

Taxable value
of land.

6. For all purposes connected with assessments for any financial year prior to the financial year commencing on the first day of July, One thousand nine hundred and thirty-eight, the Schedules to the *Land Tax Act* 1910 and the Schedules enacted in substitution for those Schedules by the *Land Tax Act* 1914 shall be deemed to be amended, and to have at all times been amended, by omitting the word "sterling" wherever it occurs.

Commencement.

7. The amendments effected by sections two, three and five of this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-eight and for each financial year thereafter.

INCOME TAX ASSESSMENT.

No. 46 of 1938.

An Act to amend the *Income Tax Assessment Act* 1936-1937.

[Assented to 30th November, 1938.]

[Date of commencement 28th December, 1938.]

BE 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* 1938.

(2.) The *Income Tax Assessment Act* 1936-1937* 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* 1936-1938.

Officers to
observe
secrecy.

2. Section sixteen of the Principal Act is amended by inserting, after paragraph (d) of sub-section (4.), the following paragraph:—

“(da) the National Insurance Commission for the purpose of the administration of any law of the Commonwealth relating to insurance;”

Exemptions.

3. Section twenty-three of the Principal Act is amended by omitting from paragraph (m) the word “thirty-seven” and inserting in its stead the word “forty-seven”.

4. Section forty-two of the Principal Act is amended by omitting the words " any, and if so what part," and inserting in their stead the words " the whole or any part (and, if a part, what part) ". Ex-Australian profits.

5. Section forty-four of the Principal Act is amended— • Dividends.

(a) by omitting sub-paragraph (i) of paragraph (b) of sub-section (2.) and inserting in its stead the following sub-paragraph :—

" (i) the amount remaining after deducting from income derived from sources out of Australia (not being income which under this or the previous Act is or has been assessable income of the company) any losses or outgoings incurred in gaining or producing that income which would have been allowable deductions if that income had been assessable income ; " ;

(b) by inserting at the end of sub-paragraph (ii) of paragraph (b) of sub-section (2.) the word " or " ;

(c) by omitting sub-paragraph (iv) of paragraph (b) of sub-section (2.) ; and

(d) by omitting paragraph (c) of sub-section (2.) and inserting in its stead the following paragraph :—

" (c) paid by a company wholly and exclusively out of the amount remaining after deducting from income (not being income which under this or the previous Act is or has been assessable income of the company)—

(i) which the company has derived from the working by it of a mining property in Australia or in the Territory of New Guinea ; or

(ii) which the company has received as dividends from a company which derived income from the working by it of a mining property in Australia or in the Territory of New Guinea and which are paid wholly and exclusively out of income so derived, any losses or outgoings incurred in gaining or producing that income which would have been allowable deductions if that income had been assessable income."

6. Section fifty of the Principal Act is amended by omitting paragraphs (a), (b) and (c) and inserting in their stead the following paragraphs :— Deductions in case of composite incomes.

" (a) where a deduction or part of a deduction relates directly to income from dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively

from income from dividends, from income from property other than dividends and from income from personal exertion ;

“(b) where a deduction or part of a deduction relates directly to the income from property other than dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively from income from property other than dividends, from income from dividends, and from income from personal exertion ; and

“(c) in all other cases, the deduction or part of the deduction shall be made successively from income from personal exertion, from income from property other than dividends and from income from dividends.”.

7. After section sixty-two of the Principal Act the following section is inserted :—

Expenditure
pursuant to
franchise.

“62A.—(1.) Where a franchise requires that the undertaking which is the subject of the franchise shall become the property of the authority granting the franchise after the expiration of the period of the franchise without reimbursement of any of the expenditure thereon, a proportionate part of the expenditure which the owner of the franchise is required by the franchise to incur, and which he has in fact incurred, shall be an allowable deduction to him so long as he continues to be the owner of the franchise.

“(2.) The proportionate part of the expenditure referred to in the last preceding sub-section shall be calculated by distributing the amount of that expenditure proportionately over the period of the franchise unexpired at the date when the construction of the undertaking is completed, or, where there is no period of years fixed as the duration of the franchise, over such period as the Commissioner determines :

Provided that, where any income is derived in respect of the undertaking before its construction is completed, the proportionate part of the expenditure which may be an allowable deduction shall be as determined by the Commissioner.

“(3.) The aggregate of the deductions allowed by this section to any person shall not exceed the expenditure which that person is required by the franchise to incur, and which he has in fact incurred, and where in any case the aggregate of the deductions equals the amount of that expenditure no further deduction shall be allowed in pursuance of this section.

“(4.) For the purposes of this section, ‘ franchise ’ means a grant by the Commonwealth or a State, or by a public authority constituted by or under an Act or State Act, whereby in consideration of the construction and maintenance of an undertaking of public utility a person is, during some limited period, authorized to collect and retain the revenue earned by that undertaking.”.

8. Section seventy-eight of the Principal Act is amended—

Gifts and
contributions.

- (a) by inserting in paragraph (a) of sub-section (1.), after the word "upwards", the words "of money or of property other than money which was purchased by the taxpayer within twelve months immediately preceding the making of the gift,"; and
- (b) by omitting sub-section (2.) and inserting in its stead the following sub-section :—

"(2.) For the purposes of this section, the value of a gift of property other than money shall be the value of the property at the time of the making of the gift or the amount paid by the taxpayer for the property whichever is the less."

