

## CHAPTER 23:03

### ESTATE DUTY ACT

*Acts 4/1967, 30/1968 (s. 38), 27/1973 (s. 103), 38/1976, 29/1981, 7/1984, 19/1985, 4/1988, 22/1989, 19/1990, 12/1993, 14/1993, 22/2001 (s. 4), 17/2004, 29/2004, 8/2005; R.G.N. 217/1970.*

**(The Capital Gains Tax Act [Chapter 23:01] will be amended by the Securities Act [Chapter 24:25] (No. 17 of 2004) when it comes into operation.)**

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## **AN ACT to impose an estate duty upon the estates of deceased persons; and to provide for matters incidental thereto.**

[Date of commencement: 1st February, 1968.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Estate Duty Act [*Chapter 23:03*].

#### **2 Interpretation**

(1) In this Act—

“acquire”, in relation to property, includes any acquisition of that property which is subject to a condition that it shall not take effect except upon the happening of some future event, certain or uncertain;

“administration and distribution account” means the account required to be rendered by the executor to the Master or the Assistant Master in accordance with the Administration of Estates Act [*Chapter 6:01*] in respect of the administration of the estate of which he is the executor;

“child”, in relation to any person, includes any person adopted by him—

(a) under any enactment; or

(b) under the law of any country other than Zimbabwe, if the adopted person is under such law accorded the status of a legitimate child of the adoptive parent and the adoption was made at a time when the adoptive parent was ordinarily resident in such country;

“company” means any body or association incorporated or registered under any law relating to companies or insurance or under a special law;

“duty” means estate duty payable under and in accordance with this Act and includes for the purposes of proviso (iii) to the Schedule to Chapter VI of the Finance Act [*Chapter 23:04*], in relation to the estate of any first-dying person referred to in that proviso who died before the 1st February, 1968, any estate duty payable under the Death Duties Act [*Chapter 146 of 1963*];

“dwelling” means a building or any part of a building, which is used wholly or mainly for the purpose of residential accommodation;

“executor” means any person to whom letters of administration have been granted by the Master or the Assistant Master in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside Zimbabwe but signed and sealed by the Master or the Assistant Master for use within Zimbabwe, and, in any case where the estate is not required to be administered under the supervision of the Master or the Assistant Master, the person administering the estate;

“family company”, in relation to a deceased person, means any company (other than a company whose shares are quoted on a recognized stock exchange) which at any relevant time was controlled, or capable of being controlled, directly or indirectly, whether through a majority of the shares thereof or any other interest therein or in any other manner whatsoever, by the deceased or by the deceased and one or more of his relatives;

“family home” subject to subsection (2), means in relation to a deceased person—

(a) a dwelling which is proved to the satisfaction of the Master—

(i) to have been the sole or main residence of that person and additionally, or alternatively, his spouse, throughout the period that he owned it; or

(ii) to have been the sole or main residence of that person and additionally, or alternatively, his spouse, for a period of four years or more immediately before the date of his death, or such shorter period immediately before the date of his death as the Master considers reasonable in all circumstances; or

(iii) to have been registered by that person as the sole or main residence of himself and additionally, or alternatively, his spouse even though he was prevented from residing in it as

provided in subparagraph (i) or (ii) in consequence of his employment or for such other cause as the Master considers reasonable in all the circumstances;

and

(b) any land, whether or not it is a piece of land registered as a separate entity in a Deeds Registry, which—

- (i) was the property of the person concerned at the date of his death; and
- (ii) surrounds or is adjacent to the dwelling referred to in paragraph (a); and
- (ii) at the date of the person's death was used primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a); and
- (iv) does not exceed two hectares or such larger area as the Master, having regard to the size and character of the dwelling referred to in paragraph (a), is satisfied is required for the reasonable enjoyment of the dwelling as a family home;

and

(c) any garage, storeroom or other building or structure which—

- (i) was the property of the person concerned at the date of his death; and
- (ii) forms part of or is attached to or otherwise associated with the dwelling referred to in paragraph (a); and
- (iii) at the date of the person's death was used primarily for private or domestic purposes in association with the dwelling referred to in paragraph (a);

“Master” and “Assistant Master” have the meaning given by the Administration of Estates Act [*Chapter 6:01*];

“relative”, in relation to any person, means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child referred to in the definition of “child” and any other person, such child shall be deemed to be related to its adoptive parent in the first degree of consanguinity;

“stocks or shares”, in relation to any company, means any part of the share capital of that company and includes any debenture or debenture stock or any other like form of marketable security.

(2) For the purpose of the definition of “family home” in subsection (1), where a deceased person was a member of a company, partnership or other association and, by virtue of his membership, had a right to occupy a particular flat, apartment or unit of residential accommodation in a building owned by the company, partnership, or association, that flat, apartment or unit of residential accommodation shall be deemed to have been his property for so long as he had the right to occupy it.

## PART II

### ESTATE DUTY

#### 3 Levy of estate duty

(1) There shall be charged, levied and collected in respect of the estate of every person who dies on or after the 1st February, 1968, a duty to be known as estate duty:

Provided that no such duty shall be charged, levied or collected in respect of the estate of a person who dies on or after the 18th April, 1980, and who is designated as a hero in terms of section 3 of the National Heroes Act [*Chapter 10:16*].

(2) Estate duty shall be charged upon the dutiable amount of the estate calculated in accordance with this Act, and shall be levied at the rate fixed by Chapter VI of the Finance Act [*Chapter 23:04*].

#### 4 What constitutes an estate

(1) For the purposes of this Act, the estate of any person shall consist of—

- (a) all property of that person as at the date of his death which is defined in subsection (2) and which was acquired by that person on or after the 1st January, 1967; and
- (b) all property which, in accordance with subsection (3), is deemed to be property of that person at the date of his death; and
- (c) all property of that person as at the date of his death which is defined in subsection (6) and which was acquired by that person before the 1st January, 1967.

