ESTATE AND GIFT TAX PROPOSALS MODIFIED

In response to numerous representations, both directly and through Members of Parliament, Mr. E.J. Benson, the Minister of Finance, has tabled in the House of Commons a notice of motion preceding a bill to amend the Estate Tax Act and the provisions of the Income Tax Act dealing with gift tax.

The motion is, in the main, identical to the budget resolutions of last October, but there are some modifications.

The budget proposed to exempt from tax outright gifts and bequests from husband to wife and wife to husband. It also proposed to increase the estate-tax exemptions for young children and to provide exemptions for older children. To offset revenue losses from these broader exemptions, the estate and gift tax rates were to be increased. (See *Canadian Weekly Bulletin*, Vol. 23, No. 45, dated November 6, 1968, P. 3.)

The changes provide for restoration of the rule that estate tax will not be payable by estates of $50,000 or less; for the right to pay estate taxes in instalments at the option of the taxpayer; for the right to use the old estate tax exemptions until July 31, 1969, if they are larger than the new exemptions; and for application of the $2,000-gift tax exemption to gifts to certain trusts.

STARTING-POINT

Estates of $50,000 or less will not be taxed. This change restores a provision of the Estate Tax Act prior to October 22, 1968, and replaces the budget's proposal that estates of $20,000 or under should not be taxed. It will mean, for example, that a small estate left by a brother to his sister, or by a grandfather to his grandchildren, will not be subject to estate tax.

The provision will not affect large estates. In these cases, the estate tax will be calculated using the exemptions and rates announced in October. However, in no case can estate tax be more than one-half of the amount by which the estate exceeds $50,000.

A new provision permits payment of estate taxes in an as many as six annual instalments. Interest will be charged on the deferred amounts at a rate to be set by regulation. Under the old provision, the Minister of National Revenue had the power to postpone payment in cases of hardship. This provision will remain but the new provision will make instalments available as a matter of right.

OPTION

Representations have been made to the Government showing that it has not been possible, since the budget, to rewrite some of the wills drawn in the light of the old exemption structure. To recognize the situation it is proposed that, in the case of a death occurring before August 1, 1969, the taxpayer be entitled to use the old exemption total if this proves greater than the total of the new exemptions.

This provision should give individuals six months from the time the bill is made public to consider and complete changes in their wills.

GIFT-TAX EXEMPTION

The budget proposals provide a gift-tax exemption of $2,000 that may be deducted from the presents made by a taxpayer in a year to each recipient. However, gifts made through a trust are not eligible. Because there is some fear that gifts to minors have to be in trust, the Government proposes to enable the taxpayer to apply the exemption to trusts under which there is only one living beneficiary. This should remove any doubt as to whether a gift for the benefit of a minor is eligible for the exemption.

MAIN ESTATE TAX PROPOSALS

The budget's central proposal on the estate tax was to provide a full exemption for bequests left to a widow by her husband and to a widower by his wife.

This replaces an exemption of $60,000 for a surviving widow, or a surviving infirm widower with a dependent child. It applies to all outright bequests and assets transferred to a trust in which the widow, or widower, has an exclusive life interest.

In general, this new exemption will apply only if the widow has an absolute right to the assets bequeathed or to the income of the trust. If her right to the benefits is conditional the exemption will not apply.

Two of the exceptions to this rule about conditional benefits are important:

(a) Common disaster: Some wills make an outright bequest to a widow contingent upon the widow's survival for a short period such as two or three months. This is usually done to avoid two sets of death duties in the event of simultaneous deaths, for example, in a traffic accident. The exemption of a bequest to a widow will apply as long as the period stated by the will is not unreasonably long.

(b) Remarriage: A pension payable to a widow only until she remarries is exempt from estate tax. But other bequests which cease if the widow remarries are not exempt at the death of the husband.

For administrative reasons, bequests to a widow of more complex interests in property or interests in complicated trust, in which others may share during her lifetime, generally will remain taxable. An exception to this rule will be made in a case where the interest of a widow in the income of a trust is limited to ascertained amounts and the balance of the income may be distributed to the children or other persons. As long as no one other than the widow or widower is entitled to receive the capital of the trust during her lifetime, the assets necessary to produce the payments to the widow from the income

(Over)