9. Section seventy-nine of the Principal Act is amended—

Concessional
deductions.

- (a) by omitting from paragraph (a) the words ", in respect of a female relative having the care of any of his" and inserting in their stead the words, "or widow, in respect of a female relative having the care of any of the taxpayer's";
- (b) by omitting from sub-paragraph (i) of paragraph (e) the word "or" (last occurring); and
- (c) by adding at the end of paragraph (e) the following sub-paragraph :—

" ; or (iii) payments made by the taxpayer to any fund established by any Act or State Act relating to insurance for the personal benefit of the taxpayer or of his spouse or children."

10. Section eighty-three of the Principal Act is amended by adding at the end thereof the following sub-section :—

Definitions.

"(2.) Where a lease is sold together with other assets the amount of the consideration attributable to the lease shall, subject to sub-section (3.) of section thirty-six and to sub-section (3.) of section fifty-nine of this Act, be—

- (a) where a separate amount is allocated to the lease in any contract of sale or arrangement and the Commissioner is satisfied that that separate amount is fair and reasonable—the amount so allocated ; or
- (b) where no separate amount is so allocated or the Commissioner is not satisfied that the amount allocated is fair and reasonable—the amount determined by the Commissioner."

Partner not
in receipt
or control
of share.

11. Section ninety-four of the Principal Act is amended by omitting from sub-section (1.) the words "one, had been received by the other partner, if only one, or divided between the other partners, if more than one, in proportion to their respective interests in the partnership," and inserting in their stead the words :—

"one—

(a) had been received by the partner who has the real and effective control of that share; or

(b) had been divided between such other partners as have the real and effective control of that share in proportion to the extent to which, in the opinion of the Commissioner, they respectively have the real and effective control of that share,

(as the case may be)".

Definitions.

12. Section one hundred and three of the Principal Act is amended by omitting from sub-section (1.) the definition of "distributable income" and inserting in its stead the following definition :—

" 'distributable income' means the amount obtained by deducting from the taxable income of a company—

(a) all taxes which, in the year of income, are paid under this or the previous Act, or paid in any country out of Australia in respect of income of the company which is taxable under this or the previous Act; and

(b) the net loss, except to the extent to which it is a loss of a capital nature, incurred by the company in the year of income in carrying on its business out of Australia;".

13. After section one hundred and thirty-five of the Principal Act, the following section is inserted in Division 12 of Part III. :—

Freights
payable under
certain
agreements.

" 135A. Where goods are shipped in pursuance of an agreement of the kind specified in section seven c of the *Australian Industries Preservation Act 1906-1937*, the amount paid or payable to the owner or charterer of the ship in respect of the carriage of those goods shall, for the purposes of this Division, be deemed to be the amount remaining after deducting from the amount which would be payable according to the gross rate of freight specified in the agreement the amount of any rebate allowed in pursuance of the agreement or any payment, whenever made, by the owner or charterer, or out of funds provided by the owner or charterer, to any person or persons being the owner or shipper of the goods or the agent of either of them in respect of the shipment."

14. Section one hundred and forty-eight of the Principal Act is repealed and the following section inserted in its stead:—

“148. Notwithstanding anything contained in this Act, where a person carrying on the business of insurance in Australia reinsures the whole or part of any risk with another person carrying on a similar business, but not in Australia—

Re-insurance
with
non-resident.

(a) the premiums paid or credited in respect of any such reinsurance shall not be—

(i) an allowable deduction to the person carrying on the business of insurance in Australia; or

(ii) included in the assessable income of the person carrying on the business of insurance out of Australia; and

(b) the income of the person carrying on the business of insurance in Australia shall not include sums recovered from the person carrying on business out of Australia in respect of a loss on any risk so reinsured.”.

15. Section two hundred and seven of the Principal Act is amended by inserting in sub-section (1.), after the word “time” (second occurring), the words “or, where an extension of time has been granted under the last preceding section, from such date as the Commissioner determines, not being a date prior to the date on which the tax was originally due and payable”.

Penalty for
unpaid tax.

16. Section two hundred and ten of the Principal Act is amended—

(a) by omitting the words “issue a certificate—” and inserting in their stead the words “, if he is satisfied—”;

(b) by omitting from paragraph (a) the word “or”; and

(c) by adding at the end thereof the following paragraph and words:—

Person
leaving
Australia
to obtain
certificate.

“; or (c) that the income tax payable by that person is irrecoverable,

issue a certificate that, for the purposes of the Act, there is no objection to the departure of that person from Australia.”.

17.—(1.) The amendments effected by this Act, other than the amendment effected by section fourteen, shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-eight and all subsequent years:

Application of
Act.

Provided that the amendments effected by section five of this Act, insofar as they require dividends to be paid out of an amount ascertained as specified therein in lieu of out of income as specified in sub-section (2.) of section forty-four of the Principal Act, shall not apply to dividends paid prior to the commencement of this Act.

(2.) The amendment effected by section fourteen of this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-six and all subsequent years.