$ per cent. per annum, but it had to give in at the end.

The rate of duty depends upon the value of the deceased *annuitant's* estate. Therefore, in the case quoted, if B's estate were valued at a high figure, the rate of duty which A's estate would have to pay on the £2,000 capital—it is payable by A's estate, not by B's—might be as high as 40 per cent.—viz. £800! And this in spite of the fact that A's estate may be quite a small one, and of the further fact that his whole estate (including this capital of £2,000) paid duty on his death, possibly only a few months before. (See also Chapter XIV, paragraph 2.)

It would seem that if a testator gives an annuity to A, the executors should, if A is advanced in years, and has considerable estate of his own, purchase an annuity from an insurance company (if they can find the purchase money), instead of paying the annuity year by year out of the residuary estate, because the purchase money would not be very large, and heavy Estate Duty would be saved on A's death.

CHAPTER VII

LEGACY DUTY

WHAT LIABLE; EXEMPTIONS; SETTLED LEGACIES;
RESIDUARY ESTATE; DEDUCTIONS ALLOWED.

LEGACY DUTY arises under the Legacy Duty Act, 1796, as amended by numerous later Acts.

It was, however, really born in another guise a few years earlier.

It is a duty upon all the free personal property (except leaseholds) which passes on a deceased's death by virtue of his will or intestacy.

It does *not* therefore catch :—

- (1) Freehold or leasehold property.
- (2) Property which passes on the death (*a*) by virtue of a deed (whether made by deceased or someone else), or (*b*) by virtue of someone else's will. But in the latter case it will bear (if personalty) Legacy Duty under *such other will*, with the results indicated in the next chapter.

It catches a *donatio mortis causa*, for that is really a form of legacy. (Revenue Act, 1845.)

In the example given in Chapter II, item (*a*) only would bear Legacy Duty under A's will, but (*d*) is regarded as passing under the aunt's will, and, being personalty, bears Legacy Duty under her will. As to item (*g*) see next chapter.

Legacy Duty is payable by the legatee (not out of Deceased's estate) unless the will directs to the contrary.

The Succession Duty Act, 1853, imposed a new duty called Succession Duty on all property passing on the death which was not liable to Legacy Duty.

Property falling within (1) and (2) above are therefore subject to Succession Duty.

Legacy Duty and Succession Duty, unlike Estate Duty, do not vary in rate according to the size of the whole estate (nor the size of the individual legacy or succession), but they vary according to the relationship of the beneficiary to the deceased from whom the property comes. It often happens, therefore, that the rate of Legacy Duty or Succession Duty on an estate is higher than that of the Estate Duty.

For deaths occurring after the commencement of the Finance Act, 1910, the rates are as follows, for both Legacy Duty and Succession Duty.

	Rate per Cent.
Husband or wife, and all lineal descendants and lineal ascendants in direct line (including the husband or wife of any such person)	1
Brothers and sisters and their lineal descendants, and the husband or wife of any such person ..	5
Persons in any other degree of collateral consanguinity, including strangers-in-blood, and illegitimate or adopted children, and charities, corporations, etc.	10

"Husband" and "wife" means *lawful* husband and wife. In the absence of such legality, the rate of duty will be the rate applicable to a stranger. A former husband or wife who has been divorced from the testator must pay at the highest rate, but any other beneficiary who, by marrying a relative of the testator had become liable to the lower rate of duty,

72 A HANDBOOK ON THE DEATH DUTIES

does not lose that advantage through becoming divorced before the testator's death (Succession Duty Act, 1853, Section 11). But see *re Morrieson*, 40 Ch. D. 30.

The above rates were introduced by the Finance (1909-10) Act, 1910, Section 58, and apply to benefits taken under the wills and intestacies of persons who die after 29th April, 1909.

In the case of wills, it is therefore necessary to see under whose will the benefit arises, for the author of the benefit is frequently not the same person as the deceased on whose death the claim arises.

A died in 1908, having bequeathed a legacy to his son B for life, and on his death to his niece C absolutely. B dies in 1910, and C has to pay Legacy Duty on B's death. A is regarded as the author of the benefit (i.e. as "the testator"), and the rate of duty is therefore the pre-1909 rate, and C being A's niece, pays duty at 3 per cent. If A had died after 29th April, 1909, the rate would have been 5 per cent.

As to the determination of "the testator" where the life tenant has a general or special power of appointment over the capital, see Chapter IX.

Section 24, Finance Act, 1925, does not alter the law as stated above, but only applies to Succession Duty. (See next chapter.)

The Principal Exemptions from Legacy Duty are:—

1. *Specific Legacies* less than £20 in value (i.e. legacies of any kind other than pecuniary legacies), unless the legatee also takes other benefits to a total of £20 or more.

2. *Personal Estate* where the whole of deceased's

personal estate does not exceed £100 in value. It is immaterial how much realty there may be in addition.

3. *No Duty* at the 1 per cent. rate is payable if—

- (1) Deceased's estate (see below) does not exceed £15,000, whatever the value of the legacy or succession; or if
- (2) The amount or value of the benefit including any other benefit derived by the same beneficiary from the same deceased does not exceed £1,000 (whatever the principal value of the whole estate); or if
- (3) The beneficiary is the widow, or a minor child, and the total benefit derived by that same beneficiary from the same deceased does not exceed £2,000 (whatever the principal value of the whole estate).

The property to be reckoned in calculating whether deceased's estate exceeds £15,000 or not, excludes (a) property in which deceased never had an interest and (b) property which he was never competent to dispose of (i.e. no general power of appointment), and which, on his death, passes to someone other than his wife (husband), or lineal descendant, or lineal ascendant, but includes all other property which is liable to Estate Duty on the death.

In the example on page 33, items (a), (c), (e), (g), (h) and (i) have to be added together for this purpose. They amount to more than £15,000, and exemption from duty would not therefore occur under this head. But this particular estate comes within another exemption, viz. No. 7 *infra*, the result of which is that no Legacy Duty or Succession Duty at all (at any of the rates) is payable on property passing under *this will*.

74 A HANDBOOK ON THE DEATH DUTIES

However, the greater part of the items in the example are not regarded as passing under A's will, but as passing under other wills. The position is further explained in Chapters VIII and IX. The property passing under such other wills bears Legacy Duty under those wills.

4. *Settled chattels* (e.g. furniture, plate or pictures) are exempt until they come into possession of someone competent to dispose of them.

A bequeaths plate to B for life, and on B's death to C for life, and then to D absolutely. No Legacy Duty is payable until C's death, unless the plate is sold, as, of course, might occur at any time by arrangement between B, C, and D.

The date of sale, or of D coming into possession, is the date for fixing the value for duty.

5. *Articles of value*, such as pictures, books, etc., bequeathed to a corporation or trustees for preservation, and not for sale.

6. *Similar articles*, if certified by the Treasury to be of national, scientific, historic, or artistic interest, are not subject to Legacy Duty, whether settled or not, so long as they remain unsold.

This corresponds with the exemption from Estate Duty already set out.

7. *Where deceased's* net estate (reckoned in the way stated in exemption (3), Chapter II) does not exceed £1,000, no Legacy or Succession Duty at all is payable. Where it only slightly exceeds £1,000, the Legacy and Succession Duty is not to be more than the excess of the estate over £1,000.

So that if the estate is worth £1,020, not more than £20 in Legacy and Succession Duty is payable.

8. Gifts to members of the Royal Family.

9. Estates of persons "domiciled" abroad pay no

Legacy Duty. The subject of domicile is dealt with in Chapter X.

10. Estates of persons killed in war are either wholly or partially exempt from all death duties.

11. Certain war securities owned by persons who are neither "domiciled" nor ordinarily resident in Great Britain or Northern Ireland are exempt from all United Kingdom death duties. See chapter on "Domicile" (page 25 (15)).

Donations *mortis causa* are liable to Legacy Duty (Revenue Act, 1845).

Settled Legacies.

If a legacy is given to A for life, and on his death to B, if B is liable to the *same rate* of Legacy Duty as A, the duty becomes payable at once on the corpus of the legacy; but if B is not liable at the same rate, then A pays Legacy Duty on the value of his life interest, and on his death B pays duty on the corpus.

In other words, if the legacy passes to different persons in succession who are liable to the same rate of duty, the duty is payable on the corpus on the testator's death, and no Legacy Duty is again payable on that legacy on the death of the legatee for life.

As to life interests coupled with power of appointment over the capital, see Chapter IX.

Executors are liable to the Revenue for payment of Legacy Duty, but if they hand a legacy over to a beneficiary before payment of the duty, the beneficiary becomes jointly liable. But where a legacy is settled by the will, and the Legacy Duty is only immediately payable on the life interest, the executors should pay the whole legacy over to the trustees of the legacy, and the trustees will pay the Legacy Duty on the life interest out of the income of the fund. On the death

of the life-tenant the trustees must pay duty on the corpus out of the capital before handing the balance to the person entitled. Both Estate Duty and Legacy Duty will then be payable out of the corpus, and so far as the Revenue is concerned the trustees of the legacy (not the settlor's executors) will be liable for the duties. As between the settlor's estate and the ultimate legatee, liability for the duties payable on the life-tenant's death depends upon the wording of the will. (See end of this chapter.)

Annuities, or life interests in funds (including life interests in residuary estates), are valued according to the age of the annuitant or life-legatee, by the scale annexed to the Succession Duty Act (Chapter VIII). The Legacy Duty is payable by four equal instalments, the first being due on making the first payment of the annuity. If the annuitant dies before all the instalments of duty are due, those not yet due cease to be payable.

The above is the case of an ordinary gift of an annuity of so much per annum. If the testator gives a fixed sum, say £1,000, to his executors with instructions to purchase B an annuity with it, the gift is treated as an ordinary legacy of £1,000, and duty is payable in full on such figure at once.

The Legacy Duty on a reversionary interest forming part of the deceased's estate is not payable until the reversionary interest falls into possession, and then it is only payable on one of the two deaths that have occurred. (See next chapter.)

The Estate Duty Office have power to commute and compound any death duty in advance on application by any interested party.

Legacies Given Legacy Duty Free.—The gift of Legacy Duty is not itself considered as a legacy, but

if freehold property is expressly given free of Estate Duty or Succession Duty (which duties would, as explained elsewhere, otherwise be payable by the devisee), the gift of the duty is a legacy and subject to Legacy Duty as such. It may be here mentioned that a devise of freehold property "free of all duties" entitles the devisee to have both the Estate Duty and Succession Duty on it paid out of the residuary estate, but, as just stated, he must pay Legacy Duty on the amount of the duty given him.

If a testator forgives a debtor to him his debt, the amount forgiven is a legacy, and the debtor must pay Legacy Duty. He must also pay Estate Duty, as previously explained (page 53).

If testator in his lifetime covenanted with A to leave A a definite sum by his will, the legacy of such sum made by the will is not a gift and is not liable to Legacy Duty. But if the covenant was not given for full consideration, a claim for Succession Duty might arise. (See Chapter VIII.)

A solicitor-executor is not strictly entitled to make any charge for work done, even purely solicitor's work, unless the will expressly empowers him to charge, and consequently a direction in the will giving him power to charge amounts to a legacy of his costs. But in ordinary cases the Revenue do not press a claim for duty.

Where a legatee predeceases the testator, and the legacy passes under the testator's will to the dead legatee's next-of-kin, it is treated as a direct legacy to such next-of-kin, and duty is only payable once, viz. under the testator's will. (*Lord Advocate v. Bogie*, [1894] A.C. 83.)

But in cases where a deceased legatee's issue take, by virtue of the Wills Act, Section 33 (and not by

78 A HANDBOOK ON THE DEATH DUTIES

virtue of express provision in the testator's will), duty may be payable in respect of *both* the deaths. (*Re Scott*, [1901] 1 K.B. 228.)

As to Powers of Appointment, Secret Trusts, etc., *vide supra*.

Residuary Legacy Duty Account.

This account has to be rendered in every case unless the person taking the residuary estate is exempt from Legacy Duty on one of the grounds already explained.

The general residuary estate is that part of the deceased's own free property which he does not specifically bequeath. He usually bequeaths a number of pecuniary and specific legacies, and then gives his "residuary estate" to his nearest relative or relatives. For instance, A's free estate consists of

Cash at bank and in house					£	200
Personal and household effects.. .. .						500
Motor car						300
Freehold house						3,500
Life policy (in his own name)						3,000
Stocks and shares						9,000
						<hr/>
						£16,500
Less debts and funeral expenses						500
						<hr/>
Net estate						£16,000
He bequeaths four pecuniary legacies of						
£500 £500 £500 £200 ..						£1,700
(sister) (wife) (son) (charity)						
The car to his wife						300
He devises the house to his son						3,500
						<hr/>
						.5,500
						<hr/>
Residuary estate						£10,500

LEGACY DUTY

79

He gives the "residue" to his wife for life, and then to his son absolutely, but before they receive it they have to pay Estate Duty on the whole net personal estate (£16,000 less the freehold house, making £12,500) at 6 per cent.	£750	
Expenses of administering the estate, say ..	150	
	900	
<i>Net residuary estate =</i>		£9,600

The Legacy Duty on the pecuniary and specific legacies, and the Estate Duty and Succession Duty on the freehold, are payable by the donees thereof respectively, unless the will expressly gave them free of all duties. In the latter case these also come out of the general residuary estate. They amount to approximately 300

In which case the net residuary estate is .. £9,300

When the administration of the estate has been almost or quite completed, the executors render the residuary Legacy Duty account, and in this particular case they will then be assessed to Legacy Duty at 1 per cent. on £9,600 (or £9,300). They will pay the duty and invest the balance of the net estate, and will then pay the income to the widow for life, and on her death hand the capital to the son (if of full age). Note that as the son and the widow are both liable for Legacy Duty at the same rate, the Legacy Duty is payable at once on (and out of) the capital, and none is again payable when the widow dies. But if someone liable at a different rate (e.g. a cousin) were (or might possibly be) the ultimate legatee, the wife would pay Legacy Duty at 1 per cent. on the value of her life interest only, and the ultimate legatee would pay 10 per cent. on the capital when the widow died.