(2) For the purposes of this section, except subsection (6)—

“property” means any right in or to property, movable or immovable, corporeal or incorporeal, and includes—

- (a) any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death; and
- (b) any right to an annuity (other than a right to an annuity charged upon any property) enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased;

but, where the deceased was not ordinarily resident in Zimbabwe at the date of his death, does not include—

- (i) any right in immovable property situate outside Zimbabwe; or
- (ii) any right in movable property physically situate outside Zimbabwe; or
- (iii) any debt not recoverable or right of action not enforceable in the courts of Zimbabwe; or
- (iv) any goodwill, licence, patent, design, trade mark, service mark, copyright or other similar right not registered or enforceable in Zimbabwe or attaching to any trade, business or profession in Zimbabwe; or
- (v) any stocks or shares held by him in a body corporate which is not a company; or
- (vi) any rights to any income derived from any property referred to in subparagraphs (iii) to (v).

(3) Property which is deemed to be property of the deceased includes—

- (a) so much of any amount due and recoverable under any policy of insurance which is a “local policy” as defined in the law for the time being in force relating to insurance, or, in the case of a deceased who was ordinarily resident in Zimbabwe at the date of his death, under any other policy of insurance, upon the life of the deceased, as exceeds the aggregate amount of any premiums or consideration proved to the satisfaction of the Master to have been paid by any person who is entitled to the amount due under the policy, together with interest at nine *per centum* per annum calculated upon such premiums or consideration from the respective dates of payment to the date of death:

Provided that this paragraph shall not apply in respect of—

- (a) a policy the amount due under which is recoverable by the surviving spouse or child of the deceased under a duly registered ante-nuptial or post-nuptial contract; or
  - (b) so much of any amount due and recoverable under a policy which is owned by a person other than the deceased as is used to meet an obligation of the owner of the policy arising as a result of the death of the deceased; or
  - (c) any amount due and recoverable under a policy which has been ceded by the deceased in his lifetime *bona fide* and for full consideration, otherwise than as security for payment of any sum of money or the fulfilment of any other obligation; or
  - (d) any amount due and recoverable under a policy effected before the 1st January, 1967, by a person other than the deceased; or
  - (e) so much of any amount due and recoverable under a policy effected before the 1st January, 1967, as bears the same proportion to the total amount so due and recoverable as the amount of the premiums paid by some person other than the deceased bears to the total amount of the premiums paid in respect of that policy; or
  - (f) any amount due and recoverable under a policy which, in the opinion of the Master, was taken out by the deceased for the purposes of paying duty in terms of this Act, to the extent that such amount does not exceed the duty payable;
- (b) any property donated by the deceased under a *donatio mortis causa*;
  - (c) any property exceeding two hundred dollars in value donated under a donation *inter vivos* made before the 1st January, 1967, unless such donation was made and took effect more than two years before the date of the death of the deceased;
  - (d) any property exceeding ten million dollars in value in any one calendar year donated under a donation (other than a donation to a spouse under a duly registered ante-nuptial or post-nuptial contract or a *donatio mortis causa*) made on or after the 1st January, 1967—
    - (i) in the case of a deceased not referred to in subparagraph (ii), by the deceased; or
    - (ii) in the case of a deceased who was married in community of property, by the deceased or by a spouse who was so married to the deceased to the extent to which the property would, if it had not been donated, have formed part of the estate of the deceased; or
    - (iii) by a body corporate, if such property was disposed of under any donation made by it at the instance of the deceased and if, having regard to the circumstances under which that donation was made by such body corporate, the Master is of the opinion—
      - A. that it was not made in the ordinary course of the normal income-earning operations of that body corporate; and
      - B. that the selection of the donee who benefited by the donation was made at the instance of the deceased;

unless—

- I. such donation is deemed to have been made more than five years before the date of death of the deceased donor; or
- II. such donation is deemed to have been made to a person who predeceased the donor;

[Subsection amended by Act 8 of 2004]

- (e) property (being property not otherwise chargeable under this Act or the full value of which is not otherwise required to be taken into account in the determination of the dutiable amount of the estate) which the deceased was, immediately prior to his death, competent to dispose of for his own benefit or for the benefit of his estate other than property which is not included in subsection (6) and which was acquired by the deceased before the 1st January, 1967.
- (4) For the purposes of paragraph (d) of subsection (3)—
- (a) any disposition (other than a disposition made before the 1st January, 1967) whereby any person becomes entitled to receive or acquire any property for a consideration which, in the opinion of the Master, is not a full consideration for that property shall, to the extent to which the fair market value of the property at the date upon which the disposition took effect exceeds the said consideration, be deemed to be a donation;
- (b) any disposition of property to a trustee to be administered by him for the benefit of any beneficiary mentioned in the trust deed, shall be deemed to be a donation of that property to the trustee;
- (c) a donation shall only be deemed to have been made on the date and to the extent that the donee became entitled absolutely to enjoy any rights under the donation without any control or reservation of rights (including the right to revoke or vary any rights conferred by the donation) by the donor or any person acting on the instructions of the donor and such rights have in fact been continuously enjoyed by the donee from such date up to the date of death of the donor:
- Provided that, in the case of a donation between spouses, the donor shall not, merely by reason of the existence of the rule of law which provides that donations between spouses are revocable until the death of the donor, be deemed to have reserved any rights under the donation;
- (d) any consideration, whether in cash or otherwise and whether or not described as a premium, paid or given by the deceased on or after the 1st January, 1967, in respect of shares issued to him by any family company shall, to the extent that it exceeds the nominal value of such shares, be deemed to be property donated by the deceased to such company.
- (5) For the purposes of paragraph (e) of subsection (3)—
- (a) the term “property” shall be deemed to include the profits of any property;
- (b) a person shall be deemed to have been competent to dispose of any property if—
- (i) he had such power as would have enabled him, if he were *sui juris*, to appropriate or dispose of such property as he saw fit, whether exercisable by will or power of appointment or in any other manner; or
- (ii) under any deed of donation, settlement, trust or other disposition made by him he retained the power to revoke or vary the provisions thereof relating to such property;
- and the power to appropriate, dispose of, revoke or vary as aforesaid shall be deemed to exist if the deceased could have obtained such power directly or indirectly by the exercise, either with or without notice, of power exercisable by him or with his consent;
- (c) the expression “property which the deceased was immediately prior to his death competent to dispose of” shall not include the share of a spouse of a deceased in any property held in community of property between the deceased and such spouse immediately prior to his death.
- (6) For the purposes of paragraph (c) of subsection (1)—
- “property” means—
- (a) any immovable property situate in Zimbabwe;
- (b) any movable property physically situate in Zimbabwe;
- (c) any limited interest in any such immovable or movable property;
- (d) any debt which is secured upon immovable property by bond registered in Zimbabwe;
- (e) any debt recoverable or right of action enforceable in the courts of Zimbabwe;
- (f) any stocks or shares in any company and any stocks of the Government or of any corporation or local authority within Zimbabwe, if any transfer whereby any change of ownership in such stocks or shares is effected is required to be registered in Zimbabwe;
- (g) where the deceased was ordinarily resident in Zimbabwe at the date of his death, any stocks or shares in any company and any stocks of the Government or of any corporation or local authority within Zimbabwe, whether those stocks or shares are transferable by delivery or by registration, and wheresoever such registration may be required to be effected;
- other than any of the foregoing which, by will or deed made by the deceased, are or will be vested in trustees for use by them for purposes which, before or after the making of such will or deed and before the 1st January, 1967, have been approved by the Governor of Southern Rhodesia or the Officer Administering the Government, as the case may be, as purposes of a national or public character.
- For the purpose of this subsection—
- “company”—
- (a) shall be construed without regard to the definition thereof in section *two*; and

