

Recommendation by Magistrate.

4. Section thirty-one of the Principal Act is amended by omitting from sub-section (2.) thereof the word "three" and inserting in its stead the word "four".

Pensioners in hospitals.

5. Section forty-five of the Principal Act is amended by omitting from the proviso thereto the word "three" and inserting in its stead the word "four".

Benevolent asylum inmates.

6. Section forty-seven of the Principal Act is amended by omitting therefrom the word "three" and inserting in its stead the word "four".

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## INCOME TAX ASSESSMENT.

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No. 28 of 1925.

An Act to amend the *Income Tax Assessment Act* 1922-1924.

[Assented to 26th September, 1925.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title and citation.

1.—(1.) This Act may be cited as the *Income Tax Assessment Act* 1925.

(2.) The *Income Tax Assessment Act* 1922-1924\* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1922-1925.

Alterations of assessments under repealed Acts.

2. Section two of the Principal Act is amended by adding at the end thereof the following further proviso:—

“Provided further that no alteration or addition shall be made in or to any assessment made under any such Act after the expiration of three years from the date when the tax payable on the assessment was originally due and payable, unless the Commissioner has reason to believe that there has been an avoidance of tax owing to fraud or attempted evasion.”

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\* Act No. 37, 1922, as amended by No. 27, 1923 and No. 51, 1924.

3. Section seventeen of the Principal Act is amended by omitting sub-section (5.) thereof. Income arising from sale of trading stock.

4. Section twenty of the Principal Act is amended by inserting therein, before sub-section (2.), the following sub-sections:— Taxation of companies.

“(1.) In calculating the taxable income of a co-operative company there shall be deducted, in addition to any other deductions allowed under this Act, so much of the assessable income of the company as is distributed among its shareholders as interest or dividends on shares.

“(1A.) For the purposes of the last preceding sub-section ‘co-operative company’ means a company, the rules of which limit the number of shares which may be held by, or by and on behalf of, any one member, and prohibit the quotation of the shares for sale or purchase at any Stock Exchange or in any other public manner whatever, and which is established for the purpose of carrying on any industry, trade or business having as its primary object or objects one or more of the following:—

- (a) The acquisition of commodities or animals in the ordinary course of the industry, trade or business for disposal or distribution among its members ;
- (b) The acquisition of commodities or animals from its members for disposal or distribution in the ordinary course of the industry, trade or business ;
- (c) The storage of commodities of its members :

Provided that if, in any financial year, the amount represented by the value of commodities and animals acquired from, the value of commodities and animals disposed of among, and the receipts in respect of the storage of commodities of, the members of a company, is not at least ninety per centum of the amount represented by the total value of commodities and animals acquired, the total value of commodities and animals disposed of, and the total receipts in respect of storage, by that company during that year, that company shall not, in respect of that year, be deemed to be a co-operative company.”

5. Section twenty-one of the Principal Act is amended by omitting sub-section (5.) thereof. Taxation of company where distribution not reasonable.

6. Section twenty-three of the Principal Act is amended— Deductions.

- (a) by inserting in paragraph (b) of sub-section (1A.) thereof, after the words “purchase of”, the words “wire or” ;
- (b) by inserting in that paragraph, after the word “construction”, the words “or alteration” ;
- (c) by omitting from that paragraph the words “wire netting” (second occurring) ;
- (d) by inserting in paragraph (c) of that sub-section, after the words “places the”, the words “wire or” ;
- (e) by inserting in that paragraph, after the words “purchase of the”, the words “wire or” ;

- (f) by inserting in paragraph (d) of that sub-section, after the words "purchased the", the words "wire or";
- (g) by inserting in that paragraph, after the words "of that", the words "wire or";
- (h) by inserting in that paragraph, after the words "placing the", the words "wire or"; and
- (i) by omitting sub-section (3.) thereof.

Taxation of  
Australian  
business  
controlled  
abroad.  
Alterations of  
assessment.

7. Section twenty-eight of the Principal Act is amended by omitting sub-section (3.) thereof.

8. Section thirty-seven of the Principal Act is amended by inserting at the end thereof the following sub-section:—

"(3.) Notwithstanding anything contained in this section, where an assessment for any financial year includes the estimated amount of income derived by the taxpayer, during the preceding financial year, from an operation or series of operations the profit or loss on which was not ascertainable at the end of that preceding year owing to the fact that the operation or series of operations was carried on during a period which extends over more than one, or parts of more than one, financial year, the Commissioner, upon ascertaining the total profit or loss actually derived or arising from the operation or series of operations, may, at any time, alter that assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained."

Boards of  
Review.

9. Section forty-one of the Principal Act is amended—

- (a) by omitting from sub-section (1.) thereof the word "Appeal" and inserting in its stead the word "Review"; and
- (b) by omitting sub-section (3.) thereof and inserting in its stead the following sub-section:—

"(3.) The persons who were, prior to the commencement of this section, appointed, in relation to income tax, to be members of a Board of Appeal, shall be deemed, as from the commencement of this Act, to have been appointed to be members of a Board of Review and shall continue to hold office as such members as if appointed under this Act."