If the net estate had not exceeded £15,000, neither

80 A HANDBOOK ON THE DEATH DUTIES

the widow nor the son would have had to pay Legacy Duty.

The widow's life interest is calculated as follows :—

The annual income of the fund, before deduction of Income Tax, is, say, £500. The widow is 60, and according to the table annexed to the Succession Duty Act, an annuity of £500 for a life aged 60 is £4,860 5s. She pays Legacy Duty on this sum, and she can pay by yearly instalments as already explained.

In the great majority of cases the residue will be exempt from *Estate Duty* on the widow's death, under Section 14, Finance Act, 1914 (as explained in Chapter VI).

Deductions Allowed.

For the purpose of Legacy Duty, there can be deducted in the residuary account :—

- (1) All debts that can be deducted for Estate Duty purposes.
- (2) Any further debts which the executors have been obliged to pay, e.g. a debt as surety, or a debt owing under a covenant to pay to the trustees of a marriage settlement.
- (3) A reasonable sum for mourning clothes and tombstone (if directed by the will).
- (4) Expenses (and disbursements) of winding up the estate, e.g. valuer's fees, Probate Court fees, solicitor's costs, etc.
- (5) Estate Duty on the unsettled personalty, and any other duties which the will has expressly thrown upon the residuary estate.

The following is a common point of difficulty :—

A settles a legacy on B for life and then on C absolutely. So far as the duties payable on A's death are concerned, the executors can discharge them at once in the ordinary way, but duties again become payable on the legacy on B's death. The questions arise :—

- (1) If the will says nothing about duties, is A's estate liable for the Estate Duty arising on B's death (which may be fifty years or more afterwards) ?
- (2) If the will gives the legacy duty-free, will A's estate be liable for the Legacy Duty payable on B's death ? (See *re Parker*, [1917] 86 L.J.Ch. 766.)

There have been many decisions of the courts, but the only general rule which seems to emerge is that in every case the intention of the testator must be looked at, and that no fixed line can be drawn. It is highly desirable that the will should *expressly provide* that all duties payable on the life-tenant's death are to come out of the legacy.

The form used in making the assessment of the residuary estate (No. 3) shows clearly what has to be included, and what can be deducted from it.

The value to be taken is the value at the date of the account, and this date is supposed to be the date on which the administration has been completed and the net residuary estate has been ascertained and set aside by the executors for the benefit of the residuary legatee. Income arising since the death has to be included and treated as added to the capital, and stocks and shares have to be re-valued. In large estates this is a troublesome and expensive business.

In some special cases, where there is no long interval between the death and the rendering of the account, the Revenue, to save trouble and expense, will allow the value for Estate Duty to stand, and dispense with addition of the income since death, but charge interest at 4 per cent. per annum on the duty as from the date of death. But the Revenue is reluctant to follow this course.

CHAPTER VIII

SUCCESSION DUTY

DESCRIPTION ; RATES ; REVERSIONS ; LIFE ESTATES ;
EXEMPTIONS ; TABLE FOR VALUATION OF AN-
NUITIES.

THE Succession Duty Act, 1853, imposed a duty called Succession Duty on all kinds of property passing on death which were not already liable to Legacy Duty.

It is not, however, payable by a successor who has previously paid full money value for the succession, as explained later.

The duty accordingly applies to :—

- (1) Freehold and leasehold property.
- (2) Property (including personalty) passing on the death under limitations contained in a deed (as distinct from a will).

The rates are now the same as for Legacy Duty. (See Chapter VII.)

It is necessary for the purpose of arriving at the rate of duty to ascertain who is the person ("the predecessor") from whom the successor derives the succession. The predecessor is not always the person on whose death the property passes (called "the deceased").

If property is settled by A on B for life, and then on C absolutely, then on B's death C is regarded as taking the property from A, and the rate of duty will depend on C's relationship to A (as in the case of Legacy Duty); but where B's life estate is coupled

with a *power of appointment* over the capital at B's death, special rules apply, and these are dealt with in the next chapter.

Attention is drawn to the following points :—

1. If a deceased owned a reversionary interest, his successor is not liable to Succession Duty (or Legacy Duty) until the interest falls into possession. Example :—

Property is settled on A for life, then to B absolutely. B predeceases A, and B's reversionary interest passes to his legatee or next-of-kin C.

No Succession Duty or Legacy Duty is payable until A dies, and C receives the fund.

If the settled fund is personalty, the rate of duty payable will depend on C's relationship to the settlor, or on C's relationship to B, *whichever is the higher*, under Section 14 of the Succession Duty Act, 1853.

If the fund is realty, the law is different.

C will pay duty according to his relationship to the settlor.

Ordinarily C would have to pay double duty, viz. on B's death and on A's death, but one duty only is expressly made payable in the case of personalty by the section quoted ; and in the case of realty it follows from Section 18 of the Finance Act, 1894, that only one duty falls due—because that section makes the duty payable twelve months after the successor becomes entitled *in possession*.

It is hoped that the examples given in Chapters IX and XIII will assist in explaining further some of the more usual cases in which claims for Estate Duty, Legacy Duty, and Succession Duty arise.

2. Once Succession Duty attaches, it cannot be got rid of by cancelling the interest created. A settles

84 A HANDBOOK ON THE DEATH DUTIES

property by deed on B for life, and then to C absolutely. B subsequently surrenders his life interest to C, who thereupon takes at once absolutely. Succession Duty will yet be payable by C on B's death.

But an arrangement to commute the duty at once could probably be made with the Estate Duty Office.

3. A succession created (as distinct from assigned) for full consideration in money's worth does not give rise to duty. For instance, A is the absolute owner of property, and being in need of money, and yet desiring to enjoy the property during his lifetime, he creates a settlement of the property on himself for life, with remainder to B absolutely, and B pays him at once full value for such reversionary interest. On A's death no Succession Duty is payable by B.

That is because when the succession was originally created the successor bought his interest out of his own pocket, and consequently cannot be said to benefit by the death for the purpose of the Succession Duty Act. As has been seen, B is also exempt from Estate Duty in such a case. Marriage, of course, is not consideration in money or money's worth, and duty would arise if that were the whole, or part, of the consideration. Creation of successions must be carefully distinguished from transmission of successions which have already been created.

4. Transmissions of successions before they fall into possession :—

- (a) Property is settled on A for life, with remainder to B absolutely. B sells his reversionary interest to C for full value.

When A dies, C pays exactly the same Succession Duty or Legacy Duty (as the case may be) as B would have done had he not sold his interest (subject to

the special protection against increases in the rate of duty, already explained on page 65).

(b) B dies and his reversionary interest passes by his will or intestacy to C. The duty payable by C is explained on page 83.

5. Succession Duty is a first charge upon the *successor's interest* (Succession Duty Act, 1853, Section 42). In the case of freehold property it is also a direct charge on the property itself (Finance Act, 1894, Section 18).

If, however, freehold property is subject to a trust or power of sale, and is sold, the charge for duty shifts to the sale proceeds. In the case of leaseholds and other personalty the charge shifts to the proceeds in any event, being only a charge on the successor's interest.

6. Succession Duty is payable as follows :—

A. On Personalty.

(1) Where successor takes absolute interest on the corpus, in one sum, at once.

(2) Where successor takes life interest only ; on the value of such life interest (see below), by four annual instalments, the first being due one year from the death. Interest at 4 per cent. per annum on the outstanding duty begins to run as from the end of one year after the death, and it is paid with the instalments.

If the successor dies before all the instalments are due, the interest which he actually enjoyed up to his death is re-valued, and the duty adjusted accordingly.

B. On Realty.

(1) Where successor takes absolute interest, or life interest, coupled with a *general* power to

86 A HANDBOOK ON THE DEATH DUTIES

appoint it after his death, duty is assessed on corpus, and is payable by eight yearly or sixteen half-yearly instalments (at option of successor), beginning one year after death. Interest at 4 per cent. per annum on outstanding duty as from end of year after death. The instalments do not cease to be payable if the successor dies. (Finance Act, 1894, Section 18.)

(2) Where successor takes life interest only (or life interest plus a *special* power of appointment), duty is on value of such, and payable by eight half-yearly instalments, with interest, as above. Outstanding instalments cease to be payable if successor dies before they are due.

In all cases charities and public bodies must pay in full at once.

Discount at 4 per cent. per annum is allowed for payment made in full in advance.

As to the effect of life interests coupled with power of appointment over the capital, see next chapter.

The value of life interests is calculated as follows :—

(1) *Personalty.*

The investments of the fund yield £100 per annum (subject to income tax).

The life-tenant is aged 60. The value of an annuity of £100 is £972 ls., according to Table 1 of the Succession Act Duty (at end of chapter).

(2) *Realty.*

If let, the net rental (without deduction of Income Tax) is the basis.

The net rent is what the owner receives after all proper deductions for repairs, rates, insurance, etc. (where these items are not payable by the tenant). If it is £200 per annum,

the value of the life interest for a person aged 50 is £2,485 19s. (see table).

If occupied by owner, the Schedule "A" tax *gross* assessment, less proper deductions for outgoings (excluding Income Tax), is the basis.

Gross assessment value	£150 per ann.
Deductions for insurance, rates, repairs, etc.	50 " "
	£100 net

Value of £100 annuity for life aged 50 is £1,242 19s. 6d., on which sum duty will be assessed.

If in any case the property is incapable of bringing in any return at all, it is not liable to Succession Duty if the successor is not competent to dispose of it.

7. The rates of Succession Duty (and of Legacy Duty) were raised to their present figures by Section 58 of the Finance (1909-10) Act, 1910.

Sub-section (4) of that section provides as follows:—

“This section shall take effect in the case of Legacy Duty only where the testator by whose will the legacy is given, or the intestate on whose death the Legacy Duty is payable, dies on or after the 30th day of April, 1909, and in the case of a succession arising through devolution of law only where the succession arises on or after that date, and in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after that date.”

The effect of this sub-section on the Legacy Duty has been explained in Chapter VII. As to Succession Duty, when does “the succession arise” or “the first succession arise,” in a case like the following?

Real estate is settled on A for life and, subject thereto, on B absolutely. B devises by his will his

88 A HANDBOOK ON THE DEATH DUTIES

reversionary interest to C, and dies in 1908. A dies in 1911. Did C's succession arise on B's death in 1908 (when C's vested interest arose) or on A's death (when it fell into possession) ?

The House of Lords decided in *Lord Advocate v. Macalister*, [1924] A.C. 586, that it arose on B's death, and it followed from that case that Succession Duty would practically never be payable at the 1910 increased rates on successions arising under the wills of persons dying before, or under settlements dated before 30th April, 1909.

Section 24, Finance Act, 1925, therefore reverses the effect of that case, and provides that the succession is to be deemed to arise when it falls into actual possession.

8. As to land let on building lease, see Chapter XIV(7).

Exemptions from Succession Duty.

It has already been stated that Succession Duty is not payable on property on which Legacy Duty is payable, and not where the succession was created (as distinct from transmitted) for full money consideration. It is, by special enactment, not payable where a life policy on A's life, in favour of B, becomes payable to B on A's death (Succession Duty Act, Section 17).

In the following additional cases it is also not payable :—

- (1) Total succession coming from the same predecessor less than £100.
- (2) Settled chattels. See exemption (4) in Legacy Duty exemptions, Chapter VII.
- (3) Advowsons and Church Patronage until sold.
- (4) Timber until sold.
- (5) Land abroad, whether freehold or leasehold, unless subject to a trust for sale.

- (6) Where deceased was "domiciled" abroad Succession Duty is not payable in respect of personalty (except leaseholds), unless on his death the property passed under a "British Settlement." (See Chapter X.) But freehold and leasehold property in Great Britain is not exempt.
- (7) Where successors are members of the Royal Family.
- (8) Where, by virtue of a settlement made by deceased in his lifetime, the property comes back to his estate on his death. A settles a fund on his son for so long only as A lives. On A's death the son's interest ceases, and the property comes back to the settlor. No Succession Duty payable.
- (9) Whole net estate not exceeding £15,000, or £1,000, or individual benefits under limit. See Legacy Duty Exemptions (3) and (7) in Chapter VII; they apply to Succession Duty also.
- (10) Persons killed in war.
- (11) War securities held by resi- } See Chapter VII,
dents abroad. } Legacy Duty Exemptions (10 and (11).
- (12) Certain articles of special value. See Chapter VII as to exemptions from Legacy Duty.

With regard to (1) and (9) it must again be emphasized that the predecessor to whom the relationship is material, or the size of whose estate in material, is not always the same person as "the deceased." The point is explained earlier in this chapter, and in the next chapter.