- (b) includes any association incorporated or registered under any law relating to companies, banking or insurance, or under a special law, and further includes any association which, though incorporated or registered outside Zimbabwe, carries on business or has an office or place of business therein.

## 5 Dutiable amount of estate

The dutiable amount of any estate shall be determined by making the following deductions from the total value of all property included therein in accordance with section *four*, that is to say—

- (a) so much of the funeral and death-bed expenses of the deceased as the Master considers to be fair and reasonable;
- (b) all debts due by the deceased to persons ordinarily resident within Zimbabwe which it is proved to the satisfaction of the Master have been discharged from property included in the estate except any debt due to a company whose shares have been valued in accordance with proviso (ii) to paragraph (g) of subsection (1) of section *six* where such debt was incurred on or after the 1st January, 1967;
- (c) all costs which have been allowed by the Master in the administration and liquidation of the estate, other than expenses—
  - (i) relating to any property which is not included in the estate; or
  - (ii) incurred in the management and control of any income accruing to the estate after the date of death;
- (d) all expenditure incurred in carrying out the requirements of the Master in pursuance of this Act and which have been allowed by him;
- (e) the amount included in the total value of all property of the deceased as representing the value of any right in or to property situate outside Zimbabwe acquired by the deceased—
  - (i) before he became ordinarily resident in Zimbabwe for the first time; or
  - (ii) after he became ordinarily resident in Zimbabwe for the first time, by inheritance or by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in Zimbabwe; or
  - (iii) out of the profits and proceeds of any such property proved to the satisfaction of the Master to have been so acquired;
- (f) any debts due by the deceased to persons ordinarily resident outside Zimbabwe which have been discharged from property included in the estate to the extent that the amount of such debts is proved to the satisfaction of the Master to exceed the value of any assets of the deceased outside Zimbabwe and not so included;
- (g) the value of any interest included as property of the deceased under paragraph (a) of subsection (2) of section *four* where such interest was held by the deceased by virtue of a donation to him by the person to whom the right of enjoyment of the property in which the deceased held the interest accrues or, where the interest consists of a right to an annuity charged upon property, by the person who is the owner of that property;
- (h) any amount which, in terms of the will of the deceased, or the value of any property included in the estate which, or the value of any fiduciary, usufructuary or other like interest where the benefit arising by reason of the cessation of such interest upon the death of the deceased, accrues or accrued to—
  - (i) any person or public institution within Zimbabwe under conditions requiring such amount or value to be devoted wholly to charitable, educational or ecclesiastical purposes of a public nature within Zimbabwe; or
  - (ii) any public institution within Zimbabwe for the advancement of science or art, or of a charitable, educational or ecclesiastical nature, if such public institution devotes such amount or value to purposes of such a nature within Zimbabwe; or
  - (iii) the State or any local authority or any rural district council established under the Rural District Councils Act [*Chapter 29:13*]:

Provided that where the property which accrues (or accrued) to the State or any local authority or rural district council or to any one person or institution referred to in subparagraph (i) or (ii) consists of a fixed sum of money bequeathed in terms of the will of the deceased and exceeds an amount of one thousand dollars, the deduction to be allowed in respect of the amount so accruing or having accrued shall be an amount which bears the same ratio to the amount so accruing or having accrued as the value of the property included in the estate bears to the aggregate of the said value and the value of the property of the deceased falling under subparagraphs (i) to (vi) of the definition of “property” in subsection (6) of section *four*, if any;

- (i) the amount by which the value of any property included in the estate or by which the value of any fiduciary, usufructuary or other like interest which ceased upon the death of the deceased has been enhanced by any improvements made to the property concerned—

