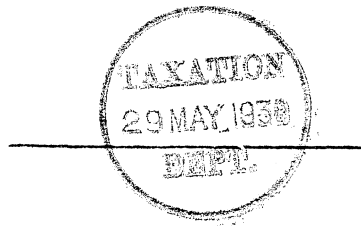


1923.
(SECOND SESSION.)

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.



REPORT

OF THE

ROYAL COMMISSION ON TAXATION;

TOGETHER WITH APPENDICES.

FIFTH AND FINAL REPORT.

Presented by Command: ordered to be printed, 13th June, 1923.

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COMMONWEALTH OF AUSTRALIA.

FIFTH AND FINAL REPORT OF THE COMMISSIONERS.

*To His Excellency the Right Honorable HENRY WILLIAM, BARON FORSTER, a Member
of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most
Distinguished Order of St. Michael and St. George, Governor-General and
Commander-in-Chief of the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY :

We, the Commissioners appointed by Royal Letters Patent to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—

- (1) The equitable distribution of the burdens of taxation ;
- (2) The harmonization of Commonwealth and State taxation ;
- (3) The giving to primary producers of special consideration as regards the assessment of Income Tax, particularly in relation to losses resulting from adverse weather conditions ; and
- (4) The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals,

have the honour, in continuation of our First, Second, Third, and Fourth Reports, dated respectively 27th October, 1921, 13th April, 1922, 21st July, 1922, and 3rd November, 1922, to report hereunder upon the following subjects coming within the Terms of Reference :—

- (32) Estate, Probate, and Succession Duties.
- (33) Commonwealth Estate Duty Assessment Act.
- (34) Brief Summary of Probate and Succession Legislation in the Several States.
- (35) Estate or Succession Duty, which form should be adopted ?
- (36) Amount Exempted from Duty.
- (37) Differentiation—Consanguinity.
- (38) Graduation.
- (39) Property passing under Settlements.
- (40) Joint Interests.
- (41) Corporation Duty.
- (42) Board of Appeal.
- (43) Office Orders.
- (44) Anomalies arising under Commonwealth and States' Scales of Rates.
- (45) Miscellaneous.
- (46) Comments on Various Sections of the Commonwealth Estate Duty Assessment Act.
- (47) Entertainments and Amusements Taxation.
- (48) War-time Profits Tax Assessment Act.

One of our colleagues, Mr. John Thomson, resigned early in November, 1922. We were thus deprived of the advantage of Mr. Thomson's assistance in the preparation of this our Final Report.

SECTION XXXII.

ESTATE, PROBATE, AND SUCCESSION DUTIES.

838. Taxes of this character take two forms, the more common of which may be called an Estate or Probate Duty, inasmuch as it is an amount levied upon the total of an estate of a deceased owner, as distinguished from a tax upon the value of a beneficiary's interest. In this form it is very ancient, as there is evidence that Death Duties of this kind were collected in Egypt as far back as the 2nd century B.C.*

839. **British Estate Duty.**—During the feudal period in England, feudal lords commonly exacted contributions upon the devolution of property at the death of the tenant. The earliest statutory tax upon estates of deceased persons in England was levied under an Act of the year 1694. This tax came to be known popularly as the Probate Duty. At first it was merely a Stamp Duty of 5s. upon each Probate or Letters of Administration. Fifteen years later, the first attempt was made to impose the tax with reference to the value of the property, but only personal property was made taxable. It is a coincidence that the Statute imposing the present British Estate Duty was passed exactly 200 years after the Statute above mentioned, namely, in 1894. The Statute of 1894 was of great importance, for the reason that it extended the tax to **real** property, which for 200 years had escaped this form of Death Duty, and also because it embodied a complete scheme of graduation, with a correlative aggregation of interests.

840. The history of British Death Duties, however, is not exhausted when the story of the imposition of tax upon the estates of deceased persons has been told. In 1796 an Act was passed imposing a tax which came to be known as the Legacy Duty. The tax was levied—

“in respect of the acquisition by collaterals and strangers of property through the testacy or intestacy of its deceased owner.”

The tax had reference to **personal** property only, a second Bill for the taxation of real estate on similar lines having been withdrawn in view of the opposition which developed. The Act of 1796, which, it will be seen, is in the nature of a tax upon beneficiaries rather than upon the estate of a deceased person, is still part of the group of Statutes in Great Britain regulating the so-called Death Duties. In 1853 a Succession Duty was imposed, which also, like the Legacy Duty, is a tax upon beneficiaries, and which extended the taxation of beneficiaries' interests to **real** property. The present British Death Duties are levied under three Acts, namely, the Estate Duty Act of 1894, which imposes a tax upon the total value of a deceased estate, and the complementary Legacy Duty and Succession Duty Acts.

841. The following table shows the rates of Estate Duty now levied in Great Britain. These rates are imposed on the total net value of the estate, and are not subject to any deductions on account of the degree of relationship to the testator of the beneficiaries :—

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

* See *The Taxation of Capital*. Soward and Willan. Waterlow and Sons Ltd., London Wall, London, 1910. We are also indebted to the same valuable work for other information in this section with regard to British and Continental Death Duties.

842. The following table shows the rates of Legacy Duty and Succession Duty now levied in Great Britain :—

Relationship of the Beneficiary (or the Person of nearer consanguinity whom he has married) to the Person from whom the Benefit is derived.	Rates of Legacy Duty and Succession Duty.
1. Husband or wife	1 per cent.
2. Lineal ancestors or issue	1 "
3. Brothers or sisters or their descendants	5 "
4. Brothers or sisters of the father or mother or their descendants	10 "
5. Brothers or sisters of a grandfather or grandmother or their descendants	
6. Other collaterals or strangers	

843. **Inheritance Taxes in the United States of America.**—The following particulars concerning the general scope of the American Inheritance Taxes are culled from a contribution upon the subject by Mr. John Harrington, Inheritance Tax Counsel of the Wisconsin Tax Commission, published in Volume LVIII. of the *Annals of the American Academy of Political and Social Science* (March, 1915).

844. The Inheritance Tax in the United States of America is of comparatively recent origin. Since the adoption of this form of taxation by the State of New York in 1885, it has extended rapidly, and now forms part of the taxation system in about four-fifths of the States of the Union.

"The Wisconsin law is modelled upon the New York law, as it existed prior to 1911, and is fairly typical of the laws prevailing in most of the States. Its salient features may be briefly summarized as follows :—

"The tax is in legal theory upon the transfer or the right to receive the property of the decedent, not upon the property itself. But the tax is measured by the amount of property passing to the beneficiary, and is made a lien upon such property, and a personal charge against the executor and the beneficiary until paid. A tax is imposed not only upon the transfer of property by will or intestate law, but also upon any transfer by deed, grant, bargain, sale or gift made in contemplation of death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

The primary rate is 1 per cent. when the transfer is to husband, wife, children, father or mother; $1\frac{1}{2}$ per cent. to uncles, aunts, nieces and nephews; 3, 4 and 5 per cent. to relatives further removed, according to degree of kindred; and 5 per cent. to strangers in blood, corporations and other organizations, except municipal, religious, charitable and educational corporations within the State, which are exempt.

The above primary rates apply to the first \$25,000 received by the beneficiary. The next \$25,000 bears a rate of one and a half times the primary rate; the next \$50,000 twice the primary rate; the next \$400,000, two and a half times the primary rate; and all above \$500,000 three times the primary rate. Thus it will be seen that a distant relative or a stranger in blood will pay 15 per cent. upon the excess over a half-million dollars that he may receive.

An exemption from the tax is allowed of \$10,000 to a widow, \$2,000 to each of the other relatives named in the first section, \$500 to those in the second section, and lesser amounts to more distant relatives, down to \$100 to those in the fifth class. These exemptions are taken out of the first \$25,000.

The Inheritance Tax is imposed and collected during, and as a part of, the settlement of estates in the County or Probate Courts, and is usually paid by the executor and charged against the share which he is required to pay over to each beneficiary upon such settlement."

In answer to the question—"If a decedent lived in one State and owned property in another State, to which State should the tax be paid?" Mr. Harrington writes :—

"Quite early in the administration of the law it was decided that, if the property is real estate, the tax is due to the State where the land is located. This rule has been affirmed repeatedly, and has received general acquiescence.

Where, however, the foreign property is personal, it was early held to follow the residence of the owner and to be taxable in the State where the deceased had his domicile. But numerous States held that the property was taxable in the State where located, and in such cases the same property was subjected to double taxation. After eliminating all real estate, and all personal property located in the State of the owner's domicile, the property so subjected to double taxation is relatively unimportant in amount

and not sufficient in any sense to serve as a basis for condemnation of the law. Nevertheless possible double or multiple taxation is a problem of sufficient moment to demand the careful attention of students and legislators.

The recent amendment to the Wisconsin Law (Section 1087-11, Sub-sections 3-8, Statutes of 1913) is intended as an important step toward the elimination of double taxation, without surrendering the right to tax the transfer of securities representing Wisconsin corporate property. It provides in substance that the stocks, bond and other securities of a non-resident decedent shall be subject to the Inheritance Tax in this State at a value proportionate to the value which the Wisconsin assets of the corporation bear to the entire assets. It is true that this law does not cover the entire situation, nor have its administrative problems been fully worked out.

Argument is frequently made on behalf of the Inheritance Tax as an economic measure, designed in some degree to reduce 'swollen' fortunes. There is no basis for such argument; and a State tax heavy enough to have that effect would probably drive much of the liquid capital out of the State, and prevent capital from coming in."

845. Frequency of Successions—Limit of Tax in relation to.—There has been much discussion as to the average interval between any two successions to property, and, while the average duration of a generation of inheritance has commonly been taken at about 30 years, the exceptions from the average are so important that several countries have adopted provisions under which the Estate Duty is reduced, or is not levied at all, if a second succession to property occurs within a short specified period. For example, in Great Britain, if property consisting of land or a business passes on death a second time within five years, substantial allowances are made in the Estate Duty, according to a sliding scale ranging from an allowance of 50 per cent. where the second death occurs within a year of the first death down to 10 per cent. where it occurs more than four years later than the first death. In the United States, under a law of 1918, no tax is charged upon a second succession if occurring within five years of the succession upon which Estate Duty has been paid. Similar provisions exist in some other countries—for example, Germany, Chile and Japan.

Australian Statutes contain no provisions of the sort. While such allowances are appropriate where Death Duty is levied in the form of an Estate Duty, there is, in our opinion, little justification for their adoption where a Succession Duty in the form we recommend (paragraph 897) is levied in lieu either of Estate Duty or of a combination of the two forms of Death Duty.

It may, of course, happen that "quick" successions occur, involving in each case the transfer of the whole estate of the deceased to one person. In those circumstances, an allowance on account of the rapidity of succession would be equally appropriate, whether the Duty levied were in the form of Estate Duty or of Succession Duty; but the circumstance that the whole estate passes in each case to one person is unlikely to occur except in cases of small estates, where the tax would be at a lower rate.

846. Life Tenants and Remaindermen.—Computation of respective interests.—For the purposes of the assessment of Estate Duty in Australia, the practice is to use actuarial tables for determination of the values of the respective interests where property devolves upon one person for a life tenancy with remainder over. In France, with a view to simplicity, the respective interests are determined in accordance with an arbitrary scale approximating to the results obtained from computations based upon the average expectancy of life at various periods. The French table is as follows :—

Age of Usufructuary.				Value of Life Interest.				Value of Reversion.			
Not exceeding 20	..	..	..	7/10ths	of the whole property	..	..	3/10ths	of the whole property	..	..
Over 20 but not exceeding 30	..	..	..	6/10ths	" "	..	..	4/10ths	" "	..	..
" 30	"	"	40	5/10ths	" "	..	..	5/10ths	" "	..	..
" 40	"	"	50	4/10ths	" "	..	..	6/10ths	" "	..	..
" 50	"	"	60	3/10ths	" "	..	..	7/10ths	" "	..	..
" 60	"	"	70	2/10ths	" "	..	..	8/10ths	" "	..	..
" 70	..	..	..	1/10th	" "	..	..	9/10ths	" "	..	..

847. Although the French table is simple, it is open to the objection that the intervals of ten years within which no change in the proportion of value occurs are so long that serious inequities may arise which cannot arise under the method of calculation adopted in Australia.

SECTION XXXIII.

COMMONWEALTH ESTATE DUTY ASSESSMENT ACT.

848. This Act came into force in December, 1914, and under it Duty is levied and payable upon the net value, as assessed under the Act, of the estates of persons dying after the commencement of the Act (Section 8 (1)).

849. In determining the net value of an estate, all debts due and owing at the time of death are allowable deductions, if the deceased person was domiciled in Australia (Section 17). If the deceased person at the time of death was not domiciled in Australia, the deductible debts are debts due and owing to persons resident in Australia, or contracted to be paid in Australia, or charged on Australian property (Section 18). Allowable deductions include Probate and Succession Duties payable under any State Act, but do not include voluntary debts or funeral or testamentary expenses (Section 3).

850. Duties lawfully paid in any place outside Australia in respect of any part of the estate outside Australia are deductible from the Duty assessable under the Act (Section 8 (7)). Under an Amending Act passed in October, 1922, deductible debts now specifically include Federal and State Land and Income Taxes which become due and payable after death and within one year after the payment of Duty on any assessment under the Act (Sections 2 and 3).

851. The rates of Duty chargeable under the *Estate Duty Act 1914* are :—

Where the Total Value of the Estate after deducting all Debts—	Duty is payable at the Rate per cent. of—
Exceeds One thousand pounds and does not exceed Two thousand pounds	One pound
Exceeds Two thousand pounds	One pound, with an additional percentage of one-fifth of a pound for every One thousand pounds or part of One thousand pounds in excess of the sum of Two thousand pounds, but so that the percentage shall not exceed Fifteen pounds

Duty is levied at two-thirds of the above rates on so much of the estate as by will, intestacy, gift *inter vivos* or settlement passes to the widow or children or grandchildren of the deceased person (Section 8 (6)).

852. For the purposes of the Act, the estate of a deceased person comprises :—

- (a) His real property in Australia (including real property over which he had a general power of appointment exercised by his will).
- (b) His personal property, wherever situate (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in Australia.
- (c) His personal property in Australia (including personal property over which he had a general power of appointment exercised by his will), including all debts, money, and choses in action receivable or recoverable by the administrator in Australia, if the deceased had at the time of his death a foreign domicile (Section 8 (3)).
- (d) Property (a) which passed from the deceased person by any gift *inter vivos* or settlement made before or after the commencement of this Act within one year before his decease, or, being property comprised in a settlement under which he was tenant for life, the life interest of which was surrendered by him to the remaindermen within one year before his decease ; or
 - (b) In which he had a beneficial interest at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person (Section 8 (4)).

Property (real or personal) which is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes, is exempt from Estate Duty (Section 8 (5)).

853. Every administrator is required to lodge a full and complete return of all the estate in Australia within three months of the death of the deceased person in respect of whose estate he is administrator (Section 10).

In the event of an administrator failing to furnish the necessary return, or of the Commissioner not being satisfied with the return made by an administrator, the Commissioner is empowered to issue a default assessment, against which, however, an appeal may lie (Section 16).

854. The Act permits of the adoption by the Commonwealth, for the purposes of the Act, of the value of dutiable estate as assessed for Duty under a State law in respect of the same estate (Section 14).

To meet special cases in which the dutiable value of an estate is not fairly ascertainable, the Commissioner is authorized to compound the Duty on such terms as he thinks fit (Section 19).

855. The Commissioner may within one year after the last payment on account of Duty make such alterations or additions to an assessment as he thinks necessary to insure accuracy (Section 20 (1)).

If an amended assessment discloses liability for additional Duty, the administrator is only liable in respect of such additional Duty to the extent of any property then under his control, or which can be legally applied by him for the purpose, unless in the first instance he had been guilty of fraud or gross negligence, in which case he is held personally liable for the additional Duty (Section 20 (2) and (3)).

If an amended assessment discloses an overpayment of Duty, the Duty paid in excess of the amount payable is refunded by the Commissioner (Section 20 (4)).

856. Objections against assessments may be made in writing within 30 days after service by post of the notice of assessment, or within a further 30 days at the discretion of the Commissioner (Section 24 (1)).

An administrator who is dissatisfied with the Commissioner's decision upon his objection may within 30 days after receipt in writing of that decision appeal to the High Court or the Supreme Court (Section 24 (4)).

If the original assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the one appealed against (Section 24 (6)).

Where an assessment is based solely upon assessment made under the law of a State, there is no right of appeal against the Commonwealth assessment, unless an appeal has been made from the State assessment (Section 24 (8)).

Appeals do not entitle an administrator to defer payment of Duty (Section 25).

857. Duty assessed is payable within thirty days after the service by post of the notice of assessment (Section 29).

The Commissioner may extend the time for payment of Duty or accept payment thereof by instalments, upon receipt by him of security for payment of the Duty, and provided the Duty is paid within a period of two years (Section 30).

A penalty of 10 per cent. of the Duty unpaid is imposed if Duty is not paid within 30 days after service by post of the notice of assessment (Section 31) ; but the Amending Act of October, 1922, gives the Commissioner discretionary power to remit the penalty or any part thereof—the latter provision having retrospective effect to 1st July, 1921 (Section 4).

858. Duty assessed under the Act is made a first charge upon the estate in priority over all other encumbrances, and any disposition of the estate or any part of it is prohibited until the Duty thereon has been paid, or until the Commissioner certifies that he holds security for the payment of the Duty sufficient to permit any specified part of the estate to be disposed of (Section 34 (1)). Contravention of this provision of the Act renders an administrator personally liable for the Duty (Section 34 (2)).

859. Section 35 of the Act sets out the manner in which an administrator shall apportion the Duty payable in respect of an estate (exclusive of so much of the estate as is exempt from Duty) among the beneficiaries :—

(a) The Duty shall in the first instance be apportioned among all the beneficiaries in proportion to the value of their interests ; and

(b) Where there are any beneficiaries under the will each of whom takes only specific bequests or devises of a value not exceeding Two hundred pounds, the Duty which under paragraph (a) of this section would be payable in respect of the interests of those beneficiaries shall be apportioned among all the beneficiaries in proportion to the value of their interests :

Provided that for the purposes of this section the value of the interests of the widow or children or grandchildren of the deceased shall be reckoned at two-thirds of their assessed value.

860. The Act permits the Commissioner to arrange for separate assessments of the Duty payable in regard to the respective interests of the beneficiaries in any separate properties, or in any defined portions of the same property, as he considers reasonable (Section 36 (1)). The Duty so separately assessed is thereafter charged solely upon the separate estate in respect of which it has been assessed. Payment of any Duty so separately assessed will free the part of the estate in respect of which the Duty was assessed from any charge for unpaid Duty separately assessed on any other portions of the estate (Section 36 (2)).

861. The Commissioner may register any outstanding Duty as a charge on property registered with the Registrar-General or Registrar of Titles of any State (Section 37). In the event of the non-payment of Duty by the final date fixed for payment, the Commissioner may apply to the Court for an order for the sale of a portion of the estate sufficient to satisfy the Duty (Section 39).

862. The Act gives the Commissioner or any officer authorized by him the right of full and free access at all times to all lands, buildings, places, books, documents, &c., for the purposes of the Act (Section 44).

863. The Commissioner may by notice in writing require any person to attend and give evidence on oath before him or before any duly authorized officer concerning any estate or assessment (Section 45).

864. The Act prescribes various maximum penalties for the following offences :—

1. The obstruction of any officer acting in the discharge of his duty under the Act or the Regulations.
2. The failure or neglect to duly furnish a return.
3. The refusal or neglect to attend and give evidence when required.
4. The making or delivering (knowingly and wilfully) of any false return.
5. The under-statement of the value of an estate with intent to defraud.
6. The evasion of assessment or Duty by fraud or wilful act, default or neglect.

The Act constitutes the two last-named indictable offences, and prescribes a maximum penalty of £500 or imprisonment for three years (Sections 46, 47, and 48).

SECTION XXXIV.

BRIEF SUMMARY OF PROBATE AND SUCCESSION LEGISLATION IN THE SEVERAL STATES.

865. **New South Wales.**—Duty is charged on all estate in New South Wales whether real or personal. The following property is subject to Duty, viz. :—

Property—

- (a) disposed of by will or settlement containing trusts to take effect after death ;
- (b) comprised in any gift made within three years before death ;
- (c) passing under any settlement by which an interest or benefit is reserved to the deceased for life, or for the life of any other person or for any period determined by the death of deceased or any other person, or by which deceased has reserved the right to restore or reclaim any property or the proceeds of the sale thereof ;
- (d) comprised in any gift made at any time of which possession and enjoyment has not been assumed by the donee ;
- (e) comprised in a *donatio mortis causa*, made at any time ;
- (f) which deceased has at any time caused to be conveyed to or vested in himself and any other person jointly so that the beneficial interest therein passes or accrues by survivorship to any person ;
- (g) in which the deceased or any other person had an interest limited to cease on death of deceased, **unless**—
 - such disposition was *bonâ fide* made or effected within [*sic*] three years before death and—
 - bonâ fide* possession and enjoyment was assumed immediately upon disposition and thenceforward retained ;
- (h) consisting of money payable under any policy of assurance which has been kept up by deceased for the benefit of a beneficiary ;
- (i) consisting of any annuity or other interest provided by deceased to the extent of the beneficial interest accruing by survivorship or otherwise on death of deceased ;
- (j) in respect of which deceased had general power of appointment ;

- (k) which on death passes to any other person by virtue of any agreement made by deceased to the extent by which the value exceeds any consideration receivable by the estate of the deceased under such agreement ;
- (l) which deceased has within three years before death transferred to or vested in a private company in consideration of shares or other interest therein ;
- (m) Specialty debts secured over property in New South Wales ;
- (n) Shares held at time of death in any company or corporation carrying on business in New South Wales.

866. Valuation is made as at the date of grant of probate, and all interest, &c., accrued up to that date is dutiable.

867. Estates under £1,000 net value are not liable to Duty. Over that amount the Duty rises by grades from 2 per cent. to a maximum of 20 per cent. on a net value of over £150,000. Where the net value of estate passing to widow, children or grandchildren does not exceed £5,000 and the deceased was domiciled in New South Wales, Duty is payable at half the rate otherwise payable.

868. Interest at $6\frac{1}{2}$ per cent. is payable on the amount of Duty outstanding, and is calculated from six months after death up to date of payment.

869. **Victoria.**—Duty is payable on the real and personal estate of a deceased person situated in Victoria. Bequests to charities are exempt. Property passing under gifts *inter vivos* made within one year of death is dutiable, as is also property the subject of any gift *inter vivos* whenever made if possession was not immediately entered into by the donee and thereafter retained continuously to the entire exclusion of the donor. Any property to which the deceased was originally entitled, and which he voluntarily causes to be registered jointly in the names of himself and any other person so that part or the whole of the beneficial interest passes to the survivor, is, to the extent of such beneficial interest, dutiable. Duty is charged on all property over which the deceased had a general power of appointment; on property passing under conveyances and assignments made with intent to evade payment of Duty, and on property passing under settlements containing trusts to take effect after the death of the settlor. Property given by way of *donatio mortis causa* is also dutiable.

The estate is valued as at date of death.

870. The rates of Duty are as follows :—

- (a) Where the estate passes to strangers by will or to certain relatives by settlement—

Under £200	.. ..	Exempt
Exceeding £200 but does not exceed £300	.. ..	$1\frac{1}{2}$ per cent.
Exceeding £300 but does not exceed £400	.. ..	2 per cent.

 &c., reaching a maximum rate of 10 per cent. on estates exceeding £20,000.
- (b) Where the estate passes to widow, widower, ancestor or descendant—

Under £500	.. ..	Exempt
Exceeding £500 but does not exceed £1,000	.. ..	2 per cent.
Exceeding £1,000 but does not exceed £2,000	.. ..	3 per cent.

 &c., reaching a maximum rate of 10 per cent. on estates exceeding a net value of £100,000.

871. **Queensland.**—Probate Duty is charged in respect of every grant of probate or letters of administration made in respect of the Queensland estate of a deceased person at the following rates, viz. :—

- If the net value is less than £300 Nil
- If the net value is more than £300 For every £100 or part thereof, £1

S 2. Probate Duty is payable only on the **personal** estate which comes into the hands of the executor or administrator.

873. Succession Duty* also (which is not limited to personal estate) is payable as follows :—

- Where the aggregate successions amount to less than £200 .. Nil
- Where the aggregate successions amount to £200 but do not exceed £1,000 2 per cent.
- Where the aggregate successions amount to more than £1,000 but do not exceed £2,000 3 per cent.
- and thence graded to—
- Where the aggregate successions amount to more than £27,500 but do not exceed £30,000 8 per cent.
- Exceeding £30,000, 8 per cent. plus $\frac{1}{3}$ per cent. for each £5,000 or part thereof, but not to exceed 15 per cent.

* See also paragraph 884.

Where the property passes to wife or lineal issue the Duty charged is :—

Where the total value of the estate—

Does not exceed £500	Nil
Exceeds £500 but does not exceed £2,500 ..	One-half prescribed rates
Exceeds £2,500 but does not exceed £5,000 ..	Two-thirds prescribed rates

and where the successor is not a stranger in blood but is other than the wife or husband or lineal issue the Duty charged is :—

The prescribed rates plus one-half, but not to exceed 15 per cent ;

and where the successor is a stranger in blood the Duty charged is :—

Double the prescribed rates, but not to exceed 20 per cent.

874. Duty is charged on realty situated in Queensland and on all personalty. Every disposition of property by reason of which any person becomes entitled to property or the income therefrom after the death of some other person is regarded as a succession. The interest accruing to a survivor under a joint tenancy is a succession. A person deriving a general power of appointment upon the death of another is regarded, when he exercises this power, as the successor to the property. Dispositions accompanied by a reservation of a benefit to the grantor confer a succession, as do also those made to take effect at periods depending on death or made for the purpose of evading Duty. Duty on realty is payable by four half-yearly instalments, and may be paid in advance, subject to a discount of 4 per cent per annum. Gifts *inter vivos* made within two years of death are dutiable as successions.

875. For Probate Duty an estate is valued as at the date of grant of probate ; but for Succession Duty as at the date when the succession takes effect.

876. **South Australia.**—Death Duty in South Australia, unlike that of other States, takes the form of a true Succession Duty, similar to that levied in Great Britain. (See also para. 884.) Real property in South Australia and personal property wherever situated is dutiable if the deceased person was domiciled in South Australia. Duty payable outside the State on any property not situated in South Australia may be deducted from the Duty payable thereon in South Australia. Duty is payable in addition on—

- (a) property passing by *donatio mortis causa* ;
- (b) property accruing to any person under a settlement containing trusts to take effect after death of the settlor or any other person ;
- (c) property accruing to any person under a deed of gift made within three months prior to death of the donor ;
- (d) property the subject of any conveyance or assignment made with intent to evade the payment of Duty, and in this case at double rates.

The value for Duty is determined as at date of death of testator.

877. The rates of duty are as follows :—

- (1) On property passing to widow, widower, descendant and ancestor—

If the net present value is—

More than £500 and less than £700	1½ per cent.
More than £700 and less than £1,000	2 per cent.

and so on irregularly, reaching a maximum of 17½ per cent. at a net value of £200,000.