10. Section forty-four of the Principal Act is repealed and the following section inserted in its stead:—

Powers of  
Board.

"44.—(1.) A Board of Review shall have power to review such decisions of the Commissioner, Assistant Commissioner or Deputy Commissioner as are referred to it by the Commissioner under this Act and, for the purpose of reviewing such decisions, shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of the Board, and the decisions of the Board upon review, shall, for all purposes (except for the purposes of sub-section (4.) of section fifty and sub-section (6.) of section fifty one of this Act) be deemed to be assessments, determinations or decisions of the Commissioner.

“(2.) Notwithstanding anything contained in this Act, a determination made by the Board under section twenty-one of this Act shall not be invalidated by reason of the fact that it is not made within the time prescribed by that section.”.

11. Section fifty of the Principal Act is amended by omitting sub-sections (4.), (5.), (6.), (7.) and (8.) thereof and inserting in their stead the following sub-section :—

Objections.

“(4.) A taxpayer who is dissatisfied with the decision of the Commissioner, Assistant Commissioner or Deputy Commissioner may within thirty days after the service by post of notice of that decision—

- (a) in writing, request the Commissioner to refer the decision to a Board of Review for review ; or
- (b) in writing, request the Commissioner to treat his objection as an appeal and to forward it either to the High Court or to the Supreme Court of a State.”.

12. Section fifty-one of the Principal Act is repealed and the following sections inserted in its stead :—

“51.—(1.) Where a taxpayer has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the taxpayer’s request is accompanied by a deposit of such amount as is prescribed for the particular class of case, refer the decision to the Board not later than thirty days after receipt of the request.

References to Board.

“(2.) A taxpayer shall be limited on the review to the grounds stated in his objection.

“(3.) If the assessment has been reduced by the Commissioner after considering the objection; the reduced assessment shall be the assessment to be dealt with by the Board under the next succeeding sub-section.

“(4.) The Board, on review, shall give a decision and may either confirm the assessment or reduce, increase or vary the assessment.

“(5.) The Board may, if it considers the reference to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount deposited in accordance with sub-section (1.) of this section.

“(6.) The Commissioner or a taxpayer may appeal to the High Court from any decision of the Board under this section which, in the opinion of the High Court, involves a question of law.

“51A.—(1.) Where a taxpayer has, in accordance with section fifty of this Act, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or the Supreme Court of a State, the Commissioner shall forward it accordingly.

Appeals to Court.

“(2.) The appeal shall be heard by a single Justice of the Court.

“(3.) A taxpayer shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

“(4.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment appealed from.

“(5.) On the hearing of the appeal, the Court may make such order as it thinks fit, and may reduce, increase or vary the assessment.

“(6.) An order of the Court shall be final and conclusive on all parties except as provided in this section.

“(7.) The costs of the appeal shall be in the discretion of the Court.

“(8.) On the hearing of the appeal, the Court may, if it thinks fit, state a case in writing for the opinion of the High Court upon any question which in the opinion of the Court is a question of law.

“(9.) The High Court shall hear and determine the question, and remit the case with its opinion to the Court below, and may make such order as to costs of the case stated as it thinks fit.

“(10.) The Commissioner or a taxpayer may appeal to the High Court, in its appellate jurisdiction, from any order made under sub-section (5.) of this section.”

Pending appeal or reference not to delay payment of tax.

**13.** Section fifty-two of the Principal Act is amended—

(a) by inserting therein, after the word “appeal” (wherever occurring) the words “or reference”; and

(b) by omitting from sub-section (1.) thereof the words “appealed from”, and inserting in their stead the words “the subject of that appeal or reference”.

Rules of Board.

**14.** Section fifty-three of the Principal Act is amended—

(a) by omitting sub-section (1.) thereof;

(b) by inserting in sub-section (2.) thereof after the word “assessments” the words “and decisions”; and

(c) by omitting from sub-section (3.) thereof the words “by Boards of Appeal or”.

Release of taxpayers in cases of hardship.

**15.** Section ninety-five of the Principal Act is amended by omitting therefrom the word “Appeal” (wherever occurring) and inserting in its stead the word “Review”.

Validation of past assessments.

**16.** Every assessment, determination or decision of the Commissioner, Assistant Commissioner or Deputy Commissioner made under the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act shall be as valid and effectual as if made under the Principal Act, as amended by this Act, and, for the purposes of any such assessment, determination or decision, the amendments contained in sections three, and five to fourteen inclusive, of this Act shall be deemed to have been in force at the time the assessment, determination or decision was made or given.

Assessments under *Income Tax Assessment Act 1915-1921*.