- (i) at the expense of the person who is the owner of the property or to whom the benefit arising by reason of the cessation of such interest upon the death of the deceased accrues; and
- (ii) during the lifetime of the deceased and with his consent;
- (j) so much of any amount which, as a result of the grant to any person of a right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property for no consideration or for a consideration which in the opinion of the Master is not an adequate consideration, is deemed to be property of the deceased under paragraph (d) of subsection (3) of section *four*;
- (k) any amount included in the estate in respect of—
  - (i) the value of books, pictures, statuary or other objects of art; or
  - (ii) so much of the value of any shares in a body corporate as is attributable to such body's ownership of books, pictures, statuary or other objects of art: if such books, pictures, statuary or other objects of art have been lent under a notarial deed to the State or any local authority or to any institution referred to in subparagraph (ii) of paragraph (h) for a period of not less than fifty years, and the deceased died during such period;
- (l) so much of the value of any property deemed to be property of the deceased by virtue of subsection (3) of section *four* as has not been deducted under any of the other provisions of this section and as the Master is satisfied has been taken into account under paragraph (g) of subsection (1) of section *six* in the determination of the value of any company shares included as property in the estate;
- (m) so much of any amount included in the estate as is payable on the death of the deceased, either by way of a lump sum or as a pension, from the Consolidated Revenue Fund or by any fund which, in the year of assessment in which the deceased dies—
  - (i) is approved by the Commissioner of Taxes as a benefit fund; or
  - (ii) is registered or provisionally registered under the Pension and Provident Funds Act [*Chapter 24:09*];
- (n) where the deceased is survived by his or her spouse, so much of the dutiable proceeds of insurance policies as does not exceed one hundred million dollars:

Provided that any deduction under this paragraph shall be made first from so much of the dutiable proceeds as is recoverable by the surviving spouse and thereafter *pro rata* from any other dutiable proceeds.

For the purposes of this paragraph—

“dutiable proceeds”, in relation to an insurance policy, means so much of the amount due and recoverable under that policy as is included in the estate under paragraph (a) of subsection (3) of section *four*;

[Paragraph amended by section 38 of Act 8 of 2005]

- (o) the value of the family home of the deceased.

[Paragraph substituted by Act 29 of 2004]

## 6 Value of property in estate

- (1) The value of any property included in the estate of any person shall be—
  - (a) in the case of property, other than such property as is referred to in paragraph (g) or the proviso to paragraph (i), disposed of by a purchase and sale which in the opinion of the Master is a *bona fide* purchase and sale in the course of the liquidation of the estate of the deceased, the price realized by such sale;
  - (b) in the case of any such fiduciary, usufructuary or other like interest in property as is referred to in paragraph (a) of the definition of “property” in subsection (2) of section *four*, an amount determined by capitalizing at nine *per centum* the annual value of the right of enjoyment of the property in which such interest was held, to the extent to which the person who upon the cessation of the said interest of the deceased becomes entitled to such right of enjoyment, over the expectation of life of such person or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period:

Provided that—

- (i) in any case in which it is proved to the satisfaction of the Master that such person paid any consideration for the right of ownership in the property whereby he became entitled to the right of enjoyment of the property upon the death of the deceased, the value shall be so much of the value so arrived at as exceeds the amount of such consideration together with interest thereon calculated at nine *per centum* per annum from the date of payment of such consideration to the date of death of the deceased;
- (ii) where upon the cessation of the interest of the deceased in any property there accrues to the holder of the bare *dominium* therein the full ownership in that property, the value of the advantage or benefit so accruing by reason of the cessation of the interest held by the deceased shall not exceed the difference between the fair market value of that property as at the date of such

- cessation and the value of the bare *dominium* as at the date when such bare *dominium* was first acquired under the disposition creating the said interest held by the deceased;
- (iii) if upon the cessation of the interest held by the deceased it is not possible to ascertain until some future date the person or some or all of the persons who will become entitled to the right of enjoyment of the property, the value shall be determined by capitalizing at nine *per centum* over a period of fifty years the annual value of the right of enjoyment of the property in which such interest was held, unless the Master and the executor agree that, having regard to the circumstances of the case, it would be reasonable to adopt a lesser period than fifty years, in which event such lesser period as agreed may be adopted accordingly;
- (c) in the case of any right to any annuity referred to in paragraph (a) of the definition of “property” in subsection (2) of section *four*, an amount equal to the value of the annuity capitalized at nine *per centum*—
- (i) in the case where the said right accrues to some other person on the death of the deceased, over the expectation of life of the person to whom the said right accrues on the death of the deceased or, if it is to be held for a lesser period than the life of such person, over such lesser period;
  - (ii) in the case where the said right does not so accrue to some other person, over the expectation of life of the person who on the death of the deceased is the owner of the property upon which such annuity was charged;
- (d) in the case of any right to any annuity referred to in paragraph (b) of the definition of “property” in subsection (2) of section *four*, an amount equal to the value of the annuity capitalized at nine *per centum* over the expectation of life of the person to whom the right to such annuity accrues on the death of the deceased or, if it is to be held for a lesser period than the life of such person, over such lesser period;
- (e) in the case of any property referred to in paragraph (b) or (d) of subsection (3) of section *four*, an amount determined as if the subject of the donation were property as defined in subsection (2) of that section and valued in accordance with the other provisions of this section after deduction of any expenditure made by the donee which is proved to have enhanced the value of such property:
- Provided that if the subject of the donation has been disposed of by the donee before the date of death of the donor for a consideration which, in the opinion of the Master, is a full consideration, such consideration shall be taken as the value of the subject of the donation;
- (f) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master, exceeds the value of such interest, determined—
- (i) in the case of a usufructuary interest, by capitalizing at nine *per centum* the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
  - (ii) in the case of an annuity charged upon the property, by capitalizing at nine *per centum* the amount of the annuity over the expectation of life of the person entitled to such annuity or, if it is to be held for a lesser period than the life of such person, over such lesser period;
  - (iii) in the case of any other interest, by capitalizing at nine *per centum* such amount as the Master may consider reasonable as representing the annual net yield of such interest over the expectation of life of the person entitled to such interest or, if such interest is to be held for a lesser period than the life of such person, over such lesser period;
- (g) in the case of shares in any company not quoted in the official list of the Zimbabwe Stock Exchange or on any stock exchange outside Zimbabwe, the value of such shares in the hands of the deceased at the date of his death as determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master, subject to the following provisions, that is to say—
- (i) no regard shall be had to any provision in the memorandum and articles of association or rules of the company restricting the transferability of the shares therein, but it shall be assumed that such shares were freely transferable;
  - (ii) no regard shall be had to any provision in the memorandum and articles of association or rules of the company whereby or whereunder the value of the shares of the deceased or any other member is to be determined;
  - (iii) if upon a winding-up of the company the deceased would have been entitled to share in the assets of the company to a greater extent *pro rata* to shareholding than other shareholders, no lesser value shall be placed on the shares held by the deceased than the amount to which he would have been so entitled if the company had been in the course of winding-up and the said amount had been determined as at the date of his death;