Provided that if the person taking is the child under twenty-one or the widow of the deceased, Duty is charged at half rates if the whole of the estate is valued under £2,000.

- (2) On property passing to brother, sister, descendant of brother or sister, or any other blood relative—

If the net present value is—

Under £200	1 per cent.
Over £200 and less than £300	1½ per cent.

&c., reaching a maximum rate of 17½ per cent. at a net value of £50,000.

- (3) Where property passes to a stranger in blood, Duty at the rate of 10 per cent. is payable where the net present value of the estate is less than £10,000 ; if between £10,000 and £20,000, at 15 per cent. ; if over, £20,000, at 20 per cent.

Slightly different rates are payable on property passing under a settlement or gift *inter vivos*, though the maximum and minimum rates are the same.

878. **Western Australia.**—Duty is payable only upon the real and personal property in Western Australia. The rates are—

On an estate of a net value not exceeding £500	1 per cent.
On an estate of a net value exceeding £500 and not exceeding £1,000 ..	2 per cent.
On an estate of a net value exceeding £1,000 and not exceeding £2,500	3 per cent.

and so on irregularly to a maximum of 10 per cent. at a net value exceeding £20,000.

879. Where property passes to parent, issue, husband, wife, and issue of husband and wife, resident and domiciled in Western Australia, Duty is payable at half of the rate otherwise payable. Property the subject of a gift by way of *donatio mortis causa* is also subject to Duty under this Act. Where property passes under a settlement made at any time and containing trusts to take effect after death or by a deed of gift made within six months of death, this is subject to Duty. It may be noted that, with regard to settlements and gifts *inter vivos*, if the settlor or donor was domiciled in Western Australia, personal property situated in Western Australia only is dutiable. Property conveyed or assigned with intent to evade Duty is taxable at double rates. Certain charitable bequests are exempt. For Duty purposes, the estate is valued as at date of death.

880. **Tasmania.**—The State Act applies to the estates of all deceased persons leaving real property in Tasmania or its dependencies and personal property wherever situated if the deceased was domiciled in Tasmania and personal property in Tasmania only if the deceased was domiciled elsewhere. Property passing under a settlement or under a deed of gift made within three years of death is dutiable. Any necessary adjustment of Duty must be made within three years of filing of accounts. Property conveyed or assigned with intent to evade the payment of Duty is dutiable. Any conveyance, assignment, &c., shall be deemed to be made with intent to evade Duty if it is to take effect on the death of the person making it. Property the subject of a *donatio mortis causa* is dutiable.

881. The rates are as follows :—

(a) When the value of the property of the deceased person, settlor or donor at the time of his death—

Exceeds £500 but does not exceed £1,000	2 per cent.
Exceeds £1,000 but does not exceed £2,000	2½ per cent.
Exceeds £2,000 but does not exceed £5,000	3½ per cent.

and so on irregularly to a maximum of 10 per cent. on net value exceeding £92,000.

(b) Where the property accrues to—

- (1) Widow, widower, descendant or ancestor, at above prescribed rates.
- (2) Brother or sister, or child of brother or sister, at double the prescribed rates with a maximum of 10 per cent.
- (3) Persons beyond the third degree of consanguinity or strangers in blood, the Duty is 10 per cent. throughout.

882. **Northern Territory.**—The South Australian law applies in this Territory, but is administered by the Commonwealth.

SECTION XXXV.

ESTATE DUTY OR SUCCESSION DUTY—WHICH FORM SHOULD BE ADOPTED?

883. **Definition of Terms.**—In some Statutes dealing with Duties leviable upon the estates of deceased persons, the terms “Estate Duty” and “Succession Duty” are rather loosely used. In this Report, the term “Estate Duty” is used as meaning a Duty which is levied upon, and is measured by, the aggregate taxable value of the estate of a deceased owner. The term “Succession Duty” is used as meaning a Duty which, whether or not it includes other elements, is levied upon, and is measured by, the taxable value of the interest of each beneficiary.

884. **British and Australian Legislation.**—As pointed out in paragraph 840, the British taxation of estates of deceased persons is of a dual character—that is, a Probate Duty is levied upon the estate as a whole and a Succession Duty is levied upon the interest of each beneficiary.

The Commonwealth Estate Duty is similar to the English Probate Duty in that the tax is levied upon the total taxable value of the estate. This is true also of all Australian States except South Australia. In Queensland, the scheme of taxation is somewhat similar to that of Great Britain—that is, a Probate Duty is charged upon the whole estate, subject to a small exemption, and an additional tax (the rates of which are graduated according to the total value of the estate) is levied upon the interests of beneficiaries. This latter tax is called a Succession Duty. It is not, however, a Succession Duty in the sense in which we use the term, inasmuch as the rates are determined by the value of the whole estate and not by the amount of the individual bequest. The effect of the dual provisions in the Queensland Act is to impose two Estate Duties, since the so-called Succession Duty, which is really an Estate Duty in its incidence, is increased by 1 per cent., the uniform rate of the so-called Probate Duty. In South Australia, under the Succession Duty Act, the tax levied is a Succession Duty in that it is levied upon the interest received by each beneficiary and the rate does not depend upon the taxable value of the whole estate of the testator.

885. New Zealand Legislation.—In New Zealand, the scheme of taxation is similar to that of Queensland. Under the *Death Duties Act* 1909, and amendments thereof, an Estate Duty is levied on the “final balance” in excess of £1,000 of the estate of a deceased person. In addition, a duty called Succession Duty is imposed in respect of every interest acquired or possessed by any person as the “Successor” of the deceased. For further details as to rates, etc., see paragraphs 942, 943.

886. European Death Duties.—The form of Death Duties in Europe is described in the following extract from the “Taxation of Capital,” Soward and Willan :—

“In the majority of foreign countries (where the grant of representation as understood by us, [*i.e.*, in Great Britain,] is unknown, and where also there is hardly anything to be found analogous to our system of settlements and trusts), taxation by means of Death Duties is most usually effected through the agency of a single tax, in the nature of an acquisition duty, which more often than not, entirely ignores the administrator or testamentary executor, and looks to no other person than the beneficiary himself for the payment of duty in respect of the acquisition by him of his share of the property forming part of the estate of its deceased owner.”

In Holland and Belgium, however, special Transfer Duties upon the estates of deceased persons supplementary to Succession Duties are levied.

887. Basic Concept.—A Death Duty in the form of an Estate Duty is the most obvious type, and historically appears to have been the first to be adopted. It has often been regarded, theoretically, as founded upon the conception that, when an owner of property dies, the State naturally asserts itself as its custodian and disposer. Mr. Gladstone, speaking in the House of Commons in reference to the action of the State in such a case, said :—

“The carrying property in perfect security over the great barrier which death places between man and man is perhaps the very highest achievement, the most signal proof of the power of civilized institutions . . . and an instance so capital of the great benefit conferred by law and civil institutions upon mankind, and of the immense enlargement that comes to natural liberty through the medium of the law, that I conceive nothing more rational than that, if taxes are to be raised at all, the State shall be at liberty to step in and take from him who is thenceforward to enjoy the whole in security that portion which may be *bonâ fide* necessary for the public purpose.” (*Ibid.*)

This statement was made in connexion with the British Succession Duty Act of 1853, which is a real tax upon successions, but (as already pointed out) is a tax additional to a Probate or Estate Duty, the basis of which latter tax is the value of the whole estate. So far as any question of principle is deducible from Mr. Gladstone’s speech, it would seem fair to make the deduction that the mode in which the State should preferably impose its tax is by means of a true Succession Duty and not by means of an Estate Duty.

888. What principle should govern the choice between these two methods of taxation of the estates of deceased persons ?—This is a question of some difficulty, and the absence of a settled theory on the subject is illustrated by the way in which the taxation has developed in Great Britain during the last 200 years. (See “Estate, &c., Duties,” paragraphs 839 and 840).

889. The view has sometimes been put forward that a charge upon the total estate of a deceased person is a means by which the State collects taxation, the payment of which, either through inadvertence or deliberate evasion, had been avoided during the lifetime of the deceased. This view, however, depends for its efficacy upon the assumption that there is a widespread evasion of taxation, particularly of Income Tax and Land Tax. In our opinion, no firm theory could be built upon such an assumption. Another view is that which regards Death Duties as justified on the ground that they provide a means of taxing accretions of capital which may have escaped in whole or in part from any contribution to the Revenue through the annual taxes. This can, however, apply only in a limited proportion of cases.

890. **Relative Simplicity.**—An Estate Duty, in addition to its greater obviousness, is said to possess the merit of being somewhat more simple in administration than a Succession Duty. That view must, however, be largely discounted under modern legislation, which, by the varying degrees of rates and of exemptions based upon differing degrees of consanguinity, goes far to place both Succession Duty and Estate Duty on the same plane as to administration. If any great advance in simplicity is sought, it could be attained only by omitting provisions which are intended to secure a higher degree of equity. The simplest form, of course, would be a flat rate upon the net amount of a deceased person's estate, with no exemptions and no allowances in respect of consanguinity. Most people, however, would view such a proposal as disregarding the facts of life and as running counter to the ideas of family consciousness and of family responsibility, which are highly developed at the present day. There is, in our opinion, no doubt that the general sense of mankind favours the levying of Duty at reduced rates where property is passing into the hands of those who had a right to look to the deceased owner for material support.

891. **Retrospective Provisions.**—In Queensland, where the Duty, though called a Succession Duty, in reality partakes largely of the nature of an Estate Duty, the Statute governing the conditions under which the Duty is leviable exhibits in remarkable degree the extent to which the idea of taxing the property of a deceased person may inspire a Legislature to what may be called retrospective action, in order to prevent property from escaping taxation. Such retrospective provisions, though not actually carried to the same extent as in the Queensland Act, are common in Estate Duty Acts, that is, provisions having the effect of including within the dutiable estate property which, in form at least, and often in reality, had been severed from that estate at some time before the testator's death—for example, it is common to declare that gifts *inter vivos* made within twelve months or some other period prior to the testator's death, shall be regarded as forming part of his estate for purposes of taxation.

892. **Succession Duty—Reasons for preferring.**—In our opinion, a pure Succession Duty should be preferred to Estate Duty or to a dual scheme of Estate Duty, plus Succession Duty, for the following reasons:—

- (1) An estate may generally be taken as having paid, during the process of accumulation, its proportionate share of such taxes as Income Tax, Land Tax, and other charges incident to the acquisition and possession of real and personal property.
- (2) Tax is more properly leviable upon the person who acquires a new interest than upon the mass of property left by a person for distribution, possibly among many.
- (3) The trend of modern thought is in the direction of taxing a person in respect of his interest in something of value rather than of taxing the thing of value irrespective of its ownership or the destination of any beneficial interest derivable from it.
- (4) A true Succession Duty enables tax to be levied so as to avoid the harsh anomalies which inevitably arise under an Estate Duty—for example, under an Estate Duty the amount of tax leviable in respect of a particular legacy or benefit, say of £5,000, may vary greatly according to the total aggregate value of the estate, as the following illustrations show:—

(a) A son (perhaps already well off), receives £5,000—all his mother's estate. He pays—

Victorian Duty	..	..	..	£200	0	0
Commonwealth Duty	..	..	..	58	6	8
				£258	6	8

- (b) A daughter, wholly dependent, receives £5,000 from her father's estate, valued at £21,000 net. She pays—

Victorian Duty	..	..	..	£310	0	0
Commonwealth Duty	..	..	..	166	13	4
				<hr/>		
				£476 13 4		

- (c) A niece receives £5,000 from the estate, valued at £21,000 net, of an uncle on whom she was wholly dependent. She pays—

Victorian Duty	..	..	..	£500	0	0
Commonwealth Duty	..	..	..	250	0	0
				<hr/>		
				£750 0 0		

If in the cases (b) and (c) above the total value of the estate were £72,000, and the amount received by each of the three beneficiaries as above were £5,000, the Duty would be—

	Total Estate.	Succession.	Tax Payable.
(a) £5,000	..	£5,000 ..	£258 6 8
(b) 72,000	..	5,000 ..	850 8 9
(c) 72,000	..	5,000 ..	1,112 0 0

- (5) A Succession Duty is simple in principle, as the acquisition of a new beneficial interest or of an addition to capital resources as the result of a testamentary disposition or its equivalent affords a clearly understandable basis of taxation.
- (6) A Succession Duty, which is a Duty not only charged upon, but also measured by the value of the interest devolving upon the taxpayer, rests upon a basis of **equity** which is absent in the case of an Estate Duty.

893. Life Interest—Taxation of, under Estate Duty and under Succession Duty.—

Under a Succession Duty Assessment Act, a position which frequently arises is that of an estate being left, say, to a widow as life tenant, with remainder over. A situation of that kind is dealt with under an Estate Duty Act—for example, the Commonwealth Act—by computing the value of the two interests, that is, the life estate and the remainder. This, however, has no effect upon the actual Duty collected, which is measured by the aggregate value of the estate; is leviable at once; and is payable by the administrator and not by any beneficiary. Under a Succession Duty, in the form which we recommend, the only interest taxable in such a case at the time of the testator's death would be the life interest. Any interest arising at the termination of that life interest would be treated as a succession then arising and taxable in the hands of the beneficiary.

894. Estate in Remainder—When should Duty be paid?—Where a testator devises his estate first by way of life interest, with remainder over, it is clear that the remainderman derives title, not from the life tenant, but from the original testator. The question arises as to whether the Duty to be paid by the remainderman when he becomes entitled in possession to his succession should be based on the value of the property at the time of the testator's death or at the date of termination of the intervening life estate. Under the South Australian Succession Duty Act, the Duty is charged on the value at the time of testator's death, but that Act differs somewhat from the British Succession Duty Act, in that the administrator, and he alone, is made liable for the Duty whereas under the British Act the principal liability to payment of Duty rests upon the Successor, while the administrator has a secondary liability imposed upon him for the purpose of the protection of the revenue, or, as may often happen, for purposes of convenience. Under the Queensland Act, **Duty is imposed on the value at the time that the succession takes effect in possession, and this, in our opinion, is the correct principle.** There would perhaps be some convenience in the payment of the Duty in the first place by the administrator, and, in the case of the first interest in possession under a will, probably that would commonly be done as a matter of arrangement between the beneficiary and the administrator; but, as we have indicated above, the duty to be paid by the remainderman is a future obligation.

895. Revenue Effect of Change from Estate Duty to Succession Duty.—Of all the taxes affecting property, Estate Duty or Succession Duty is, in the nature of things, the least susceptible of accurate annual forecast. No revenue officer can estimate upon any fixed principle the amount likely to be derived from such Duties, so many of the necessary factors being unknown.

896. If Duty is imposed as a Succession Duty, and if the same amount of revenue as at present is required to be raised, existing scales of rates, which are applied to the aggregate value of an estate, would need review, as obviously the larger number of taxpayers under the Succession Duty system would be chargeable upon successions of comparatively moderate value. That system, however, in our opinion, rests upon the equitable bases of taxing the individual on the beneficial interest in possession acquired by him and of using that interest as the measure of the tax. In those fundamental respects it is more soundly based than is an Estate Duty.

897. We recommend, for the reasons stated in paragraph 892, and more particularly on the grounds of equity of incidence and simplicity of principle, that existing Duties levied upon the net aggregate value of the estate of a deceased person be superseded by a system of Succession Duties—

1. Levied upon and measured by the taxable value of the interest of each beneficiary ;
2. Payable by the beneficiary (Successor), either directly or on his behalf by the trustee or executor ;
3. Due and payable at the time when the Successor or any person in his right or on his behalf becomes entitled in possession to the succession or to the receipt of the income and profits thereof ;
4. Based upon the value of the property at the date of death of the testator, if the Successor then becomes entitled in possession, or, if there is an intervening estate, upon the value of the succession at the termination of that estate.

SECTION XXXVI.

AMOUNT EXEMPTED FROM DUTY.

898. The question of a general exemption, so keenly debated by witnesses in connexion with Income Tax, was not prominent in the evidence taken in relation to Estate Duty. This may be due to the fact that the witnesses were, almost without exception, professional men—managers of Trustee Companies, Solicitors, Accountants, and others—who deal with matters arising out of Estate or Succession Duty in a fiduciary capacity only. But the questions of the nature, amount, and of the persons or class of persons entitled to any exemption, are vital questions to those who are affected by the tax.

899. Three types of exemption may be enumerated :—

- (1) **A continuous exemption**—that is, a specified sum which, irrespective of the total net value of the estate, is allowed as a deduction from what would otherwise have been the taxable value of the estate or succession. An illustration is the exemption allowed under the Commonwealth Land Tax legislation under which tax is levied upon unimproved values of land owned by a taxpayer only if those values exceed £5,000, and only in respect of the values in excess of that amount.
- (2) **A conditional exemption**.—An illustration is the exemption allowed in respect of the Commonwealth Estate Duty, under which, if the net value of an estate does not exceed £1,000, no duty is levied, but, if the net value exceeds £1,000, duty is levied upon every £1 of the total net value. This type of exemption has been adopted by all the Australian Legislatures except that of Western Australia, but, as pointed out in paragraphs 982–985, it produces anomalies.
- (3) **A vanishing exemption**—that is, a specified amount, say £500—which, if it constitutes the whole of the net value of an estate, remains untaxed ; but, if the net value exceeds £500, the exemption diminishes in accordance with a prescribed scale, until it reaches the vanishing point—for example, if the exemption diminishes by £1 for every £1 by which the value exceeds £500 then if the total value were £750 the exemption would be £250 and the taxable amount £500 ; but, if the value were £1,000 (which in that case would be the vanishing point), the whole amount would be taxable. This case may be regarded as a variant of No. 2. There is no example of this type of exemption in Australian Estate or Succession Duty Acts, though it is not uncommon in Acts dealing with Income Tax.

Variants to all of these types would be found in exemptions expressed in terms of duty and not in terms of value of Estate or Succession. We do not know of any examples of such variants in actual practice.

900. Australian Legislatures have adopted varying provisions with regard to the exemptions under Estate or Succession Duty Acts.

The following table exhibits in brief form the provisions now operative :—

Legislature.	Name of Principal Act.	Nature of Exemption.	Amount of Exemption.	Persons Entitled to Exemption.	Remarks.
Commonwealth	<i>Estate Duty Assessment Act No. 22, 1914</i>	Conditional exemption* that is an amount which is exempt if the total taxable value does not exceed that amount, but which, if that amount is exceeded, does not apply to any part of the value of the Estate	£ 1,000	All	
New South Wales	<i>Stamp Duties Act No. 47, 1920</i>	" " "	1,000	All	
Victoria	<i>Administration and Probate Act 1915</i>	" " "	200	All	
"	" "	" " "	500	Widow, Children, Grandchildren	
Queensland	<i>Succession and Probate Duties Act 1892</i>	" " "	199	All	
"	" "	" " "	500	Widow, Children, Grandchildren	Probate duty of 1 per cent. is also payable on the personal property in all estates exceeding £300 in value
South Australia	<i>Succession Duties Act 1893</i>	" " "	499	Widow, Widower, descendant, ancestor	
Tasmania	<i>Deceased Persons Estates Duties Act 1915</i>	" " "	500	"	
Western Australia	<i>Administration Act 1903</i>	No provision			

* For definition of this term see paragraph 899.

901. **Australian Provisions.**—It will be seen from the above Table that the following is the position with regard to Exemptions from Tax under the law of the Commonwealth and that of the several States.

902. **Commonwealth.**—The Commonwealth Estate Duty Assessment Act allows an exemption of **£1,000** in the form that, where the total value of the estate does not exceed **£1,000**, no Duty is charged.

903. **In New South Wales**, if the deceased was domiciled in that State, an exemption of the same amount (**£1,000**) as under the Commonwealth law is allowed.

904. **In Victoria**, in the case of property passing under a will or intestacy to the widow or a child, or under a settlement to the widow, widower, a descendant or ancestor, no Duty is charged if the value of the estate does not exceed **£500** ; and, in the case of property passing under a will to other relations or strangers, or under a settlement to other relations, no Duty is charged if the value does not exceed **£200**.

905. **In Queensland**, no Succession Duty is charged where the value of the estate does not exceed **£199**, nor in respect of property passing to the widow, children, or grandchildren where the value of the estate does not exceed **£500**.

906. **In South Australia**, no Duty is charged upon a succession taken by the widow, widower, a descendant or ancestor, if the total value of the succession does not exceed **£499**. This exemption from Duty is not extended to property taken by other persons.

907. **In Western Australia**, there is no exemption to any class of beneficiaries.

908. **In Tasmania**, no Duty is charged where the net value of the estate does not exceed **£500**.

909. Exemptions granted under the Commonwealth and State laws, as particularized in the foregoing paragraphs, are all in the form that, if the total net value of the estate (or succession) exceeds the amount of the exemption, Duty is charged upon the total net value.

910. **Type of Exemption Recommended.**—In our opinion, the type of exemption which should be adopted is a “vanishing exemption,” rather than an exemption continued throughout the whole range of values. The foundation principle of an exemption, more or less imperfectly expressed in Income Tax or Estate or Succession Duty Statutes which contain exemption provisions, is the dependency of the taxpayer upon the income or capital benefit received.

911. In Income Tax there is only one possible means of measuring such an allowance—that is, directly or indirectly exempting from taxation any income not exceeding a certain sum. (For the purposes of this paragraph, it is unnecessary to consider whether the exemption is or is not continuous). In an Estate or Succession Duty, the recognition of the great social fact of family relationship, with its implications of expectancy and dependency, has led to the adoption of a second means, less direct, but hardly less effective, of granting what is virtually an exemption for certain privileged beneficiaries. In the case of an estate of moderate amount (and such estates form a large proportion of all those coming within the range of Estate Duty), and especially in an estate which is wholly left to the widow of the deceased owner, the recipient of the estate or succession is commonly dependent wholly or in great part upon the provision for the future which the net capital value of the estate supplies. While dependency is an element, and an important element, in the consideration of an exemption, there are practical and also theoretical difficulties in the way of exempting from duty an amount which at a reasonable rate of interest would provide a means of livelihood in perpetuity. One great difficulty would be the question of revenue. Under an Estate Duty of what may be called the standard type, that is, where the Duty is levied upon the whole amount of the estate, the revenue difficulty would exist but would be less than under other forms of Death Duty. Under a Succession Duty, which is designed to fall directly upon each beneficiary and to be measured by the extent of each beneficial interest, the revenue question might easily become acute, if any attempt were made to secure to each beneficiary an exemption from Duty in respect of an amount which would return in perpetuity an income of, say £100.

912. Two other objections may be noticed—first, that, if dependency is to be the basis of exemption, then strict proof of the financial position of each beneficiary would be required. The necessary investigation might often be difficult and unsatisfactory from the point of view of the Revenue authorities and irritating and inquisitorial from the point of view of the taxpayer. The second objection is that, in the cases where dependency is absolute and earning power is small, non-existent, or impossible to estimate, liberality towards the taxpayer could not be expected to go further than to exempt an amount, the interest upon which would provide a small income for the period covered by the expectancy of life of the person concerned, and not an income in perpetuity. If the taxpayer, say a widow, had attained a certain age, she would in many cases be entitled to the Old Age Pension, and this would constitute a material set-off to any claim for exemption based upon absolute dependency.

913. In the great majority of cases where the estate is small, complete dependency is confined to one or more of those who constitute the immediate family. Where the estate is not small, there may also be dependency, but the amount of benefit received may be so large that the case will be properly met by applying the method of a diminishing exemption. Apart from any other financial capacity, the succession itself, to the extent to which it exceeds the sum beyond which the exemption begins to diminish, affords a measure of capacity to bear tax. The closest degree of family relationship is the safest guide to the classification of the group which should receive the highest or the only exemption from Duty, or, if not exempted, should pay Duty at the lowest rate.

914. As to the allocation of an exemption, we are of opinion that the exemption should apply only within the most favoured group, Class 1, that is, widow or widower and lineal ancestors or issue (including adopted and illegitimate children). As to the amount of exemption, we consider that the widow of the deceased owner of an estate should be treated more liberally than others coming within Class 1. (See paragraph 924).

915. We recommend—

- (1.) That, in the case of the widow of a deceased owner of an estate, the amount to be exempted from Duty should be £1,000.
- (2.) That, in the case of all others coming within Class 1, the amount to be exempted from Duty should be £500.
- (3.) That, in both cases, the exemption be a “vanishing” exemption, diminishing by £1 for each £1 by which the succession exceeds the amount of the exemption applicable.

The effect would be that, in the case of the widow, the exemption would cease altogether at £2,000, so that, if the amount of the succession exceeded that sum, the whole amount would be taxed. In the case of any other person coming within Class 1, the exemption would cease at £1,000, so that, if the amount of the succession exceeded that sum, the whole amount would be taxed.

SECTION XXXVII.

DIFFERENTIATION — CONSANGUINITY.

916. The embodiment in legislation of the idea that Estate or Succession Duties should be differentiated in amount according to the nearness or remoteness of relationship of the beneficiaries to the testator dates back at least 2,000 years.

917. In Great Britain, where, it should be noted, there is both an Estate Duty levied upon the total value of the estate of a deceased person and also Legacy Duty and Succession Duty, the differentiation under the Legacy Duty and Succession Duty Acts is in accordance with the Table given in paragraph 842. It will be seen from that Table that the rate levied upon strangers and distant relatives is 10 per cent., while upon the most favoured class, which includes husband or wife, lineal ancestors or issue, the rate is only 1 per cent. The very high degree of differentiation in this case may perhaps be accounted for by the existence also of an Estate Duty, with rates ranging from 1 per cent. to 20 per cent.

918. Under the Commonwealth Estate Duty Assessment Act, preferential rates are prescribed in respect of so much of the estate as passes to the widow, children or grandchildren of the deceased. In these cases, two-thirds of the ordinary rates are charged.

919. In New South Wales, one-half rates are charged on property passing to the widow of the deceased or to any of the children under 21 years of age, but this provision applies only where the assessable value of the estate does not exceed £5,000, and where the deceased owner was at the time of his death domiciled in New South Wales.

920. In Victoria, differentiation in favour of the widow and children is effected thus:—

If, under a will or in an intestacy, the only persons entitled are—

the widow, or

the widow and children (which term includes grandchildren), or

the children

of the deceased owner, the estate is taxed on a scale much lower than that which is applied to other cases. Further, if, in the case of property “devised or bequeathed” to the widow and children, or widow or children, the total value of the estate in and out of Victoria does not exceed £2,000, and the persons named are the only beneficiaries, or if they are not the only beneficiaries, the total value of their shares does not exceed £2,000, duty is levied at half the rates of the lower scale.

921. In Queensland, the widow or lineal issue pay Succession Duty at half rates (*) where the total value of the estate (not of the succession merely) does not exceed £2,500, or two-thirds of the ordinary rates where the total value of the estate exceeds £2,500, but does not exceed £5,000. In each case the reduced rates are applied only where the “predecessor” was domiciled in the Commonwealth.

922. In South Australia, the Schedule divides beneficiaries into three classes. The first class is composed of the widow, widower, descendant or ancestor of the deceased person. The rates range from 1½ per cent. on successions of values from £500 to £699, to 17½ per cent. on successions of £200,000 and upwards; values below £500 are not dutiable. It is provided that “where the person taking is the child under twenty-one years of age or the widow of the deceased, the duty shall be charged at one-half the foregoing rates, if the net present value of the whole of the estate of the deceased is under £2,000.” This proviso, which makes the application of a specially privileged rate upon a succession dependent upon the value of the whole estate of which the succession may be only a part, constitutes an exception to the general scheme of the South Australian Act, which bases the tax upon the value of the succession.