The Estate Duty payable on the property, as well as any debts charged thereon, are deductible, and Succession Duty is chargeable only on the balance.

Any debt which is legally payable, and not only the kinds which are deductible for Estate Duty purposes, can be deducted.

The table for valuation of single-life annuities appears on the next page. For the tables for valuing annuities held for more than one life reference must be made to the Succession Duty Act.

90 A HANDBOOK ON THE DEATH DUTIES

TABLE I ANNEXED TO SUCCESSION DUTY ACT, 1853.
THE VALUES OF AN ANNUITY OF £100 PER ANNUM HELD ON A
SINGLE LIFE.

Years of Age. Birth	Values.			Years of Age.	Values.		
	£	s.	d.		£	s.	d.
1	1,892	8	6	48	1,300	9	6
2	1,906	13	0	49	1,271	19	6
3	1,919	2	0	50	1,242	19	6
4	1,926	8	0	51	1,213	17	0
5	1,928	16	0	52	1,185	14	0
6	1,926	19	6	53	1,157	17	6
7	1,921	12	0	54	1,130	13	0
8	1,913	4	6	55	1,103	18	0
9	1,902	16	6	56	1,077	10	0
10	1,890	19	6	57	1,051	10	0
11	1,878	3	0	58	1,025	10	0
12	1,864	7	0	59	999	1	0
13	1,849	12	0	60	972	1	0
14	1,833	18	6	61	943	15	6
15	1,817	7	6	62	914	2	0
16	1,800	8	6	63	883	6	0
17	1,783	13	0	64	852	9	0
18	1,767	16	0	65	821	12	6
19	1,753	5	6	66	790	15	0
20	1,740	11	0	67	761	19	0
21	1,729	9	6	68	733	8	6
22	1,719	17	0	69	705	4	0
23	1,713	1	0	70	677	9	0
24	1,706	16	6	71	650	8	0
25	1,700	11	6	72	623	19	6
26	1,694	0	0	73	597	7	6
27	1,686	14	6	74	569	13	0
28	1,677	5	6	75	541	0	6
29	1,667	1	0	76	511	9	6
30	1,656	1	0	77	477	17	0
31	1,644	7	6	78	444	9	6
32	1,632	0	0	79	412	9	6
33	1,619	0	6	80	381	3	0
34	1,605	4	0	81	350	14	6
35	1,590	9	6	82	321	14	6
36	1,574	17	6	83	292	10	0
37	1,558	9	6	84	263	2	0
38	1,541	10	6	85	234	18	6
39	1,524	0	0	86	207	16	0
40	1,506	1	6	87	184	11	6
41	1,487	10	0	88	164	17	6
42	1,468	4	0	89	148	7	0
43	1,447	11	6	90	133	9	0
44	1,426	2	0	91	122	16	0
45	1,403	10	0	92	107	7	0
46	1,379	14	6	93	93	3	0
47	1,354	16	6	94	79	8	6
	1,328	2	6	95	64	11	0

CHAPTER IX

LIFE ESTATES COUPLED WITH POWER OF APPOINTMENT

EXAMPLES SHOWING HOW LEGACY AND SUCCESSION DUTY ASSESSED.

(a) In Respect to Tracing the Predecessor.

A very common form of settlement is one upon A for life, with power to appoint the capital on his death to someone else, and failing any exercise of such power, the capital to go to B, or perhaps to the next-of-kin of A himself.

If A is given power to appoint to anyone he chooses, he has a "general power"; if he can only select from a limited class (e.g. his own children), it is a "special power."

The power may be made exercisable by deed, or will, or both. The rate of duty payable by the appointee depends upon his degree of relationship to the person from whom the property is deemed to come ("the predecessor").

For the purpose of ascertaining the rate of Succession Duty and Legacy Duty payable by the appointee on A's death, the rule is as follows:—

If A had a special power, the *settlor* is the predecessor (or author of the bounty); if a general power, then A is the predecessor.

92 A HANDBOOK ON THE DEATH DUTIES

But whether A has a general or special power, if he fails to exercise it and the property consequently goes over to B under the settlement, then B's "predecessor" is the settlor. If, however, A had a general power and refrained from exercising it, but the property nevertheless goes to A's own next-of-kin as part of A's own estate, A is the predecessor, for he was really in the same position as if he had exercised the general power.

(b) In Respect to the Property Assessable.

This is a somewhat involved matter, and can be conveniently dealt with separately according to its effects on the three duties.

1. *Estate Duty.*

Since Estate Duty is payable on the full capital of a fund even when the deceased had a life interest only (except in certain cases of married persons), the amount of duty is not affected one way or the other by the existence, or absence, of powers of appointment. The case of married persons, as affected by the Finance Act, 1914, Section 14, is explained at pages 60-61.

2. *Legacy Duty.*

As explained in Chapter VII, if a legatee takes only a life interest, he only pays legacy duty on such (unless the persons who take on his death *must* be chargeable with duty at the same rate as himself).

If he has a life interest and a *general* power of appointment either by deed or will, he pays duty in the first place on the life interest only, and on the power being exercised he pays further duty, to an amount which will make the whole duty paid by him equal to duty

on an absolute interest. It is somewhat doubtful when the further duty is legally due if he exercises the power by deed, but in practice it is usually paid on his death, and of course the appointee will then also pay the duty arising on the appointor's death; so that double duty will be payable (Legacy Duty Act, 1796, Section 18).

And the same result follows (in the case of either a general or special power) if the life-tenant refrains from exercising the power, and on his death the fund nevertheless descends to his next-of-kin as part of his property. The next-of-kin will have to pay the double duty.

3. *Succession Duty.*

So far as *personalty* is concerned, the rule is as stated above for Legacy Duty, and, subject to what immediately follows, it is the same for realty also (Succession Duty Act, 1853, Section 4). *Realty* is covered by the Finance Act, 1894, Section 18, which provides that if a successor is "competent to dispose" of realty, Succession Duty is to be payable on the full capital value. He is "competent to dispose" if he has a general power of appointment (either by deed or will) *whether he exercises it or not*, and therefore, if he takes a life interest coupled with a general power, he pays duty at once on the full capital value in the case of realty. It may be added that a tenant-in-tail is "competent to dispose," because he can bar the entail.

Since the exercise of a special power relates back to the settlement creating it, it follows that if a special power is created by deed, the appointee of the fund takes under the deed, and no Legacy Duty is payable by him. And this is so whether the power be exercised

94 A HANDBOOK ON THE DEATH DUTIES

by deed or by will. Succession Duty will be the duty payable.

On the other hand, if a general power is created either by a deed or by a will, and it is exercised by deed, the appointee takes under the appointor's deed, and the same result occurs as in the previous case, i.e. the duty will be Succession Duty.

The practical differences resulting from which kind of duty is payable seem to be as follows :—

1. The duty on life interests is payable by different instalments.

2. Where persons taking property in succession are liable to the same rate of Legacy Duty, duty is payable on the capital at once. In the case of Succession Duty, the duty need only be paid in such a case on the life interest.

3. Certain exemptions from duty which apply to Legacy Duty do not apply to Succession Duty, and vice versa. (See Chapters VII and VIII.)

The following examples may assist :—

1. A by deed settles £2,000 in value of personalty and realty on his nephew B's marriage to C, on trust for B for life, then to C for life, and then amongst such of their children as B shall by deed or will appoint, and in default of any such appointment to B absolutely. There is a son, D, and B appoints to him by will (subject to the life interest of C, who survives B). On C's death Succession Duty is payable by D on the whole fund under the deed, and A is the "predecessor." As A is D's great-uncle, the rate of Succession Duty is 5 per cent.

NOTE.—If B's power to appoint had been a general one, entirely different results would have followed. B would then have been the "predecessor," and as

the duty arose under his will (not under a deed), the duty would have been Legacy Duty on the personalty and Succession Duty on the realty.

The rate of duty would have been 1 per cent., and if B's whole estate (including this fund) were under £15,000, no Legacy or Succession Duty would be payable.

2. Turn to the example given in Chapter II (*item c*). On B's death Succession Duty arises under the settlement, and A is the "predecessor."

Item d.—When the brother's children receive the fund, they pay Legacy Duty under the aunt's will at 5 per cent., she being the "predecessor."

Item e.—When the son receives the land, the duty arising would be Succession Duty under his grandfather's will, and although the grandfather died in 1892, when the 1 per cent. rate of duty was not payable, Section 24 of Finance Act, 1925, makes duty payable.

Item f.—On A's death, Succession Duty is payable by the children under the deed. Their grandmother is the "predecessor," and the rate is 1 per cent.

Item g.—No duty is payable until the life-tenant dies. When that occurs A's sister will receive the £10,000 fund, and pay Legacy Duty on it at 10 per cent., which is the higher of the two rates that are claimable. (See Chapter VIII.)

Note that as items (*a*), (*b*), and (*h*) are under £1,000 in all, no Legacy or Succession Duty whatever is payable *under A's will*, and therefore item (*a*) is exempt from Legacy Duty. Items (*b*) and (*h*) are not liable on other grounds, and item (*i*) is not liable until the articles are sold, in which event Legacy Duty will be payable under the father's will.

Further examples appear in Chapter XIII.

CHAPTER X

DOMICILE

(SEE CHAPTER XIII, CASE 5.)

DOMICILE is an extremely important factor in connection with the death duties.

If a deceased was at the time of his death domiciled outside Great Britain (meaning England, Scotland, and Wales, but not the Isle of Man or Channel Islands), the following consequences occur :—

1. Only that part of his whole estate which is within Great Britain is liable to Estate Duty. The remainder is ignored for all purposes whatsoever—including calculation of rate of duty. Share warrants to bearer in British companies are not British assets if the warrants are actually situate abroad at date of death.

2. No Legacy Duty is payable on moveables, even though the beneficiaries may be ordinary British residents.

3. No Succession Duty is payable, except on freeholds or leaseholds in Great Britain. But it is payable when the property passes under a British settlement (*vide infra*).

Domicile is either domicile of origin or domicile of choice. *Prima facie* a person's domicile is that of the country where his parents were domiciled when he was born. If it is claimed that he had acquired a different domicile, it must be clearly established that

he had definitely and finally (a) given up his domicile of origin and (b) intended to reside permanently in his new country. If at any time he acquires an origin of choice, but subsequently abandons it without acquiring a new one, his domicile of origin automatically revives.

Common cases arising are those of British-born subjects going to the Dominions for a career. Once it is shown that a deceased had taken up his residence abroad with the fixed intention of living there permanently, and of never returning to live permanently in this country, he is considered to have become domiciled abroad.

Satisfactory evidence of such intention is :—

1. Letters written by deceased to relatives or friends stating his intention to make his home permanently abroad.
2. Signed statements by neighbours that they had frequently heard deceased express an intention to live permanently where the domicile is claimed.
3. The fact (if it be so) of deceased having bought or furnished a house or estate abroad.

The domicile of a married woman is that of her husband ; of a minor that of his lawful parents (if illegitimate, of his mother).

The foreign residence must be entirely voluntary, so that if a person goes abroad to flee his creditors, to escape punishment, to preserve his health, or because his employment compels him, change of domicile will not, in the absence of special circumstances, be inferred. If a change is intended, it would be advisable for the person in his lifetime to make a formal declaration of his intention before a magistrate or notary, and also express his intention in his will.

98 A HANDBOOK ON THE DEATH DUTIES

Nationality is immaterial, for deceased may have acquired citizenship of a foreign country merely for business or other reasons, and yet have intended to return to Great Britain later.

It is necessary to establish that the domicile was acquired in some definite country. If deceased spent his time moving about from one foreign country to another, it would be strong evidence that he had no intention of living permanently in any of them, and consequently his domicile of origin would remain.

“Ordinarily resident” is not the same as “domiciled.” Ordinary residence means the place where a man means to spend most of his time and have his principal home. For instance, he may live in France for seven months of the year for some years, and yet have no intention of abandoning his British domicile. Or he might be living abroad in the service of the Crown without any intention of stopping there to die. In both cases his domicile would remain British, but his ordinary residence would be abroad, and he would escape death duties on certain British War securities. (See Chapter I.)

British Settlement.

If on the death of a tenant-for-life, domiciled abroad, moveable property passes under a British settlement, all such property is liable to Succession Duty—including property situate abroad.

The test is—would it be necessary to resort to the British Courts to enforce the settlement ?

Where at the date of the tenant-for-life's death all the trustees are resident in Great Britain, and *either* all the beneficiaries are resident here, *or* the settled property is actually situate in Great Britain, the settle-

ment is a British one. See *In re Cigala's Settlement Trusts* (1878), 7 Ch. D. 351; 47 L.J. Ch. 166; 38 L.T. 439; 26 W.R. 257. *Attorney-General v. Jewish Colonization Syndicate*, [1900] 2 Q.B. 556; [1901] 1 K.B. 123. *Attorney-General v. Johnson*, [1907] 2 K.B. 885.

It is difficult to see why exemption on these grounds should be allowed, especially when the beneficiaries happen to be domiciled or ordinarily resident in Great Britain, as they often are.

CHAPTER XI

SPECIAL METHODS OF PAYING DEATH DUTIES

1. THE Revenue may, if it thinks fit, on the application of the person liable to pay Estate Duty in respect of any freehold or leasehold property in Great Britain, passing on a death, accept in satisfaction of the whole, or part, of such duty such part of the property as may be agreed upon between the Revenue and that person. (See Finance (1909-10) Act, 1910, Section 56 (1).