- (iv) no regard shall be had to any provision or arrangement resulting in any variation in the rights attaching to any shares through or on account of the death of the deceased;
- (v) there shall be taken into account any power of control exercisable by the deceased and the company whereunder he was entitled or empowered to vary or cancel any rights attaching to any class of shares therein, including by way of redemption of preference shares, if by the exercise of such power he could have conferred upon himself any benefit or advantage in respect of the assets or profits of the company:

Provided that—

- (i) where the Master is satisfied that any shares (other than shares in a family company) were acquired by the deceased in a *bona fide* commercial transaction and conditions were, at the time of the acquisition, imposed by the person from whom they were acquired or by the memorandum or articles of association or rules of the company, having the effect of reducing the value of such shares, then such conditions may be taken into account in assessing the value of the shares;
- (ii) this paragraph shall not apply in relation to any shares which were acquired before the 1st January, 1967, and in respect of which—
  - (a) the provision or arrangement referred to in subparagraph (i), (ii) or (iv); or
  - (b) the right referred to in subparagraph (iii) or (v);as the case may be, was in effect immediately before the 1st January, 1967;  
[Paragraph will be amended by section 120 of Act 17 of 2004 when it comes into force]
- (h) in the case of any property referred to in paragraph (e) of subsection (3) of section *four* which consists only of profits, an amount determined by capitalizing at nine *per centum* such amount as the Master may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his death, and in the case of any other property referred to in the said paragraph (e), the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he had at that date exercised his power of disposition;
- (i) in the case of any other property, the fair market value of such property as at the date of death of the deceased person as determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master:

Provided that in any case in which, as a result of conditions imposed on or after the 1st January, 1967, by any person whomsoever, the value of any property could or would be reduced for any reason at or after the moment of death of the deceased, the value of such property shall, unless the Master otherwise directs, be determined as though those conditions had not been imposed.

(2) For the purposes of paragraphs (b) and (f) of subsection (1) the annual value of the right of enjoyment of a property means an amount equal to six *per centum* of the fair market value determined, subject to section *nine*, by sworn valuation by some impartial person appointed by the Master, of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest:

Provided that—

- (i) where it is established to the satisfaction of the Master that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to six *per centum* of such value of the property, the Master may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall, for the purposes of paragraph (b) of subsection (1), be deemed to be the annual value of the right of enjoyment of such property;
- (ii) where the property which is subject to any such interest consists of books, pictures, statuary or other objects of art, the annual value of the right of enjoyment thereof shall, for the purposes of paragraph (b) of subsection (1), be deemed to be the average net receipts, if any, derived by the person entitled to such right of enjoyment of such property during the three years immediately preceding the date of death of the deceased.

(3) Where for the purposes of subsection (1) any calculation is required to be made over the expectation of life of any person, such calculation shall, in the case of a person who is not a natural person, be made over a period of fifty years.

(4) Whenever the value of any property included in the estate of a deceased is reduced as a result of the continuance after the death of that person of any right in respect of which a deduction has been allowed under paragraph (j) of section *five*, the value of such property shall, for the purposes of subsection (1), be determined as though the said right had not been granted.

(5) For the purposes of paragraph (g) of subsection (1)—

“company” means any company incorporated in Zimbabwe or elsewhere;

“Zimbabwe Stock Exchange” means the Zimbabwean Stock Exchange established by the Zimbabwe Stock Exchange Act [*Chapter 24:18*];

“shares” includes any class of shares, stock, debenture stock, debentures or right to subscribe for or purchase shares stocks or debentures.

### PART III

#### ADMINISTRATION

#### 7 Administration of Act

- (1) The Master shall be responsible for the administration of this Act.
- (2) The functions imposed upon the Master by this Act may be exercised or performed by the Master personally or by any officer acting under a delegation from or under the control or direction of the Master.
- (3) Any decision made and any notice or communication issued or signed by any such officer may be withdrawn or amended by the Master or by the officer concerned, and shall, until it has been so withdrawn, be deemed to have been made, issued or signed by the Master.

#### 8 Rendering of returns

(1) Every executor or, if he is called upon by the Master to do so, any person having the control of or any interest in any property included in the estate shall submit to the Master a return in the form prescribed by the Master disclosing the amount claimed by the person submitting the return to represent the dutiable amount of the estate together with full particulars regarding—

- (a) the property of the deceased as at the date of his death;
- (b) property which, in accordance with subsection (3) of section *four*, is deemed to be property of the deceased as at that date;
- (c) any deduction claimed in terms of section *five*.

(1a) Any person who fails to submit any return in terms of subsection (1) within the period specified by the Master, or who knowingly omits from such a return any particulars required by this Act to be included therein shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) If, after having been called upon to do so by the Master, any person referred to in subsection (1) fails to submit to the Master the return referred to in that subsection within the period specified by the Master, the Master may estimate the dutiable amount of the estate of the deceased in such sum as he may consider to be fair and reasonable, and thereupon duty shall be assessed upon the dutiable amount of the estate as so estimated.

#### 9 Determination of dutiable amount

- (1) If the Master on receipt of any return referred to in section *eight* or any sworn valuation of any property—
  - (a) is dissatisfied with any value at which any property is shown in any such return or sworn valuation; or
  - (b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in the return does not represent the correct dutiable amount;he shall adjust such value or amount and determine the dutiable amount accordingly.