The second class of beneficiaries consists of brothers and sisters of the deceased person, descendants of a brother or sister, and any person in any other degree of collateral consanguinity to the deceased. In this class, values under £200 are dutiable at 1 per cent. (there being no exemption), and values above £200 are rated in accordance with a scale which rises to 17½ per cent. upon values of £50,000 and upwards.

The third class of beneficiaries consists of strangers in blood to the deceased person. In this class, values under £10,000 are dutiable at 10 per cent; values of £10,000 and under £20,000 at 15 per cent.; and values of £20,000 and upwards at 20 per cent.

It will be seen that there is differentiation in favour of beneficiaries in Class 2 as compared with Class 3, and in favour of beneficiaries in Class 1 as compared with both the other Classes.

* This does not affect the Probate Duty, which is charged at a flat rate of 1 per cent upon personal property only, where the value exceeds £300. The Succession Duty is additional, and is levied upon successions making up the estate, after allowing a deduction of the Estate Duty.

922A. In Western Australia, half rates are charged in respect of so much of the estate as passes to persons who are *bonâ fide* residents of and domiciled in Western Australia and occupying towards the deceased the relationship of parent, issue, husband, wife, or issue of husband or wife.

922B. In Tasmania, a scale of rates is prescribed, applying to property passing to a widow, widower, descendant or ancestor of the deceased person. Double the rates in that scale are charged in respect of property passing to a brother or sister or descendant of a brother or sister or any person in any other degree—not beyond the third degree—of collateral consanguinity to the deceased person. Where property passes to a person in any degree beyond the third degree of consanguinity to the deceased person, or to a stranger in blood, there is a uniform rate of 10 per cent., which, on estates exceeding £500 in value, and not exceeding £1,000, is five times the rate applied in the case of widow, &c. (the most favoured class); on estates exceeding £5,000 in value, and not exceeding £20,000, is two and a half times that rate; and on estates exceeding £20,000 in value, and not exceeding £100,000, is twice that rate.

922C. While the question of a general exemption or exemptions to particular classes of beneficiaries is dealt with under the heading "Amount Exempted from Duty," Section XXXVI, the full effect of any differentiation can hardly be appreciated, unless the amount, if any, granted by way of exemption, is also borne in mind. For particulars of these exemptions see paragraph 900.

923. Of the two methods adopted in Australian Acts for effecting differentiation, namely:—

- (a) By prescribing a scale applicable to the least favoured classes, and prescribing some fraction of this scale for the more favoured class or classes; or
- (b) By prescribing a scale for the most favoured class, and prescribing multiples of this scale for the less favoured class or classes,

we prefer the former method.

924. We recommend that the Duty—whether it take the form of an Estate Duty, as at present in force in the Commonwealth and most of the States, or of a Succession Duty, as we recommend (paragraph 897)—be differentiated in accordance with the following scale:—

Class.	Persons Included in Class.	Proportion of Full Rates.
1	Widow or widower and lineal ancestors or issue, including illegitimate children and children formally adopted	50%
2	Brothers and sisters and their descendants	80%
3	All others	100%

SECTION XXXVIII.

GRADUATION.

925. The principle of graduation, as applied to Income Tax, was discussed in Section XI of our Second Report. The same principle, more or less regular in its application, has been generally adopted in the assessment of Estate and Succession Duties.

926. Attention has already been directed (Sections XXXII–XXXV) to differences in the basal conceptions of the Death Duties levied in Australia and other countries, some taking the form of a simple Estate Duty, some a simple Legacy or Succession Duty and others a blend of both. Differences also occur as to the classification of the beneficiaries who are privileged to pay less than the normal rates which are chargeable to strangers in blood; and as to the proportion or scale of the privilege allowed to the several favoured classes. The latter questions are discussed under the heading "Differentiation—Consanguinity," Section XXXVII.

927. Practice in Australia.—In the following paragraphs the graduated scales of the various Australian Acts are briefly reviewed. Except where otherwise indicated the references are to the scales of rates applying to the least favoured persons.

928. Commonwealth.—Upon an estate of a net value not exceeding £1,000 no Duty is levied, and upon estates of net values from £1,001 to £2,000, Duty is levied on every £ of the net value at the rate of 1 per cent. Graduation begins to operate when the net taxable value of an estate (after deducting all debts and State Probate or Succession Duty) exceeds £1,000. At a

value of **£1,001** the rate (applicable to the whole estate) is 1 per cent., and rises by steps of **·2** per cent. at each increase of **£1,000** in the net value of the estate, until at **£71,001** it reaches 15 per cent.

929. So far as estates of values from **£1,001** to **£71,001** are concerned, the scale has, in effect, a basic rate of tax of **·6** per cent. (corresponding to the basic rate of Income Tax mentioned in paragraphs 347 to 350 of our Second Report) upon which is superimposed a scale of rates graduating between these values by a series of unvarying steps of **·2** per cent. net at each increase of **£1,000** in taxable value. Each estate (the value of which is not a precise multiple of **£1,000**) bears the rate of Duty applicable to the next succeeding multiple of **£1,000**, up to and not exceeding **£72,000**, at which point graduation is superseded by a flat rate of 15 per cent.

930. The rate of Duty under the Commonwealth Act on the **highest £** of the taxable value of estates between **£1,001** and **£2,000** is 1 per cent. The rate from that point rises regularly with each increase in value of **£1,000** or part of **£1,000** till it reaches 29.4 per cent. on the highest **£** of an estate of the taxable value of **£71,001**. On each succeeding **£** thereafter the rate is uniformly 15 per cent. The reason that the maximum rate on the highest **£**, as mentioned in this paragraph, is 29.4 per cent., and not 30 per cent., as might be expected, is that the zero of the Commonwealth scale is at the point represented by Minus **£3,000**; and, when the line of taxable income is reached, the progression has a value of **·6** per cent., as indicated in paragraph 929. There is thus a sharp regression in rate of Duty at **£72,000**, on the highest **£** of which the rate is 29.4 per cent., while on each succeeding **£** the rate is 15 per cent.

931. The **average** rates of Duty run from 1 per cent. on estates of taxable values between **£1,001** and **£2,000**, suddenly springing to 1.2 per cent. on the whole value of an estate of **£2,001**, and rising thence with each increase of **£1,000** by 69 regular steps each of **·2** per cent., till at **£71,001** it reaches 15 per cent. On each succeeding **£**, the rate is uniformly 15 per cent. On all estates over **£71,001** in taxable value, the highest rate and the average rate are the same, namely, 15 per cent.

932. Each increase in rate of Duty is by the Act made retrospective to the first **£** of net value, with the result that sudden and spasmodic increases in the Duty payable characterise the movement, as the following examples, typical of many others, exhibit:—

On an Estate of the Taxable Value of	The Rate of Estate Duty is—	And the Duty Amounts to	If the Estate be £1 Greater in Value, viz	The Rate of Duty on the whole Estate is	And the Duty Amounts to	Making the Effective Duty on the Last Single £ of Taxable Value
£	%	£	£	%	£	£
1,000	Nil	Nil	1,001	1·0	10	10
2,000	1·0	20	2,001	1·2	24	4
10,000	2·6	260	10,001	2·8	280	20
20,000	4·6	920	20,001	4·8	960	40
50,000	10·6	5,000	50,001	10·8	5,402	102
71,000	14·8	10,508	71,001	15·0	10,650	142

933. A method which yields such results is clearly incorrect in theory, and in practice may offer an undesirable inducement—to officials, to augment values so as to bring the estate over the **£1,000** mark, thereby increasing the Duty out of proportion to the increase in value; and to administrators, to keep the value just under the **£1,000** mark. The last item in the foregoing table shows that, under the existing scale—

On an estate valued at **£71,000** the Estate Duty is **£10,508**.

On an estate valued at **£71,001** the Estate Duty is **£10,650**.

The addition of **£1** in value at that point involves an additional Duty of **£142**.

934. **New South Wales**.—Upon an estate of a net value not exceeding **£1,000**, no Duty is levied if the deceased owner was at the time of his death domiciled in New South Wales. On an estate of a net value exceeding **£1,000** left by a person domiciled in New South Wales, and on an estate of any value left by a person not so domiciled, the rates of Duty ascend in steps representing increases of estate value of at first **£1,000**, then **£2,000**, then **£5,000**, and finally **£10,000**, from 2 per cent. on an estate of the taxable value of **£5,000** to 20 per cent. on an estate exceeding **£150,000**. The rapidity of increase in rate is greatest in the case of the smaller estates; less in the case of estates exceeding **£20,000**; and least in the case of estates exceeding **£140,000**. Under the **Income Tax Act** of New South Wales, the rate of tax on any **£** of income is fixed; it is not influenced by any question as to whether it forms part of a total taxable income of **£150** or **£150,000**; but under the **Estate Duty Law** of that State the rate of Duty chargeable on the final balance of an estate of any value is made retrospective to the first **£**. The difference is fundamental; the effect of the Estate Duty provision is to greatly increase beyond the nominal

the effective rate of Duty on the highest £ of the taxable value. This will be readily seen by reference to the following table, the first three columns of which are taken from the Third Schedule of the New South Wales *Stamp Duties Act 1920* :—

1.	2.	3.	4.	5.
Final Balance of Estate.		Rate per Centum of Duty.	Value of Estate.	Effective Duty on the Highest £.
Exceeding.	Not Exceeding.			
£	£		£	£ s. d.
1,000	5,000	2·0	5,000	2 0 0
5,000	6,000	2·5	5,001	25 0 6
10,000	12,000	5·0	10,001	50 1 0
25,000	30,000	8·0	25,001	125 1 7
70,000	75,000	12·5	70,001	350 2 6
105,000	110,000	16·0	105,001	525 3 2
150,000	..	20·0	150,001	750 4 0

935. As the value of an estate increases from the first £ of any step up to the limit of the step to which the same nominal rate of Duty applies, the effective rate of Duty on the highest £ recedes—in effect the rate of Duty is by turns sharply accelerated and slowly regressive ; it moves by fits and starts, a movement which is neither scientific or equitable, and may offer the same possible inducement to both tax gatherer and taxpayer as has been mentioned with regard to the Federal Estate Duty.

936. There are four points at which the rapidity of increase in rates changes ; thus:—

On Estates Over the Value of.	Under the Value of.	
£	£	
1,000	5,000	The rate is uniform at 2 per cent.
5,000	10,000	The rate ascends by $\frac{1}{2}$ per cent. at each interval of
10,000	20,000	.. .. £1,000
20,000	140,000	.. .. 2,000
140,000	150,000	.. .. 5,000
		.. .. 10,000

and at each change it is to a pitch flatter than the preceding range ; just the reverse course to that underlying the theory of diminishing utility of increments of wealth.

937. **Victoria.**—Estates, the value of which, after deducting debts, does not exceed £200, are exempt under the Victorian Administration and Probate Acts, but on estates exceeding that figure Duty is chargeable in respect of the whole value at rates varying by 29 steps of dissimilar height and irregular scope from 1·5 per cent. on an estate valued between £200 and £300 to 10 per cent. on an estate exceeding £20,000. The scheme is irregular and exhibits inconsistency and inequity throughout its movement.

938. **Queensland.**—When the net value of the estate of a deceased person exceeds £300, there is payable a Probate or Administration Duty at the rate of 1 per cent. Superimposed upon this is a Succession Duty which is levied on the net value of the estate after deducting the Probate Duty. The rate of Succession Duty is not determined by the amount of the individual succession, but—

“for determining the rate of Succession Duty there shall be aggregated so as to form one estate the value (after deducting debts) of all property whether situate within or without Queensland and passing on such death.”

Successions under £200 are exempt and from that point Duty at 4 per cent. rises by irregular steps to £55,000, at which point it reaches an average of 20 per cent. On each succeeding £ the rate is uniformly 20 per cent.

Though named a Succession Duty, the basis of assessment is rather that of an Estate Duty, and as such the scale shows defects in form similar to those exhibited by the scale of the New South Wales Act.

939. **South Australia.**—In this State there operates a Succession Duties Act, under which on the net present value of the property inherited from a deceased person by a stranger in blood to such deceased person there is charged a Duty of:—

- 10 per cent. if the value of the inheritance be under £10,000 ;
- 15 per cent. if it be £10,000 and under £20,000 ;
- 20 per cent. if it reach or exceed £20,000.

These rates are based on the net value of the property passing to the individual beneficiary, and are not influenced by the total value of the estate of which such property is a part, but they show the same objectionable characteristics as have already been referred to in regard to other Acts. For example, a succession of £9,999 passing to a stranger in blood will carry a Duty of £999 18 0 but if the value of the property be £1 in excess of that figure, it is at £10,000 chargeable with a total Duty of

	1,500	0	0
the increase of £1 in value increasing the Duty by	£500	2	0

940. **Western Australia.**—Without exempting any portion of the taxable value of the estate of a deceased person, the rates of Duty commencing at 1 per cent. on estates not exceeding £500 rise at irregular intervals by dissimilar steps. The intervals range from £500 to £2,000, and the increases in rate from 2 per cent. to 1 per cent. The maximum rate is 10 per cent., which applies where the net value of the estate exceeds £20,600.

941. **Tasmania.**—Estates of less value than £500 are exempt; all in excess of that sum are chargeable at rates rising in unequal steps at varying intervals from 2 per cent. on estates exceeding £500 and not exceeding £1,000 to 10 per cent. on estates exceeding £92,000.

942. **Practice in New Zealand.**—Under the Death Duties Act of 1909, and subsequent amendments, Estate Duty is levied upon the net value of all property of a deceased person which is situated in New Zealand at time of death and exceeds £1,000. If the net value of the Estate does not exceed £10,000, any interest passing to the widow up to £5,000 is free of duty. From 1 per cent. on Estates between £1,000 and £2,000, the rate rises by increments of 1 per cent. at each step up to 20 per cent., which is reached when £100,000 is passed, the steps at the lower stages being 3 of £1,000, then 3 of £2,000, followed by 8 of £5,000, and finally 5 of £10,000 each.

943. Additional thereto there is payable Succession Duty by any person who acquires a beneficial interest in the Estate of a deceased person. In the case of a total stranger, the scale is:—

Succession not exceeding £500	..	..	..	No duty
„ exceeding £500 and not exceeding £20,000	..	..	..	10 per cent.
„ exceeding £20,000	..	..	..	20 per cent.

Relatives of the deceased are grouped into five classes, from that of a widow (who is allowed a total exemption from Duty if the value of the Succession does not exceed £10,000), through minute classification to “relatives of the deceased in any degree not more remote than the fourth,” each grade being allowed substantial concessions on the rates chargeable to more distant relatives or to total strangers.

944. **Practice in Great Britain.**—The Death Duties in Great Britain include Duties which are equivalent to both Estate Duty and Succession Duty.

945. Under the former, Duty is chargeable on the whole of the net value of the estate of the deceased, at rates which, commencing at 1 per cent. on estates valued between £100 and £500, rise regularly by increments of 1 per cent. in steps which vary from £500 to £200,000, the rate being in all cases retrospective to the first taxable £ of estate value. On higher values, the increment in rate is more rapid, and the steps larger, till a maximum of 40 per cent. on estates exceeding £2,000,000 in net value is reached.

946. Additional to Estate Duty, there is chargeable on individual successions Legacy or Succession Duty, differentiated according to the degree of consanguinity of the successor to the deceased, and rising from 1 per cent. on the net amount of the individual succession in the case of husband or wife (the most privileged class) through five classes to 10 per cent. in the case of the least privileged class. The total Duty chargeable on a succession of £5,000, passing to a person in the least favoured class, varies according to the total net value of the estate, as illustrated in the following Table:—

Net Value of Estate of Deceased.	Rate of Estate Duty.	Value of Succession.	Value of Succession after Deducting Estate Duty.	Succession at 10 per cent.	Total Duty Amount.	Equal to per cent. on Succession.
£	%	£	£	£	£	%
5,000	3	5,000	4,850	485	635	12·7
10,000	4	5,000	4,800	480	680	13·6
20,000	6	5,000	4,700	470	770	15·4
30,000	8	5,000	4,600	460	860	17·2
50,000	10	5,000	4,500	450	950	19·0
100,000	14	5,000	4,300	430	1,130	22·6

947. **Scales of Rates.—Lack of Guiding Principle.**—The scales of rates mentioned in the preceding paragraphs are shown graphically in Appendices 11, 12, and 13. One looks in vain among them for an expression of systematic treatment in accordance with accepted principles of graduation in taxation; they are all more or less spasmodic and unmarked by any definite guiding principle.

948. **Ratio of Successions to Estates.**—In the absence of statistics exactly in point, there is room for diversity of opinion as to the average number of successions into which estates generally are divided, and probably the proportion in the case of very large estates will differ from that in the case of small estates. We have assumed, for the purposes of this Section, that the ratio generally is 2 or $2\frac{1}{2}$ successions to one estate. This assumption was reached after consideration of the statistics in the Seventh Annual Report of the Commissioner of Taxation, pp. 202-3. It is there shown that 75 per cent. of the total number of estates paying Commonwealth Estate Duty in the financial year 1919-20 were of a dutiable value not exceeding £5,000. Of the estates within that group, a very large proportion (probably 80 per cent.) would pass as single successions, *i.e.*, the whole to one person in each case. 80 per cent. of 75 per cent. equals 60 per cent. of the whole. Then, if it be assumed that in the remaining 20 per cent. of estates below £5,000, and in all estates above that value, the average number of successions is about 4, the average number of successions in all estates would be from say 2 to $2\frac{1}{2}$. If $3\frac{1}{2}$ successions be assumed as the average in estates in the second group, the average for all estates would be exactly 2; while, if $4\frac{1}{2}$ successions be taken as the average of the second group, the average for all estates would be exactly $2\frac{1}{2}$. In many estates there might be a number of small legacies to servants and others, but these would have no material influence upon the position and may be left out of consideration. For the purposes of the subsequent discussion and illustration, we have thought it desirable to consider the two ratios of the average number of successions to each estate mentioned above.

949. **Estate Duty—Value-Groups.**—Regard must also be had to the Duty payable at present by estates within various value-groups; see the following Table, the figures of which are for the year 1919-20:—

Dutiable Value of Estates.	Number.	Percentage in Each Grade of Total Number.	Duty Paid in Each Grade.	Percentage of Duty in Each Grade to Total Duty.
			£	
Under £5,000	3,714	75·5	77,924	5·5
From £5,001 to £25,000	1,137	22·8	301,975	20
Above £25,000	131	2·7	1,089,683	74·5
	4,982	100	£1,469,582	100

The above figures indicate that a change from an Estate to a Succession Duty would affect the revenue with greatest force in respect of estates in the third group, *i.e.*, those above £25,000 in value. A tabulation of the numbers of estates coming within each group is of partial assistance only in endeavouring to arrive at the probable effect on revenue of the recommended change. The influence of the preponderating Duty paid by the small number of large estates must be a potent factor. Data for an accurate estimate could be obtained only by means of a laborious investigation, and we did not feel justified in asking the Commissioner of Taxation to undertake that investigation for the purposes of our Report.

950. In a scheme of graduation under which the rate on the highest £ of taxable value would reach, but not exceed, 15 per cent., the corresponding culmination of ascent in rates of Succession Duty would be reached at £18,000, on the assumption that the average estate is divided into 2 successions, and at £14,400 (which, for convenience, may be replaced by £15,000), if the average estate be regarded as divided into $2\frac{1}{2}$ successions.

951. In the cases of Estate and Succession Duties as of Income Tax, an important subject for study is the Duty carried by each individual £ of taxable value; for, whatever be the total value of the estate, each £ in one estate should carry exactly the same Duty as the corresponding £ in every other estate.

952. **Regression in the Commonwealth Scale.**—In the scale of the present Commonwealth Estate Duty, while the prescribed (that is the average) rate on an estate of the taxable value of £72,000 is 15 per cent., the Duty on the highest £ is nearly 30 per cent. (exactly 29·4 per cent.) and at that point the rate suddenly drops to 15 per cent., which is the rate on each £ above £72,000. The position is identical with that commented upon in our second Report (paragraph 328), where, after quoting similar regressive rates in the Income Tax Scales of Queensland, Western Australia, and New Zealand, we said that those scales show—

“drops which are in each case a reversal of the principle applied throughout the whole range of the graduated scale—for progression in the rates of tax there is substituted (probably unintentionally) regression which is usually regarded as an unjust mode of taxation.”

953. In the Schedule of the Commonwealth Land Tax Act, passed prior to the Estate Duty Act, and in the Income Tax Act, passed subsequently, regression has been avoided in continuing the line of Tax beyond the graduated scale. Under the Estate Duty Act, as at present, the nominal rate and the average rate never exceed 15 per cent.; and it might be inferred from the form of the Rates Schedule that the attention of Parliament was concentrated upon the question of the point at which the progressive increase of the average rate should cease.

954. To avoid regression, and also to avoid the imposition of a rate in excess of 15 per cent. upon any part of the taxable value of an estate, two courses would be open:—

- (1) To retain, as in the present Commonwealth Scale, a value of £72,000 as the terminal point of the progression, but to reduce the present rate of progression by one-half. The result would be that the rate on the highest £ of an estate of £72,000 would be 15 per cent. Applying that percentage as a flat rate, to such part of the value of an estate as exceeds £72,000, then, however great the estate, the rate on the highest £ would reach but never exceed 15 per cent., and the average rate, while continually approaching, would never quite reach 15 per cent.

At a value of	£144,000,	the average rate would be	11·40	per cent.
" "	£216,000,	" " "	12·60	"
" "	£360,000,	" " "	13·56	"
" "	£1,008,000,	" " "	14·48	"

- (2) To terminate the present progressive scale of the Estate Duty Act at £36,000 (where the rate on the highest £ is 15 per cent.), and impose a flat rate of 15 per cent. upon every £ of value in excess of £36,000. If this course were adopted then, however great the estate, the rate on the highest £ would reach but never exceed 15 per cent., and the average rate, while continually approaching, would never quite reach, 15 per cent.

At a value of	£72,000,	the average rate would be	11·40	per cent.
" "	£144,000,	" " "	13·20	"
" "	£216,000	" " "	13·80	"
" "	£360,000,	" " "	14·28	"
" "	£1,008,000,	" " "	14·74	"

955. To avoid regression and also to avoid altering the present progressive scale of the Estate Duty Act, it would be necessary to alter the flat rate imposed upon such part of the value of an estate as exceeds £72,000 to 30 per cent., which at £72,000 is the rate on the highest £. Then, applying that percentage, however great the estate, the rate on the highest £ would reach, but never exceed, 30 per cent., and the average rate, while continually approaching, would never quite reach 30 per cent. For example, assuming 30 per cent. had been so adopted, then:—

At a value of	£144,000,	the average rate would be	22½	per cent.
" "	£216,000,	" " "	25	"
" "	£360,000,	" " "	27	"
" "	£1,008,000	" " "	29	"

If with a maximum rate of 15 per cent. on the highest £ it were decided to terminate the progression at some point other than £36,000, the necessary adjustment could be made by flattening or steepening the line of ascending rates. If it were desired to carry the progression to a point at which the rate on the highest £ would be higher than 15 per cent., another point for the termination of the Scale would, of course, have to be selected.

956. **Determination of Maximum Rate a Question of Policy.**—We refrain from expressing an opinion as to whether, in Estate or Succession Duty, a graduated Scale carried to the point at which the average rate is 15 per cent. (which involves a rate of 30 per cent. on the highest £, as in the present Commonwealth Schedule) is too high or too low. That is a question to be decided from time to time, according to the needs of the revenue and the extent to which it is considered necessary or prudent to exact tribute from successions to private wealth passing at death, whether that tribute be levied by one Authority only or by two Authorities as at present.

957. **Form of Rate Scale.**—Having regard to equitable incidence and productiveness of the Duty, convenience in use and ready adaptability to varying requirements, a regularly graduated scale easily understood, delicately adjustable, and admitting of easy calculation of Duty, should be chosen. Such a scale would be represented by a straight line which, starting at the point representing zero value, would ascend regularly and uninterruptedly with each increase of £1 in taxable value of a Succession up to the net value chosen as the limit of progression, and beyond that limit would be continued by a flat rate on so much of the value of the Succession as exceeds the chosen limit.

958. **Graphical Illustration.**—For the purposes of illustration we show (on the graphs, Appendices Nos. 11, 12, and 13) the lines of average rates under such a scale. These lines may conveniently be referred to as “standard” scales.

958A. **Rules for Computation of Duty.**—The simple arithmetical rules for computation of Duty may be expressed thus :—

- (A) If the ascent be to 15 per cent. on the **highest £ at £15,000**—

The standard rate of Duty per cent. on the **highest £** of taxable value of any Succession is found by inserting a decimal point before the third last integer. The result is the standard rate per cent. expressed in pounds and decimals of one pound—thus :—

On the **highest £** of a succession of **£13,746**, the “standard” rate of Duty per cent. is 13·746.

The standard **average** rate of Duty per cent. on every £ of the taxable value of any Succession is found by inserting a decimal point before the second last integer. The result is the “standard” average rate per cent. expressed in shillings and decimals of a shilling—thus :—

The “standard” **average** rate per cent. on a succession of **£13,746** is 137·46 shillings, or a small fraction over 6·873 per cent.

Note.—The “standard” **average** rate of duty is one-half of the rate on the **highest £** at every point within the scale of graduation.

- (B) If the ascent be to 15 per cent. on the **highest £ at £18,000**—

The standard average rate of Duty per cent. on every £ of the taxable value of any Succession is found by inserting a decimal point before the last integer. The result is the standard average rate per cent. expressed in pence and decimals of a penny—thus :—

The “standard” **average** rate per cent. on a succession of **£13,746** is 1374·6 pence, or a small fraction over 5·727 per cent.

Note.—The “standard” rate of Duty per cent. on the **highest £** is found by doubling the average rate—in this case 11·454 per cent.

959. **Illustrative Tables.**—In Appendices Nos. 15 and 16 are Tables showing the operation of these scales in a wide range of examples, compared with the scale under the present Commonwealth Estate Duty Act.

960. The Duty chargeable on Successions of varying taxable values is shown in Appendix No. 15, where a limit of 15 per cent. on the highest £ with an average rate of 7·5 per cent. is reached at **£15,000** ; and in Appendix No. 16, where a limit of 15 per cent. on the highest £ with an average rate of 7·5 per cent. is reached at **£18,000**. To these are added supplementary Tables showing the results where a limit of 30 per cent. on the highest £ with an average rate of 15 per cent. is reached at **£30,000** and at **£36,000** respectively.

