

## CHAPTER 3

### ESTATE DUTY

13. Paragraph 4(d) of the Order of the President requires us to make recommendations as to the changes, if any, to be made in the principles governing the distribution among the States, under Article 269 of the Constitution, of the net proceeds in any financial year of estate duty in respect of property other than agricultural land.

14. Article 269 provides that the net proceeds of estate duty, except in so far as they represent proceeds attributable to Union territories, are to be assigned to the States and distributed among them in accordance with the principles formulated by Parliament by law.

15. The existing scheme of distribution is as follows:—

- (i) Out of the net proceeds of the duty in each financial year, a sum equal to two per cent is retained by the Union as proceeds attributable to Union territories;
- (ii) The balance is apportioned between immovable property and other property in the ratio of the gross value of all such properties brought into assessment in that year;
- (iii) The sum thus apportioned to immovable property is distributed among the States in proportion to the gross value of the immovable property located in each State; and
- (iv) The sum apportioned to property other than immovable property is distributed among the States in proportion to their population.

16. Most of the States have suggested the continuance of the present scheme of distribution. Suggestions made by some other States are—

- (i) Distribution of the entire net proceeds of estate duty, along with the States' shares of all other divisible taxes and duties, solely on the basis of needs of each State;
- (ii) Distribution of the entire net proceeds on the basis of population; and
- (iii) Distribution of the entire net proceeds on the basis of collection.

17. The existing principles of distribution were enunciated by the Second Finance Commission, and they were fully endorsed by the subsequent Commissions, with only a minor change in respect of the portion attributable to Union territories. These Commissions were of the view that the levy and collection of the taxes and duties specified in Article 269 of the Constitution had been placed under the Union Government so as to ensure uniformity of taxation and convenience of collection. They considered that although that Article

suburban traffic for the three years ending 1966-67 (*vide* Appendix II). They are as follows :—

State	Percentage share
Andhra Pradesh	8.56
Assam	2.88
Bihar	10.86
Gujarat	6.91
Haryana	2.46
Jammu and Kashmir	0.01
Kerala	1.78
Madhya Pradesh	9.92
Madras	5.54
Maharashtra	9.12
Mysore	3.83
Nagaland	0.01
Orissa	2.36
Punjab	4.76
Rajasthan	6.43
Uttar Pradesh	19.06
West Bengal	5.51
<b>Total</b>	<b>100.00</b>

16.25  
+ 48.75  
81.25

We recommend that the grant to be made available to the States in lieu of the repealed tax on railway passenger fares be distributed in accordance with these percentages.

12. Practically all the States have represented to us, as they did to the Fourth Finance Commission, that the system of a fixed annual grant has deprived them of a potentially elastic source of revenue and they have urged that the quantum of the grant should be suitably increased each year having regard to the growth in railway earnings from passenger fares. Some States have suggested, as an alternative, that the tax should be re-introduced. These suggestions go beyond the scope of item (c) of our terms of reference, with which we are dealing at present. We propose to consider them in our final Report when dealing with item (h) of paragraph 4 of the President's Order, relating to the scope for raising revenue from taxes and duties mentioned in Article 269 of the Constitution.

did not rule out any principle of distribution, the principles to be laid down should be such as to secure for each State, as nearly as possible, the amounts which it would have itself collected if it had the power to levy and collect such tax or duty. The basis of location of the property subject to estate duty was considered by them to be the most appropriate principle of distribution. However, as this basis of location could not be applied to movable property, they felt it necessary to have some general principle of distribution for the part of proceeds of the duty relating to such property; and for this purpose they adopted the basis of population.

18. We have carefully considered the various suggestions made by the State Governments. We are of opinion that the view taken by the earlier Commissions is reasonable and sound. The proceeds of taxes and duties specified in Article 269 are wholly assigned to the States in which they are levied, unlike the proceeds of income-tax and excise duties which are divisible between the Centre and the States under Articles 270 and 272. It would not, therefore, be appropriate to treat the taxes under Article 269 as part of a common pool of resources to be distributed on a uniform principle, such as relative needs of States. We also think that the factor of location of immovable property cannot be disregarded in distributing the part of the duty relating to such property. Nor can the collection of duty in a State be taken as a general basis to indicate what the State would have realised on such property as it could have taxed if it had the power to do so.

19. We also considered a suggestion that the *pro rata* share of immovable property in the estate duty assessed under each estate, should be initially apportioned to the States where such property is located. This would take into account the large variations in rates of duty assessed on estates of different sizes, distributed unevenly among the States. We do not, however, think it correct to accept this procedure, as the net proceeds of the duty in any year are not strictly relatable to the particular properties which may be brought into assessment in that year, the amount of duty assessed being payable in instalments over a number of years. The Central Board of Direct Taxes have also pointed out certain practical difficulties in the acceptance of this suggestion.

20. In view of the foregoing considerations, we have come to the conclusion that no change is called for in the existing principles governing the distribution of the duty among the States.

21. The principles of distribution to be formulated under clause (2) of Article 269 relate to the distribution of the net proceeds remaining after excluding proceeds attributable to the Union territories. The determination of the proceeds attributable to the Union territories is thus a necessary step preceding the application of the principles of distribution formulated for the purpose of distribution among the States. The Fourth Finance Commission had recommended that a sum equal to two per cent. of the net proceeds be retained by the Union as attributable to the Union territories. Taking into account the population of the Union territories as now constituted following the changes under the Punjab Reorganisation Act, 1966,

and the gross values of immovable property located therein and brought into assessment in the five years ending with 1966-67, we consider that a sum equal to three per cent. of the net proceeds should be determined as the proceeds attributable to the Union territories.

22. Accordingly, we recommend that—

- (1) Out of the net proceeds of the estate duty in each financial year, a sum equal to three per cent. thereof to be retained by the Union as being the proceeds attributable to Union territories; and
- (2) The balance of net proceeds be distributed among the States in accordance with the following principles:—
  - (a) Such balance be first apportioned between immovable property and other property in the ratio of the gross value of all such properties brought into assessment in that year;
  - (b) The sum thus apportioned to immovable property be distributed among the States in proportion to the gross value of the immovable property located in each State and brought into assessment in that year; and
  - (c) The sum apportioned to property other than immovable property be distributed among the States in proportion to the population of each State.

23. On the basis of figures of population according to the 1961 Census the percentage shares of the States for the purpose of Clause (2)(c) of para 22 will be as under:—

<i>States</i>	<i>Percentage</i>
Andhra Pradesh	8.37
Assam	2.76
Bihar	10.80
Gujarat	4.80
Haryana	1.76
Jammu and Kashmir	0.83
Kerala	3.93
Madhya Pradesh	7.53
Madras	7.83
Maharashtra	9.20
Mysore	5.48
Nagaland	0.09
Orissa	4.08
Punjab	2.59
Rajasthan	4.68
Uttar Pradesh	17.15
West Bengal	8.12
<b>TOTAL</b>	<b>100.00</b>