**17.** Every assessment of the Commissioner, Assistant Commissioner or Deputy Commissioner, made under any Act repealed by the Principal Act, shall be as valid and effectual as if any Board of Appeal under the Act so repealed had been a Board of Review constituted in the same manner, and having the same powers and functions, as a Board of Review under the Principal Act as amended by this Act.

18. Where the Commissioner, purporting to act under the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act, has referred to a Board of Appeal any assessment, determination or decision of the Commissioner, or where any objection against an assessment of the Commissioner has been treated as an appeal and forwarded to a Board of Appeal, the decision of a body of persons, purporting to act as a Board of Appeal, upon any such reference or objection shall be deemed to be, and at all times to have been, a decision upon review and as valid and effectual as if it had been given by a Board of Review in pursuance of the provisions of the Principal Act, as amended by this Act, and in any case in which the Commissioner or the taxpayer has instituted, or purported to institute, an appeal to the High Court from the decision of that body of persons, the Commissioner or the taxpayer may appeal to the High Court from that decision (as if it were a decision of a Board of Review) if, in the opinion of the High Court, the decision involves a question of law.

Prior decisions.

19.—(1.) Where, under any Act repealed by the Principal Act, any objection against an assessment of the Commissioner has been treated as an appeal and forwarded to a Board of Appeal, the decision of a body of persons, purporting to act as a Board of Appeal, upon any such objection, shall be deemed to be, and at all times to have been, a decision of a Board of Review upon review, and as valid and effectual as if the Board of Appeal under the Act so repealed had been a Board of Review constituted in the same manner, and having the same powers and functions, as a Board of Review under the Principal Act as amended by this Act.

Objections under *Income Tax Assessment Act 1915-1921*.

(2.) In any case in which the Commissioner or a taxpayer has instituted, or purported to institute, an appeal to the High Court from the decision of a body of persons purporting to act as such Board of Appeal, the Commissioner or the taxpayer may appeal to the High Court from that decision (as if it were a decision of a Board of Review) if in the opinion of the High Court, the decision involves a question of law.

20. Any action taken prior to the commencement of this section by a member of a Board of Appeal in accordance with section ninety-five of the Principal Act in connection with any application referred to him under that section shall be deemed to have been taken by a member of a Board of Review in accordance with that section as amended by this Act.

Validation of action of Board of Appeal in cases of hardship.

21.—(1.) Where a taxpayer, purporting to act under and in accordance with the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act, and the Regulations under any of those Acts, has requested the Commissioner—

Pending cases.

- (a) to treat his objection against his assessment as an appeal to a Board of Appeal; or
- (b) to refer any determination or decision of the Commissioner to a Board of Appeal,

or where a taxpayer, purporting to act under and in accordance with any Act repealed by the Principal Act and the Regulations under the Act so repealed, has requested the Commissioner to treat his objection against his assessment as an appeal to a Board of Appeal, and no order in respect of the appeal or reference has been made by any body of persons purporting to act as a Board of Appeal, the Commissioner may, upon the request in writing of the taxpayer made within thirty days after the commencement of this Act, refer the objection, determination or decision to a Board of Review for review.

(2.) Where a person, purporting to act under and in accordance with the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act, and the Regulations under any of those Acts, or under and in accordance with any Act repealed by the Principal Act and the Regulations under the Act so repealed, has requested the Commissioner to treat his objection against his assessment as an appeal to the High Court or the Supreme Court of a State and the hearing of the appeal has not commenced, that person may within ninety days after the commencement of this section, by notice in writing, request the Commissioner to refer his assessment to a Board of Review for review in respect of the matters stated in the objection and the Commissioner shall refer the assessment accordingly.

(3.) Where a reference has been made under the last preceding sub-section, the High Court or the Supreme Court, as the case may be, shall not have jurisdiction to proceed with the hearing of the appeal.

(4.) The Commissioner or a taxpayer may appeal to the High Court from any decision of the Board of Review under this section which, in the opinion of the High Court, involves a question of law.

Validation of  
determinations  
under section  
21 of  
Principal Act.

**22.** Where the Commissioner, purporting to act under section twenty-one of the *Income Tax Assessment Act 1922*, or of the *Income Tax Assessment Act 1922-1923*, or of the Principal Act, has, within the time prescribed for making a determination under that section, indicated (whether expressly or impliedly) in writing to a company that he is of opinion that it could reasonably have distributed a sum or further sum to its members or shareholders, that indication shall be deemed to be, and at all times to have been, a determination within the meaning of that section.

Rules of  
High Court.

**23.** Any rules made by the Justices of the High Court under section fifty-three of the Principal Act as amended by this Act shall, so far as applicable, apply in relation to the hearing of appeals by the High Court under sections eighteen, nineteen and twenty-one of this Act in like manner as they apply to the hearing of appeals to the High Court under the Principal Act as amended by this Act.

Commencement.

**24.** Sections three and five, paragraph (i) of section six and section seven of this Act shall be deemed to have commenced upon the date of the commencement of the *Income Tax Assessment Act 1922*.