961. In these Appendices there are shown in—

- | | |
|--------|--|
| Column | A—The aggregate taxable value of estates of deceased persons ; |
| „ | B—The rates per cent. of Estate Duty under the present Commonwealth Act ; |
| „ | C—The Duty now payable on each estate ; |
| „ | D—The equivalent value of each succession on the assumption of an average of 2½ (Appendix No. 15) or 2 (Appendix No. 16) successions to each estate ; |
| „ | E—The average rate of Succession Duty applicable on the scale above described ; |
| „ | F—The rate per cent. on the highest £ ; |
| „ | G—The Duty which would be payable on each Succession ; |
| „ | H—The total Duty payable in respect of the assumed number of Successions to an estate ; |
| „ | I—The percentage which H bears to C ; |
| „ | J—The amount by which the duty at present payable under C would exceed that payable under H. |

962. **Modes of Adjusting Scale to Varying Requirements.**—As was pointed out in paragraphs 340/51 (Second Report), there are several ways in which a scale (if it be adopted as a standard) may be adjusted from time to time to varying requirements:—

- (A) Duty may be levied at a percentage over or at a percentage under the standard scale; or
- (B) A fixed sum (such as the basic rate of 5d. in the Commonwealth Income Tax) may be added to the rate per cent. on the value of all Successions, thus raising the rate of Duty uniformly, irrespective of the Standard rate of Duty applicable to the Succession*; or
- (C) A fixed sum may be deducted from the rate per cent., thus lowering the rate of Duty uniformly, the converse process of B; or
- (D) The range of graduation may be extended to higher rates on Successions of greater value; or
- (E) The range of graduation may be restricted to lower rates on Successions of less value, the converse process of D; or
- (F) At the point where graduation stops, the rates may be continued on a more or less sharply progressive, flat, or regressive line.

It should be added that the scales outlined in this Report as “standards” are much steeper than the scale of the present Commonwealth Estate Duty.

SECTION XXXIX.

PROPERTY PASSING UNDER SETTLEMENTS.

963. Under the Commonwealth Act, where property the subject of a settlement passes to any person as the result of trusts or dispositions in the settlement taking effect only after the death of the settlor or any other person, it is dutiable if the settlement was made within one year before the settlor's death. In one important respect, however, the Commonwealth Act differs from the Acts of all the States, in that the State Acts bring within the dutiable area **all** property passing under the operation of trusts or dispositions in a settlement which take effect after the death of the settlor **independently of the date of the settlement**. In any scheme of Death Duties, it seems necessary, if the scheme is to be comprehensive and consistent, that, where there is a disposition of property taking effect after the death of a settlor or other person, such property should be deemed taxable, whether it passes through the operation of a will or codicil, or through the operation of a Deed having the effect of a testamentary disposition. On this general view, it seems therefore that no distinction should be made between a will and a settlement, where both operate in the same way, that is, where the settlement is in effect a testamentary disposition.

964. **We recommend that the Commonwealth Act be amended to conform with the general principle of Death Duties and with the Acts of all the States by rendering dutiable all property which passes under a trust or disposition in a settlement taking effect after the death of the settlor or of any other person named in the settlement, whether the settlement be made within one year of the settlor's death or at any earlier period.**

SECTION XL.

JOINT INTERESTS.

965. Where an interest in real estate is held jointly by two or more persons, the law attaches to that form of tenure the important right of survivorship, so that, where there are two joint tenants and one dies, the survivor becomes owner of the whole estate. The same effect follows where there is a joint ownership of personal property. Under the Commonwealth Act, the benefit which accrues to the survivor or survivors of two or more joint tenants has not been treated as a taxable interest, though it is so under some of the State Acts, as also under the British *Succession Duty Act* 1853. The relevant section of that Act reads as follows:—

“Where any persons shall, at or after the time appointed for the commencement of this Act, have any property vested in them, jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession; and every person to whom any such interest shall accrue shall be deemed to be the successor; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the Duty, if any, chargeable thereon by this Act in proportion

* To this suggested method Mr. Commissioner Duffy expresses dissent (see Second Report, page 133).

to their respective interests in the succession ; and any beneficial interest in such succession, accruing to any of them by survivorship, shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived."

Upon the principle which governs our recommendation (paragraph 964) with regard to settlements, whenever made, containing trusts or dispositions taking effect upon the death of the settlor, **we are of opinion that the beneficial interest which accrues by survivorship to a surviving joint tenant should be treated as a taxable interest. We recommend that the Act be amended to effect that purpose.**

This would be applicable whether the scheme of the Act is that of an Estate Duty, as at present in the Commonwealth Act, or of a Succession Duty, which is the form we recommend Death Duties should assume.

966. The principle of this recommendation is partly covered by the proposed amendment to Section 8 (4) (a) of the Act, which, however, is not sufficiently comprehensive to cover the whole ground.

SECTION XLI.

CORPORATION DUTY.

967. The question of applying the principle of Death Duties to corporations which under their charter or constitution have perpetual succession, was discussed in Great Britain for many years before legislative action was taken to impose taxation upon the property of such corporations. It was first proposed that the tax should be payable on the capital of corporately-owned property at stated periods, say every 25 or 30 years, representing the average interval between successions to property. The difficulties in the way of such a scheme led to the substitution of an annual Duty which by the British Act of 1885 was fixed at 5 per cent. upon the net annual income. It is said that the revenue derived from this tax has been disappointing, the highest point having been reached in the year 1915-16, with a figure of £62,000. The rate of 5 per cent. as originally fixed has never been increased, and apparently is much too low in comparison with the Death Duties imposed upon privately-owned estates. The Estate Duty, for example, now rises by a graduated scale to 40 per cent. of the taxable capital value. Australian Legislatures have not, so far, enacted any Statute imposing a charge upon corporations, having the same specific intention as the British Corporation Duty ; that is, as a substitute for some form of Probate or Estate Duty.

968. There is, no doubt, a continually increasing volume of property, both real and personal, passing into the possession of corporations, or (to use a more familiar term) public companies, and that fact appears to have satisfied British legislators that there is a theoretical and practical justification for the imposition of a tax of the nature of an Estate Duty upon such companies.

969. As a means of preventing too great accumulations of land under conditions inimical to free alienation (and this perhaps is one of the principal reasons which induced the British Legislature to impose the tax) a Duty payable once in a generation, as was first intended, seems a much less powerful instrument than a progressive Land Tax. When, to avoid serious practical difficulties, it is found necessary (as was the case in Great Britain) to impose the tax in the form of an annual levy upon income, its potency as an instrument for effecting a dispersion of interests in land is obviously diminished almost to vanishing point.

But, apart from this aspect, does the theory of such a tax, which rests upon the assumption that property held by a public company escapes taxation of the nature of Estate or Succession Duty, bear analysis ? Is not thought upon the subject, in England at least, influenced, perhaps unconsciously, by facts of history which are not facts of to-day ?

970. During the prolonged historic struggle to free a large proportion of the total area of arable land in England from the control of "the dead hand," it was the fact that unless the corporations (largely ecclesiastical) which held the land could be **directly** taxed by way of an Estate or Succession Duty, their property would escape such taxation altogether. But the passage of the years has brought an entirely different situation. The property of corporations or companies is represented to-day by shares or stock widely distributed among the public, and, as forming part of the estate of the owners at death, that property comes periodically within the range of Death Duties.

971. It may be said that a corporation as such is not affected by the taxation of the individual owners of its shares or stock. That is true, but, in our opinion, a corporation tax in the nature of or in substitution for a Death Duty can be justified only on one of two grounds, namely :—

- (1) That such taxation is necessary to prevent the holding of land out of use or the using of it otherwise than in a manner profitable to the community, or
- (2) That unless the corporation is itself directly taxed by way of Death Duties the land or other property it holds will not come within the range of Death Duties at all.

As to No. 1, we have already submitted that a Land Tax is a more effective method of inducing the subdivision of large landed estates. As to No. 2, as indicated above, in effect practically all property held by corporations, except that held for religious, charitable, or other public purposes, and for that reason exempted from Death Duties, is now taxed through the Death Duties imposed upon the estates of individual owners of interests in corporations, and its taxation in the hands of the corporations also would be a double taxation.

972. **For the reasons above stated, we are of opinion that neither in theory nor on practical grounds is it desirable to attempt the imposition of a Corporation Tax in the nature of a Death Duty.**

973. Under modern Company Law or by virtue of special Acts of Parliament, corporations or companies enjoy special privileges, and if it were thought necessary to impose some special tax upon them, additional to the taxes to which they are now subject, it would seem more appropriate to impose something in the nature of an annual License Fee. At present the power of the Commonwealth to deal with the matter in that way is incomplete.

SECTION XLII.

BOARD OF APPEAL.

974. In our First Report (page 29) we recommended the constitution and appointment of a Board of Appeal for the purpose of hearing taxpayers' appeals from assessments under the Income Tax Act. By an Amending Act of December 1921, such an Appeal Board was constituted. The members of that Board have since been appointed, and the Board is now in operation.

975. In our Fourth Report (page 198), dealing with Land Tax, we recommended that the existing Taxation Appeal Board, appointed under the Income Tax Assessment Act, be given the necessary powers to deal with appeals arising under the Land Tax Assessment Act.

976. Under the Estate Duty Assessment Act, the present provisions with regard to objections and appeals contained in Section 24 allow an administrator to lodge with the Commissioner an objection in writing against an assessment, stating fully the reasons for the objection. If the Commissioner disallows the objection wholly or in part, the administrator may appeal to the High Court or to the Supreme Court of a State.

977. In our opinion, the functions of the Board of Appeal should be extended to admit of its hearing appeals arising under the Estate Duty Assessment Act. That action would, we think, be justified for the same reasons as have been stated in support of our recommendations with regard to the Board of Appeal under the Income Tax Assessment Act and the Land Tax Assessment Act. The Estate Duty Assessment Act, like the Land Tax Assessment Act, is highly technical, and many questions must arise between taxpayers and the Department which taxpayers would be glad to have the opportunity of referring to an independent tribunal, such as the Board of Appeal, having a simple and inexpensive procedure. We think that, generally, the rights of taxpayers and the powers and duties of the Board of Appeal for the purposes of the Estate Duty Assessment Act should be similar to those which we have recommended in relation to the Income Tax and Land Tax Assessment Acts.

978. **We therefore recommend—**

- (1) That the existing Taxation Appeal Board, appointed under the Income Tax Assessment Act, and any subsequent or additional Board of Appeal similarly appointed, be empowered to hear and adjudicate in matters of appeal under the Estate Duty Assessment Act.
- (2) That it shall be competent for the Board of Appeal to adjudicate upon matters which involve questions either of law or of fact; that in respect of questions of fact the Board's decision shall be final, but that in respect of questions of law an appeal shall lie from the Board to the High Court or to the Supreme Court of a State.
- (3) That in those instances in which (prior to the constitution of the Board of Appeal)—
 - (1) Notice of appeal to a Court has been given in accordance with Section 24 of the Act, but the case has not come on for hearing;
 - (2) Objection against assessment has been lodged, but no decision has been given by the Commissioner;
 the Act shall provide that taxpayers shall have the option of transferring their appeal or objection, as the case may be, to the Appeal Board.

It is intended that the above recommendations shall apply whether the taxation to be levied takes the form of an Estate Duty, or, as we recommend (paragraph 897) the form of a Succession Duty.

SECTION XLIII. OFFICE ORDERS.

979. In connexion with the Income Tax, we recommended in our Third Report, pages 170-1 that the Office Orders relating to that Act should be published for the benefit of the public at the earliest possible moment. A similar recommendation was made in our Fourth Report, page 200, in respect of the Orders issued under the Land Tax Assessment Act.

980. All the evidence taken by the Commission upon the several Direct-Taxation Acts administered by the Commonwealth, and our own examination of such of the Orders as were made available to us, have satisfied us that it would be greatly to the public advantage to have access to all Office Orders issued in relation to those Acts as soon as they are issued.

981. **We recommend**, in respect of the Orders issued and to be issued under the Estate Duty Assessment Act :—

- (1) That the existing body of Office Orders affecting the general practice of the Department be published at the earliest possible moment, and be offered for sale to the public at a moderate cost.
- (2) That all such Office Orders subsequently issued be made accessible to taxpayers as soon as issued.
- (3) That, with a view to securing wide publicity, the daily Press in each capital city be furnished with copies of all such Office Orders as soon as issued.
- (4) That all such Office Orders be purchasable at each Commonwealth Taxation Office at a moderate cost.
- (5) That facilities be provided free of charge at each Commonwealth Taxation Office for the perusal by taxpayers of all such Office Orders as are operative.
- (6) That all such Office Orders be made to apply to all assessments affected thereby relating to the current financial year.

SECTION XLIV.

ANOMALIES ARISING UNDER COMMONWEALTH AND STATES' SCALES OF RATES.

982. In the Commonwealth and the State Acts anomalies arise from the fact that, while in every case (except that of Western Australia) estates below a certain value are not taxed, the tax is levied on the whole estate if exceeding that amount. Similar anomalies appear where marked changes in rates occur or where preferential deductions are reduced or disappear, the effect being to increase the rates at various stages of value in a sudden and irregular manner.

983. Under the Commonwealth Act, estates not exceeding £1,000 in value are exempt from taxation, but, as the State tax is allowed as a deduction from the amount taxable by the Commonwealth and as the States' rates vary, the Commonwealth tax begins to operate at different points of value according to the State in which Probate is granted, as the following examples show :—

At lowest rates (nearest relatives), the point at which the Commonwealth tax begins to operate is—

Where Probate is granted in New South Wales	.. ..	£1,011
Where Probate is granted in Victoria, South Australia, and Western Australia	.. ..	£1,016
Where Probate is granted in Queensland and Tasmania	.. ..	£1,026

At highest rates (distant relatives and strangers in blood), the point at which the Commonwealth tax begins to operate is—

Where Probate is granted in New South Wales	.. ..	£1,021
Where Probate is granted in Western Australia	.. ..	£1,031
Where Probate is granted in Victoria	.. ..	£1,042
Where Probate is granted in Queensland	.. ..	£1,076
Where Probate is granted in South Australia and Tasmania	.. ..	£1,112

An added £1 in value at these points entails a tax under the Commonwealth Act—

At lowest rates, of	.. ..	£6 13 4
At highest rates, of	.. ..	£10 0 0

and when combined with the State taxes the added £1 in value causes increases in taxation—

At lowest rates, ranging from	.. ..	£6 13 7 to £6 14 0.
At highest rates, ranging from	.. ..	£10 0 6 to £10 2 2.

984. With the exception of the highest rate in Tasmania, which is 10 per cent. throughout, all the State rates are graduated in "steps"—though varying in scale in different States. This form of scale produces an anomalous increase of Duty wherever the "step" occurs. The most pronounced of these are shown below:—

State.	Rates.	Estate Value.	Tax.	Additional Duty to be Paid for the £1 Added Value.	Cause of Anomalous Increase of Duty.
New South Wales	Lowest ..	£ 1,000	£ s. d. Nil	£ s. d.	
		1,001	10 0 2	10 0 2	Exemption £1,000
		5,000	50 0 0		
		5,001	125 0 6	75 0 6	Preferential rates cease, and at the same point an increase occurs in the scale of rates, the higher rate then being applied to the whole amount
	Highest	1,000	Nil	..	Exemption £1,000
		1,001	20 0 5	20 0 5	
Victoria ..	Lowest ..	500	Nil		
		501	5 0 2	5 0 2	Exemption £500
		2,000	30 0 0		
		2,001	66 12 8	36 12 8	Secondary preferential deductions cease and there is also an increase in the prescribed preferential rate
	Highest	200	Nil	..	Exemption £200
		201	3 0 4		
Queensland	Lowest ..	300	Nil		
		301	3 0 2	3 0 2	Exemption from Probate Duty
		500	5 0 0		
		501	10 0 5	5 0 5	Succession duty commences
		2,500	62 10 0	..	Secondary preferential deductions are reduced
					Preferential rates reduced by one-sixth
	Highest	2,501	80 11 9	18 1 9	
		5,000	172 4 5		
		5,001	250 0 0	77 15 7	Secondary preferential rates cease
		199	Nil		
		200	8 0 0	8 0 0	Exemption £199
		300	12 0 0		
South Australia	Lowest ..	301	15 1 0	3 1 0	Probate Duty operates
	Highest	499	Nil		
		500	3 15 0	3 15 0	Exemption £499
		1,999	29 19 8		
		2,000	80 0 0	50 0 4	Secondary preferential deductions cease, and there is also an increase in the prescribed preferential rate
Western Australia ..	..	..	..	..	No pronounced increases
Tasmania ..	Lowest ..	500	Nil		
		501	10 0 5	10 0 5	Exemption £500

NOTE.—Where the word exemption appears and the value does not exceed the amount mentioned it is to be understood no Duty is charged, but when the value exceeds that amount Duty is charged on the total value.

By the term "secondary preferential deduction" is meant an allowance under which certain beneficiaries, having a close relationship to the testator, are not only charged Duty upon a lower scale of rates than that prescribed for other beneficiaries, but also, in addition, where the total amount of the estate does not exceed a specified amount, are charged a proportion only (say one half) of the rates of the lower scale.

Fuller information as to Commonwealth and State duties, and as to the combined effect of those Duties in various States, will be found in Appendices Nos. 10 and 10a.

985. The figures in Appendix No. 10 show that upon estates not exceeding £1,500 in value the Western Australian rates are the lowest, and the Tasmanian rates are the highest. (In this comment the rates referred to are the highest rates in the respective scales, that is, those charged in respect of beneficiaries who are either distant relatives or strangers in blood.) Upon values of £7,500 and upwards, the Western Australian rates are the same as those of Victoria; and upon values of £30,000 and upwards are the same as those of Victoria and Tasmania. The maximum effective percentage of the combined State and Commonwealth taxes is reached with regard to estates in Victoria, Western Australia, and Tasmania at the value of £80,000, the combined rate

at that point being 23·50 per cent. The highest effective percentage of the combined taxes occurs in the case of estates in Queensland, where a percentage of 32·85 is reached at a value of £100,000. At the highest point of value shown in the Appendix, £200,000, it will be seen that the percentage of combined Commonwealth and State taxes is in the case of estates in Queensland 32·85; estates in New South Wales and South Australia 32·00, and estates in Victoria, Western Australia, and Tasmania 23·50.

986. In reading Appendix No. 10, it should be remembered that variations in the Commonwealth Duty in the different States arise from the fact that the State Duty is deducted from the taxable value upon which the Commonwealth Duty is levied.

987. Further, with regard to South Australia, it should be noted that the figures in Appendix No. 10 are comparable with those of other States only on the assumption that each estate passes to one Successor only, the Duty in South Australia being not an Estate Duty, but a Succession Duty (see paragraph 884 of the Report).

988. Appendix No. 10A has been compiled to show the percentage of combined Commonwealth and State (South Australia) taxes to the total value of the estate in cases where the total estate passes either as a whole to one Successor or respectively to 2, 4, or 6 successors. The figures in the Columns relating to Duty payable where the estate passes to one Successor only are the same as those shown in Appendix No. 10.

SECTION XLV.

MISCELLANEOUS.

989. **Date at which Valuation for Probate purposes is required to be made.**—Under the Commonwealth Statute and the Statutes of all the States except New South Wales, the value of an estate for purposes of payment of Duty is taken as at the date of death of the testator. In New South Wales the valuation is required to be made as at the date of grant of Probate.

990. There is sometimes a considerable interval of time between the death of a testator and the grant of Probate, and as, for the purposes of the Commonwealth Duty, the executors are required to have valuations made as at the date of death of the testator, the requirement of the New South Wales Law operates to cause considerable additional expense and inconvenience, as a second valuation is often necessary. Complaint was made by witnesses, particularly witnesses representing Trustee Companies, of the hardship so caused. Those witnesses were unable to suggest any reason for the lack of concordance of the New South Wales Law on this point with all other Estate Duty Laws in Australia.

991. **We are unaware of any objection to the adoption of the course followed by the other States and by the Commonwealth, and bring the matter under notice in the hope that it may receive consideration by the proper Authorities.**

992. **Valuations made for One Authority—Acceptance by Another Authority.**—It was strongly urged by witnesses that a valuation for Probate which has been accepted by one Authority (either Commonwealth or State) should also be accepted by the other. Instances were given where valuations made on behalf of the State and on behalf of the Commonwealth differed considerably. As the State Probate Duty is invariably paid first, and the Commonwealth, in some States at least, accepts State valuations of personal property, it would seem that State valuations of real property should also be accepted, thus avoiding the anomaly complained of (See paragraph 1027.)

993. **Grant of Probate—Practice in States not uniform.**—It was represented to us that, in one detail affecting convenience and expense, the practice in regard to the Grant of Probate is not uniform in the various States. For example, in one State the Affidavits in regard to Probate are lodged with the Registrar, who deals with the matter at the minimum of cost and in due course issues the Probate, while in an adjoining State it is necessary to employ Counsel to appear before the Probate Judge and move for the grant of Probate.

994. **In our opinion, the simplest and least expensive method which is found practicable should, in the interests of the community, be generally adopted.**

995. **Re-Sealing of Probates.**—Complaint was made by a number of witnesses of the large expense caused in obtaining a re-seal of Probate in States other than the State in which Probate is granted. Instances were given by way of illustration—for example, in one case where Probate was obtained in Victoria, the testator had possessed 100 shares in a Public Company in South Australia, the gross value of the asset being £57 10s. 0d. The cost of re-sealing the Probate to enable the Executor to transfer the asset was £20. In another case, in respect of shares worth £150 in a Company registered outside the State in which Probate was obtained, the cost to the Executor was over £40.

It is, in our opinion, very desirable that such expenses should be reduced to a minimum.

996. In our Second Report, paragraph 249, we recommended, as part of a permanent scheme for the allocation of direct subjects of taxation between the Commonwealth and the States, that the power to impose Probate or Succession Duties should be exclusively vested in the States. **Assuming that such an allocation be made, it would, in our opinion, be of the greatest value to the Australian community if the States agreed upon a uniform Act, and also if each State accepted the values shown on the Probate granted by any other State, subject only to a simple and inexpensive form of registration.**

997. **Taxation Dependent upon the Location of Documents of Title.**—In the case of documents of title such as Mortgages, Scrip, &c.; the amount of Estate Duty payable under existing State Laws may depend upon the physical location of the documents at the date of the testator's death. For example, if the Mortgage Deed of property situated in New South Wales is in Victoria at the time of the testator's death, Duty is payable in both States. This also applies in the case of Scrip and similar documents. This dual taxation has been the subject of serious complaint by witnesses during our inquiry, and has been the subject also of adverse comment by economists, in relation to a similar practice in the United States.

In our opinion, action should be taken to prevent double taxation of this kind.

998. **In the case of a Mortgage Deed, the location of the land within a particular jurisdiction should, we think, as between one State and another, be decisive upon the question of the Authority to whom, and to whom only, Estate Duty should be paid.**

998A. **Another instance of Double Taxation under States' Legislation.**—Section 103 of the New South Wales Stamp Duties Act (No. 47 of 1920) provides that—

(1) The estate of a deceased person, whether domiciled at the time of his death in or out of New South Wales, shall also be deemed to include—

(a)

(b) every share and all stock held by such person at the time of his death in any company, corporation or society, whether registered or incorporated within or out of New South Wales, and carrying on the business of mining for gold or other minerals as defined in the *Mining Act* 1906 in New South Wales, or of treating any such minerals, or the business of pastoral or agricultural production or timber-getting in New South Wales;

(c) every share held by such person in any corporation, company or society having a share register in New South Wales for any purpose whatever.

998B. Section 4 of the New South Wales *Companies (Death Duties) Act* 1901 makes it obligatory, under penalty, for every company incorporated outside New South Wales which carries on the business—

(a) of mining for any minerals in New South Wales; or

(b) of pastoral or agricultural production or timber-getting in New South Wales,

to make application to the Registrar for registration of an office of the company in New South Wales. In the event of the death of a member of any such company, the company is required by Section 7 of the same Act (which provides a penalty for non-compliance), within six months from the day when the probate or letters of administration are notified to or lodged with the company, to furnish to the Registrar a return giving the name and address of such member, and other particulars, including the number, description, and value of the shares held by such member at the time of his death.

998c. Estate Duty on such shares is made payable by the company, which may deduct the amount so paid from any moneys payable by the company to the personal representatives of the deceased member in respect of the shares or stock, or may recover the amount by suit or action from such representatives. In such cases, and in cases arising out of Section 103 (1) (c) above cited, if the ownership of the shares was in (say) Victoria, the interest would be liable to taxation in that State also.

998D. The Queensland *Succession and Probate Duties Act 1892 Amendment Act of 1895* has similar provisions to those of the New South Wales Act, in cases where share or other interests of a company incorporated in Queensland appear in a branch register (outside Queensland) of the company. Those provisions are applicable "although the testator or intestate may not have had his domicile in Queensland"

998E. Legislative provisions such as those above cited entail a form of double taxation which appears to us to be devoid of justification. It is necessarily very unequal in its incidence; it is regarded by taxpayers as unjust, and appears as an arbitrary exercise of State power which is rendered possible by the existence of special and statutory forms of property.

We recommend that action be taken to prevent double taxation of this kind.

SECTION XLVI.

COMMENTS ON VARIOUS SECTIONS OF THE COMMONWEALTH ACT.

999. Section 3 (Definition Section)—

"Administrator" means any executor to whom probate of a will is granted, or any person to whom letters of administration, with or without a will annexed, is granted, and also any person who, by virtue of any administration, becomes entitled to administer, take charge of, or become receiver of, any property of a deceased person :

A departmental suggestion was submitted to us that the definition be amended by the addition of the words :—

"and includes any person who takes possession of or intermeddles with the property of a deceased person and any person required by the Commissioner to furnish a return in respect of property received by him from a deceased person within one year before the death of that person."

In his Seventh Annual Report the Commissioner of Taxation explains the necessity for the proposed amendment thus :—

"In the administration of the Act it has been found that the definition of 'administrator' is not wide enough to cover all the persons who may have charge or possession of the estate of a deceased person. It does not extend to persons who have received gifts of property from the testator within twelve months prior to his death, although such property forms part of the dutiable estate of the deceased. It would not cover the case of a person who took upon himself to administer any part of the deceased's estate without authority to do so.

The Act at present only requires an administrator, as therein defined, to lodge returns under the Act. As stated above, certain persons who may have taken control of portions of the estate of the deceased are not regarded as administrators, and are, therefore, not bound by the obligations laid on administrators by the Act.

Any person who has taken control of any part of the deceased's estate is *de facto* an administrator, and he should be bound by the same obligations as an administrator.

It is considered that the definition of 'administrator' should be extended to cover these persons, so that an assessment for duty in respect of the estate handled by them can be made against them."

Without comment upon the verbal form of the proposed amendment, which no doubt will be revised, **we consider the suggestion a reasonable one and recommend its acceptance**, except as to the specified period before decease, which will (if our recommendation in respect of Section 8 (4) (a) be adopted) become two years instead of one.

1000. "Debts" includes probate and succession duties payable under any State Act, but does not include voluntary debts :

This definition should be read in conjunction with Sections 17 and 18, which, as amended in October, 1922, by the addition of the words underlined, now read respectively :—

17. For the purpose of assessing the value for duty of the estate of any person dying after the commencement of this Act, all debts due and owing by the deceased at the time of his death and Federal and State Land and Income Taxes which become due and payable after his death and within one year after the payment of duty on any assessment under this Act, shall be deducted from the gross value of the assessable estate if the deceased was at the time of his death domiciled in Australia.