Note that it is optional on the part of the Revenue, and only applies to freehold and leasehold property, and only to Estate Duty (not to Succession Duty).

2. The Lords Commissioners of His Majesty's Treasury, in pursuance of the powers conferred upon them by Section 34 of the Finance Act, 1917 (7 & 8 Geo. V, c. 31), as amended by Section 42 of the Finance Act, 1918 (8 & 9 Geo. V, c. 15), have by regulations prescribed certain Bonds, War Stock, etc., to be accepted in payment of any death duties.

The Regulations are contained in the Death Duties, etc. (Payment in Securities), Regulations (No. 2) 1918, 1919, (No. 2) 1919 and 1921, published as Statutory Rules and Orders, Nos. 1045 of 1918, 122 and 1353 of 1919, and 850 of 1921, which may be purchased through any bookseller or directly from H.M. Stationery Office at the following addresses: Adastral House,

PAYMENT IN WAR SECURITIES 101

Kingsway, London, W.C. 2, and 28, Abingdon Street, London, S.W. 1; York Street, Manchester; 1, St. Andrew's Crescent, Cardiff; or 120, George Street, Edinburgh.

Under such Regulations the following securities are now acceptable subject to the prescribed conditions: 4 per cent. National War Bonds, 1927, 1928, and 1929; 5 per cent. National War Bonds, 1925, 1927, 1928, and 1929; 4 per cent. War Loan, 1929-1942, Stock and Bonds; 5 per cent. War Loan, 1929-1947, Stock and Bonds; 4 per cent. Funding Loan, 1960-1990, Stock and Bonds; and 4 per cent. Victory Bonds.

For the purpose of the payment of death duties the values, exclusive of accrued interest remaining unpaid, of these securities are as follows: 5 per cent. War Loan, 1929-1947, 95 per cent.; 4 per cent. Funding Loan, 1960-1990, 80 per cent.; and all other securities 100 per cent.

Application to pay death duties by means of the transfer of such securities should be made to the Commissioners of Inland Revenue, and should be addressed to the Controller, Estate Duty Office, Inland Revenue, Somerset House, W.C. 2.

The application should specify the amount and denomination of the securities tendered, including the distinguishing numbers of the certificates or bonds; whether Stock or Registered Bonds or Bonds to Bearer, and in the first two cases whether transferable by deed or not; whether the securities formed part of the estate passing on the death for at least six months immediately preceding the death, or continuously up to the date of death from the date of original subscription; whether they are subject to any lien or charge whatsoever; and whether they are under

102 A HANDBOOK ON THE DEATH DUTIES

the applicant's control, and, if not, in whose custody they are.

The option of discharging the death duties by the transfer of War securities authorized for that purpose falls to be exercised once and for all at the time of the delivery of the Inland Revenue Affidavit or Account.

It is essential, therefore, that all such applications should be made at the time of lodging the affidavit, as the question of payment cannot be reopened in the event of the duty being paid in cash in the first instance.

It will be seen that the values of the securities are fixed at the original issue price, except in the case of Victory Bonds. At the present time Victory Bonds are the only one of the securities which it is profitable to employ for the purpose, their market value being still less than 100 per cent. It was, of course, one of the special attractions of the issue that the bonds could be used for payment of death duties at face value, and at one time, when their market value was only about 70 per cent., such use was highly profitable.

For instance, if death duties in a given case amount to £1,000, they can be satisfied by transfer of bonds to the nominal value of that sum.

The securities used must have been in deceased's own absolute and continuous ownership for at least six months immediately preceding the death.

Deceased's securities can be used for payment of the duties on any part of the estate passing on the death, even parts of it the duty on which is not payable out of deceased's estate. For instance, in one case that has occurred, deceased's children had to pay Estate Duty on some substantial gifts made by the deceased to them within three years of his death. As has been explained, the executors were not accountable for the duty, but they elected to pay it, and they were

PAYMENT IN WAR SECURITIES 103

allowed to use Victory Bonds forming part of deceased's estate, the value of which then was very much below the value at which they are acceptable for duty.

As the children were the deceased's residuary legatees, they, of course, received the full benefit of the transaction. Unless the children had been the residuary legatees, it would have been a breach of trust on the part of the executors to have done as they did, unless, perhaps, they afterwards recovered from the children a sum equivalent to the full nominal value of the bonds used. They parted with bonds which might at any time be drawn for repayment at face value.

CHAPTER XII

METHODS OF MITIGATING THE DUTIES

It is certain that the heavy burden of the death duties has for some years been an incentive in an ever increasing degree to the devising of schemes for getting round them. Some of these schemes are perfectly legitimate, whilst others are not. As in the case of Income Tax, there are many downright evasions, and the honest have to bear additional burdens to make up for the defalcations. Dishonesty is difficult to detect in the case of death duties.

It can, however, be stated without hesitation that no reputable solicitor will knowingly assist in the perpetration of anything even remotely savouring of fraud on the Revenue.

The debt, indeed, which the Revenue owes to members of the profession for its assistance in the assessment and collection of the duties is considerable, and this skilled and, so far as the State is concerned, gratuitous service, renders it possible for a relatively small body of officials to collect such a very large annual sum.

Legitimate schemes may be summarized as follows :—

(A) Gifts by Deceased in his Lifetime.

A reference to items (III) and (IV) at the beginning of Chapter I will show what is necessary to make such gifts effective from the standpoint of Estate Duty.

METHODS OF MITIGATING THE DUTIES 105

It is essential that, even if the gift is made more than three years before death (in the case of a charity, one year), it must be an absolute out-and-out one, with no reservation of any kind whatsoever to the donor. *Legacy* Duty would be saved, even if the death occurred within three years, if the gift was an out-and-out one ; the death caused no benefit.

Gifts even though over £100 in value are not liable to duty if the Commissioners are satisfied that they were (1) part of the normal expenditure of deceased, and (2) reasonable in view of the size of deceased's income and other circumstances.

For instance, a man with an income of £15,000 a year gave regular presents of £1,000 a year to each of four children, and these were held to be exempt. And it is believed that in the same case a special Christmas present of £500 to one of them was also held to be exempt. The case was not contested.

If property is settled on A for life, with remainder to B, A could give up his life interest to B. The life interest would merge, and no Estate Duty would be payable on A's death (but Succession Duty would still remain if it had already attached). (See Chapter VIII.)

If A had a life estate coupled with a power of appointment which he could exercise in favour of B, he could surrender the life estate to B and at the same time appoint the capital to him.

Or if A has a life estate, and a power of appointment, and in default of any exercise of the power, the property passes under the settlement to B, A could surrender his life estate to B, and also formally and irrevocably release his power of appointment, so that the reversion also at once passed to B.

If all these transactions took place more than three years prior to the death, no Estate Duty would be

106 A HANDBOOK ON THE DEATH DUTIES

payable on A's death (but Succession Duty would not be affected if it had already attached).

It should be added that if Estate Duty is payable, it is assessed on the value of the gift as at the date of death, not at the date of the gift. So that in the case of a gift of a quickly depreciating asset, such as a motor car, the assessable value might be very small. If it became less than £100, it would apparently be exempt.

In the case of consumables (such as valuable wines), apparently only the part (if any) left unconsumed at date of death would be assessable. But it is often difficult to say whether the gift was one of money to purchase an article or of the article itself. If the gift was one of money, duty would be payable on the money. If the donee had sold the gift before the death, it is doubtful how the duty would be assessed, but probably on the sale proceeds.

It would seem to be advisable in some cases for the donee to cover his possible liability for Estate Duty (there is no Legacy Duty) by insuring against the risk of the donor dying within the time limit.

(B) Formation of Holding Company.

In cases of large estates this is sometimes done. All A's estate is transferred to a company, and he holds the shares in it. On his death the shares in the company will be valued, and in some circumstances they may be lower in value than the former assets themselves would have been.

If the company makes no profit, this might well cause a depreciation in the value of the shares.

Some of the shares can be issued or transferred to members of the family, in consideration of their services to the company. Various arrangements under

METHODS OF MITIGATING THE DUTIES 107

this heading can be conceived—some advisable, and some the reverse.

(C) Domicile Abroad.

If deceased has acquired a domicile outside Great Britain (for instance, in the Irish Free State or the Channel Islands, see Chapter I, Part I), his estate escapes all Succession Duty and Legacy Duty except on realty and on property passing under British settlements (see Chapter X), and Estate Duty is only payable on the assets left in Great Britain. One can, of course, remove such assets, and invest in colonial or foreign securities (which incidentally usually yield a higher rate of interest than British ones).

The estate would have to bear death duty in the country of domicile, but it is not a difficult matter to select a country in which such duty (and also other taxation) is less than in the United Kingdom.

There recently occurred a case of a very wealthy person domiciled in a Continental country, which shall be called X. He had stocks and shares in British companies valued at over £300,000. He died, and his widow succeeded, and she died a year later, and her brother succeeded. The latter was also domiciled in X. He was so concerned at the two heavy mulctings of the estate within so short a period that he determined to avoid another one occurring on his own death. He accordingly incorporated a limited company in his own country, and transferred the British securities to it—a few companies refused to register the foreign company as shareholder, in which cases he sold, or transferred to his company's nominees, with the result that when he dies no British duty will be payable, and his estate will only bear duty (if

any) in country X on the value of the shares in the foreign company. The company will never die, and so no United Kingdom assets will pass.

(D) Living on Capital.

Heavy death duties are encouraging many persons to put their capital into the purchase of annuities for themselves. This increases their income, and ensures a safe return for so long as they live. At their death there is no capital left for the State to take. It is unwise for the State to encourage this sort of thing—from many points of view.

(E) “Unofficial Wills” or “Secret Trusts.”

These can only affect the rate of Legacy Duty and Succession Duty (not Estate Duty). A may leave his property to a widow or other near relative who is only liable to Legacy or Succession Duty at 1 per cent., but give her an informal request to distribute his estate amongst other persons who would be liable at 5 per cent. or 10 per cent. rates. He would, of course, only do this where the apparent legatee was sufficiently otherwise provided for, and he was satisfied that his wishes would be carried out. One could in this way save a very large sum in duty.

The official will alone is to be looked at in arriving at the rate of Legacy or Succession Duty.

If the testator has gone to the length of making some *binding* arrangement with the apparent beneficiary, so that the latter could be forced at law to hand over the property to the real beneficiary or to hold it on trust for him, the case is not very clear. But apparently the higher rate could be claimed (Succession Duty Act, 1853, Section 8). If the testa-

METHODS OF MITIGATING THE DUTIES 109

tor's object were held by the Court to be to evade duties (as distinct from some other perfectly legitimate object which he might have), it seems that the Crown could demand duty twice, viz. on the apparent succession and also on the actual one (see same section).

(F) Settling Chattels.

As explained in Chapters I, VII, and VIII, if certain kinds of chattels are settled, they escape duty until sold. It may therefore save duty, besides being judicious on other grounds, to settle them, instead of bequeathing them to the legatee outright.

As to illegal methods, most of these are so obvious that they are only referred to for the purpose of emphasizing the unwisdom of putting too great a strain on straight dealing. Non-disclosure of assets, under-valuation of assets, ante-dating gifts *inter vivos*, are instances. Some individuals with elastic consciences who consider that the State is attempting to rob them will have no hesitation whatsoever in (as they would put it) locking the door. The only hold which the Revenue possesses over such persons is the necessity for obtaining a Grant of Probate or (in an intestacy) Letters of Administration, in order to make a title to landed property, stocks and shares, and other things which do not pass by mere delivery. But if stocks and shares had been put into several joint names, it would not be necessary even in those cases to apply for probate, for all that would be required would be to obtain an ordinary death certificate and register it with the companies concerned. The surviving names would then remain in the companies' books, and the survivors could deal with the holdings.

CHAPTER XIII

SPECIMEN ESTATES

SHOWING (1) CLAIMS FOR DUTIES, (2) ACCOUNTABLE PARTIES, AND (3) AMOUNT OF DUTIES.

SHORT explanatory notes appear in the following pages; if further explanation of a particular claim is required, a glance at the contents page, or at the index at the end of the book, will indicate where the point is dealt with.

If it is desired to find an illustration amongst the following cases of some statement appearing in the preceding pages, reference should be made to the index, under heading of "Examples."

"Net Personalty" means the unsettled personalty (i.e. the deceased's own free personalty) after deduction of deceased's debts and funeral expenses.

The duties marked * are payable out of the residuary estate.

By "Accountable Parties" is meant the parties primarily liable to the Revenue—not necessarily the beneficiaries who will eventually bear the burden. The point is dealt with near the end of Chapter I. As there explained, for deaths occurring on or after 1st January, 1926, the deceased's executors will become liable, jointly with the successor, for the duties on the freeholds. But as between beneficiaries the incidence of the duties is no way altered by the new Acts, so that those who succeed to real property will continue to take it subject to the Estate Duty and Succession Duty thereon, and will not be entitled to have either of the duties paid out of deceased's general residuary estate (in the absence of express directions by the will to the contrary).

In each example, the deceased, A, is supposed to die after 29th June, 1925, so that the present rates of Estate Duty apply.

See Index, heading "Examples."

CASE 1.

Estate Passing.	Value.	Beneficiaries.
(1) Freehold house	£ 600	} All to wife absolutely except a legacy to A's sister B of £150.
(2) Leasehold shop	100	
(3) Net personalty	250	
(4) Reversionary interest in War Stock expectant on death of an uncle aged 60. Present value of reversion, £500..	500	
Total	£1,450	

CLAIMS ARISING.