(2) Any dutiable amount determined by the Master under subsection (1) shall, subject to section *twenty-eight*, be the amount upon which duty shall be assessed.

#### 10 Supply of information to Master

(1) For the purposes of the administration of this Act, the Master may call upon any person to furnish him with such information as he may require and to produce for examination by the Master or by any person appointed by him for that purpose, at such time and place as may be appointed by the Master for that purpose, any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Master may deem necessary, and if any such deeds, plans, instruments, books, accounts, lists or documents are not in the English language, the Master may by notice in writing require the executor of the estate concerned to produce at such time and place as may be appointed, at the expense of the estate, a translation in the English language prepared and certified under oath by some person approved by the Master.

(2) The Master may, by notice in writing, require any person whom the Master may deem able to supply information, to attend at a time and place to be named by the Master for the purpose of being examined on oath respecting any transactions or matters affecting any estate; and any person so attending may be allowed by the Master any reasonable expenses necessarily incurred by such person in so attending.

(3) If any officer engaged in carrying out the provisions of this Act who has, in relation to the affairs of a particular estate, been authorised thereto by the Master in writing or by telegram, satisfies a magistrate by statement made on oath that there are reasonable grounds for suspecting that any person has committed an offence under this Act, the magistrate may by warrant authorize such officer and any other officers designated by the Master to exercise the following powers—

- (a) without previous notice, at any reasonable time during the day enter any premises whatsoever and on such premises search for any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents;
- (b) in carrying out any such search, open or cause to be removed and opened, any article in which he suspects any moneys, valuables, deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents to be contained;
- (c) seize any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for duty;
- (d) retain any such deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents for as long as they may be reasonably required for any assessment or for any criminal or other proceedings under this Act.

(4) Any officer authorised in accordance with subsection (3), when exercising any power under such subsection, shall on demand produce the warrant issued to him thereunder.

(5) The executor of the estate in relation to the affairs of which any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents have been seized under subsection (3) shall be entitled to examine and make extracts from them during office hours under such supervision as the Master may determine.

### **11 Assessment of duty by Master**

(1) The Master shall assess the duty payable under this Act and shall in respect of every estate liable for the duty issue a notice of assessment to the executor or, if there is no executor, to any person liable for the duty.

(2) The duty assessed shall be paid on such date and at such place as may be specified in the notice of assessment, and may be paid in one sum or in such instalments as may be determined by the Master having regard to the circumstances of the case.

(3) A notice of assessment shall be issued in respect of each return submitted in respect of any estate in which liability for duty is disclosed, due regard being had in the calculation of the duty to any duty chargeable on any previous returns submitted in respect of the same estate, or any duty chargeable in terms of section *eight* or *nine*.

### **12 Payment of interest**

(1) If any duty remains unpaid at the expiration of a period of thirty days from the date of payment notified in accordance with subsection (2) of section *eleven*, there shall be payable, in addition to the unpaid duty, interest on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment:

Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest shall be payable as from a date twelve months after the date of death on the difference, if any, between the duty assessed and any deposit made on account of the duty payable within the said period of twelve months.

(2) Whenever the Master is satisfied that the delay in the payment of duty within the period of thirty days from the date of payment notified in accordance with subsection (2) of section *eleven*, or within the period of twelve months from the date of death, as the case may be, has not been occasioned either by the executor or by any person liable for the duty, he may allow an extension of time within which the duty may be paid without interest if, before the expiration of the said period of thirty days or the said period of twelve months, as the case may be, or such further period as the Master may allow—

- (a) a deposit on account of the duty payable is made of an amount which, in the opinion of the Master, is reasonable, regard being had to the amount of the duty payable; and
- (b) application is made in writing to the Master for such extension of time.

(3) The interest payable in terms of subsection (1) shall be at such rate, as may be fixed from time to time by the Minister responsible for finance by notice in a statutory instrument.

### **13 Person liable for duty**

The person liable for the duty shall be—

- (a) where duty is levied on property of the deceased which falls under subsection (2) of section *four*—
  - (i) as to any property referred to in paragraph (a) or (b) of the definition of “property” in that subsection, the person to whom any advantage accrues by the death of the deceased;
  - (ii) as to any other property, the executor;
- (b) where duty is levied on property which, in accordance with subsection (3) of section *four*, is deemed to be property of the deceased—
  - (i) as to property referred to in paragraph (a) of that subsection, the executor:

Provided that where the amount due under the policy is recoverable by any person other than the executor, the person liable for the duty shall be the person entitled to recover the amount due under the policy;

- (ii) as to any property referred to in paragraph (b), (c) or (d) of that subsection, the donee;

(iii) as to any property referred to in paragraph (e) of that subsection, the executor.

#### **14 Duty payable by executor**

Notwithstanding anything to the contrary contained in section *thirteen*, any duty payable under this Act shall be payable by and recoverable from the executor of the estate subject to the duty:

Provided that the liability under this section of any executor shall be a liability in his capacity as executor only and for an amount not exceeding the available assets in the estate.

#### **15 Right of recovery by executor**

(1) Every executor who is required to pay duty in respect of any property referred to in subparagraph (i) of paragraph (a), the proviso to subparagraph (i) of paragraph (b) or subparagraph (ii) of paragraph (b) of section *thirteen* shall be entitled to recover from the person liable therefor the duty attributable to such property.

(2) The duty attributable to any such property shall be a sum which bears to the full duty payable in respect of the estate before the deduction of any amount in accordance with section *eighteen* the same ratio as the value of the said property, as determined for the purposes of this Act, bears to the total value of the estate as so determined, reduced, in any case in which there is, in accordance with section *eighteen*, deducted from the duty payable in respect of the estate any amount paid in respect of any property included in the estate which has accrued to the person liable for the duty attributable to that property, by the amount so paid.