18. If the deceased was at the time of his death not domiciled in Australia the debts which may be deducted from the gross value of the assessable estate shall be debts due and owing to persons resident in Australia, or contracted to be paid in Australia, or charged on property situate in Australia, and Federal and State Land and Income Taxes due and payable at the time of his death or which become due and payable after his death and within one year after the payment of duty on any assessment under this Act.

The Commonwealth Commissioner of Taxation informed us that it is proposed to amend the present definition of "Debts" so as to limit the deductions allowed in respect of Probate and Succession Duties payable under any State Act to Duties paid on the estate dutiable under the Commonwealth Act.

We concur in that proposal.

1001. **Secrecy to be imposed on Departmental Officers.** *The Income Tax Assessment Act 1915-18* provides that every officer shall make a declaration of secrecy before entering upon his official duties or executing any power or duty conferred or imposed on him under the Act, and imposes a maximum penalty of Two hundred and fifty pounds upon any officer who makes a record of or divulges any information relating to the affairs of a person except in the performance of his duty under the Act.

1002. In our Fourth Report (paragraphs 737 and 738) we commented upon the absence of any such provision from the Land Tax Assessment Act. We expressed the opinion that, with the exception of the official valuation only of separate parcels of land (which would be available for public information if independent State Valuation Bureaux were established), it is desirable that taxpayers' affairs with regard to Land Tax be treated confidentially, as in the case of Income Tax, and recommended the amendment of the Land Tax Assessment Act accordingly.

1003. In recommending the inclusion of secrecy provisions in the Estate Duty Assessment Act, the Commissioner of Taxation pointed out that recent prosecutions by the Department had emphasized the necessity of having suitable secrecy provisions in all Acts administered by him. In his opinion, such provisions would not only be in the interests of office discipline, but would assist in protecting taxpayers from exploitation.

1004. **We recommend that the Act be amended—**

- (1) To include suitable provisions enforcing the obligation of secrecy upon officers in all matters relating to the affairs of an estate.
- (2) To provide for the supply of information to other Commonwealth Departments (if required for any public purpose) and to State Taxation authorities. (Section 13 of the Act already provides for the making of arrangements with State Taxation authorities for the supply by them of information to the Commonwealth Commissioner).

1005. **Section 8, Sub-section (3)(a) reads :—**

(3.) For the purposes of this Act the estate of a deceased person comprises—

(a) his real property in Australia (including real property over which he had a general power of appointment, exercised by his will);

This sub-section provides that property over which a deceased person had a **general** power of appointment which he has exercised by his Will shall form part of his dutiable estate. This is a common provision in Estate Duty Acts. The Commissioner of Taxation has suggested an amendment of the Sub-section to include property in which the deceased person had a beneficial interest together with a **limited** power of appointment exercisable by will.

We are not satisfied that the suggested amendment to include a limited power of appointment can be justified, unless possibly from a Revenue point of view, that is, in order to prevent some apparent, but not real limitation being placed upon a general power of appointment in order to avoid Duty. A limited power of appointment may of course be a power which can be exercised only in a direction entirely contrary to the desires of the donee of the power. There is also the possibility from the Revenue point of view (this difficulty is the converse of the one mentioned above) that, if a property over which a testator had a limited power of appointment is made dutiable, the limits may be so wide that the power will be almost, if not quite, as valuable as a general power of appointment. The question whether a deceased person having a limited power of appointment had also a beneficial interest in the property to be appointed cannot, we think, be regarded as a determining factor. The South Australian *Succession Duties Act 1893* contains in Section 9 a provision requiring the administrator to include in the statement to be supplied to the Registrar :—

"The net present value of any property given to an uncertain person, or on an uncertain event, including property over which a special power of appointment is given, such value to be estimated as if such property had been given by way of vested remainder to a certain person."

1006. The British *Succession Duty Act 1853* has a provision (Section 4) making dutiable as a "succession" any property passing as the result of the exercise of a limited power of appointment. From the point of view of an Estate Duty Act such as that of the Commonwealth, we are unable to recommend the inclusion of such a provision, although in our opinion it would not be out of place in an Act imposing a Succession Duty upon the basis which we recommend (paragraph 897).

1007. Section 8, Sub-section (4) reads :—

(4) Property—

- (a) which passed from the deceased person by any gift *inter vivos* or settlement made before or after the commencement of this Act within one year before his decease, or, being property comprised in a settlement under which he was tenant for life, the life interest of which was surrendered by him to the remaindermen within one year before his decease ; or
- (b) in which he had a beneficial interest at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person,

shall for the purposes of this Act be deemed to be part of the estate of the person so deceased.

The Commissioner of Taxation has suggested an amendment of these Sub-sections. Under Sub-section (4) (a), Duty is levied in case of surrender within one year of death on the total value of any property which is the subject of a life interest held by the testator, whether such life interest was created by the testator or not. **It is proposed to amend Sub-clause (a)** by inserting after the word “settlement” in the fourth line the words :—

“or agreement made by him or by him and some other person jointly.”

This would be in accordance with the provisions of the British Succession Duty Act and the Victorian *Administration and Probate Act* 1915.

We recommend that the Act be so amended.

1007A.—The period, one year before decease, specified in Sub-Section (4) (a) is the same as that specified in the Acts of Victoria and South Australia. In New South Wales and Tasmania, the period is three years, in Queensland, two years, and in Western Australia, six months.

We recommend that a period of two years be adopted, and that the Commonwealth Act be amended accordingly.

1008. **It is also proposed to amend Sub-clause (b)** to provide for the payment of Duty on all life interests held by the testator and created by himself, whether held by him at the date of death or surrendered within the period prescribed within which gifts *inter vivos* are rendered dutiable. The necessity for some such amendment is illustrated by a case which arose where a person settled on himself for life certain property with remainder to his daughter. On his decease the Department sought to include this property in his taxable estate, on the ground that it came within the terms of Section 8 (4) (b) of the Act as being property in which the deceased had at his death a beneficial interest, which devolved upon another person. The Commissioner was advised that the Departmental claim could not be maintained, as by the settlement made during his lifetime the testator had created two interests, his own life interest and the absolute interest of his daughter. Upon the settlor's death, no interest passed to the daughter. It was simply a case of one interest ceasing and another independent interest arising in possession.

1009. **We endorse the Commissioner's suggestion and recommend an amendment of Section 8 (4) (b)** to provide for payment of Duty on all life interests held by a testator and created by himself whether held by him at the date of death or surrendered within the period prescribed within which gifts *inter vivos* are rendered dutiable.

1010. A further addition to Sub-section (4) recommended by the Commissioner is one to provide for the taxation of property which was taken by the donee under gift, **whenever made by the deceased as donor, of which bona fide possession and enjoyment was not assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.** The words in heavy type in the preceding sentence indicate the amendment proposed. This provision originated with the English *Estate Duty Act* 1894, Section 2, and appears also in the Victorian *Administration and Probate Act* 1915. An illustrative case which arose under the latter Act was one in which a testatrix twelve months before her death had given to her three sons portions of the land owned and worked by her, each portion being surrounded by other land of the testatrix. Upon the same day upon which the land was so transferred, each of the sons executed a lease to the testatrix for five years of the land given to him, a fair and reasonable rent being reserved. After the gifts, the lands given continued to be in the actual physical occupation of the testatrix and to be worked by her with her other lands in the same way as before the gifts. In that case it was held that the land so given was chargeable with the Duty payable under the Victorian Act as though part of the estate of the testatrix. (*Lang v. Webb*, 13 C.L.R. 503). The object of the proposed amendment of the Sub-section is to protect the revenue against arrangements to defeat the Act by colorable transactions.

We approve of the principle of the suggestion, and recommend amendment of the Act accordingly.

1011. The Commissioner of Taxation suggests the insertion in Sub-section (4) of a provision under which interest **receivable** from money on deposit shall be deemed to accrue from day to day and interest accrued to the date of death of a testator or person dying intestate shall form part of his estate.

We concur in the suggestion and recommend amendment of the Act accordingly.

1012. **If this amendment be adopted**, it should also be made clear that interest **payable** up to the date of death shall be deductible from the gross value of the estate as a debt.

1013. **Section 8, Sub-section (5) reads :—**

(5.) Estate duty shall not be assessed or payable upon so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious, scientific, charitable or public educational purposes.

The Commissioner of Taxation suggests that this Sub-section be amended by adding at the end the words "within Australia", the effect of which will be to subject to tax any part of the estate of the deceased person which passes to a religious, scientific, charitable or public educational body **outside Australia**. The question whether this result could be attained under the Section as it stands was argued before the High Court in the case of Jackson and Another, Appellants, and the Federal Commissioner of Taxation, Respondent (27 C.L.R., 503). In that case it was held by the majority of the Court (Knox, C.J., Isaacs and Starke, *J. J.*—Rich, *J.*, dissenting) that the exemption given by the Sub-section in favour of devises, &c., for charitable purposes is not limited to such charitable purposes as have operation in Australia, but extends also to charitable purposes which are being carried out abroad. The Commissioner informs us that the restriction to charitable and other purposes **within Australia** was undoubtedly intended.

In our opinion, this is a reasonable restriction, and we recommend amendment of the Act to make that restriction operative.

1014. **Section 8, Sub-section (6.) reads :—**

(6.) In respect of so much of the estate as by will intestacy gift *inter vivos* or settlement passes to the widow or children or grandchildren of the deceased estate duty shall be assessed and payable at two-thirds of the rate which would otherwise be payable.

The Commissioner of Taxation suggests an amendment of this Sub-section to provide that the reduced rate payable in respect of so much of the estate as passes to the widow, children or grandchildren of the deceased shall not apply in cases where the benefit taken by those relatives of the deceased does not accrue to them immediately, but only after the interposition of a prior terminable interest. The question arose in Victoria in the case of *In re Davidson* (23 A.L.R., 415), in which Mr. Justice Cussen ruled that the privilege granted by the Sub-section to the widow, children or grandchildren by the reduction in the rate of Duty payable in respect of their interests should not be lost, even though a prior estate was interposed before their enjoyment began. The Commissioner's suggestion that this privilege as to Duty should be withdrawn where any prior interest intervenes, so that after the termination of such intervening interest the widow's share should be lessened by the full rate of Estate Duty, does not command our sympathy. It appears to us clear that the Parliament intended that full rates should not be charged in respect of the interest of a widow, child or grandchild, and if, for any reason, the beneficial enjoyment of an estate by any of these persons is deferred, that in our opinion is not a sufficient reason for making a further inroad by taxation upon their interest.

In this case, we recommend that any privilege as to rates accorded to near relations be not affected by the interposition of a prior estate.

1015. **The Commissioner of Taxation further suggests** that the privilege as to a lower rate of Duty should apply only where the privileged person (widow, child or grandchild) is at the date of death of the testator domiciled within Australia. **This suggestion also fails to commend itself to us. In our opinion the test should be family relationship.** Domicile outside Australia at the material date may have arisen not from choice, but from circumstances outside the control of the parties affected, and we do not think that they should be deprived of the privilege now afforded by the Act.

1016. **Other questions** arise in connexion with the consideration of affording privilege in respect of tax to persons holding certain relationship to the deceased. **For example, there may be considered the case of adopted children.** In some State Acts there are provisions under which a child who has been adopted with the formalities prescribed by a Statute dealing with the matter is deemed for the purposes of Estate or Succession Duty to be a child of the person whose estate is subject to Duty. It seems to us that this is a reasonable provision. Most frequently adoption, in accordance with such a provision, takes place in the case of married couples who have no children of their own, or who, if they have children, adopt others who have some degree of relationship to

them or are the children of intimate friends. Whether in those circumstances or otherwise, there is an assumption of parental responsibility towards the child so adopted, and a compliance with the law governing adoption, which, in our opinion, justify placing the adopted child, for the purpose of preference, in the same position as a child born of the marriage of the adoptive parents.

We recommend, therefore, that, where a child has been adopted in compliance with the formalities in any State Law, such child should be regarded for the purpose of Estate Duty as coming within the privileged class.

1017. Another case is that of illegitimate children. The question as to how illegitimate children should be treated for purposes of Estate or Succession Duty has been debated in Great Britain at intervals, and often with strong feeling, for more than 100 years, and private members have more than once attempted to secure the passage of Bills to assimilate the rates of Legacy and Succession Duty in the case of illegitimate children to the rates affecting legitimate children, but so far without success, the position still being that an illegitimate child is for the purposes of Estate Duty treated as a stranger in blood and taxable at the highest rate. In Hanson's "Death Duties," page 667, after quoting various cases, it is said :—

It would seem, therefore, that legitimated children are not "strangers in blood", but pay Succession Duty at the same rate as if they had been originally legitimate. But it appears to be otherwise when the children, though acknowledged by the father as his natural children, are not legitimated. (*Atkinson v. Anderson*, 21 Ch. D. 100).

In New Zealand, the *Death Duties Act* 1909, Section 19, provides—

For the purposes of Succession Duty illegitimate relationship shall be recognised as equivalent to legitimate relationship in all cases in which the successor is entitled, on the intestacy of the deceased, to succeed by virtue of that illegitimate relationship to any part of the estate of the deceased, or would have been so entitled if the deceased had died intestate.

In Tasmania the *Deceased Persons Estates Duties Act* 1915, Schedule (2), Part II., provides that :—

Where the person taking the property is an illegitimate child of the deceased person or of the settlor or donor or of any person making any such instrument, the Duty in respect of the property so taken shall be charged at the same rate as if such child were legitimate.

1018. We are informed that in all the States Acts have been passed providing that, in the case of illegitimate children, subsequent marriage of the parents has the effect of legitimating the children. For purposes of State Estate or Succession Duties, presumably no question arises where a subsequent marriage of the parents has occurred, but the question of illegitimate children whose parents have not married is left open except in Tasmania. It will be seen from the provision quoted from the Tasmanian Act that, so far as Estate Duty is concerned, the question of whether there has or has not been a subsequent marriage of the parents is not taken into account in that State in determining the status of the child.

1019. We recommend adoption of a provision similar to that in force in Tasmania.

1020. Another relationship which may be considered is that of a widower. In Great Britain and also in South Australia and Western Australia, a widower is for purposes of Death Duties placed in the same category as a widow. The Victorian Act makes a similar provision where the benefit to a widower has arisen as the result of a settlement, but apparently not where it arises under a Will. In our opinion, it is reasonable that a surviving husband or wife should be treated in the same way for purposes of Estate Duty.

1021. Section 8, Sub-section (7.) reads :—

(7.) All duties lawfully paid in any place outside Australia, in respect of any part of the estate situate outside Australia, may be deducted from the duty to which the estate is liable under this Act.

The Commissioner of Taxation points out that it has sometimes happened that the Duty payable outside Australia in respect of part of the estate which is assessable inside Australia has exceeded the proportion of the Australian Duty which is attributable to that part of the estate. In some cases, under the Act as it stands, the result has been that the allowances in respect of the Duty paid outside Australia have entirely wiped out the Duty assessable in Australia on the whole estate, and thus exempted the estate from Australian Duty. The Commissioner suggests "that the law should be amended so as to limit the deduction in such cases to the proportion of the Duty payable in Australia or outside Australia (which is applicable to the doubly taxed part), whichever of the two is the less."

We endorse that suggestion and recommend a consequent amendment of the Act.

1022. The Commissioner of Taxation suggests a further amendment by the insertion after Section 8 of a provision **to meet cases in which transfers for valuable consideration have been made by the testator within one year of his death, but in which the consideration is less than the true market value.** The present definition of "gift *inter vivos*" excludes transactions in favour of *bonâ fide* purchasers for valuable consideration. Nothing, however, is said as to the adequacy of the consideration. In some State Acts, provision is made for treating the difference between the consideration actually paid in such cases and what is deemed to be adequate consideration as part of the taxable estate. The suggestion of the Commissioner is that a similar provision should be inserted in the Commonwealth Act.

1023. **We support that suggestion and recommend insertion of a suitable provision,** subject to our recommendation (paragraph 1007 A) for substitution of a period of two years in lieu of the present period of one year.

1024. While approving of the principle of the suggested provision, we are of opinion that the question of the adequacy or otherwise of consideration paid in such cases is one upon which **a taxpayer should have the right of appeal from the Commissioner's decision to the Board of Appeal.** (See section of this Report headed "Board of Appeal").

1025. **Section 10 (1.) reads :—**

10.—(1.) For the purpose of assessment and levy of estate duty every administrator shall, except as prescribed, within the prescribed period, prepare and furnish in the prescribed form and at the prescribed place a statement setting forth a full and complete return of all the estate in Australia of the deceased person in respect of whose estate he is the administrator.

The Commissioner of Taxation suggests the omission from this Sub-section of the words "in Australia". The effect of the omission of those words would be to place upon the administrator the duty of furnishing a statement showing the whole of the estate of the deceased person. This might in many cases include, for example, real property outside Australia, and in this respect seems to us to go too far. By common consent of civilized nations, the taxation of real property is governed by the Laws of the country in which the property is situated.

In our opinion, it should be sufficient if the return to be furnished by an administrator comprise what is required by Section 8, Sub-section (3.).

1026. **Section 11 reads :—**

11. The Commissioner may require such further or other returns as he deems necessary for the full and complete assessment and collection of the duty assessable under this Act, and may permit the administrator or other person interested to make alterations in any return lodged, upon the Commissioner being satisfied as to the necessity for the alteration.

The Commissioner of Taxation suggests that this Section be amended by omitting the words "such further or other returns" and inserting the words "any person to furnish such returns". At present, under Section 10, returns can be required only from any person who comes within the definition of the term "administrator", and this has been found too narrow for effective administration. (See paragraph 999). The Commissioner in evidence said, in explanation :—

The idea of the proposed amendment is that there should be power to call upon any person for a return if that person has control of any part of the estate which would be dutiable. It is not intended to require an accountant or solicitor who had had to do with an estate to furnish returns, because they may not be in a position to do so. Several cases have happened which have driven us into this position. Persons have given away the whole of their estate within a very few months of their death. In two cases we had, I think, the estate was divided absolutely amongst the members of the family, and there was nothing left to put into any testamentary document. There was no executor or administrator. We had nobody from whom we could get a return. It was a dutiable estate only because of the gifts having taken place within the time limit of one year. There was nobody responsible for making a return.

We recommend the proposed amendment of the Section.

A consequential amendment of Section 12 will be required.

1027. **Section 14 reads :—**

14. In assessing duty in accordance with this Act, the Commissioner may if he thinks fit adopt, as far as it extends, the value of dutiable estate as assessed for duty under a State law in respect of the same estate.

This Section enables the Commissioner to adopt as far as it extends the value of dutiable estate as assessed for Duty under a State Law. The evidence shows that this provision is availed of by the Commonwealth Department with regard to the value of **personal** estate, but with regard to **real** estate the Commonwealth relies upon valuations made by its officers for the purposes of Land Tax. In this connexion, attention is invited to paragraph 706 (Fourth Report). The Commissioner informs us that in some States the Commonwealth valuation of lands is used by the States for the purposes of Estate Duty. If arrangements be made for the Commonwealth to adopt valuations of land by State Authorities for the purposes of the Land Tax Assessment Act, we assume that the State valuations would be adopted also for the purposes of any Estate or Succession Duty Assessment Act. (See paragraph 992).

1028. Section 16 reads :—

16.—If—

- (a) any administrator makes default in furnishing any return ; or
- (b) the Commissioner is not satisfied with the return made by any administrator ; or
- (c) the Commissioner has reason to believe that any estate (though no return has been furnished) is dutiable,

the Commissioner may make an assessment of the amount on which, in his judgment, duty ought to be levied, and the estate shall be liable to duty thereon, except so far as the amount is, on appeal, shown to be excessive.

The Commissioner of Taxation suggests certain amendments of this Section, partly consequential upon the proposed amendment of Section 11 and partly by substitution of the word "person" for the word "estate" in the clause near the end of the Section, where it is said :—
"The estate shall be liable to Duty thereon except, &c." This proposed substitution, taken in conjunction with the proposed amendment of Section 11, and without explanation, left it open to be inferred that a person might be called upon to pay Duty who had no beneficial interest in the estate. The Commissioner informs us that is not the intention, but that liability to Duty will only rest upon a person who comes within the definition, as proposed to be amended, of the term "administrator". The Act, however, seems to us to be somewhat defective on this point, and **we recommend that an amendment be made** for the purpose of declaring explicitly that an administrator shall be liable for payment of Duty to the extent only of the property or funds actually received or disposed of by him and available for that purpose. This is not an uncommon provision in similar Acts, and, in the Commonwealth Act, Section 20 (3.), the liability of an administrator for certain **additional or increased** Duty is definitely limited, except in cases of fraud or gross negligence, "to the extent of any property then under his control or which can be applied by him for payment of such Duty."

1029. Section 17, as amended by Act No. 34 of 1922 (for text of the Section, see paragraph 1000).

In connexion with a somewhat similar provision in the New South Wales Stamp Duties Act, particulars were supplied to the Commission of a case arising in that State of a person who died intestate in the year 1922. The facts, as stated by the solicitor who acted for the estate, are as follows :—

At the time of his death, the Federal Assessment for Income Tax for the year ending 30th June, 1921 had not been received, but was issued in May this year (1922) and amounted to the sum of £2,500, in addition to which there will be a further assessment up to the date of his death, which will probably amount to another £1,000.

There is also a State Income Tax of £47 18s. 7d., making a total of say £3,547 18s. 7d.

I brought the case under the notice of the Colonial Treasurer, who referred it to the Stamp Commissioner. His reply is that the matter was referred to the Crown Solicitor, who supported his (the Commissioner's) contention that Federal and State Income Tax which has not been assessed before the date of the death is not a debt actually due and owing by a deceased at the time of his death, and consequently is not a debt for which allowance can be made in terms of Section 107 of the Stamp Duties Act.

This view was supported by Mr. Langer Owen, on the ground that Section 41 of the *Federal Income Tax Assessment Act 1915-18* states that "Income Tax, shall be due and payable 30 days after the service by post of a notice of assessment." Section 44 of the same Act states that Income Tax shall be deemed, when it becomes due and payable, to be a debt due to the King, &c."

It will be seen that reference is made both to the Federal assessment and also to the State assessment. Section 17, as indicated in paragraph 1000, was amended during the year 1922. It seems open to doubt whether the Section as amended will completely meet the complaint of the witness, and **we recommend that the matter be further considered with a view to making provision for adequate deduction in such a case**, if it be considered that the recent amendment would be inadequate in similar circumstances. **It is in our opinion desirable also that the State Act be amended.** (See also recommendation, paragraph 1056).

1030. Section 18, as amended by Act No. 34 of 1922 (for text of the Section as amended, see paragraph 1000).

If, in view of the facts stated above in reference to Section 17, it be found necessary to amend that section, presumably a similar amendment of Section 18 will be made.

1031. Section 19 reads :—

19. Where in the opinion of the Commissioner any estate is of such a nature or is so disposed of or circumstanced that the value thereof is not fairly ascertainable under this Act, he may compound the duty on such property on such terms as he thinks fit, and may give a discharge to the administrator or to any other person interested in the property upon payment of the duty according to such composition.

In the case already cited (*In re Davidson*, 23 A.L.R., 415), Mr. Justice Cussen, after quoting Section 19, went on to say :—

In such a case there would appear not to be an assessment strictly so-called either of value or of Duty, but possibly the Duty, after an agreement for composition, would be “payable.” Perhaps the Section provides for cases of partial administration.

This judicial comment is brought under notice with a view to consideration of some suitable amendment of the Act.

1032. Section 20 reads :—

20.—(1.) The Commissioner may, within one year after the last payment on account of duty on any assessment, make all such alterations in or additions to the assessment as he thinks necessary in order to insure its completeness and accuracy.

(2.) Every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the administrator affected, and unless made with his consent shall be subject to appeal.

(3.) An administrator shall only be liable for such additional or increased duty to the extent of any property then under his control or which can be applied by him for payment of such duty, unless it is owing to any fraud or gross negligence on his part that the proper amount of duty was not paid in the first instance, in which case he shall be personally liable for the additional or increased duty.

(4.) If the alteration in any assessment made by the Commissioner under this section has the effect of reducing the duty payable on the estate, the Commissioner shall refund the duty which has been paid in excess of the amount payable on the altered assessment.

The Commissioner of Taxation has suggested an amendment of this Section so as to permit of the amendment of an assessment at any time, together with the collection at any time of Duty short-paid. It will be seen that the Section, as at present, fixes a limit of one year after the last payment on account of Duty on any assessment as the period within which the Commissioner may alter or add to an assessment. **We do not think it reasonable that the right of the Commissioner to amend assessments should in all cases be unlimited as to time.** In paragraph 546 of our Third Report, dealing with Income Tax, we recommended, in reference to a similar matter, that, where the issue of an amended assessment is due to the failure of a taxpayer to place the Department in possession of all the material facts upon which to base a complete assessment, no limitation of time be imposed upon the Department. In cases where the Department has from the beginning been placed in possession of all the information necessary for the compilation of a complete and accurate assessment, but has issued an imperfect assessment, we recommended that a limit of three years be imposed upon the Department as the period within which an amended assessment may be issued.

1033. **We recommend that, in these latter circumstances, a period of Two years from the date of the furnishing of the return by the administrator be fixed as the limit within which an additional or amended assessment may be made.**

1034. **We also recommend that the same period be fixed as that within which the taxpayer shall have the right to claim a refund.**

1035. To meet the case where, after the estate has been distributed, Duty is found to have been short-paid, the Commissioner suggests the insertion of a provision in the Act to authorize the collection of Duty short-paid from the beneficiaries to whom the property has been distributed. Some difficulties may occur in cases, for example, where beneficiaries are out of the jurisdiction, or where a trustee, after retaining money sufficient to pay the tax, has absconded. **The principle upon which the Commissioner's recommendation rests is, however, reasonable, and we recommend amendment of the Act to provide for the collection of short-paid Duty from the beneficiaries to whom the Duty should have been apportioned by the administrator, in accordance with the directions (if any) of the Will, or otherwise as prescribed by Section 35.**

1036. Section 22 reads :—

22.—(1.) Production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—

(a) be conclusive evidence of the due making of the assessment ; and

(b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *prima facie* evidence only.

(2.) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any return or assessment shall for all purposes be sufficient evidence of the matter therein set forth, without the production of the original.

The Commissioner of Taxation suggests amendment of this Section—

(a) by inserting in Sub-section (1.) thereof after the words “production of any” the words “notice of” ;

(b) by inserting in Sub-section (1.) thereof after the word “Commissioner” the words “Assistant Commissioner or a Deputy Commissioner” ;

- (c) by omitting from Sub-section (1.) thereof the words "copy of an assessment" and inserting in their stead the words "copy of a notice of assessment";
- (d) by inserting in Sub-section (2.) thereof after the word "Commissioner" the words "Assistant Commissioner or a Deputy Commissioner"; and
- (e) by inserting in Sub-section (2.) thereof after the words "from any return or" the words "notice of".

The amendments so suggested are, in our opinion, desirable, and will bring the Act into line with the Income Tax Assessment Act, and with our recommendation, paragraph 761, Fourth Report, relating to the Land Tax Assessment Act.

We recommend that the amendments above indicated be included in the Act.

1037. **Section 24.** If our recommendations with regard to Board of Appeal (page 247 of this Report) be adopted, this section will need to be re-cast.