Nature of Claim.	Remarks.	Accountable Parties.	Rate of Duty.	Amount of Duty.
			Per cent.	£
Estate Duty on (1) (Payable by instalments)	—	Wife	2	12
Estate Duty on (2) and (3) (It is elected to pay now on the reversionary interest, instead of waiting for it to fall into posses- sion)	No Succession Duty or Legacy Duty at all is payable, because items (1), (2) and (3) amount to less than £1,000	The Executors	2	7
Estate Duty on (4)	Item (4) is not aggregable	The Executors	1	5
	Total duties ..	.. ..	..	£24

= about 1½ per cent. of estate.

CASE 2.

Estate Passing.	Value.	Beneficiaries and Remarks.
<i>Free Estate.</i>		
(1) Freehold house £6,000, subject to £1,000 mortgage	5,000	Wife.
(2) Net personalty	9,000	Wife, £2,500. Daughter, £2,000. Sister, £1,000. Old servant, £250. Charities, £1,500. Son (residue), £1,750—reduced to £650 (see below).
(3) Gifts <i>inter vivos</i> liable to duty	2,000	Son.
<i>Settled Estate (personalty).</i>		
(4) Settled by A's father in 1900 on A's marriage on A for life, then wife for life, then to children in equal shares. There is one son and one daughter	7,000	Aggregable for Estate Duty and Legacy Duty purposes (calculating for £15,000 limit).
(5) Settled by will of A's aunt, who died in 1895, on A for life, and then to such of his children as A should appoint. In default of appointment to C (a cousin). A appointed by deed to son and daughter in equal shares	3,000	Aggregable for Estate Duty, as aunt died after 1894 Act, and also for £15,000 limit. Special power of appointment, so aunt is the "predecessor."
Total	£26,000	

**“The claims for duty in this case appear
overleaf.”**

CLAIMS ARISING.

Nature of Claims.	Remarks.	Accountable Parties.	Rate of Duty.	Amount of Duty.		
			Per cent.	£	s.	d.
<i>Free Estate.</i>						
Estate Duty on (1) ..	(Not payable for a year)	Wife	10	500	0	0
Estate Duty on (2) ..	—	The Executors	10	900	0	0*
Estate Duty on (3) ..	(No Legacy Duty)	Son	10	200	0	0
Succession Duty on (1) ..	(Not payable for a year.) Reckoned on £5,000, less £500 Estate Duty, viz. on £4,500	Wife	1 (on £4,500)	45	0	0
Legacy Duty on (2) ..	Following is payable out of residuary estate	The Executors	1 (Wife) 1 (Daughter) 5 (Sister) 10 (Servant) 10 (Charities)	25 20 50 25 150	0 0 0 0 0	0 0 0 0 0
	Duty £900					
	Expenses, say .. 200					
	£1,100					
	Leaving £650 net to be received by son from residuary estate		1 (Son) on £650	6	10	0

<i>Settled Estate.</i>				
Estate Duty on (4) ..	When widow dies no further Estate Duty payable (Finance Act, 1914, Section 14)	Trustees of marriage settlement	10	700 0 0
Succession Duty on same on value of widow's life estate, and when she dies on value of capital passing to son. (But see next column)	Reckoned on £7,000, less £700 Estate Duty, viz. on £6,300 on assumption that Revenue agrees to now accept duty on capital value, and that it is desired to so pay it	Trustees of marriage settlement	1 (on £6,300)	63 0 0
Estate Duty on (5) ..	But claim refund of Settlement Estate Duty paid on aunt's death	Trustees of aunt's will	10	300 0 0
Legacy Duty on same under aunt's will. (It was only payable on her death on value of A's life interest)	The aunt is the "predecessor." The rate in force in 1895 is to apply. On £3,000, less £300 Estate Duty, viz. £2,700	Trustees of aunt's will	3 (not 5) (on £2,700)	81 0 0
	Total duties ..	.. ..	.. ..	£3,065 10 0

SPECIMEN ESTATES

= nearly 12 per cent. of estate.

* Payable out of the residuary estate.

CASE 3.

Estate Passing.	Value.	Beneficiaries and Remarks.
<i>Own Free Estate.</i>		
(1) Freehold agricultural property. The value as purely agricultural property is £12,000, and it has an <i>additional</i> value as building land of £5,000. Also timber (which is excluded from valuation)	£ 17,000	Son.
(2) Leasehold house	2,000	Wife.
(3) Net personalty (moveables)	20,000	Wife, £2,000. Daughter, £5,000. Sister, £5,000. Old servants, £1,000. Charities, £2,000. Son (residue), £5,000.
<i>Settled Estate.</i>		
(4) Personalty settled by will of father, who died in 1893, on A for life, and then on A's wife for life, and then to such of A's children as A should by deed or will appoint. He appointed to his only son by deed. The wife is alive	16,000	Not aggregable as the settlor died before 1894. The father is the "predecessor," and the property passes under his will, because the power is only a special one.
Total	£55,000	

CLAIMS ARISING.

Nature of Claim.	Remarks.	Accountable Parties.	Rate of Duty.	Amount of Duty.
<i>Free Estate.</i> Estate Duty on (1) .. (payable by instalments)	(See page 42 as to agricultural land.) Timber, if and when sold, will be liable at 12 per cent. on sale proceeds (see page 36)	Son	Per cent. 9 per cent. on £12,000 and 12 per cent. on £5,000	£ 1,680 s. 0 d. 0
Estate Duty on (2) & (3) Succession Duty on (1)	Payable on £17,000, less £1,680 Estate Duty = £15,320	Executors Son	12 1	2,640 0 0* 153 4 0
Succession Duty on (2) Legacy Duty on (3) ..	The ultimate residuary estate is £5,000, less Estate Duty £2,640 Expenses 260 = £2,900 (leaving £2,100 net)	Executors Executors	1 1 (Wife) 1 (Daughter) 5 (Sister) 10 (Servants) 10 (Charities) 1 (Son on £2,100)	20 0 0 20 0 0 50 0 0 250 0 0 100 0 0 200 0 0 21 0 0
<i>Settled Estate.</i> Estate Duty on (4) ..	On wife's death, no Estate Duty will be payable (Finance Act, 1914, Section 14). No Legacy Duty payable under father's will, because when he died the 1 per cent. rate was not payable	Father's will trustees	7	1,120 0 0
	Total duties .. .. .	.. ..	.. ..	£6,254 4 0

SPECIMEN ESTATES

117

* Payable out of the residuary estate.

= 11½ per cent. of estate.

CASE 4.

A is a wealthy widow without children. Her husband died in 1915.

Estate Passing.	Value.	Beneficiaries and Remarks.
<i>Free Estate.</i>		
(1) Freehold house in country	20,000	Own nephew.
(2) Leasehold house in London	10,000	Own niece.
(3) Freehold house on the Riviera	—	Not liable to duty and not aggregable.
(4) Net personalty in United Kingdom (moveables)	150,000	Own (not husband's) nephews and nieces, £50,000. Cousins, £50,000. Charities (residue), £53,000. Relatives' pecuniary legacies expressly given free of Legacy Duty.
(5) Furniture in France, £3,300, less death duties and debts in that country, £300	3,000	
(6) Advowson (London parish) .. .. .	—		Not liable.
<i>Settled Estate.</i>		
(7) Silver and pictures settled by her late husband, B, by deed on herself for life and then on her sister for life	25,000	Not liable to Succession Duty until sold.

(8) Stocks settled in 1910 by B on the marriage on himself for life, then on A for life, and then to such of their children as A or B should appoint, and in default of appointment to his brother, C. There were no children, so C takes	50,000	No Estate Duty, as it was paid on B's death, and A not competent to dispose. Not aggregable for fixing rate of duty on rest of estate.
(9) A enjoyed an annuity of £1,000 a year payable out of her late uncle's residuary estate, under his will	20,000	Aggregable with A's estate, but duty payable by the uncle's residuary estate.
(10) Personalty settled by will of B's father, who died in 1891, on B for life, then A for life, and then as survivor appoints. She appoints the whole between husband's six nephews (grandchildren of the settlor)	30,000	Aggregable, although the settlor died before 1894, because A had a general power of appointment. For the same reason, duty is payable again on the capital on her death, although it bore duty on her husband's death. A is the "predecessor" for Legacy Duty purposes.
Total	£308,000	Rate based on £258,000 (see above).

Note that if the whole estate had been just under £300,000, the result of the non-aggregation of (8) would have been to lower the rate on the whole of the rest of the estate from 25 per cent. to 24 per cent., for the assessable value would have been under £250,000. (See page 36.)

CLAIMS ARISING.

Nature of Claim.	Remarks.	Accountable Parties.	Rate of Duty.	Amount of Duty.		
			Per cent.	£	s.	d.
<i>Free Estate.</i>						
Estate Duty on (1) ..	Payable by instalments	Nephew	25	5,000	0	0
Estate Duty on (2) ..	—	Executors	25	2,500	0	0*
Estate Duty on (4) ..	—	Executors	25	37,500	0	0*
Estate Duty on (5) ..	—	Whoever actually deals with it	25	750	0	0*
Succession Duty on (1) ..	Payable by instalments. (Deduct Estate Duty)	Nephew	5 (on £15,000)	750	0	0
Succession Duty on (2) ..	(Deduct Estate Duty)	Niece	5 (on £7,500)	375	0	0
Legacy Duty on (4) and (5)	(Relatives' pecuniary legacies are expressly duty-free)	Executors	5 (on £50,000)	2,500	0	0*
	Duties payable out of residue = £48,250		10 (on £50,000)	5,000	0	0*
	Expenses = 750		10 cousins			
	<u>£49,000</u>		10 (on £4,000 charities)	400	0	0

	Balance of residue is £4,000 only. The charities get £3,600 net only (after payment of Legacy Duty)				
<i>Settled Property.</i>					
Estate Duty on (7) ..	(No Succession Duty)	Settlement Trustees	25	6,250	0 0
Succession Duty on (8) ..	B is the "predecessor"	Settlement Trustees	5	2,500	0 0
Estate Duty on cesser of (9)	Assume capital agreed at £20,000. (See Chapter VI)	Trustees of uncle's will	25	5,000	0 0
Estate Duty on (10) ..	—	Trustees of father's will	25	7,500	0 0
Legacy Duty on same ..	(Deduct Estate Duty.) In this case, if the power had been a "special" one, no Estate Duty would be due, and only 1 per cent. Legacy Duty. The grandfather would have been the "predecessor"	Trustees of father's will	10 (on £22,500)	2,250	0 0
		Total duties	.. ..	£ 78,275	0 0

SPECIMEN ESTATES

121

* Payable out of the residuary estate.

= 25½ per cent. of estate, including the £50,000 not liable to Estate Duty.

CASE 5.

A is a widower without children. He is domiciled in the Irish Free State, but all his beneficiaries are domiciled and ordinarily resident in England. (See Chapter X.)

Estate Passing.	Value.	Beneficiaries and Remarks.
<i>Free Estate.</i>		
(1) Freehold land in Irish Free State	£ —	Not liable.
(2) Personalty in Irish Free State	—	Not liable.
(3) Shares in French companies	—	Not liable.
(4) Shares in English companies	80,000	Divided between distant relatives and charities.
(5) Leasehold house in London	8,000	A niece.
<i>Settled Estate.</i>		
(6) Personalty in Irish Free State and	5,000	As this is a "British" settlement, both items are liable to all United Kingdom duties. If it had been a non-British settlement, or no settlement at all, (6) would have been exempt from all duties and (7) from Succession Duty. A would have been wiser to have made his Dublin solicitors the trustees.
(7) Stocks and shares in English companies, settled by A by deed on a lady (not a relative) living permanently in London. The trustees are London solicitors. A to receive the income as long as he lived	10,000	
Aggregable estate	£103,000	

CLAIMS ARISING.

Nature of Claim.	Remarks.	Accountable Parties.	Rate of Duty.	Amount of Duty.		
<i>Free Estate.</i>						
Estate Duty on (4) and (5)	Irish Free State domicile prevents Legacy Duty	English administrator	Per cent. 20	£	s.	d.
				17,600	0	0
Succession Duty on (5) ..	Leasehold property in United Kingdom is liable to Succession Duty	English administrator	5	400	0	0
<i>Settled Estate.</i>						
Estate Duty on (6) and (7)	(See remarks above)	Trustees	20	3,000	0	0
Succession Duty on same	Deduct £3,000 Estate Duty	Trustees	10 (on £12,000)	1,200	0	0
	Total duties ..	.. ..	..	£ 22,200	0	0

= 21½ per cent. of estate.

If the beneficiaries of the free personal estate in the United Kingdom had been liable to Legacy Duty, it would have amounted to £8,000 (10 per cent. of £80,000).

SPECIMEN ESTATES

124 A HANDBOOK ON THE DEATH DUTIES

CASE 6.

Illustrating Effect of Raised Estate Duty on the Residuary Legatee.

A leaves a widow and eight children.

Net personalty in United Kingdom is £56,000. He bequeathes his estate as follows:—

8 Children £5,000 each free of Legacy Duty.

2 Employees and 2 charities each £250 free of Legacy Duty.

Residuary estate to wife.