#### **16 Right to mortgage property**

To provide for the payment of any duty, the person liable therefor may, with the consent of the Master, borrow any moneys or mortgage any property in respect of which the liability for duty arises, notwithstanding any provision to the contrary contained in any deed or testamentary disposition or in any law.

#### **17 Recovery of duty paid in certain cases**

Any person who has disposed of property in respect of which a liability for duty in accordance with subparagraph (ii) of paragraph (b) of section *thirteen* thereafter arises, without having received full consideration therefor, may recover from the person to whom he has disposed of such property the amount of duty payable by him in respect thereof:

Provided that the amount so recoverable shall not exceed the amount by which the full consideration for such property would have exceeded the amount of consideration actually received by him.

#### **18 Deduction of duties payable to other governments**

There shall be deducted from any duty payable under this Act, without in any way modifying or adding to the rights of any person under an agreement entered into by the State with the government of any other country or territory relating to the prevention of or relief from double taxation in respect of estate duty, any amount of any death duties proved to the satisfaction of the Master to have been paid to any other country or territory in respect of any property situate outside Zimbabwe and included in the estate of any person who at the date of his death was ordinarily resident in Zimbabwe:

Provided that the deduction under this section shall not exceed the duty imposed on such property by this Act.

#### **19 Deduction of capital gains tax**

There shall be deducted from any duty payable under this Act the amount of any tax paid by the deceased or his estate in terms of the Capital Gains Tax Act [*Chapter 23:01*], in respect of any property that is deemed to be the property of the deceased in terms of paragraph (d) of subsection (3) of section *four*.

### PART IV

#### GENERAL

#### **20 No account to be filed by Master before duty paid or secured**

The Master shall not file any administration and distribution account in his office or grant a discharge to any executor until he is satisfied that the duty payable under this Act has been paid or secured to his satisfaction.

#### **21 No property to be delivered by executor before duty provided for**

Before delivering or transferring any property of the deceased to any heir or legatee the executor shall satisfy the Master that due provision has been made for the payment of any duty payable under this Act.

#### **22 Personal liability of executor**

Every executor who pays over or parts with the possession or control of any property under his administration without first paying any duties payable under this Act shall be personally and jointly and severally liable with any other person to whom he has paid over or to whom he has delivered any such property for the amount of the duty ascertained by the Master to be payable in respect thereof.

#### **23 Expenditure incurred by executor**

Every executor who is required to incur any expenditure in respect of any property which falls under paragraph (a) or (b) of the definition of "property" in subsection (2) or under subsection (3) of section *four* shall be

entitled to recover such expenditure from the person liable, in accordance with section *thirteen*, for the duty payable in respect of such property.

#### **24 No transfer of stocks or shares to be registered before duty paid**

(1) A company shall not permit the transfer—

- (a) of any stocks or shares in such company registered in a deceased person's name; or
- (b) of any stocks or shares in such company registered in the name of any person who has been notified to such company by the Master as being a person in whose name stocks or shares belonging to a deceased person are held;

without the prior written consent of the Master.

(1a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(2) The person holding the position of secretary of such company shall be responsible for the carrying out of the provisions of subsection (1).

#### **25 No transfer of property to be registered in Deeds Registry until duty paid**

No grant, transfer, endorsement or other registration shall be recorded in the Deeds Registry in connexion with any property or interest in property forming part of a deceased estate or which was held by a deceased person, unless there is produced to the Registrar of Deeds a certificate issued by the Master that all necessary provision has been made for the payment of any duties payable under this Act.

#### **26 Returns by insurers and certificate required before payment made**

(1) Every person who carries on in Zimbabwe any insurance business shall, on the death of any person, before he makes payment of any claim under any policy of insurance upon the life of that person, advise the Master, in such form as the Master may require, of any amount of which he intends to make payment.

(2) No person carrying on an insurance business as aforesaid shall, except to a duly appointed executor, make any payment under any such policy of insurance as is mentioned in subsection (1) without the written consent of the Master given either generally or for any particular case.

(2a) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by Act 22 of 2001]

(3) Contravention of this section shall, in addition to the penalty prescribed in subsection (2a), render the person so carrying on insurance business liable for the payment of all such duty.

[Subsection amended by Act 22 of 2001]

(4) The principal officer of a registered insurer, as appointed in terms of the law for the time being in force relating to insurance, shall be responsible for the carrying out of the provisions of subsections (1) and (2).

#### **27 Burden of proof**

(1) In any objection or appeal under this Act the burden of proof that any amount is exempt from or not liable to duty or is subject to any deduction or other reduction under this Act shall be upon the person claiming such exemption, non-liability, deduction or reduction.

(2) Upon the hearing of any appeal by any court that court shall not vary or set aside any decision of the Master or refer any assessment back to the Master for further assessment or make any determination or order which has any such effect, unless the person aggrieved by the decision or assessment of the Master shows that such decision or assessment is wrong.

#### **28 Objections**

(1) Every executor or other person liable for duty under this Act who is aggrieved by any assessment of such duty in terms of section *eleven*, including any valuation on which such assessment is made, may, within thirty days after the date of the assessment notice or within such further period as the Master may on good cause approve, lodge with the Master an objection in writing which shall specify in detail the grounds upon which it is made.

(2) The Master may allow such objection or disallow it, or allow it in part and disallow it in part.

(3) The Master shall give written notice to the objector of his decision on such objection.

#### **29 Appeals**

(1) If the objector is dissatisfied with a decision of the Master made under subsection (2) of section *twenty-eight*, he may appeal therefrom to either the Fiscal Appeal Court or the High Court, which shall inquire into and consider the matter and confirm, vary or set aside the decision of the Master or, if it deems fit, refer the relevant assessment back to the Master for further investigation and assessment; and such further assessment shall be subject to objection and appeal in terms of this Act.