1038. **Section 24 (8)** reads :—

(8.) Notwithstanding anything contained in this section, where the assessment made by the Commissioner is based solely upon assessments made under the law of a State, an appeal shall not lie from such assessment unless an appeal has been made from the State assessment upon which the assessment under this Act is based.

The Commissioner suggested an amendment of this Sub-section to provide for its application to cases where the Commonwealth assessment is based **partially** upon an assessment made under the Law of a State; the prohibition against appeal to apply in that case to that part only of the assessment which is based on a State assessment.

1039. **In our opinion, the Sub-section should not be amended, but should be repealed, for the following reasons :—**

- (1.) That any relations existing between two independent taxing authorities should not affect any taxpayer's rights of appeal against the decision of either.
- (2.) That, where a taxpayer becomes unable to proceed by way of appeal against the State assessment, owing to some accidental delay in giving notice, he should not be thereby deprived of his right of appeal against the assessment of a different authority.
- (3.) That if, as we recommend in this Report, a taxpayer under the Commonwealth Act be given a right of appeal to a Board of Appeal, it is very undesirable that he should be deprived of that right in consequence of something that occurred between him and a State authority.
- (4.) That, as at present State rates are generally much higher than those of the Commonwealth, it is unlikely that a taxpayer will fail to appeal against a State assessment if he thinks he has good grounds for such an appeal.

It has been suggested that, if the Sub-section be omitted, the omission might lead the Commonwealth Department to incur further expenditure upon staff in order to value through their own officers personal property in the estates of deceased persons, in lieu of accepting as at present the State valuations for such property. It does not seem to us necessary or desirable that such a result should follow, as State valuing officers would no doubt be available as witnesses, if required, in support of the valuations made by them and adopted by the Commonwealth Department.

1040. **Section 25** reads :—

- (1) The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment appealed from; and duty may be levied and recovered on the assessment as if no appeal were pending.
- (2) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded and amounts short paid shall be recoverable as arrears.

This Section corresponds with Section 39 of the Commonwealth Income Tax Assessment Act and with Section 45 of the Commonwealth Land Tax Assessment Act.

1041. The Section provides that, where an administrator has given notice of appeal against an assessment, Duty may be levied and recovered as if no appeal were pending. It may frequently occur that, from causes entirely beyond the control of the taxpayer, considerable time may elapse between the giving of the Commissioner's decision on an objection and the hearing by the Court of an appeal against that decision. It may also happen that Duty amounting to a considerable sum has been paid within the thirty days after the service by post of the notice of

the original assessment, as required by Section 29 of the Act, and that the Court on appeal may alter the assessment in the taxpayer's favour. While Section 25 provides that in such a case the amount of Duty found to have been paid in excess shall be refunded, there is no provision for the payment by the Department of interest upon the Duty paid in excess.

1041. In paragraphs 818, 819, and 820 we discussed a similar position arising under the Land Tax Assessment Act, and are of opinion that the provision there recommended should be included in the Estate Duty Assessment Act or in any Succession Duty Act which may replace that Act.

We therefore recommend that it be provided that a taxpayer, when lodging an objection, should be required to pay tax upon the amount which he admits is taxable, or 75 per cent. of the tax assessed, whichever is the greater.

We are also of opinion that the procedure recommended in paragraph 820 in respect of the Land Tax Assessment Act should be followed in respect of an Estate or Succession Duty Assessment Act.

1043. It may further be pointed out that there is sometimes considerable delay in the giving of the Commissioner's decision upon an administrator's objection. We are officially informed that delay is often occasioned by the peculiar difficulties raised by the objection, and that in such cases the discretionary power of the Commissioner or Deputy Commissioner to extend the time for payment of Duty is frequently exercised.

1044. **Sections 25 to 28.** Some consequential amendments of these Sections will be required if provisions be inserted to enable taxpayers dissatisfied with the Commissioner's decision to appeal, not only to a Court, but to the Board of Appeal. (See "Board of Appeal," page 247.)

1045. **Section 31**, as amended by Act No. 34 of 1922, reads :—

31. If the duty is not paid as provided by section twenty-nine of this Act or such further time as is provided by section thirty of this Act, additional duty amounting to ten per centum of the duty unpaid shall be payable in addition by way of penalty.

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional duty imposed by way of penalty or any part thereof.

In our Reports with regard to Income Tax and also with regard to Land Tax, in dealing with a similar provision, **we have recommended that the penalty Duty of 10 per cent. be altered to 10 per cent. per annum.**

We recommend a similar amendment of the Estate Duty Assessment Act.

1046. **Section 35** reads :—

35. Subject to any different disposition made by a testator in his will, the duty payable in respect of an estate, exclusive of so much of the estate as is devised or bequeathed or passes by gift *inter vivos* or settlement for religious scientific charitable or public educational purposes, shall be apportioned by the administrator among the persons beneficially entitled to the estate in the following manner :—

- (a) The duty shall in the first instance be apportioned among all the beneficiaries in proportion to the value of their interests ; and
- (b) where there are any beneficiaries under the will each of whom takes only specific bequests or devises of a value not exceeding Two hundred pounds, the duty which under paragraph (a) of this section would be payable in respect of the interests of those beneficiaries shall be apportioned among all the beneficiaries in proportion to the value of their interests.

Provided that for the purposes of this section the value of the interests of the widow or children or grandchildren of the deceased shall be reckoned at two-thirds of their assessed value.

This Section was discussed at length by Mr. Justice Cussen in the case of *In re Davidson*, already cited, paragraph 1014. The difficulties of the Section pointed out by Mr. Justice Cussen may perhaps be partly due, as he suggests, to the fact that :—

Instead of an elaborate set of provisions in which an endeavour is made to provide for various cases, an attempt is made to state the matter in a few words.

We suggest that the Judgment in the case in question be considered, with a view to amendment of the Act.

1047. With regard to the Section generally, it may, however, be pointed out that, if our basic recommendation for a change in the scheme of the Act by the substitution of a Succession Duty for an Estate Duty be adopted, the necessity for the Section will disappear.

1048. **Section 37.**—The Commissioner of Taxation has suggested an addition to this Section, the effect of which would be to prevent the Registrar-General or other proper officer of a State from removing the charge from the register until he had received a certificate from the Commissioner, certifying not only that arrears of Duty had been paid, but also that all costs of the charge had been met. We understand that the costs are only small fees payable under the State Acts. If it be thought necessary to amend the Act for the purpose of enacting explicitly (what now seems

implicit in the Section) that the Registrar shall not remove the charge from the Register until he has received a certificate from the Commissioner that arrears of Duty have been paid, we see no objection to inclusion of a requirement that the certificate should cover also payment of costs, by which we mean the State fees payable by the Commonwealth.

1049. Section 44 reads :—

44. The Commissioner, or any officer authorized by him on that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents, and other papers, and to all registers of deeds or documents of title, for the purpose of valuing or inspecting any estate or of ascertaining the ownership thereof and for any of these purposes may make extracts from or copies of any such books, documents or papers.

The Commissioner of Taxation suggests the amendment of this Section to enable the notice in writing to be given, not only by the Commissioner, but also by the Assistant Commissioner or a Deputy Commissioner, and also to widen the scope of the Section by extending the powers it confers to any of the purposes of this Act.

We endorse these administrative suggestions and recommend amendment of the Act accordingly.

1050. Section 45 reads :—

45.—(1.) The Commissioner may by notice in writing require any person to attend and give evidence before him or before any officer authorized by him in that behalf concerning any estate or assessment, and to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he, or the officer so authorized by him, may administer an oath.

The Commissioner of Taxation suggests amendment to enable him to require any person, whether a taxpayer or not, to furnish him with such information as he may require, and to attend and give evidence, &c., as in the Section.

We recommend the suggested amendment.

1051. Section 47 reads :—

47. Any person who—

- (a) fails or neglects to duly furnish any return as and when required by this Act or the Regulations or by the Commissioner ; or
- (b) without just cause shown by him refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him, or to produce any book, document or papers required of him by the Commissioner or any such officer ; or
- (c) knowingly and wilfully makes or delivers any false return, or makes any false answer, whether verbally or in writing, in relation to any matter or thing affecting the liability to or exemption from assessment under this Act of any estate ;

shall be guilty of an offence.

Penalty : One hundred pounds.

The Commissioner of Taxation proposes an amendment of Sub-clause (c) of this Section by the omission of the words “knowingly and wilfully”. This would bring the Section into line with a similar provision of the *Income Tax Assessment Act 1922*. A further suggestion of the Commissioner is to provide that the penalty shall not be less than £2 nor more than £100. **In view of the considerable amounts generally involved in Estate Duty assessments, we see no objection to this minimum penalty.**

1052. Further amendments proposed by the Commissioner by way of addition to Section 47 are as follows :—

(2.) A prosecution for an offence against paragraph (a) or (c) of Sub-section (1) of this Section may be commenced at any time.

The proposed Sub-section (2.) is identical with Section 66 (2.) of the *Income Tax Assessment Act 1922*. **We see no objection to this provision.**

1053. A proposed Sub-section (3.) is similar to Sub-section (3.), Section 66 of the *Income Tax Assessment Act 1922*, but the latter provision refers to a further Section in which the punishment is a pecuniary penalty. We see no objection to this proposed amendment, subject to the adoption of our recommendation with regard to the amendment of Section 43.

1054. A proposed Sub-section (4.) is identical with the provision in the *Income Tax Assessment Act 1922*, Section 66 (4.), and is in our opinion a proper limitation upon the operation of Section 47 (c).

1055. The Commissioner of Taxation suggests the insertion of a new Section, to read as follows :—

47A. Notwithstanding anything contained in the preceding Section, any person who—

- (a) fails to include any assets in any return ; or
- (b) includes in any return as a debt an amount which was not actually due and owing, or in respect of which no liability had accrued, at the time of death, except rates, taxes and duties payable under any Commonwealth or State Act,

shall be liable to pay by way of additional duty the amount of One pound or double the Duty which would have been evaded if the assessment had been based on the return lodged, whichever is the greater, in addition to any additional duty which may become payable by him in accordance with Section thirty-one of this Act :

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional duty or any part thereof."

With regard to Sub-clause (a) of the proposed new Section, we consider its operation should be limited to cases where an administrator failed to include in his return a statement of assets of which he had knowledge. It is not infrequent, particularly with regard to gifts *inter vivos*, made before the testator's death, but within the time limited by the Act which makes such gifts dutiable, for the administrator to be ignorant of the existence of assets at the time when he prepares his return. If without unreasonable delay after the discovery by him of the omission he informs the Commissioner of assets not previously returned, in our opinion he should not be subject to any penalty.

1056. With regard to Sub-clause (b), if the inclusion in question were the result of imperfect information, for which the administrator was not responsible, in our opinion he should not be subject to any penalty or additional Duty. In the proposed wording of this Sub-clause, it is in our opinion necessary to make clear that obligations in the nature of debts, which may be said to have arisen before the death of the testator, although amounts were not actually payable at that date, should be regarded as debts which the administrator is entitled to deduct from the gross value of the estate.

1057. Section 48 reads :—

48. Any person who—

- (a) with intent to defraud, in any return understates the value of any estate, or
- (b) by any wilful act default or neglect, or by any fraud, art or contrivance whatever, evades assessment or duty,

shall be guilty of an indictable offence.

Penalty : Five hundred pounds or imprisonment for three years.

The penalty prescribed by this Section is in the alternative, namely, a fine of £500 or imprisonment for three years. It is observed that in the *Income Tax Assessment Act* 1922 provisions have been inserted rendering a person against whom a pecuniary penalty has been adjudged liable to imprisonment on failure to pay such penalty. But neither in the Commonwealth *Income Tax Assessment Act* nor in the Commonwealth *Land Tax Assessment Act* is there a provision similar to the imprisonment penalty of Section 48 of the *Estate Duty Assessment Act*. The provision of imprisonment as an alternative penalty in a Taxation Act is by no means universal, and where it exists imprisonment is rarely, if ever, imposed.

1058. With regard to the *Estate Duty Assessment Act*, the Commissioner of Taxation informs us that the question of retaining the penalty of imprisonment will be reconsidered. Unless there are strong reasons for its retention, which have not been disclosed to us, this provision should, in our opinion, be eliminated.

1059. At this point, we wish to draw special attention to the fact that, if our recommendation for the substitution of Succession Duty in lieu of Estate Duty be adopted, a complete re-drafting of the Act will probably be necessary. It has not always been possible, if it had been desirable, to indicate, in our comments upon the present Act, what changes, in our opinion, would be necessary if that basic change were made.

SECTION XLVII.

ENTERTAINMENTS AND AMUSEMENTS TAXATION.

1060. **Commonwealth Entertainments Tax Assessment Act.**—The Commonwealth Entertainments Tax Assessment Act was assented to in December, 1916, and was brought into operation on the 1st January, 1917. The Act relates to the imposition, assessment and collection of a tax upon payments for admission to entertainments.

1061. The general administration of the Act is vested in the Commissioner of Taxation (Section 4) who (under Section 5) may delegate to the Assistant Commissioner all or any of his power or functions under the Act (except the power of delegation). That Section also authorizes the Commissioner, in relation to any particular matter or class of matters, or to any particular State or part of the Commonwealth, to delegate necessary powers to any other person (Section 5). This authority has been exercised in favour of the Deputy Commissioners of the several States.

1062. The Commissioner is required to furnish annually for presentation to Parliament a report on the working of the Act, in which attention is to be drawn to breaches or evasions of the Act (Section 6).

1063. **Rates Payable.**—The rates payable under the *Entertainments Tax Act* 1916 were altered under Amending Acts in 1918, in 1919, and again in 1922. The rates payable under the respective Acts are as follows:—

Year in which Act was Passed.	Period Operating.	Payment for Admission (excluding the Amount of Tax).	Rate of Tax.
1916	1st January, 1917, to 11th November, 1918	Exceeding sixpence and not exceeding one shilling Exceeding one shilling	One penny One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling
1918	12th November, 1918, to 30th November, 1919	Not exceeding one shilling, excepting payments not exceeding threepence for the admission, on Saturdays between the hours of twelve o'clock noon and six o'clock in the afternoon, of children apparently under the age of twelve years Exceeding one shilling	One penny One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling
1919	1st December, 1919, to 1st October, 1922	Not exceeding fivepence for the admission to a continuous place of entertainment of persons apparently over the age of sixteen years Sixpence Exceeding sixpence, but not exceeding one shilling Exceeding one shilling	One halfpenny One halfpenny One penny One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling
1922	2nd October, 1922 (still in operation)	One shilling Exceeding one shilling	One penny One penny for the first shilling and one halfpenny for every sixpence or part of sixpence by which the payment exceeds one shilling

1064. **Definitions.**—In Section 2 of the Act the following definitions occur:—

“Admission” means admission as a spectator or one of an audience, and includes admission for the purpose of participating in any exercise in which the payment for admission entitles him to participate;

“Entertainment” includes any exhibition, performance, lecture, amusement, game or sport for admission to which payment is made;

“Payment for admission” includes any payment made by a person as a booking fee for admission, or by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving tax or more tax is required;

“Proprietor” in relation to any entertainment includes any person responsible for the management thereof.

1065. Obligations of Proprietor.—Section 8 provides that no person shall be admitted for payment to any entertainment where the payment is subject to tax except with a ticket stamped with an unused stamp denoting that the proper tax has been paid; or, in special cases, through a barrier which automatically registers the numbers of persons admitted. To obviate the necessity for observance of either of the above rules the proprietor may make arrangements with the Commissioner (or Deputy Commissioners) for furnishing return of payments for admission, provided that he has given security up to an amount and in a manner approved by the Commissioner for the payment of the tax.

In all cases where a proprietor collects tax from the public he holds it as property of the Commonwealth (Section 8 (2)), and the tax, if the amount is less than £50, may be recovered from the proprietor (without prejudice to any other means of recovery) summarily as a civil debt (Section 10).

1066. Clubs, &c.—In some cases annual payments made by members of Clubs, Associations or Societies cover only the right of admission to a series of entertainments. In such a case tax is charged on the lump sum. Where the payment covers other rights, the Commissioner decides what portion represents payment for admission to entertainments and charges tax thereon (Section 11).

1067. Exemptions from Tax.—Payments for admission to entertainments are exempt from tax when it is shown to the Commissioner's satisfaction:—

- (a) that the whole of the takings thereof are devoted to philanthropic, religious or charitable purposes, without any charge on the takings for any expenses of the entertainment; or
- (b) that the entertainment is of a wholly educational character (any question on that point to be determined, in case of difference, by the Commissioner); or
- (c) that the entertainment is intended only for the amusement of children, and that the charge is not more than sixpence for each person (under the *Entertainments Tax Amendment Act 1922* tax is now levied only on payments for admission (excluding the amount of tax) of one shilling and upwards); or
- (d) that the entertainment is provided for partly educational or partly scientific purposes by a Society, Institution or Committee not conducted or established for profit (Section 12).

1068. Refunds.—Tax may be refunded to a proprietor where the Commissioner is satisfied that the whole of the net proceeds of the entertainment are devoted to philanthropic, religious or charitable purposes and that the expenses of the entertainment do not exceed 50 per cent. of the gross receipts. Where the gross receipts of such an entertainment are diminished as the result of adverse climatic conditions so that the expenses exceed 50 per cent. the tax may be refunded (Section 13).

1069. Entertainments for Patriotic Purposes.—The Commissioner of Taxation in his Sixth Annual Report (page 130), dealing with the financial year 1915–16, states—

“Under the wording of Section 13 all entertainments for patriotic purposes are dealt with. Claims have been made for treatment under this heading of entertainments arranged by associations of returned soldiers for the benefit of their own associations, but they have not been allowed, as it cannot be said that the object of one organization for the mutual protection and benefit of its members is patriotic within the generally accepted meaning of that word.”

“While Section 13 indicates that tax must be collected and then refunded if the expenses of the entertainment have not exceeded 50 per cent. of the receipts, the Department does not administer it in that way. It requires promoters of entertainments coming within the classes mentioned in the Section to register the entertainments, and obtain exemption from tax, subject to the condition that tax will be paid if, upon production of properly attested accounts, the Department finds that the expenses have exceeded 50 per cent. of the receipts. This arrangement is found to work excellently, and to save time and expense to the Department and the public.”

1070. In his Seventh Annual Report, dealing with the financial years 1916–17 to 1919–20 (page 212), the Commissioner further remarks, in reference to this Section—

“In October, 1919, the Honorable the Treasurer, however, approved of refunds of tax in respect of entertainments for—

- (1) ‘Welcome Home’ or other such functions held on the return of soldiers;
- (2) The purpose of raising funds for erecting Memorial Halls or other buildings for the use of returned soldiers.

To secure a refund promoters must submit with their application evidence showing that the proceeds of the entertainment are to be used for the purpose for which such

entertainments are held, *i.e.*, the proceeds have been definitely set aside for the building of Memorial Halls or Club Rooms, and that this money cannot be used for any other purpose. The amounts claimed are checked with the original returns made to the Department, and if found correct the claim is certified and then forwarded to the Treasury for payment."

1071. Right of Entry.—Section 14 provides that any officer authorized by the Commissioner may enter any place of entertainment at any reasonable time to see that the provisions of the Act and the regulations prescribed thereunder are being complied with. The Act provides a maximum penalty of £20 for the offence of preventing or obstructing the entry of an authorized officer of the Department (Section 14).

1072. Offences and Penalties.—If any person is admitted for payment to any place of entertainment in contravention of the Act, the person admitted and the proprietor are each guilty of an offence. The maximum penalty in the case of the former is £5 and of the latter £50. In addition, the proprietor is made liable for the unpaid tax (Section 15).

Section 16 enumerates a series of indictable offences (such as forging a die or stamp, fraudulently mutilating any stamp with the intent that any use should be made of any part of the stamp), the maximum penalty for which is imprisonment for fourteen years.

Other indictable offences constituted under Sections 17, 18, and 19 respectively involve liability to penalties of imprisonment for seven years, three years and one year.

Power is given under the Act, on information given before a Justice of the Peace on oath, to search the premises of any person suspected of being guilty of an indictable offence and to seize any machinery, implements or utensils applicable to the commission of such an offence (Section 20).

Section 21 authorizes the framing of regulations under the Act and the prescribing of penalties not exceeding £50 for any breach of the regulations.

1073. British Entertainments Duty.—The *Finance (New Duties) Act* 1916, which imposed Duties in respect of admission to entertainments, became operative in respect of these Duties on 15th May, 1916.

The Duties levied under the Act were the following:—

Where the payment, excluding the amount of the Duty does not exceed 2d.		A halfpenny
Exceeds 2d. and does not exceed 6d. ..	..	One penny
" 6d. " " 2s. 6d. ..	..	Twopence
" 2s. 6d. " " 5s. ..	..	Threepence
" 5s. " " 7s. 6d. ..	..	Sixpence
" 7s. 6d. " " 12s. 6d. ..	..	One shilling
" 12s. 6d. " " ..	..	One shilling for the first 12s. 6d. and one shilling for every 10s., or part of 10s. over 12s. 6d.

1074. Successive alterations in the above rates were made under the Finance Acts of 1917, 1918 and 1919. The rates fixed by the *Finance Act* 1919 came into force on 1st October, 1919, and are as follows:—

Where the payment, excluding the amount of the Duty, does not exceed 2½d.		A halfpenny
Exceeds 2½d. and does not exceed 4d. ..	..	One penny
" 4d. " " 4½d. ..	..	One penny and a halfpenny
" 4½d. " " 7d. ..	..	Twopence
" 7d. " " 1s. ..	..	Threepence
" 1s. " " 2s. ..	..	Fourpence
" 2s. " " 3s. ..	..	Sixpence
" 3s. " " 5s. ..	..	Ninepence
" 5s. " " 7s. 6d. ..	..	One shilling
" 7s. 6d. " " 10s. 6d. ..	..	One shilling and sixpence
" 10s. 6d. " " 15s. ..	..	Two shillings
" 15s. " " ..	..	Two shillings for the first 15s., and sixpence for every 5s., or part of 5s. over 15s.

1075. The *Commonwealth Entertainments Tax Assessment Act 1916*, the *South Australian Stamp Act Further Amendment Act 1916* (so far as it relates to Amusements Duty), the *Tasmanian Amusements Duties Act 1916*, and Part III. of the *New Zealand Finance Act 1917* (relating to Amusements Tax) are each modelled largely on the lines of the Imperial enactment.

1076. Some of the provisions of the British Act which differ materially from those of the Australian Acts may be briefly referred to—

Exemptions.—The British Act provides—

1. That any question on the point of an entertainment being of a wholly educational character shall be determined, in case of difference, in England, by the Board of Education; in Scotland, by the Scotch Education Department; and, in Ireland, by the Lord-Lieutenant.
2. Entertainments Duty is not charged on payments for admission to any entertainment where the Commissioners are satisfied that the entertainment is intended only for the amusement of children, and that the charge is not more than 2d. for each person (1921 Act).
3. Duty is not charged in respect of an entertainment provided by a Society or Institution not conducted or established for profit, which has been founded with the object of reviving national pastimes, in furtherance of that object.
4. Duty is not charged in respect of an entertainment if the Commissioners are satisfied that it is—
 - (a) Provided by a Society which is established solely for the purpose of promoting the interest of the industry of agriculture, or some branch thereof, or the manufacturing industry, or some branch thereof, or the public health, and which is not conducted for profit; and
 - (b) Consists solely of an exhibition of the products of the industry or branch thereof, for promoting the interests of which the Society exists, or materials, machinery, appliances or foodstuffs used in the production of those products, or of articles which are of material interest in connexion with the questions relating to the public health, as the case may be.

Penalties.—The British Act provides that if any person acts in contravention of or fails to comply with any Regulation made under the Act, he shall be liable in respect of such offence to an excise penalty of Fifty pounds.

1077. **South Australian Amusements Duty.**—Part 1 of the *South Australian Stamp Act Further Amendment Act 1916* imposes Stamp Duties in respect of admission to amusements. Section 21 of the Act provided that Part 1 (relating to the Amusement Duty) should expire on the 31st December, 1917, but this Section of the Act was repealed in November, 1917, and Amusements Duty continues to be levied and collected as follows:—

Where the payment, excluding the amount of Duty—

(1) does not exceed threepence	.. .. .	One farthing
(2) exceeds threepence, but does not exceed sixpence	.. .. .	One halfpenny
(3) exceeds sixpence—for every sixpence or fractional part of sixpence of such payment..	.. .. .	One halfpenny
Members' or season tickets	.. .. .	One halfpenny for every sixpence or fractional part of sixpence of the price of such ticket

In cases where properly constructed barriers or mechanical contrivances which automatically register the actual number of persons admitted through or past such barriers or contrivances as the means of gaining admission to an amusement are permitted to be used in lieu of duly stamped tickets, Duty at such of the above rates as may be applicable upon the total of the returns made by the promoter of such amusement calculated as though the numbers registered had been tickets issued.

1078. Several of the provisions of the South Australian Act relating to the Amusements Duty were embodied without alteration in the Commonwealth Entertainments Tax Assessment Act, which was enacted some two months later; but the following provisions in the South Australian Act may be compared with the corresponding provisions in the Commonwealth Act:—

Definitions.—Section 5 of the South Australian Act contains the following definitions:—

“Admission” means admission as a spectator or one of the audience, and “payment on admission” includes any payment made by a person who, having been admitted to one part of a place where an amusement is held, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required:

"Amusement" means amusement (including, though without limiting the meaning of that term, concert, recital, lecture, reading, entertainment of the stage, cinematograph or other picture show, dancing, boxing, horse-racing, or other exhibition, performance, amusement, sport, game, or contest of any kind whatsoever) to which persons are admitted for payment; and "admission to an amusement" includes admission to any place in which the amusement is held;

"Promoter," in relation to any amusement, includes the person, company, corporate body, or association having the superintendence or management of the amusement, and also includes the agent, trustee, manager, or committee of any such person, company, corporate body, or association respectively, and also includes any person responsible for the management of the amusement.

Exemptions.—Section 10 of the South Australian Act reads as follows:—

10. (1) Where, upon application being made by the promoter of any amusement to the Commissioner prior to the giving of such amusement, the Commissioner is satisfied—

(a) that the whole of the gross takings or the whole of the net proceeds of such amusement are to be devoted to charitable, patriotic, religious, educational, or scientific purposes, and

(b) that the estimated expenses (if any) to be incurred in connexion with such amusement are reasonable, he may give to such promoter a certificate under his hand exempting such amusement from the payment of amusements duty, and such certificate shall be evidence that amusements duty is not chargeable on payments made for admission to such amusement.

(2) If the estimate of expenses to be incurred in connexion with such amusement is exceeded, any certificate granted under sub-section (1) hereof with respect thereto may be declared by the Commissioner to be null and void, and thereupon—

(a) the exemption hereby granted shall cease, and

(b) the promoter to whom the same was granted shall be liable to a penalty not exceeding Twenty Pounds, unless he satisfies the Commissioner that such excess could not reasonably have been foreseen.

(3) Amusements duty shall not be charged on payments for admission to any agricultural, horticultural, floricultural, poultry, dog, or other like show.

Penalties.—Section 20 of the South Australian Act provides that any contravention of or failure to observe any provision of the Act shall be an offence, and that every person guilty of an offence for which no specific penalty is prescribed shall be liable to a penalty not exceeding £50 or to imprisonment for a period not exceeding twelve months.