The duties payable are:—

Estate Duty on £56,000 at 16 per cent. (1925 rate) ..	£8,960
Legacy Duty on children's legacies, 1 per cent. on £40,000	400
Legacy Duty, 4 employees and charities, 10 per cent. on £1,000	100
	<hr/>
	9,460

Legacy Duty on net residuary estate, viz.	£56,000
Less pecuniary legacies ..	£41,000
Less death duties	9,460
Less administration expenses ..	240
	<hr/>
	50,700
	<hr/>
Net residue	£5,300
	<hr/> <hr/>

Legacy Duty at 1 per cent. on £5,300 53

Total death duties £9,513

= 17 per cent. of estate.

The widow actually receives £5,300 less £53 duty = £5,247.

In this case, although A died in July 1925, he made his will in March 1919, when Estate Duty on £56,000 was at the rate of 7 per cent., and his scheme was to leave his widow at least £10,000 net. She would, in fact, have had over that figure but for the subsequent raising of the duty by the Finance Act, 1919, to 11 per cent., and by the Finance Act, 1925, to 16 per cent.

The 1925 rate is more than twice the rate in force early in 1919, and takes £5,020 more in Estate Duty from the widow.

The testator was unable to alter his will before he died on account of infirmity, but he might have failed to alter it in any event unless his advisers had taken the initiative in bringing the effect of the Acts before him.

Note that the duties payable amount to 17 per cent. of the whole, although practically the whole estate goes to the widow and children, and no beneficiary receives more than £5,300.

If deceased had had no children, and the whole residue had passed to the widow, the death duties would have been practically the same in amount.

CASE 7.

Illustrating :—

- (1) The large proportion of big estates taken in duties. (See Preface.)
- (2) The diminution of family fortunes in cases of quickly recurring deaths. (See Preface.)
- (3) The relief given in cases of quick successions to land or a business. (See Chapter III.)

A's estate consists of :—

Free personalty (shares, etc.).. .. .	£1,500,000
A shipbuilding business (not a limited company)	500,000
Freehold land	200,000
Total	<u>£2,200,000</u>

A dies young, unmarried, and without parents. He gives his whole estate to his uncle, B.

The duties payable on A's death are :—

Estate Duty on £2,200,000 at 40 per cent. ..	£880,000
Succession Duty on the land, £200,000 less the Estate Duty thereon (£80,000), viz. 10 per cent. on £120,000	12,000
Legacy Duty on the rest of the estate, £2,000,000, less the Estate Duty thereon (£800,000), viz. 10 per cent. on £1,200,000	120,000
Total duties	<u>£1,012,000</u>

= 46 per cent. of the estate.

If the whole property had passed to A's brother, the proportion of the estate taken in duties would have been approximately 43 per cent. ; if to A's widow or child (or any lineal ascendant or descendant), approximately 40½ per cent. So that a deceased's own widow and children are very little better off than total strangers. (See Chapter XIV, para. (5).)

B, who was aged 75 when A died, himself dies within a year afterwards. After payment of the duties and expenses on A's death, B received approximately £1,000,000 from A's estate. Apart from that, B owned personalty of his own of £100,000, so that the rate of Estate Duty on the whole is 30 per cent.

The whole passes to B's widow.

The proportion of the £1,000,000 taken by the State on B's death (but for the special remission in the case of the land and the business) would be approximately 30½ per cent., so that of the original £2,220,000 there will be left on B's death about £650,000 only. On the widow's death, which occurred eighteen months after B's death, the net amount left may be estimated at (at most) £500,000. So that inside of less than three years the State has taken no less than £1,700,000 out of the original estate of £2,200,000! In this particular estate the following remissions fall to be made in the case of the land and business on B's death.

As B died within one year of A, 50 per cent. of the *Estate Duty* on the land and business which would normally have been payable on B's death is remitted.

The remission amounts to £100,000 for the business, and £40,000 for the land.

As the widow also died within two years of B's death, a remission of 40 per cent. of the duty which would

128 A HANDBOOK ON THE DEATH DUTIES

otherwise have been payable on her death on the land and business would be made.

It seems clear that, with duties on the present very heavy scale, the remission in such cases should apply to *all* forms of property, and should, moreover, be increased greatly. The three deaths could well have occurred inside of three weeks instead of three years.

It will be appreciated that if, in the above cases, B and his widow had had large estates of their own (apart from the original fund passing on the deaths), the rates of duty would have been even higher than those quoted above, and the rate of Legacy or Succession Duty might have been 10 per cent. on *each* of the deaths, instead of on A's death only.

Indeed, it might quite well occur that instead of the third successor taking £500,000 out of the original £2,200,000, he would receive some £300,000 only.

The same kind of result, although on a slightly less iniquitous scale, would occur in the case of moderate-sized estates.

CHAPTER XIV

AMENDMENT OF THE LAW: SINGLE-DUTY SYSTEM

THE following few points (out of many) are drawn attention to, in order that those responsible may consider carefully whether revision of the law is not now called for. They are set out here instead of in the form of an appendix, because it is thought that the chapter may be of assistance as an additional exposition of some features of the law as it now stands.

1. System of Aggregation.

This works great injustice where property passes on the death under a settlement to someone outside deceased's immediate family.

Property is settled by A's uncle on A for life and then to another nephew B.

If A's own estate is very large, the fund may have to bear 40 per cent. Estate Duty (plus 5 per cent. Succession Duty) before B gets it, although B is a poor man, and the fund is a small one. The size of A's estate has no logical bearing upon the size of B's tax. The aggregation is in fact a pure absurdity.

The following case is one of inconvenience rather than of injustice. A dies owning, say, £5,000.

A's own estate has been completely wound up, and the residuary estate handed over to the beneficiaries, and perhaps spent. It subsequently transpires that some settled fund, of which neither the executors nor

130 A HANDBOOK ON THE DEATH DUTIES

their solicitors knew anything, exists, and is aggregable with the deceased's estate. This may mean that the rate on the latter is doubled or trebled, and hundreds of pounds further duty may have to be paid on it and found by the beneficiaries. And apparently A's executors would be personally liable for any such further duty that might prove to be irrecoverable from the beneficiaries. Even in the cases where all the aggregable property is known at once, great delay in distributing deceased's estate is often entailed through the necessity of finally settling the values of every fund passing, so as to make sure of the rate of duty on each part of the estate. A certificate fixing the rate can be obtained under the Finance Act, 1894, Section 11 (2), as amended by the Finance Act, 1907, Section 16, but the protection is insufficient.

2. Cesser of Annuities.

A's will bequeathed an annuity of £200 to a brother B (then in poor circumstances). A died and the annuity was paid for some years to B until he died by A's residuary legatees. Before B died he had been left a substantial fortune by another relative. The benefit supposed to accrue to A's residuary legatees by the cesser of B's annuity is agreed at, say, £4,000 (see Chapter VI), and they have to pay Estate Duty on £4,000, although they have already borne it on the testator A's death!

Imagine their feelings when told that for the purpose of arriving at the rate of duty the £4,000 must be aggregated with B's estate, and that the rate is 40 per cent. (as it may be). Their own benefit under the will was quite a small one, for A's estate was small, and the rate of duty paid was much smaller than the

rate now demanded on the £4,000. This is clearly absurd and unjust, for how can A's residuary legatees control the size of B's estate ?

The above is a case of two hardships arising at once. Another kind of case is given in Chapter VI, sub-title "Annuities." In that instance Estate Duty would be assessed on over £33,000, whereas the real benefit accruing to A's estate is obviously much less. It is, in fact, the sum which it would have cost A to purchase for B from a good insurance office an annuity of £100 immediately before B's death. If B were aged 50 when he died, the value of the annuity would be about £12,000 immediately before his death, and if aged 80, it would be only about £3,000. To assess on this basis would be equitable and logical, and the saving of a large amount of labour, time, and expense. As it stands, A's real estate would have to be valued, engaging the attention of Government valuers, and then months of correspondence, negotiations, and perhaps appeals to the Court would possibly follow. And all this in order to establish the right of the Revenue to levy duty on A on an entirely artificial and wholly unjust basis.

3. Quick Successions.

It is unfair, and also bad on economic grounds, for family fortunes to be taxed in full on several occasions within a short space of time, as they are when several deaths occur quickly.

The present law as to quick successions to landed estates and businesses should apply to all property which can be readily identified as having passed on the original death.

All settled funds can be so identified. As the law

132 A HANDBOOK ON THE DEATH DUTIES

stands, if a father, mother, and several children die within a few years, the family fortune, if it passed on each death, will have been practically transferred from the family to the State. (See Case 7, Chapter XIII.)

4. Large Families.

It is not equitable, or desirable, that the estate of a man with several children should pay exactly the same death duties as if he had none. The estate is diminished in circumstances that demand that as much as possible of it should be left untouched. A graduation in the rates of duty according to the value of each successor's benefit would avoid injustice.

5. Apportionment of Duties.

Reference to Case 6 in the last chapter will show that the burden of the Estate Duty falls entirely on the residuary legatees. The raising of the duty does not affect any of the other beneficiaries. Means should be devised of distributing the burden amongst all classes of beneficiaries. Raising the Legacy Duty and Succession Duty instead of the Estate Duty, or making the Estate Duty chargeable upon each beneficiary's succession, might assist, but the best method would probably be to substitute a single duty for the present three duties. In the case of large estates, the difference in the amount of duties payable where the estate goes to deceased's own family and to strangers respectively could fairly be widened. (See Case 7, Chapter XIII.)

6. Small Estates.

If deceased's own net estate does not exceed £1,000, no Legacy or Succession Duty is payable at all. The

exemption may have been reasonable enough at the time it was made, but in these days of heavy tolls upon larger estates, the smallest estates should bear their fair share. The total duty on an estate of £1,000 is £20. Can anyone suppose that this £20 is felt in anything approaching the degree in which a mulcting of, say, 30 per cent. or 40 per cent. is felt by a large estate? Reference is invited to Case 1 in the preceding chapter. The exemption from Legacy Duty and Succession Duty is, in any case, illogical, so far as it is based on value (not relationship). If a cousin or stranger succeeds by will or intestacy to £1,000, why should he escape from £100 Legacy Duty simply because he takes the whole of deceased's estate, instead of only a portion of it? So far as deceased's own family are concerned, the exemption is perfectly right, and is in fact given them when the estate (calculated as explained in a previous chapter) does not exceed £15,000 in value.

7. Succession Duty on Leased Freeholds (Succession Duty Act, 1853, Section 2).

A dies in 1925 possessed of a large freehold building site leased on building leases in the usual form for 99 years, of which, from 2 to 98 years are unexpired at his death. His successor is assessable on the value as in 1925 of the land, without taking account of the increased value years hence when the houses will fall into the estate. But his successor will be called upon for Succession Duty on the extra benefit accruing through the falling in of the leases, as and when they determine.

In the case of a large estate consisting of thousands of houses, with many leases falling in, or being surrendered by arrangement, each year, Succession Duty

134 A HANDBOOK ON THE DEATH DUTIES

accounts may have to be rendered every year for nearly 100 years ahead!

The work involved in each assessment is intricate and exceedingly troublesome, owing to the nature of the calculations required.

It is true that the Act gives the Revenue *power* to compound and commute duties in advance, but in a case like this they would only do it (if at all) on an exorbitant basis.

The duty ought to be settled once and for all at the date of the death on the value as it stands at that date.

8. Realty and Personalty.

The distinction made between real and personal estate is misleading. Many testators do not know that Estate Duty on freehold property is payable by the devisee, whilst the duty on personalty is not payable by the legatee. This is liable to lead to serious miscarriage of intentions.

9. Foreign Domicile.

There appears to be no reason why beneficiaries who are resident in the United Kingdom should escape Succession duty and Legacy Duty merely because their deceased was domiciled out of Great Britain. In Case 5, Chapter XIII, there was a clear loss to the Revenue of £8,000 Legacy Duty.

In fact, it is doubtful whether there should be immunity in any case, even if the beneficiaries are not resident here.

10. Evasions.

Further steps should be taken to prevent evasions. (See Chapter XII.) It should, for instance, be neces-

sary to produce probate or administration, not merely a death certificate, in proving title to joint holdings of stocks, etc.

A list of the assets should be attached to probates (as in Scottish "confirmations"), so that anyone can see what has borne duty. For instance, if the probate is tendered for registration at a company's office, the secretary could detect at once if the company's shares had been omitted. In the alternative, a company should be prohibited from registering until a certificate that duty has been discharged on the shares is produced.

11. Residuary Accounts.

These accounts are the most troublesome of all the various ones which the executors have to render, and should be much simplified or abolished. It should not be necessary to re-value securities and to include income arising since the death; the duty should be payable on the estate as at the death, not as at the date of the account. It is appreciated that the Revenue may find the present system useful in so far as it conduces to the checking of the previous accounts already put in by the executors, but this purpose could be served by requiring executors to lodge a simple affidavit that all the assets have been accounted for, before they distribute the residuary estate.

12. Life Estates (Estate Duty).

It is not equitable to tax successors who only take a life interest on the same value as if they took an absolute interest. They cannot use the capital in any way. An ideal method of valuation in all cases would be to treat every successor (whether absolute

or limited) as taking a life interest (as in fact he does), and to value according to his age. For instance, a fund of £20,000 passes to A, aged 35, under a will. The yield on the fund may be taken as 5 per cent. for life, making £1,000 per annum. An annuity of £1,000 for a life aged 35 is £15,750, and that should be the value for duty. If A were 80, the value would be £3,820, and so on. It is obvious that a man of 25 in normal health who receives a legacy of £10,000 acquires more benefit than a man of 75 who receives the same amount, yet both now bear the same duty.