(2) On the determination by the Fiscal Appeal Court of an appeal under subsection (1) or, as the case may be, paragraph (a) of subsection (3), the appellant or the Master, if dissatisfied with such determination, may appeal therefrom to the High Court on any ground of appeal which involves a question of fact alone or a question of mixed fact and law, and the High Court shall consider the matter and confirm, vary or reverse the determination appealed from or make such order as it considers the Fiscal Appeal Court should have made.

(3) Notwithstanding anything to the contrary in any other enactment, the High Court in any appeal under this section shall not take oral evidence, but if in the hearing of such an appeal it considers that the just determination of the matter requires the taking of oral evidence on any question it shall—

- (a) in the case of an appeal from a decision of the Master, transfer the case to the Fiscal Appeal Court, where upon the case shall be dealt with in all respects by that Court as if it were an appeal to that Court under subsection (1);
- (b) in the case of an appeal from a determination of the Fiscal Appeal Court, set aside the determination and remit the case to that Court for further hearing, with such instructions regarding the taking of further evidence as the High Court deems fit.

(4) On the determination by the High Court or the Fiscal Appeal Court of any appeal under this section, the appellant or the Master, if dissatisfied with such determination, may appeal therefrom to the Supreme Court on any ground of appeal which involves a question of law alone, but on no other ground, and the Supreme Court shall consider and determine any question or questions of law arising on the case, and accordingly shall reverse, confirm or vary the determination appealed from or remit the matter to the High Court or the Fiscal Appeal Court, as the case may be, with the opinion of the Supreme Court thereon, or make such other order in the matter as the Supreme Court deems fit.

(5) The—

- (a) the Chief Justice, in relation to appeals to the Supreme Court;
- (b) the Chief Justice and the Judge President of the High Court, in relation to appeals to the High Court;
- (c) President of the Fiscal Appeal Court, in relation to appeals to that Court;

may make such rules as may be deemed by the Chief Justice and the Judge President or, as the case may be, the President of the Fiscal Appeal Court, to be necessary or expedient for giving effect to the provisions of this section. No such rule shall have effect until approved by the Minister responsible for justice and published in a statutory instrument.

(6) For the purposes of this section, a question as to whether a matter is a question of fact, of mixed fact and law or of law shall be treated as a question of law, and an appeal shall lie accordingly, but only with the leave of the court appealed from or, failing such leave, with the leave of a judge of the court to which the appeal is to be made.

(7) For the purposes of this section, subject to this section and of any rules made thereunder—

- (a) the Supreme Court shall have all the appropriate powers conferred on it by the Supreme Court Act [Chapter 7:14]; and
- (b) the High Court shall have all the appropriate powers conferred on it by the High Court Act [Chapter 7:06]; and
- (c) the Fiscal Appeal Court shall have all the powers conferred by Part II of the Fiscal Appeal Court Act [Chapter 23:05].

### **30 Recovery of duty**

(1) Any duty or interest or any other sum whatsoever due under this Act shall be a debt due to the State and shall be recoverable by action instituted in the name of the Master in any competent court.

(2) Any such action may be instituted against any person liable under any provision of this Act, notwithstanding that the obligation to pay the amount of duty is also imposed by this Act on any other person.

(3) In any such action it shall not be competent for the defendant to raise as a defence any matter which could be the subject of an appeal in terms of section *twenty-eight* and which has not been determined in terms of that section, but the court hearing such an action may, if it is satisfied that such an appeal is pending and that there are reasonable grounds for such appeal, postpone the action until such appeal has been determined.

### **31 Prevention of or relief from double taxation**

(1) The President may enter into an agreement with the government of any other country or territory, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of Zimbabwe and of such other country or territory, of estate duty in respect of the same property.

(2) As soon as may be after the conclusion of any such agreement, the arrangements thereby made shall be notified by the President, by proclamation in a statutory instrument, whereupon the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of estate duties levied or leviable in Zimbabwe, have effect as if enacted in this Act, but only if and for so long as such arrangements, so far as they relate

to immunity, exemption or relief in respect of estate duties levied or leviable in such other country or territory, have the effect of law in such other country or territory.

(3) Where the President revokes any such proclamation, the arrangements notified therein shall cease to have effect.

(4) The Minister shall lay a copy of every agreement referred to in subsection (1) before Parliament on one of the sixty days on which Parliament next sits after the conclusion of the agreement, and if Parliament does not by resolution approve such agreement on one of the sixty days on which Parliament next sits after the date when the agreement is so laid before it, the agreement shall cease to be of force on the day next following the sixtieth day on which Parliament next sits after the said date.

## PART V

### OFFENCES, REGULATIONS, FORMS AND SAVINGS

#### **32 Offences and penalties**

(1) Any person who, in relation to any matter dealt with in this Act, makes a statement which is false in a material respect and which he knows to be false or does not have reasonable grounds to believe to be true shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who, without lawful cause, obstructs or hinders the Master in carrying out any provision of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(3) Any person who, without just cause, fails to comply with any reasonable requirement of the Master made for the purpose of carrying out any provision of this Act shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section substituted by Act 22 of 2001]

#### **33 Regulations**

The Minister may make regulations for the better carrying out of the objects and purposes of this Act, including regulations for the valuation of annuities or of fiduciary, usufructuary or other limited interests in property and the payment of fees to executors and other persons required to render returns under this Act in respect of property with regard to which no remuneration is payable under the provisions of section 56 of the Administration of Estates Act [*Chapter 6:01*].

#### **34 Forms to be prescribed**

The Master may prescribe such forms as he may consider necessary for the proper carrying out of any provision of this Act.

#### **35 Savings**

Notwithstanding anything to the contrary contained in this Act, section 35 of the Death Duties Act [*Chapter 146 of 1963*] and all the provisions of the Southern Rhodesia and Republic of South Africa Death Duties Act [*Chapter 158 of 1963*] shall be applied as if such provisions had been contained in an agreement entered into, approved and proclaimed in terms of section *thirty-one*.