Section 18 (2) of the South Australian Act provides that any regulation made under the Act may fix penalties not exceeding in any case the sum of £10 for any breach of the same or any other regulation.

1079. Tasmanian Amusements Duty.—The *Tasmanian Amusements Duties Act* 1916 (assented to on 23rd December, 1916) was amended by the *Amusements Duties Amendment Act* 1917 (assented to on 8th February, 1917) in order to bring the measure into closer harmony with the Commonwealth Entertainments Tax Assessment Act and to facilitate the collection of the Duty by the Commonwealth. Under the existing arrangement specifically authorized by Section 5a of the Tasmanian 1917 Act, the whole of the tax leviable under both the Commonwealth and Tasmanian Acts is collected by the Commonwealth, the portion belonging to the State being then handed over without any deduction for the expense of collection. In consideration of this arrangement, the services of the State police in the way of supervision, &c., are given free of charge.

1080. The Rates Schedule of the Tasmanian Act is as follows:—

Amusements Duty shall be payable as follows:—

1. Where the payment, excluding the amount of Duty—

(1) does not exceed sixpence One halfpenny

(2) exceeds sixpence, for every sixpence or fractional part of sixpence of such payment One halfpenny

2. Members' or Season Tickets One halfpenny for every sixpence or fractional part of sixpence of the price of such ticket

1081. It is only necessary to refer to the principal remaining points of difference between the Tasmanian and the Commonwealth Acts:—

Exemptions.—The Tasmanian Act, which includes as exempt from Duty payments for admission to (amongst others) any amusement where the Commissioner is satisfied that—

"the amusement is provided for partly educational or partly scientific purposes by a Society, institution or Committee not conducted or established for profit," also provides that—

"Where it is proved to the satisfaction of the Treasurer of the State that the amusement is provided by any *bonâ fide* local registered band for the purpose of raising

funds for the maintenance of such band, the amount of amusements duty charged on payments for admission to such amusement shall be paid by said Treasurer to the promoter."

Regulations.—Penalties.—Section 29 of the Tasmanian Act provides (as in the case of the South Australian Act) that any regulation made under the Act may fix penalties, not exceeding in any case the sum of £10, for any breach of the same or any other regulation. The Commonwealth Act, as previously mentioned, authorizes the prescribing of penalties, not exceeding £50, for any breaches of the Regulations.

1082. New Zealand Amusements Tax.—The rates charged when the New Zealand Amusements Tax came into force on 1st November, 1917, were altered as from 1st January, 1922, to the following :—

Where price charged for admission does not exceed ninepence	Nil
Where price charged exceeds ninepence, but does not exceed three shillings and sixpence	One penny for every shilling or part of a shilling
Where price exceeds three shillings and sixpence	One penny for every shilling or part of a shilling, together with, in addition to the amount of tax calculated as aforesaid, the sum of one penny.

1083. Criticism by Witnesses.—The main criticism against a tax of this nature was voiced by Theatrical Proprietors, whose view was expressed thus by a representative :—

"My contention is that the Amusement Tax is a 'Class Tax,' that it is unfair in its incidence. It is the only business whose customers are taxed for purchasing its goods. The reason why I maintain it is unfair in its incidence is that it only affects but a limited portion of the inhabitants. A great proportion of the population take their amusement in other forms and are not taxed. It has affected the attendances in the cheaper parts of the theatre, but, whether this is so or not, or whether the public can afford to pay it, is beside the mark, and in no way justifies a 'Class Tax.'"

1084. Complaint was made to the Commission by representatives of Country interests as to the delay in obtaining registration under the Commonwealth Act, especially in the case of the more remote districts, but this has since been rectified by enabling registration to be effected with local Postmasters.

1085. Evidence was submitted by representatives of certain Musical Societies in support of their claim for immunity from tax under Section 12 (d) of the Act, on the grounds that their entertainments were provided for partly educational purposes, and that their Societies were not conducted or established for profit. (Under the departmental interpretation of the Act as expressed in Office Order No. 209 such entertainments are taxed).

1086. A suggestion was made by one witness, who was the Secretary of a Musical Society, that a new sub-clause should be added to Section 12 of the Act, to read as follows :—

"(e) That the entertainment is provided wholly or in part for musical education or for the promotion or cultivation of love of music, or to raise funds for any of such purposes by a Society, institution or Committee not conducted or established for profit."

1087. We are of opinion that the principle upon which liability to tax should be determined in the case of a Musical Society is already expressed with sufficient clearness in sub-section (d) of Section 12, under which exemption from tax is granted in the case of an entertainment which is provided for partly educational purposes by a Society, institution or Committee not conducted or established for profit.

1088. In cases arising under this sub-section, taxability rests upon questions which, if forming the subject of dispute, might, in our opinion, be suitably referred for final decision to the Board of Appeal.

1089. Comments on Suggested Amendments of the Commonwealth Entertainments Tax Assessment Act.—We are officially informed that amongst the amendments which have been recommended to the Government are the following :—

- (1.) To amend Section 2 (Definition of "Admission") to make taxable payments for articles supplied by a proprietor for the purpose of the entertainment—such as skates.

If it is, as we assume, suggested that a payment for the hire or use of articles supplied by a proprietor should be made taxable, **we think the suggestion a reasonable one, provided that such payment, together with the sum paid for admission, amount to at least the prescribed minimum payment for admission upon which tax is levied.**

- (2.) To widen the definition of "Proprietor" so that persons who apply for registration of an entertainment cannot later claim not to be the "proprietors" of an entertainment and therefore to be not liable for the tax.

We consider the suggestion a reasonable one, subject to the right of an applicant to withdraw from liability upon giving notice within a prescribed time prior to the entertainment.

- (3.) To provide for the full amount of any security bond becoming payable to the Commissioner on breach of conditions of the bond. At present only the tax can be retained, which cannot be ascertained if the proprietor refuses to make returns.

We do not approve of this suggestion. In our opinion the security furnished in accordance with Section 8 (1) of the Act should be regarded as in the nature of an indemnity. The arbitrary forfeiture of the full amount of the security bond because of failure to furnish a return might in many cases mean the infliction of an unduly severe penalty. The failure or refusal to furnish a return will, we consider, be adequately met by empowering the Commissioner to issue a default assessment, as suggested in the succeeding paragraph.

- (4.) To enable the Commissioner to make a default assessment in certain cases, this being a power given in all other Commonwealth Taxation Acts. This power is necessary where proprietors refuse or neglect to furnish returns or, furnish returns obviously incorrect.

We concur in this suggestion. (See recommendation in preceding paragraph).

- (5.) To exempt from tax entertainments for the purpose of erecting or furnishing memorial halls, club rooms and other similar buildings for the use of returned soldiers, provided—
 - (a) that no political purpose is to be served by the entertainment;
 - (b) that the entertainment is not for the benefit of persons other than returned soldiers or their dependants.

We concur in this suggestion.

- (6.) Power is sought to make it an offence to fail to pay to the Commissioner within seven days after an entertainment the tax collected. In a recent actual case, the tax collected was not paid to the Commissioner, but as there was no evidence of a criminal offence prosecution had to be dropped. A severe penalty (£100 or twelve months' imprisonment) is suggested.

We consider it reasonable that failure on the part of the proprietor of an entertainment to remit tax collected to the Commissioner within a reasonable time should involve a penalty by way of fine, in addition to the tax.

In this connexion, Regulation 47A, which came into operation in March, 1919, appears to afford the necessary protection to the revenue. The Regulation reads—

"Any proprietor who, without lawful excuse (proof whereof shall lie upon him), fails within seven days after the close of an entertainment, to pay to the Commissioner the tax due in respect of the entertainment shall be guilty of an offence. Penalty: Fifty pounds."

- (7.) It is proposed to insert a section relating to secrecy and non-production of official documents similar to that found in other Commonwealth Taxation Acts.

We concur in this suggestion.

1090. **Note.**—We desire it to be understood that while submitting recommendations for amendment of the Commonwealth Entertainments Tax Assessment Act (the continuance of which may be a temporary necessity), we adhere to the view already expressed in our Second Report (paragraph 249) that, as part of a scheme for the allocation of subjects of direct taxation between the Commonwealth and the States, **the power to impose Land, Probate or Succession, and Entertainments Taxation** (the existing forms of direct taxation other than that of Income Tax) **should be exclusively vested in the States**, subject only to the overriding powers of the Commonwealth in the case of war.

1091. **Board of Appeal.**—In our opinion, the functions of the existing Board of Appeal (appointed under the Income Tax Assessment Act) should be extended to admit of its hearing appeals arising under the Entertainments Tax Assessment Act. Such extension of the Board's functions would, we think, be justified for the same reasons as have been advanced in support of our recommendations with regard to the Board of Appeal under the Income Tax, Land Tax and Estate Duty Assessment Acts.

1092. **Consideration of Objections.**—The main objections raised against an Entertainments Tax briefly summarized are :—

1. That from its nature, while certain forms of amusement and recreation are made contributory to the revenue, others are necessarily free from any such contribution ; and
2. That the forms of amusement and recreation subject to the tax are essential to the mental, moral and physical well-being of the community, and should therefore be encouraged or at least countenanced rather than penalized by the imposition of any additional charge in the form of tax upon their patrons.

1093. With regard to the first-named objection, as to the partial application of the imposition, in our opinion that is not a conclusive objection as it would obviously not be practicable to apply a tax of this nature to all forms of amusement or recreation.

1094. With regard to the second objection raised against the tax, viz., that the forms of amusement and recreation subject to tax are of special value to the community, and should therefore be encouraged rather than penalized, any assumption that the imposition of the tax has tended to discourage participation in these forms of amusement and recreation would seem to be rebutted by the facts available to us. For example the statistics published in the Seventh Annual Report of the Commissioner of Taxation, supplemented by later particulars furnished by the Department, disclose the following information :—

Period of Collection.				Total Number Admissions.	Total Tax.
					£ s. d.
1st July, 1917	to 30th June, 1918	..		32,375,389	238,396 12 1
"	1918 " 1919	..		56,174,994	354,652 19 4½
"	1919 " 1920	..		95,866,621	551,317 3 11½
"	1920 " 1921	..		101,286,921	643,800 0 0
"	1921 " 1922	..		101,092,221	674,931 0 0

1095. **Probable Revenue Effect of 1922 Changes in Rates.**—The particulars furnished of the Commonwealth Collections of Entertainments Tax for the year 1919–20 in Schedule No. 5 of the Commissioner's Seventh Annual Report disclose the fact that over one-fourth of the total amount of the tax for that year was paid in respect of prices of admission (excluding tax) of less than 1s. This would suggest that the recent amendment in the rate of Tax (see paragraph 1063) will, upon last year's figures, involve an annual reduction in Revenue of at least £150,000.

1096. **Entertainments Tax—Should it be permanent ?**—As a War-time measure, the Entertainments Tax met with but little opposition, as it did not seem unreasonable that those who had time, inclination and means to indulge in certain forms of sport and amusement should be required to contribute to the national funds. It is significant of an altered attitude towards Commonwealth Taxation of this nature that a Bill to repeal the Act was passed by the House of Representatives in 1921, though it was defeated in the Senate.

1097. We regard an Entertainments Tax in the scheme of National Finance as being in the nature of emergency legislation, the repeal of which should be considered as soon as the public finances admit. While it is apparently freer from administrative difficulties and is less costly to collect than other forms of direct taxation, on economic grounds it is open to the objection that its incidence is necessarily partial and uneven. It has not been in force sufficiently long, nor have the conditions under which it has operated approached nearly enough to the normal, to enable us to express a confident opinion as to its social effects.

SECTION XLVIII.

WAR-TIME PROFITS TAX ASSESSMENT ACT 1917-1918.

1098. This Act applies "to the profits of any business arising up to the 30th June, 1919." The operation of the Act, therefore, was exhausted some time before the commencement of our inquiry, except in respect of outstanding or unissued assessments. Early in our investigation we learned that the number of outstanding and unissued assessments was very considerable. The difficulties of administration of this highly complex Act may be gauged from the fact that (as we are informed) even at the present date, January, 1923, the issue of assessments has not been completed.

1099. The Act provides—

"27. (1) There shall be a Board or Boards of Referees to be appointed by the Governor-General.

(2) The Board of Referees shall consider such cases as are referred to it by the Commissioner and as are prescribed."

No Board of Referees was, however, appointed, and this omission was a subject of complaint by many witnesses.

1100. In view of the number of still unsettled cases and unissued assessments under the Act, we recommend that the Board of Appeal constituted under the *Income Tax Assessment Act 1915-1921* be given similar powers of adjudication in relation to matters arising out of the War-time Profits Tax Assessment Act.

If this recommendation and the similar recommendations in respect of Land Tax, Estate Duty, and Entertainments Tax be adopted, the result will be that the Board of Appeal will be empowered to act in relation to matters arising out of all the Taxation Acts administered by the Commonwealth Commissioner of Taxation.

ACKNOWLEDGMENTS.

We wish to express our indebtedness to the Australian Governments for their courtesy in affording facilities for the conduct of our inquiry and in placing at our disposal the services of expert officers.

We also desire gratefully to acknowledge the willing and courteous assistance afforded us in the course of our inquiry by Commonwealth and State officials, and by many others outside the Public Service, to all of whom we tender our warm thanks.

The care and skill with which evidence was prepared, and the ready response to many requests for the loan of, or access to, works of reference, departmental statistics and other sources of information, was much appreciated by us, and greatly facilitated our study of various questions incidental to our investigation.

Our first secretary, Mr. A. G. Brown, M.A., L.L.B., was, at the conclusion of our First Report, transferred to other important duties in the Commonwealth Public Service.

In his place Mr. S. E. Jelley, F.C.A.A., who had been associated with the Commission as Accountant, was at first appointed Acting Secretary and subsequently Secretary to the Commission. Mr. Jelley's knowledge of accountancy has been of particular value in the investigation of many proposals and in the compilation of numerous tabulated statements, and the ability he has displayed in the preparation of the several important graphs that form part of our Second and Fifth Reports merits special commendation.

In concluding this, our Fifth and Final Report,

We have the honour to be,

Your Excellency's most obedient Servants,

W. WARREN KERR, Chairman.

JOHN JOLLY.

J. G. FARLEIGH.

W. T. MISSINGHAM.

S. MILLS.

M. B. DUFFY.

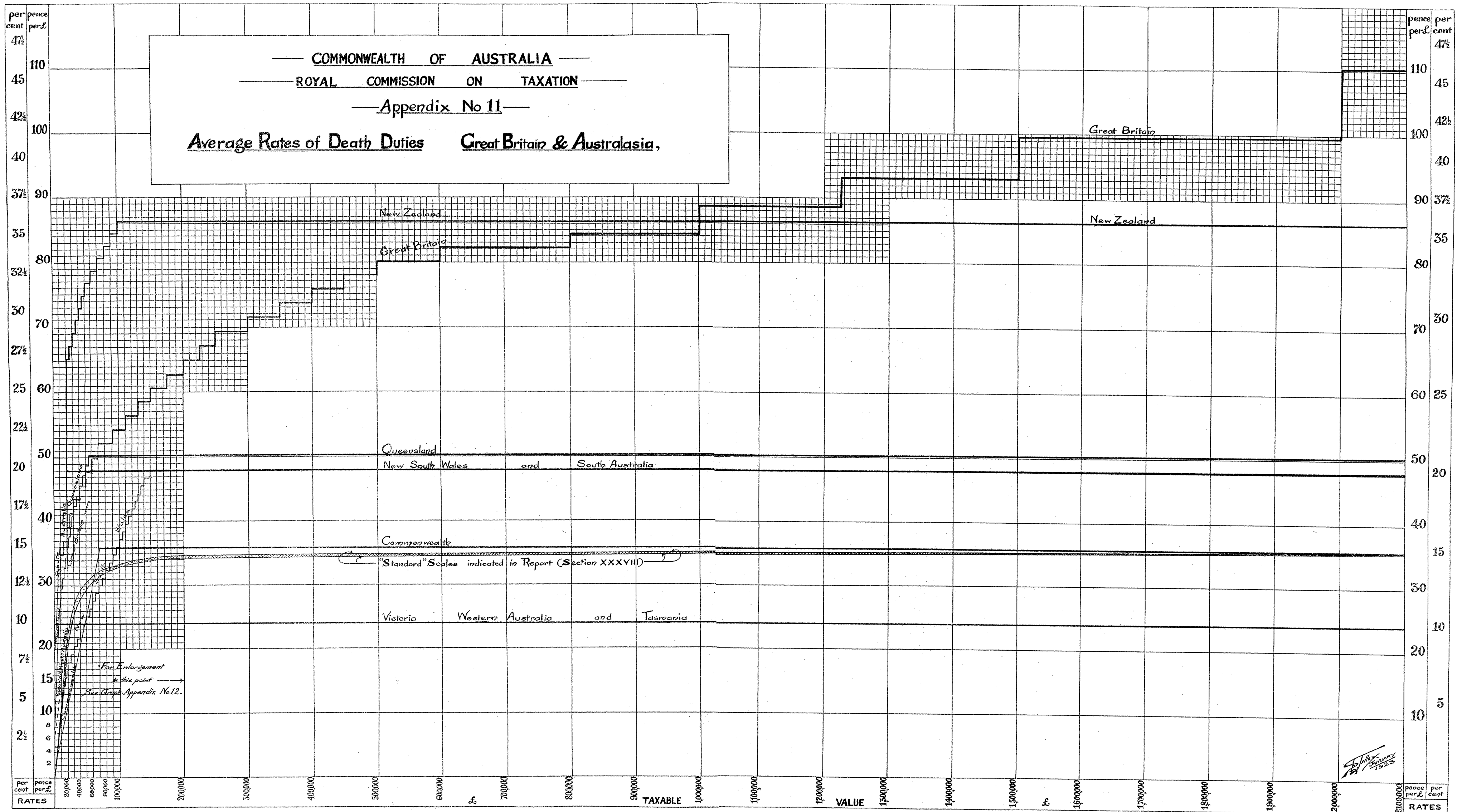
S. E. JELLEY, Secretary.

Melbourne, 28th February, 1923.

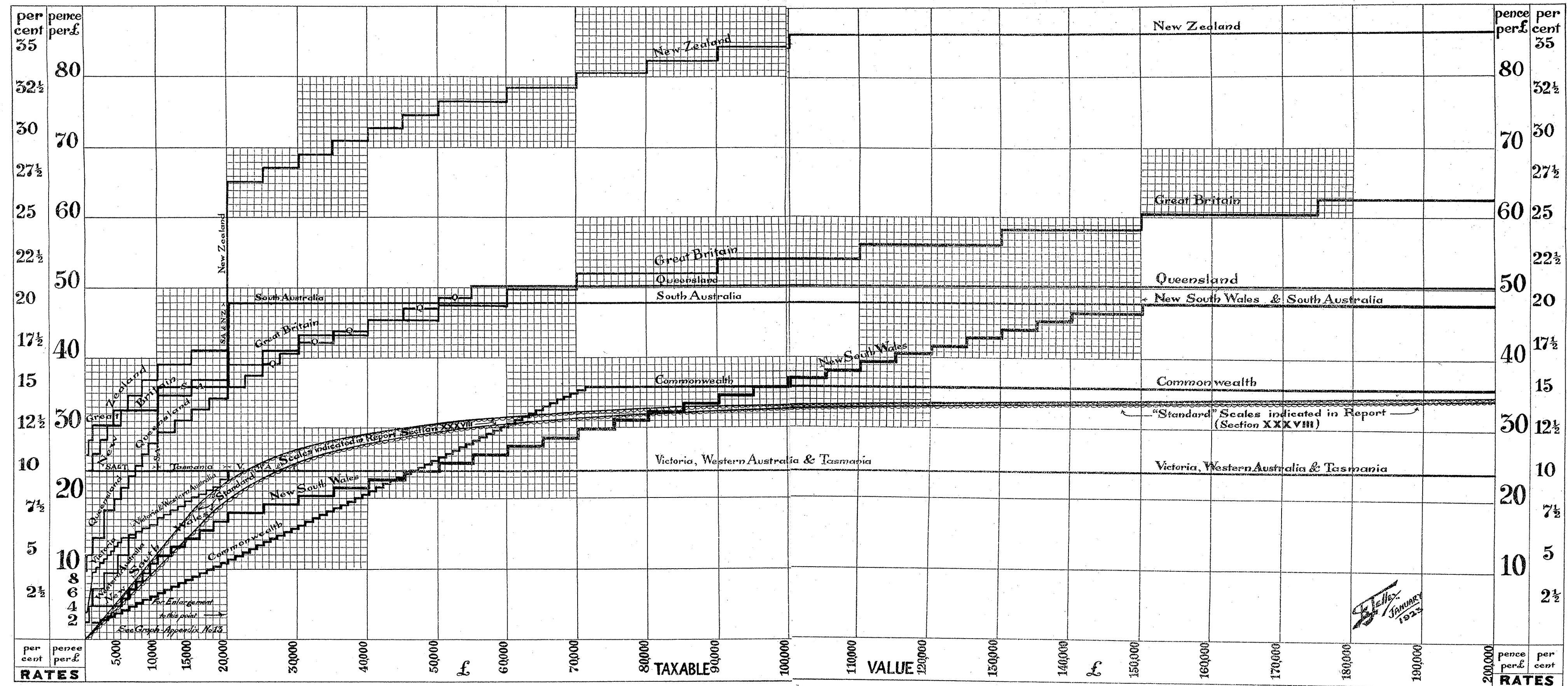
APPENDIX No. 10.
(SEE PARAGRAPH 984 OF THE REPORT.)

COMMONWEALTH AND STATE DEATH DUTIES.