13. Need for Simplification.

The law generally is far too complicated. There are at least fifty Acts of Parliament bearing on death duties, with dates beginning from the end of the eighteenth century; some of them are very long, and scarcely one of them is easy to understand.

It is often necessary to spend a considerable time reading and re-reading various Acts in order to endeavour to see whether duty is payable in a given case, and, as often as not, the only result is a headache. Simplification and codification has become a real necessity. It is submitted that all the current Acts should be repealed, and a codifying Act passed, and that one of the principal features of the new Act should be the imposition of a single duty, graduated, like (for example) Quebec Succession Duty, both according to the relationship of the beneficiary to the deceased and to the value of his individual succession. To give an illustration let us turn to Case 6 in the preceding chapter.

Let it be assumed, for the moment, that the single duty is a combination of the present rates of duty

as applicable to an estate of the size of the *individual succession* : so that the child who takes £5,000 would be liable to 3 per cent. (the rate of Estate Duty on £5,000) + 1 per cent. (representing Legacy Duty) = 4 per cent., and the servant taking £250 would be liable to 1 per cent. (the rate of Estate Duty on £250) + 10 per cent. = 11 per cent.

The following duty would be payable :—

8 Children, each 4 per cent. on £5,000 (£200)	£1,600
4 Other legatees, each 11 per cent. on £250 (£27 10s.)	110
Widow 5 per cent. (4 per cent. + 1 per cent.) on £15,000	750
	<hr/>
Total duty	£2,460

The total duty is only about a quarter of that shown in Case 6, for, of course, the rates of the single duty would have to be more steeply graduated, in order to compensate for the loss which the Revenue would otherwise suffer through the deceased's estate being split up into several smaller estates, each liable to a smaller rate of duty than the whole estate would have been.

The actual graduations could only be settled upon after actuarial estimates of the probable average yield (based on existing Estate Duty Office statistical records) had been made. The object would be to see that the total yield from the new duty approximated to the total yield under the present system.

If the difficulty of estimating the rates necessary for producing approximately the same yield as that under the present system should prove to be too great, the situation could be met by calculating the single duty in another way, i.e. by assuming it to be simply an aggregate of the present duties as now assessed. The portion of the new duty attributable to the present Estate Duty would then depend upon the value of

138 A HANDBOOK ON THE DEATH DUTIES

testator's whole estate (not of the particular succession), and the beneficiary would in effect bear a rateable proportion of the whole.

For instance, suppose a bequest of £1,000 to a nephew by a testator whose net estate is £20,000. The Estate Duty on the whole estate (at 8 per cent.) is £1,600, and the Legacy Duty on £1,000 (at 5 per cent.) is £50.

The single duty on the legacy would be £50 plus one-twentieth of £1,600 = $50 + 80 = £130$. (The legatee taking one-twentieth of the whole estate, and so bearing one-twentieth of the Estate Duty upon it.)

This system would have the advantage of making the yield of the single duty identical with that of the combined present duties, but it would, as compared with assessment on the value of the individual succession, possess the defects of—(1) Making the amount of the legatee's duty depend on the value of the testator's whole estate, which has logically nothing to do with the legatee, since death duties are in essence a tax upon the successors. (2) Making it uncertain until the exact net value of the whole estate is ascertained—a matter of some years in many cases—how much duty will be payable by the legatee. In case of necessity, this method might be adopted during the first few years, whilst statistics are compiled to show the average size of individual successions.

It is thought that a single duty would enable testators to more easily and equitably plan their dispositions and beneficiaries to appreciate the very serious size of the tax better than they can under the present piecemeal system; that far less work would be involved at both the Estate Duty Office's and the solicitors' ends in assessing and collecting the duty, and that justice as between various classes of beneficiaries would be better served. The present system is archaic and

illogical. It is essentially a tax on the successors, and yet takes no account of what each successor receives.

It is believed that a statute of less than fifty average-length sections would suffice to give a simple, complete, and intelligible death duty system. Draughtsmanship of the kind seen in Section 14 of the Finance Act, 1914, is nothing less than a scandal, and befogs the most astute reader.

14. Payment by Instalments.

The existing option to pay the duties on freehold property by instalments should be extended to personalty, at all events where the duties payable amount to more than 10 per cent. of the property. With the duties at their present very heavy rates, it is impossible to raise the money to pay them, except by throwing securities on the market in large quantities at the same time—perhaps, too, at the moment when prices happen to be specially low. Payment by instalments would permit of gradual realizations, and of waiting for a recovery in price of the securities to be sold. The State might encourage immediate payment in full by exempting life policies made payable direct to the Commissioners for duty from payment of duty, or by giving a fair discount for payment of the duties in advance. The heavier the duties, the greater becomes the necessity for elasticity in payment.

15. Estate Duty on Freeholds.

Discount should be allowed for payment less than a year after the death, as it is in the case of Succession Duty. The rate of discount should be at least 5 per cent. per annum.

INDEX

NOTE.—*Sub-headings are not in alphabetical order.*

- Abroad (*see* Foreign)
- Acceleration of interest (Estate Duty), 21
- Accountable parties—
 - Estate Duty, 16, 26, 27, 28, 110
 - Legacy Duty on settled legacy, 75
 - Estate Duty on settled legacy, 76
- Administration of Estates Act, 1925, 6, 16, 27, 28
- Advowson, 13, 16, 21, 88
- Aggregation (generally), 32-37, 129-130
 - Exemptions from, 32-37, 129-130
 - Certificate as to (rate of Estate Duty), 130
- Agricultural property, 42, 43
- Airmen, 21
- Amendments of the law wanted, 129-139
- Annuities, 19, 26, 66-69
 - Purchase of, 66, 67, 69
 - Covenant to pay, 67
 - Cesser of, when not liable, 67
 - Method of assessing Estate Duty, 66-69, 130-131
 - Legacy Duty, 76
 - Table for valuation of, 90
- Australian death duties, 50, 51

- Bank, 16
- British Columbia, 50
- "British settlement," 20, 98-99, 107
- Business, "quick succession" to, 43, 44, 126-127
 - "Goodwill" valuation, 56

- Canadian death duties, 51
- Capital, living on, 108
- Cases—
 - Attorney-General v. Peek, 21
 - Re Smyth, 25
 - Re O'Grady, O'Grady v. Wilmot, 27
 - Bailey v. Barnes, 30
 - Attorney-General v. Earl Howe, 36
 - Re Exmouth's Annuity, 37
 - Lord Advocate v. Alexander's Trustees, 48
 - Re Maryon-Wilson, 48
 - Attorney-General v. Brunning, 53
 - Attorney-General v. Jameson, 56
 - Ellesmere v. C.I.R., 59

142 A HANDBOOK ON THE DEATH DUTIES

Cases—*continued*

- Attorney-General *v.* Watson, 67
- Re* Morrieson, 72
- Lord Advocate *v.* Bogie, 77
- Re* Scott, 78
- Re* Parker, 81
- Lord Advocate *v.* Macalister, 87
- In *re* Cigala's Settlement, 99
- Attorney-General *v.* Jewish Colonization Syndicate, 99
- Attorney-General *v.* Johnson, 99
- Certificate as to rate of Estate Duty, 130; as to discharge, 30
- Cesser of annuities (*see* Annuities)
- Cesser of interest, 19
- Ceylon, 50
- Channel Islands, 14, 96, 107
- Charities, 86
- Chattels—
 - Settled by Royal Grant, 37
 - When exempt from Legacy Duty, 74
 - When exempt from Succession Duty, 88
 - Advisable to settle, 109
- Children, when exempt from Legacy Duty and Succession Duty, 73
- Colonial death duties, 49–52
- Colonies, list of, to which Finance Act, 1894, Section 20, applied, 50
- Commuting or compounding duties, 65, 76, 84, 134
- Companies, shares in, 54–56
 - Transfer of assets to, 106, 107
- "Competent to dispose," 17, 22, 35, 60, 87, 93
- Contingent interest (*see* Reversionary Interest)
- Corrective affidavit, 49
- Covenants to pay money, 47–48, 77

- Death duties (*and see* headings Estate Duty, Succession Duty, and Legacy Duty)
 - Payment in War Securities, 100–103
 - Methods of mitigating, 104–109
 - Evasions, 104, 134
 - Claims barred after twelve years, 29
- Debts deductible (Estate Duty), 46, 47–49
 - Legacy Duty and Succession Duty, 80, 89
 - Must be for money consideration (Estate Duty), 47–48
 - Foreign, 48
 - Tax, rates, rent, etc., 49
- Debts due to deceased (Estate Duty and Legacy Duty), 53, 77
- Deductions allowed—
 - Debts (*see* above)
 - Funeral expenses (*see* that heading)
 - From foreign assets, 49
 - Colonial and foreign duties, 49–52
 - For Legacy Duty assessments, 80
 - For Succession Duty assessments, 89
- Dividends, 54

- DOMICILE** (generally), 20, 96-99
 Foreign, no Legacy Duty or Succession Duty, 74, 88, 96, 107
 War Securities, when exempt, 25, 75
 "British settlement," 88, 98-99
 As affecting Estate Duty, 96
 Evidence as to, 95
Dominions (*see* Colonies)
Donations *mortis causa*, 17, 26, 70, 75

East Africa Protectorate, 50
 "Estate by itself," 32
ESTATE DUTY (generally), 13
 Out of what payable, 15, 26
 When payable, 15, 16
 Interest on, 16, 17
 On settled objects of national, etc., importance, 23, 33, 34
 On unsettled objects of national, etc., importance, not yielding income, 23
 On War Securities, 25
 On annuities, 19, 26, 66-69, 130-131
 On gifts *inter vivos*, 18, 26, 104-106
 On donations *mortis causa*, 17, 26
 On property in which deceased had no interest, 26, 35
 On nomination life policy, 26, 30
 On property abroad, 19, 26, 48-49, 88
 On settled property (power of appointment), 27, 92
 On leaseholds, 27
 On agricultural land, 42-43
 On covenants to pay marriage settlement trustees, 47, 48
 On debts due to deceased, 53
 On "goodwill," 56
 On freeholds, 16, 17, 26, 27, 139
 On advowsons, 16
 On timber, 16, 24, 35
 On works of art, books, etc., 22, 33, 34
 On life interests, 60-61, 92
 On reversionary interests, 63-66
 On settled legacies, 76, 80-81
 On land and businesses (*see* "Quick Successions")
 On shares in private companies (*see* "Companies")
 Discount (realty), 17, 139
 Commutation of, 65
 Exemptions from duty, 20-26
 Barred after twelve years as against purchasers, 29
 On what payable, 17-20
 Benefit purchased, 19
 Failure of interest, 25
 Under settlements, 26
 A charge on property, 27, 29-31
 "Quick successions" to land or a business, 43, 44, 126-128
 "Aggregation" for fixing rate, 32-37, 129-130
 Rates of, 38-43, 130

144 A HANDBOOK ON THE DEATH DUTIES

ESTATE DUTY—*continued*

- Adjustment when estate just above mark for higher rate, 43
- Fixed duty on small estates, 45, 46
- Gift of Estate Duty liable to Legacy Duty, 77
- Deductible from property for assessment to Legacy Duty and Succession Duty, 80, 89
- As affected by powers of appointment, 92
- Payable in War Securities, 100-103
- Payable in land, 100
- Unfair effect of raising rates of, 124-125
- Certificate as to rate of, 130; as to discharge, 30
- Estate Duty Office (address), 14
- Estates not over £1,000 net—
 - Not aggregable, 32
 - Not liable to Legacy Duty and Succession Duty, 74, 95, 132-133
- Estates not over £500 gross, 45, 46
- Estates not over £15,000 (Legacy Duty and Succession Duty), 73, 89
- Evasions, 104, 109, 134
- EXAMPLES illustrating (*inter alia*) the following points, appear in Chapter XIII ("Specimen Cases") at the pages indicated below :—
 - Estate under £1,000 : how computed ; what duties payable, 111
 - Reversionary interest, how treated for Estate Duty, 111
 - Aggregation—
 - Reversionary interest, 111
 - Settled funds, 112, 116, 118-119
 - Annuity, 119
 - Items to be included in calculating £15,000 limit for 1 per cent. Legacy Duty and Succession Duty, 112
 - Rule for tracing "the predecessor," 112, 115, 116-117, 119, 121
 - Payment of duties out of residuary estate, 114, 120, 124-125
 - Allowance of Estate Duty from property for assessment to Succession Duty, 114, 115, 117, 120-121, 126
 - Allowance of Estate Duty from property for assessment to Legacy Duty, 126
 - Working of Finance Act, 1914, Section 14, 115, 117
 - Repayment of Settlement Estate Duty, 115
 - Date for fixing rate of Legacy Duty, 115
 - Estate Duty on agricultural property (Finance Act, 1925), 116
 - Duties on timber, 116-117
 - Settlement before 1894 (not aggregable), 116, 119
 - Foreign property, duties on, 118
 - Advowson, 118
 - Settled chattels, exemption, 118
 - Foreign domicile, "British settlements," 122-123
 - Unduly heavy toll on large estates when deaths occur close together, 126-128
 - Relief in "quick succession" to land or a business, 126-128
- Executors, 26, 27, 110, 130
- Exemptions (*see under* Estate Duty, Legacy Duty, and Succession Duty, respectively
- Expenses deductible (Legacy Duty), 80