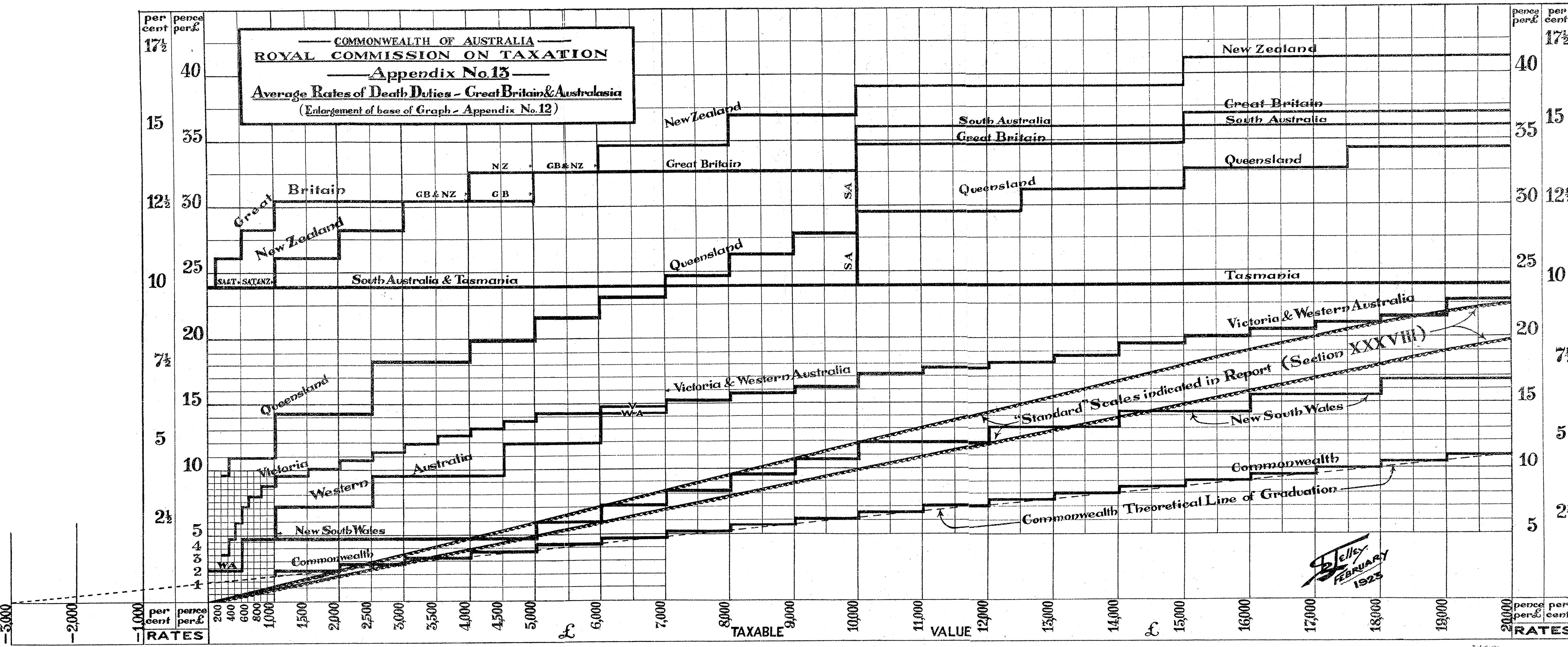
Total Value of Estate.	LOWEST RATES (NEAREST RELATIVES).						Tax Payable to—	HIGHEST RATES (DISTANT RELATIVES AND STRANGERS IN BLOOD).						Total Value of Estate.	
	Probate granted in—							Probate granted in—							
	New South Wales.	Victoria.	Queensland.	South Australia. (See also Appendix No. 10A.)	Western Australia.	Tasmania.		New South Wales.	Victoria.	Queensland.	South Australia. (See also Appendix No. 10A.)	Western Australia.	Tasmania.		
£ 200	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	State Commonwealth	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ 200
..	..	..	..	..	1 0 0	..	Combined Taxes .. ..	..	..	8 0 0	20 0 0	2 0 0	20 0 0	..	..
..	..	..	..	..	0-50	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	..	4-00	10-00	1-00	10-00	..	..
500	..	..	5 0 0	3 15 0	2 10 0	..	State Commonwealth .. ..	..	12 10 0	25 0 0	50 0 0	5 0 0	50 0 0	..	500
..	..	..	5 0 0	3 15 0	2 10 0	..	Combined Taxes .. ..	..	12 10 0	25 0 0	50 0 0	5 0 0	50 0 0	..	..
..	..	..	1-00	0-75	0-50	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	2-50	5-00	10-00	1-00	10-00	..	..
1,000	..	10 0 0	20 0 0	15 0 0	10 0 0	20 0 0	State Commonwealth .. ..	..	36 13 4	50 0 0	100 0 0	20 0 0	100 0 0	..	1,000
..	..	..	..	..	..	..	Combined Taxes .. ..	..	36 13 4	50 0 0	100 0 0	20 0 0	100 0 0	..	..
..	..	1-00	2-00	1-50	1-00	2-00	Percentage Combined Taxes to Total Value of Estate .. ..	..	3-66	5-00	10-00	2-00	10-00	..	..
1,500	15 0 0	22 10 0	37 10 0	22 10 0	22 10 0	37 10 0	State Commonwealth .. ..	..	30 0 0	60 0 0	105 0 0	45 0 0	150 0 0	..	1,500
9 18 0	9 17 0	9 15 0	9 17 0	9 17 0	9 17 0	9 15 0	Combined Taxes .. ..	..	14 14 0	14 8 0	13 19 0	14 11 0	13 10 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	2-98	4-96	7-93	3-97	10-90	..	..
2,000	20 0 0	30 0 0	50 0 0	30 0 0	30 0 0	50 0 0	State Commonwealth .. ..	..	40 0 0	85 0 0	140 0 0	60 0 0	200 0 0	..	2,000
13 4 0	13 2 8	13 0 0	12 16 0	13 2 8	13 0 0	13 0 0	Combined Taxes .. ..	..	19 12 0	19 3 0	18 12 0	19 8 0	18 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	2-98	5-207	7-93	3-97	10-90	..	..
3,000	30 0 0	100 0 0	96 13 4	135 0 0	60 0 0	85 0 0	State Commonwealth .. ..	..	60 0 0	142 10 0	230 0 0	120 0 0	300 0 0	..	3,000
23 15 3	23 4 0	23 4 6	22 18 5	23 10 5	23 6 5	23 6 5	Combined Taxes .. ..	..	35 5 7	34 5 10	33 4 10	34 11 2	32 8 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	3-170	5-893	8-775	6-152	11-08	..	..
4,000	40 0 0	146 13 4	128 17 9	180 0 0	80 0 0	126 13 4	State Commonwealth .. ..	..	80 0 0	210 0 0	306 13 4	160 0 0	400 0 0	..	4,000
36 19 2	35 19 3	36 2 8	35 13 1	36 11 9	36 3 0	36 3 0	Combined Taxes .. ..	..	54 17 7	53 1 2	51 14 2	53 15 2	50 8 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	3-372	6-576	8-958	5-344	11-26	..	..
5,000	50 0 0	200 0 0	172 4 5	250 0 0	125 0 0	175 0 0	State Commonwealth .. ..	..	100 0 0	287 10 0	416 13 4	250 0 0	500 0 0	..	5,000
52 16 0	51 4 0	51 9 11	50 13 4	52 0 0	52 0 0	51 9 4	Combined Taxes .. ..	..	78 8 0	75 8 0	73 6 8	76 0 0	72 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	3-568	7-258	9-80	6-52	11-44	..	..
7,500	262 10 0	356 5 0	425 0 0	487 10 0	240 0 0	300 0 0	State Commonwealth .. ..	..	262 10 0	480 0 0	775 0 0	480 0 0	750 0 0	..	7,500
106 3 0	104 15 6	103 15 4	102 17 0	100 9 7	105 12 0	105 12 0	Combined Taxes .. ..	..	159 4 6	154 8 10	147 19 0	154 8 10	148 10 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	5-623	8-459	12-308	8-459	11-98	..	..
10,000	450 0 0	500 0 0	633 6 8	750 0 0	340 0 0	425 0 0	State Commonwealth .. ..	..	450 0 0	680 0 0	1,166 13 4	680 0 0	1,000 0 0	..	10,000
185 10 8	164 13 4	162 7 4	160 6 8	166 8 10	165 19 4	165 19 4	Combined Taxes .. ..	..	248 6 0	242 6 5	212 0 0	242 6 5	216 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	6-983	9-223	13-787	9-223	12-16	..	..
15,000	900 0 0	840 0 0	1,050 0 0	1,350 0 0	615 0 0	750 0 0	State Commonwealth .. ..	..	900 0 0	1,230 0 0	1,950 0 0	1,230 0 0	1,500 0 0	..	15,000
338 8 0	339 16 10	316 4 0	300 8 0	345 4 10	342 0 0	342 0 0	Combined Taxes .. ..	..	507 12 0	468 3 7	443 14 0	468 3 7	450 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	9-384	11-321	15-958	11-321	13-06	..	..
20,000	1,460 0 0	1,200 0 0	1,533 6 8	1,800 0 0	950 0 0	1,080 0 0	State Commonwealth .. ..	..	1,400 0 0	1,900 0 0	2,866 13 4	1,900 0 0	2,000 0 0	..	20,000
545 12 0	551 9 4	541 13 9	533 17 4	584 4 0	554 19 9	554 19 9	Combined Taxes .. ..	..	818 8 0	796 8 0	719 12 0	796 8 0	756 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	11-092	13-482	17-931	13-482	13-78	..	..
30,000	2,400 0 0	1,980 0 0	2,700 0 0	3,000 0 0	1,500 0 0	1,920 0 0	State Commonwealth .. ..	..	2,400 0 0	3,000 0 0	5,100 0 0	3,000 0 0	3,000 0 0	..	30,000
1,140 16 0	1,195 10 5	1,128 8 0	1,080 0 0	1,216 0 0	1,198 1 7	1,198 1 7	Combined Taxes .. ..	..	1,711 4 0	1,620 0 0	1,394 8 0	1,620 0 0	1,620 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	13-794	15-40	21-648	15-40	15-40	..	..
40,000	3,600 0 0	2,800 0 0	3,866 13 4	4,000 0 0	2,000 0 0	2,880 0 0	State Commonwealth .. ..	..	3,600 0 0	4,000 0 0	7,332 6 8	4,000 0 0	4,000 0 0	..	40,000
1,941 6 8	2,063 12 0	1,927 2 3	1,872 0 0	2,077 6 8	2,029 4 6	2,029 4 6	Combined Taxes .. ..	..	2,912 0 0	2,808 0 0	2,352 0 0	2,808 0 0	2,808 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	16-23	17-02	24-213	17-02	17-02	..	..
50,000	5,000 0 0	3,800 0 0	5,166 13 4	5,000 0 0	2,500 0 0	3,900 0 0	State Commonwealth .. ..	..	5,000 0 0	5,000 0 0	9,833 6 8	5,000 0 0	5,000 0 0	..	50,000
2,880 0 0	3,080 0 0	2,869 6 8	2,880 0 0	3,230 0 0	3,073 6 8	3,073 6 8	Combined Taxes .. ..	..	4,320 0 0	4,320 0 0	8,534 13 4	4,320 0 0	4,320 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	18-64	18-64	26-736	18-64	18-64	..	..
60,000	6,600 0 0	4,500 0 0	6,600 0 0	6,600 0 0	3,000 0 0	4,920 0 0	State Commonwealth .. ..	..	6,600 0 0	6,000 0 0	12,600 0 0	6,000 0 0	6,000 0 0	..	60,000
4,058 8 0	4,342 8 0	4,058 8 0	4,058 8 0	4,560 0 0	4,332 19 3	4,332 19 3	Combined Taxes .. ..	..	6,087 12 0	6,156 0 0	4,834 16 0	6,156 0 0	6,156 0 0	..	..
..	..	..	..	..	..	..	Percentage Combined Taxes to Total Value of Estate .. ..	..	21-146	20-26	28-058	20-26	20-26	..	..
80,000	10,400 0 0	7,200 0 0	9,866 13 4	9,600 0 0	4,000 0 0	7,260 0 0	State Commonwealth .. ..	..	10,400 0 0	8,000 0 0	16,800 0 0	8,000 0 0	8,000 0 0	..	80,000
6,774 8 0	7,280 0 0	6,919 16 5	6,946 2 8	7,600 0 0	7,264 0 0	7,264 0 0	Combined Taxes .. ..	..	10,161 12 0	10,800 0 0	8,468 16 0	10,800 0 0	10,800 0 0	..	



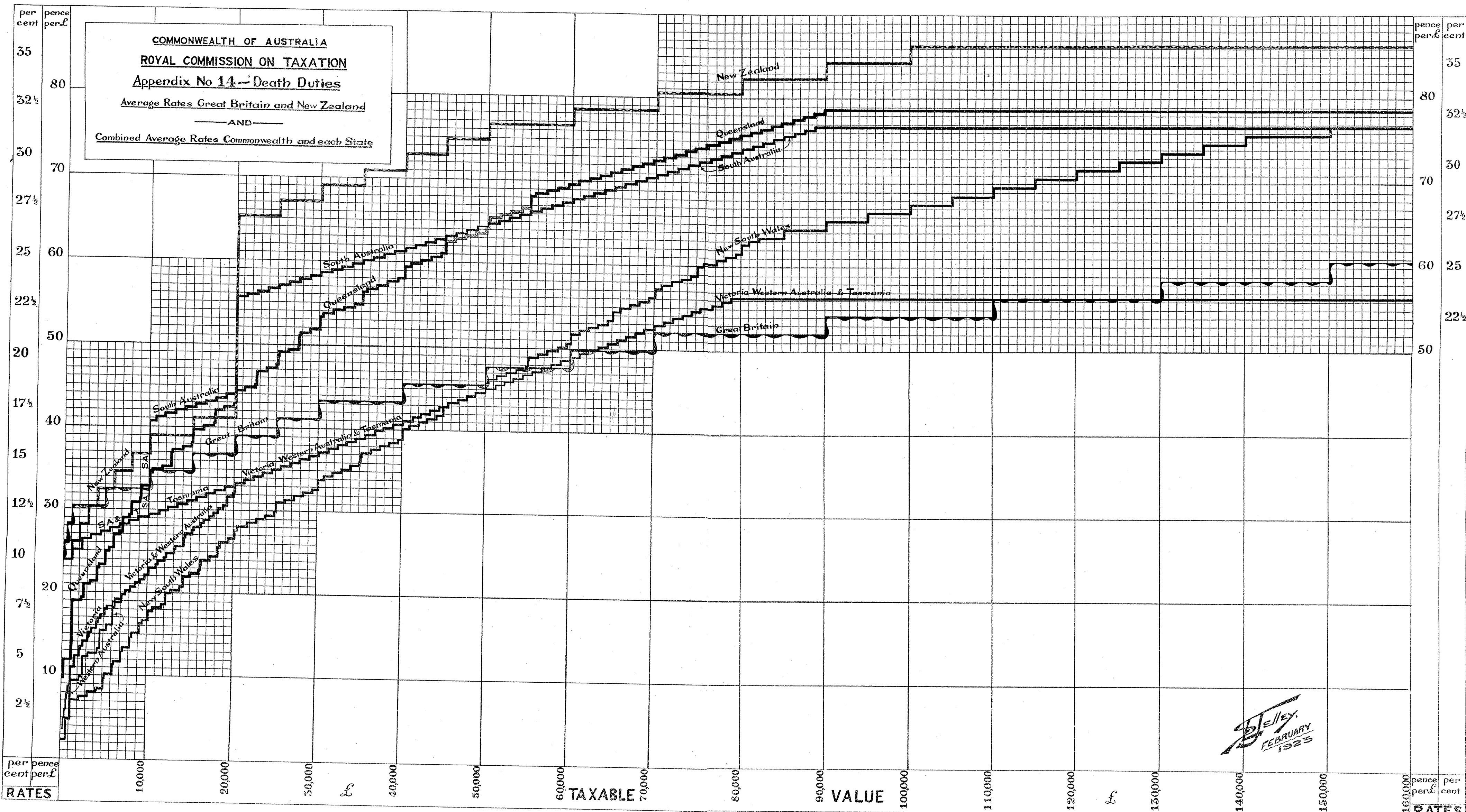
—COMMONWEALTH OF AUSTRALIA—
ROYAL COMMISSION ON TAXATION
 —Appendix No 12—
Average Rates of Death Duties - Great Britain & Australasia,
 (Enlargement of base of Graph - Appendix No. 11)



COMMONWEALTH OF AUSTRALIA
ROYAL COMMISSION ON TAXATION
 Appendix No. 13
Average Rates of Death Duties - Great Britain & Australasia
 (Enlargement of base of Graph - Appendix No. 12)



Delley
 FEBRUARY
 1923



APPENDIX No. 15.

TABLE comparing the Duties payable under the present Commonwealth Estate Duty Act with those which would be payable under a Succession Duty, as described in paragraph 897 of Report.

The Table (so far as it relates to Succession Duty) assumes—

1. An average of $2\frac{1}{2}$ successions to each estate ;
2. A progressive scale of rates terminating at a value of £15,000, at which point the average rate is 7.5 per cent. and the rate on the highest £ is 15 per cent ;
3. The application of a flat rate of 15 per cent. to so much of the value of a succession as exceeds £15,000.

Present Commonwealth Estate Duty.				Succession Duty.				I.	J.
A.	B.	C.	D.						
Taxable value of Estate.	Rate per cent.	Amount of Duty.	Taxable value of succession, that is, value in Column A divided by $2\frac{1}{2}$.	Average rate per cent. on value in Column D.	Rate per cent. on highest £ in Column D.	Amount of Duty on each succession value, Column D.	Total succession Duty on estate (G x $2\frac{1}{2}$).	Percentage of H to C.	Amount by which C exceeds H.
£		£ s. d.	£			£ s. d.	£ s. d.		£ s. d.
2,000	1.0	20 0 0	800	..	.4	3 4 0	8 0 0	40	12 0 0
3,000	1.2	36 0 0	1,200	..	.6	7 4 0	18 0 0	50	18 0 0
4,000	1.4	56 0 0	1,600	..	.8	12 16 0	32 0 0	57	24 0 0
5,000	1.6	80 0 0	2,000	..	1.0	20 0 0	50 0 0	62.5	30 0 0
7,000	2.0	140 0 0	2,800	..	1.4	39 4 0	98 0 0	70	42 0 0
10,000	2.6	260 0 0	4,000	..	2.0	80 0 0	200 0 0	77	60 0 0
15,000	3.6	540 0 0	6,000	..	3.0	180 0 0	450 0 0	83	90 0 0
20,000	4.6	920 0 0	8,000	..	4.0	320 0 0	800 0 0	87	120 0 0
25,000	5.6	1,400 0 0	10,000	..	5.0	500 0 0	1,250 0 0	89	150 0 0
30,000	6.6	1,980 0 0	12,000	..	6.0	720 0 0	1,800 0 0	90	180 0 0
*34,365	7.6	2,611 14 10	13,746	..	6.87	944 15 3	2,367 18 2	90.5	*249 16 8
36,000	7.8	2,808 0 0	14,400	..	7.2	1,036 16 0	2,592 0 0	91	216 0 0
37,500	8.2	3,075 0 0	15,000	..	7.5	1,125 0 0	2,812 10 0	91.5	262 10 0
50,000	10.6	5,300 0 0	20,000	{ 15,000 at 7.5 5,000 at 15 }	9.37	1,875 0 0	4,687 10 0	88	612 10 0
60,000	12.6	7,560 0 0	24,000	{ 15,000 at 7.5 9,000 at 15 }	10.31	2,475 0 0	6,187 10 0	82	1,372 10 0
70,000	14.6	10,220 0 0	28,000	{ 15,000 at 7.5 13,000 at 15 }	10.98	3,075 0 0	7,687 10 0	75	2,532 10 0
72,000	15	10,800 0 0	28,800	{ 15,000 at 7.5 13,800 at 15 }	11.09	3,195 0 0	7,987 10 0	74	2,812 10 0
75,000	15	11,250 0 0	30,000	{ 15,000 at 7.5 15,000 at 15 }	11.25	3,375 0 0	8,437 10 0	75	2,812 10 0
100,000	15	15,000 0 0	40,000	{ 15,000 at 7.5 25,000 at 15 }	12.19	4,875 0 0	12,187 10 0	81	2,812 10 0
125,000	15	18,750 0 0	50,000	{ 15,000 at 7.5 35,000 at 15 }	12.75	6,375 0 0	15,937 10 0	85	2,812 10 0
150,000	15	22,500 0 0	60,000	{ 15,000 at 7.5 45,000 at 15 }	13.12	7,875 0 0	19,687 10 0	87	2,812 10 0
200,000	15	30,000 0 0	80,000	{ 15,000 at 7.5 65,000 at 15 }	13.59	10,875 0 0	27,187 10 0	91	2,812 10 0
500,000	15	75,000 0 0	200,000	{ 15,000 at 7.5 185,000 at 15 }	14.44	28,875 0 0	72,187 10 0	96	2,812 10 0
1,000,000	15	150,000 0 0	400,000	{ 15,000 at 7.5 385,000 at 15 }	14.72	58,875 0 0	147,187 10 0	98	2,812 10 0

* The apparently anomalous degree of difference in this case between the amount of Estate Duty and Succession Duty arises from the fact that, under the Commonwealth Estate Duty, if the value of an estate exceeds any even £1,000, the rate appropriate to the next higher even £1,000 is applied.

If the scale of Succession Duty be extended till a maximum rate of 30 per cent. on the highest £ is reached at £30,000, the Duty payable on Successions greater than £15,000 (estates greater than £37,500) compares with the Duty payable under the Commonwealth Estate Duty Act as follows:—

50,000	10.6	5,300 0 0	20,000	..	10	20.0	2,000 0 0	5,000 0 0	94.34	300 0 0
60,000	12.6	7,560 0 0	24,000	..	12	24.0	2,880 0 0	7,200 0 0	95.24	360 0 0
70,000	14.6	10,220 0 0	28,000	..	14	28.0	3,920 0 0	9,800 0 0	95.89	420 0 0
72,000	15	10,800 0 0	28,800	..	14.4	28.8	4,147 4 0	10,368 0 0	96	432 0 0
75,000	15	11,250 0 0	30,000	..	15.0	30	4,500 0 0	11,250 0 0	100	Equal.
100,000	15	15,000 0 0	40,000	{ 30,000 at 15 10,000 at 30 }	18.75	30	7,500 0 0	18,750 0 0	125	H exceeds C by 3,750 0 0
125,000	15	18,750 0 0	50,000	{ 30,000 at 15 20,000 at 30 }	21.0	30	10,500 0 0	26,250 0 0	140	7,500 0 0
150,000	15	22,500 0 0	60,000	{ 30,000 at 15 30,000 at 30 }	22.5	30	13,500 0 0	33,750 0 0	150	11,250 0 0
200,000	15	30,000 0 0	80,000	{ 30,000 at 15 50,000 at 30 }	24.37	30	19,500 0 0	48,750 0 0	162.5	18,750 0 0
500,000	15	75,000 0 0	200,000	{ 30,000 at 15 170,000 at 30 }	27.75	30	55,500 0 0	138,750 0 0	185	63,750 0 0
1,000,000	15	150,000 0 0	400,000	{ 30,000 at 15 370,000 at 30 }	28.87	30	115,500 0 0	288,750 0 0	192.5	138,750 0 0

TABLE comparing the Duties payable under the present Commonwealth Estate Duty Act with those which would be payable under a Succession Duty, as described in paragraph 897 of Report.

The Table (so far as it relates to Succession Duty) assumes—

1. An average of 2 successions to each estate ;
2. A progressive scale of rates terminating at a value of £18,000, at which point the average rate is 7·5 per cent. and the rate on the highest £ is 15 per cent.
3. The application of a flat rate of 15 per cent. to so much of the value of a succession as exceeds £18,000.

Present Commonwealth Estate Duty.				Succession Duty.				I. Percentage of H to C.	J. Amount by which C exceeds H.
A. Taxable value of Estate.	B. Rate per cent.	C. Amount of Duty.	D. Taxable value of succession, that is, value in Column A divided by 2.	E. Average rate per cent. on value in Column D.	F. Rate per cent. on highest £ in Column D.	G. Amount of Duty on each succession value, Column D.	H. Total succession Duty on estate (G x 2).		
£		£ s. d.	£			£ s. d.	£ s. d.		£ s. d.
2,000	1·0	20 0 0	1,000	..	·42	·83	4 3 4	41·67	11 13 4
3,000	1·2	36 0 0	1,500	..	·62	1·25	9 7 6	52·5	17 5 0
4,000	1·4	56 0 0	2,000	..	·83	1·66	16 13 4	59·0	22 13 4
5,000	1·6	80 0 0	2,500	..	1·04	2·08	26 0 10	65·0	27 18 4
7,000	2·0	140 0 0	3,500	..	1·46	2·92	51 0 10	73·0	37 18 4
10,000	2·6	260 0 0	5,000	..	2·08	4·17	104 3 4	80·0	51 13 4
15,000	3·6	540 0 0	7,500	..	3·12	6·25	234 7 6	87·0	71 5 0
20,000	4·6	920 0 0	10,000	..	4·17	8·33	416 13 4	90·5	86 13 4
25,000	5·6	1,400 0 0	12,500	..	5·21	10·42	651 0 10	93·0	97 18 4
30,000	6·6	1,980 0 0	15,000	..	6·25	12·5	937 10 0	94·0	105 0 0
*34,365	7·6	2,611 14 10	17,182	..	7·16	14·32	1,230 1 9	94·0	*151 11 4
36,000	7·8	2,808 0 0	18,000	..	7·5	15·0	1,350 0 0	96·0	108 0 0
37,500	8·2	3,075 0 0	18,750	{ 18,000 at 7·5 750 at 15 }	7·8	15·0	1,462 10 0	95·0	150 0 0
50,000	10·6	5,300 0 0	25,000	{ 18,000 at 7·5 7,000 at 15 }	9·6	15·0	2,400 0 0	90·5	500 0 0
60,000	12·6	7,560 0 0	30,000	{ 18,000 at 7·5 12,000 at 15 }	10·5	15·0	3,150 0 0	83·0	1,260 0 0
70,000	14·6	10,220 0 0	35,000	{ 18,000 at 7·5 17,000 at 15 }	11·14	15·0	3,900 0 0	76·0	2,420 0 0
72,000	15·0	10,800 0 0	36,000	{ 18,000 at 7·5 18,000 at 15 }	11·25	15·0	4,050 0 0	75·0	2,700 0 0
75,000	15·0	11,250 0 0	37,500	{ 18,000 at 7·5 19,500 at 15 }	11·4	15·0	4,275 0 0	76·0	2,700 0 0
100,000	15·0	15,000 0 0	50,000	{ 18,000 at 7·5 32,000 at 15 }	12·3	15·0	6,150 0 0	82·0	2,700 0 0
125,000	15·0	18,750 0 0	62,500	{ 18,000 at 7·5 44,500 at 15 }	12·84	15·0	8,025 0 0	85·5	2,700 0 0
150,000	15·0	22,500 0 0	75,000	{ 18,000 at 7·5 57,000 at 15 }	13·2	15·0	9,900 0 0	88·0	2,700 0 0
200,000	15·0	30,000 0 0	100,000	{ 18,000 at 7·5 82,000 at 15 }	13·65	15·0	13,650 0 0	91·0	2,700 0 0
500,000	15·0	75,000 0 0	250,000	{ 18,000 at 7·5 232,000 at 15 }	14·46	15·0	36,350 0 0	96·0	2,700 0 0
1,000,000	15·0	150,000 0 0	500,000	{ 18,000 at 7·5 482,000 at 15 }	14·75	15·0	73,650 0 0	98·0	2,700 0 0

* The apparently anomalous degree of difference in this case between the amount of Estate Duty and Succession Duty arises from the fact that, under the Commonwealth Estate Duty, if the value of an estate exceeds any even £1,000, the rate appropriate to the next higher even £1,000 is applied.

If the scale of Succession Duty be extended till a maximum rate of 30 per cent. on the highest £ is reached at £36,000, the Duty payable on Successions greater than £18,000 (estates greater than £72,000) compares with the Duty payable under the Commonwealth Estate Duty Act as follows:—

37,000	8·2	3,075 0 0	18,750	..	7·81	15·62	1,464 16 10	2,929 13 8	95·25	146 6 4
50,000	10·6	5,300 0 0	25,000	..	10·42	20·83	2,604 3 4	5,208 6 8	98·26	91 13 4
60,000	12·6	7,560 0 0	30,000	..	12·5	25·0	3,750 0 0	7,500 0 0	99·2	60 0 0
70,000	14·6	10,220 0 0	35,000	..	14·58	29·17	5,104 3 4	10,208 6 8	99·9	11 13 4
72,000	15·0	10,800 0 0	36,000	..	15·0	30·0	5,400 0 0	10,800 0 0	100·0	Equal
75,000	15·0	11,250 0 0	37,500	{ 36,000 at 15 1,500 at 30 }	15·6	30·0	5,850 0 0	11,700 0 0	104·0	H exceeds C by 450 0 0
100,000	15·0	15,000 0 0	50,000	{ 36,000 at 15 14,000 at 30 }	19·2	30·0	9,600 0 0	19,200 0 0	128·0	4,200 0 0
125,000	15·0	18,750 0 0	62,500	{ 36,000 at 15 26,500 at 30 }	21·36	30·0	13,350 0 0	26,700 0 0	142·4	7,950 0 0
150,000	15·0	22,500 0 0	75,000	{ 36,000 at 15 39,000 at 30 }	22·8	30·0	17,100 0 0	34,200 0 0	152·0	11,700 0 0
200,000	15·0	30,000 0 0	100,000	{ 36,000 at 15 64,000 at 30 }	24·6	30·0	24,600 0 0	49,200 0 0	164·0	19,200 0 0
500,000	15·0	75,000 0 0	250,000	{ 36,000 at 15 214,000 at 30 }	27·84	30·0	69,600 0 0	139,200 0 0	185·6	64,200 0 0
1,000,000	15·0	150,000 0 0	500,000	{ 36,000 at 15 464,000 at 30 }	28·92	30·0	144,600 0 0	289,200 0 0	192·8	139,200 0 0

* The apparently anomalous degree of difference in this case between the amount of Estate Duty and Succession Duty arises from the fact that, under the Commonwealth Estate Duty, if the value of an estate exceeds any even £1,000, the rate appropriate to the next higher even £1,000 is applied.

If the scale of Succession Duty be extended till a maximum rate of 30 per cent. on the highest £ is reached at £36,000, the Duty payable on Successions greater than £18,000 (estates greater than £72,000) compares with the Duty payable under the Commonwealth Estate Duty Act as follows :—

37,000	8·2	3,075 0 0	18,750	..	7·81	15·62	1,464 16 10	2,929 13 8	95·25	146 6 4
50,000	10·6	5,300 0 0	25,000	..	10·42	20·83	2,604 3 4	5,208 6 8	98·26	91 13 4
60,000	12·6	7,560 0 0	30,000	..	12·5	25·0	3,750 0 0	7,500 0 0	99·2	60 0 0
70,000	14·6	10,220 0 0	35,000	..	14·58	29·17	5,104 3 4	10,208 6 8	99·9	11 13 4
72,000	15·0	10,800 0 0	36,000	..	15·0	30·0	5,400 0 0	10,800 0 0	100·0	Equal
75,000	15·0	11,250 0 0	37,500	{ 36,000 at 15 1,500 at 30 }	15·6	30·0	5,850 0 0	11,700 0 0	104·0	H exceeds C by 450 0 0
100,000	15·0	15,000 0 0	50,000	{ 36,000 at 15 14,000 at 30 }	19·2	30·0	9,600 0 0	19,200 0 0	128·0	4,200 0 0
125,000	15·0	18,750 0 0	62,500	{ 36,000 at 15 26,500 at 30 }	21·36	30·0	13,350 0 0	26,700 0 0	142·4	7,950 0 0
150,000	15·0	22,500 0 0	75,000	{ 36,000 at 15 39,000 at 30 }	22·8	30·0	17,100 0 0	34,200 0 0	152·0	11,700 0 0
200,000	15·0	30,000 0 0	100,000	{ 36,000 at 15 64,000 at 30 }	24·6	30·0	24,600 0 0	49,200 0 0	164·0	19,200 0 0
500,000	15·0	75,000 0 0	250,000	{ 36,000 at 15 214,000 at 30 }	27·84	30·0	69,600 0 0	139,200 0 0	185·6	64,200 0 0
1,000,000	15·0	150,000 0 0	500,000	{ 36,000 at 15 464,000 at 30 }	28·92	30·0	144,600 0 0	289,200 0 0	192·8	139,200 0 0