- Failure of interest (Estate Duty), 25
 Finance Act, 1914, Section 14, 60-63, 80, 92, 115, 139
 Finance Act, 1925—
 Rates of Estate Duty, 41 ; on agricultural property, 42
 Section 24 does not affect Legacy Duty, 72 ; but does Succession
 Duty, 87, 88, 95
 Fixed duty on small estates, 45, 46
 Flats, valuation of lease, 57
 Foreign death duties deductible, 49-52
 Foreign domicile (*see* Domicile)
 Foreign property, 19, 26, 48, 49, 88
 Forgiveness of debt, 53, 77
 Forms, 14
 Freehold (*see* Realty)
 Funeral expenses (Estate Duty), 47
 Funeral expenses (Legacy Duty), 80
 Furniture and effects, 53, 54

 General power (*see* Power of Appointment)
 Gifts *inter vivos*, 18, 26, 104-6 (*and see* Donation *moris causa*)
 Payment of duties on, in War Securities, 102-103
 How valued for Estate Duty, 106
 No Legacy Duty on, 105
 Kinds of, 105
 What is "normal and reasonable expenditure," 105
 Insurance of duty on, 106
 "Goodwill," 56
 Government Securities (*see* War Securities)
 Great Britain (scope of taxation laws, etc.), 14, 50-51, 75, 96, 107

 Hire-purchase, 46
 Hong Kong, 50
 Husband and wife (*see* Married Persons)

 Illustrative cases (*see* Examples)
 Immoveables (*see* Realty, Leaseholds)
 India, 50
 Interest in expectancy (*see* Reversionary Interest)
 Ireland and I.F.S., 14, 26, 50, 51, 75, 107
 Isle of Man, 14, 96

 Joint tenancy, 18

 Kenya (*see* East Africa)
 Killed in war, 26, 75, 89

 Land (*see* Realty, Leaseholds)
 Land Charges Act, 1925, 29
 Land Registration Act, 1925, 30
 Law of Property Act, 1925, 27, 29, 30
 Lease, land subject to (Succession Duty), 88, 133-134

146 A HANDBOOK ON THE DEATH DUTIES

- Leaseholds (Estate Duty), 27
 - Duties not charged on, 29
 - How valued, 56-59
 - Subject to Succession Duty (not Legacy Duty), 82
 - Foreign domicile (Succession Duty), 96
- Legacy Duty, 70-81
 - On what payable, 70
 - Rates of, 71-72, 87
 - Married persons, 71
 - Exemptions from, 72-75
 - Specific legacies under £20, 72
 - When 1 per cent. rate not payable, 73
 - How £15,000 limit calculated, 73
 - On chattels, works of art, etc., 74
 - When estate not over £1,000, 74
 - Foreign domicile, no duty, 74, 96, 107
 - On settled legacies, 75, 79-81, 91-95
 - On annuities and life interests, 76, 80-81
 - On reversionary interest, 76, 83
 - Legacies given free of Legacy Duty, 76
 - Gift of Legacy Duty not itself a legacy, 76
 - Payable on gift of Estate Duty or Succession Duty, 77
 - On forgiven debt, 77
 - On solicitor-executor's fees, 77
 - When legatee predeceases testator, 77
 - Is payable on donation *mortis causa*, 75
 - Payable on *corpus* when successors all liable at same rate, 79
 - Deductions from value for assessment, 80
 - On the residuary estate, 78-81
 - How affected by powers of appointment, 92-93
 - How the "predecessor" found, 72, 91-95
 - Not payable on gifts *inter vivos*, 105
 - Official will only material, 108
- Letters of Administration, 109, 135
- Life estates coupled with power of appointment (*see* Powers of Appointment)
- Life estates, Estate Duty on, 19, 60-61, 92, 136
 - When not aggregable, 32
 - How Legacy Duty assessed, 75-76, 79-80, 92-93
 - How Succession Duty assessed, 85-87, 93-95
 - Surrender of (Succession Duty), 105
- Life policy, 16, 19, 26, 30, 46, 88

- Market value of realty, 59
- Marriage gifts, 18, 84
- Marriage is not valuable consideration, 84
- Marriage settlement covenant to pay trustees, 47, 48
- Married persons (Estate Duty), 22, 25, 60-62
 - Legacy Duty, 71
 - Domicile of, 96
- Mitigating the duties, methods of, 104-109
- Mortgage made by deceased himself, 47

- Mortgage on agricultural land, 42
 Mortgage on estate under £500 gross, 46
 Mortgage on reversionary interest, 65, 66
 Mourning clothes, 60
 Moveables (*see* Personalty)
- Nationality not material, 98
 New Brunswick, 50
 New Legislation (1925), 14, 27-31, 110
 Affects rate of Succession Duty sometimes, 88
 New South Wales, 50
 New Zealand, 50
 Newfoundland, 50
 Nigeria, 50
 Northern Ireland (*see* Ireland)
 Notices of deaths, 14
 Nova Scotia, 50
 Nyassaland, 50
- Ontario (reciprocity with), 50
- Pension, exempted from Estate Duty, 21
 Personal representatives (*see* Executors)
 Personalty
 Definition, 13
 Abroad, 20
 Succession Duty not a charge on, 85
 Pictures, etc. (*see* Works of Art)
 Possessions, Protectorates (*see* Colonies)
 Power of appointment (Estate Duty), 27, 61, 73
 New law as to land, 28
 As affecting Succession Duty, 85-86, 91-95
 As affecting Legacy Duty, 91-95
 "Predecessor" (for rate of duty), 72, 82, 89, 91-92, 94-95
 Pre-emption, shares subject to, 56
 Private companies (*see* Companies)
 Probate (*see* Letters of Administration)
 Public bodies, 86
 Purchasers and mortgagees protected after twelve years, 29
- Quebec death duties, 50, 51, 136
 Queensland death duties, 50, 51
 "Quick successions" to land and a business, 43, 126-128
- REALTY—**
 Definition, 13
 Estate Duty, 16, 26-31, 33, 139
 Succession Duty, 17, 85, 93, 139
 Abroad, 19, 88
 Sale, 17
 Searches by purchasers, 28-31
 "Quick succession" to, 43, 44, 126-128

148 A HANDBOOK ON THE DEATH DUTIES

REALTY—*continued*

- Valuation of, 56-59
 - Devised "free of all duties," 77
 - Subject to trust for sale, 85
 - Charged with annuity, 131
 - Subject to lease (Succession Duty), 88, 133-134
- Rent-charge, 13
- Residence—
 - War Securities, 25, 75
 - Not same as "domicile," 98
- Residuary estate: residue, 15, 78-81
- Residuary Legacy Duty Account, 78 *et seq.*, 135
- Reversion to leased land, 64 (*and see also Lease*)
- Reversionary Interest—
 - Not liable if created for value, 20, 84
 - For some purposes not regarded as settled property, 35
 - Estate Duty on, 63-66
 - Purchasers and mortgagees protected against raising of duty, 65, 66
 - Legacy Duty on, 76, 83
 - Succession Duty on, 83
 - Transmissions of (Succession Duty), 84-85
- Reverter to settlor, exempt from Estate Duty, 21
 - Exempt from Succession Duty, 89
- Rhodesia, 50
- Royal Family, 74, 83

- Scotland, 96
- Seamen and marines, 21
- Searches by purchasers (new law), 28-31
- Secret trusts, 108
- Settlement Estate Duty, 61-63
 - Abolishment of, 62
 - Interest on, 63
- Settlements—
 - Made before 2nd August, 1894, 22, 32
 - Objects of national, etc., importance, 23, 33
 - Estate Duty arising under, 26, 27
 - Special executors for settled land, 28
 - Chattels, works of art, etc. (Legacy Duty, Succession Duty), 74, 88, 109
 - Of legacies, how Legacy Duty assessed, 75, 79
 - Of legacies, who pays Estate Duty on, 76, 80, 81
 - Of legacies, who pays Legacy Duty on, 80-81
 - Rates of Succession Duty are determined when possession falls in, 87, 88
 - "British settlements" (*see* "Domicile")
 - May cause rate on free estate to be raised, 129, 130
- Share warrants to bearer, 96
- Sierra Leone, 50
- Simplification of law wanted, 136-129
- Single-duty system advocated, 136-139

- Small estates (*see* Estates)
- Soldiers, 21
- Solicitor-executor, power to charge fees, 77
- Special power (*see* Power of Appointment)
- Specimen estates and claims for duties, 110-128
- Stocks and shares, 33, 54-56, 81
- Where articles restrict sales, 56
- Strangers-in-blood (Legacy Duty and Succession Duty), 71
- Succession Duty (generally), 71, 82-90
- Land let on building lease, 88, 133
- Discount on, realty, 17, 139
- Charged on realty, 28-31, 85
- Covenant to pay marriage settlement trustees, 47, 48
- When 1 per cent. rate not payable, 73
- How £15,000 limit calculated, 73
- Estates not over £1,000 exempt, 74
- Foreign domicile, no duty, 74, 96
- Gift of Succession Duty liable to Legacy Duty, 77
- On what payable, 82, 85
- Rates of, 82, 87, 91
- Not payable when succession created for value, 82, 84, 88
- But otherwise when *transmitted* for value, 84-85
- On reversionary interest, 83
- Once attached, always attached, 84
- A charge, 85
- Charities and public bodies, 86
- On life estates, 86-87, 91-95, 105
- When 1909 raised rates operate, 87, 95
- Exemptions from, 88-89
- On life policy, 88
- On works of art, etc., 89
- On settled chattels, 89
- On advowsons, 88
- On timber, 88
- On land abroad, 88
- On War Securities, 89
- When property reverts to settlor, 89
- How affected by powers of appointment, 91-95
- How "the predecessor" determined, 91-95
- Attempts to evade (secret trusts, etc.), 108
- Barred after twelve years, as against purchaser, 29
- Succession Duty Act, Table I, 90
- Table I of Succession Duty Act, 1853, 90
- Tables of Estate Duty, 38-41
- Tasmania, Trinidad, Tobago, 50
- Timber, 16, 24, 35, 42, 88
- Tombstone, deduction for (Legacy Duty), 80
- Transvaal death duty, 50
- Trust for sale, 20
- Trustee, 20

150 A HANDBOOK ON THE DEATH DUTIES

- Uganda, 50
- United Kingdom (definition), 14, 26
- “ Unofficial wills,” 108
- U.S.A., 52

- Valuations for Estate Duty, how made, 53-59
 - Debts to deceased, 53
 - Furniture and effects, 53, 54
 - Stocks and shares, 54-56
 - Real property, 56-59
 - Flats, 57
 - For Legacy Duty on residuary estate, 81
 - Of life interests, 80, 86-87, 90
 - Annuities charged on land, 131
- Victoria, 50
- Victory Bonds (*see* War Securities)

- Wales, 96
- War Securities, 25, 75, 89
 - Can be used to pay duties, 100-103
- Weihaiwei, 50,
- West Indies, 50
- Widow, when exempt from Legacy Duty and Succession Duty, 73
- Wills Act (lapsed legacies), 77-78
- Works of art, etc., remission of Estate Duty, 22
 - Not aggregable in some cases, 33, 34
 - When not liable to Legacy Duty, 74
 - When not liable to Succession Duty, 89

- Yukon territory, 50

- Zanzibar, 50

Printed in Great Britain by

UNWIN BROTHERS, LIMITED, LONDON AND WOKING

INTERNATIONAL LAW

AS INTERPRETED DURING THE RUSSO-JAPANESE WAR

By LORD BIRKENHEAD *and*
N. W. SIBLEY, B.A., LL.M., Trin. H. Camb.

Royal 8vo. 25s. net

"Every chapter testifies to conscientious, painstaking labour. The authors do not shirk difficult questions. They do not hide imperfect knowledge under generalities. Their statements are well 'documented.' It is a critical, well-considered history of the war from the point of view of the lawyer. Students will be grateful for the collection of facts and documents in the appendix. . . . They have reviewed, in a book certain to be often consulted, most of the chief questions of international law which have arisen during the war in a spirit of fairness and with conspicuous ability. . . . It is a piece of well-knit, solid work. It embodies research and care."—*The Times*.

INTERNATIONAL LAW AND THE GREAT WAR

By COLEMAN PHILLIPSON, M.A., LL.D., Litt.D.
Author of "Studies in International Law," etc.

With an Introduction by Sir JOHN MACDONELL, K.C.B., LL.D.

Demy 8vo. 15s. net

"Dr. Coleman Phillipson's work on 'International Law and the Great War' is a comprehensive review of the whole subject by a learned writer to whose care, impartiality, and knowledge Sir John Macdonell bears witness in his introduction."—*Truth*.

CRIMINAL APPEAL AND EVIDENCE

By N. W. SIBLEY, B.A., LL.M., Trin. H. Camb.
Joint Author of "International Law as Interpreted During the Russo-Japanese War"

Demy 8vo. 15s. net

"Books on legal subjects appeal as a rule to the legal profession. This volume is an exception, for it is full of interest for every one who is concerned—as every citizen is—in the administration of the criminal law."—*Truth*.

T. FISHER UNWIN, LTD., 1 ADELPHI TERRACE, LONDON, W.C. 2