

INCOME TAX ASSESSMENT.

No. 58 of 1941.

An Act to amend the *Income Tax Assessment Act* 1936-1940.

[Assented to 3rd December, 1941.]

[Date of commencement, 31st December, 1941.]

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

1.—(1.) This Act may be cited as the *Income Tax Assessment Act* 1941. Short title and citation.

(2.) The *Income Tax Assessment Act* 1936-1940* 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* 1936-1941.

2. Section five of the Principal Act is amended—

Parts.

(a) by inserting after the words "Division 6.—Trustees" the words "Division 6A.—Husband and Wife."; and

(b) by omitting the words "on Income taxed abroad and on business income".

3. Section sixteen of the Principal Act is amended—

Officers to observe secrecy.

(a) by omitting from paragraph (e) of sub-section (4.) the word "or";

(b) by omitting from paragraph (f) of sub-section (4.) the words "the Territory for the Seat of Government", and inserting in their stead the words "the Australian Capital Territory or of the Northern Territory";

(c) by adding at the end of sub-section (4.) the following word and paragraph:—

" ; or (g) the Commonwealth Prices Commissioner."; and

(d) by inserting after sub-section (5.) the following sub-section:—

"5A. For the purposes of sub-sections (2.) and (5.) of this section, an officer or person shall be deemed to have communicated such information to another person in contravention of those sub-sections if he communicates that information to any Minister."

* Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; No. 17, 1940; and No. 65, 1940.

Exemptions.

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

- (a) by omitting from paragraph (k) the words “pensions paid under the *Australian Soldiers' Repatriation Act* 1920–1934,” and inserting in their stead the words “pensions, attendants' allowances, detention allowances and payments of a like nature paid under the *Australian Soldiers' Repatriation Act* 1920–1940 or under the *Seamen's War Pensions and Allowances Act* 1940,”;
- (b) by inserting after paragraph (k) the following paragraph :—
“ (ka) payments by way of endowment under the *Child Endowment Act* 1941 ; ” ;
- (c) by adding to paragraph (q) the following proviso :—
“ Provided that this paragraph shall not apply to exempt any income unless—
 - (a) where there is a liability for payment of income tax in the country where that income is derived—the Commissioner is satisfied that the tax has been or will be paid ; or
 - (b) where the outgoings incurred in producing that income exceed that income—the Commissioner is satisfied that the tax would have been paid in the country where it is derived if the income had exceeded the outgoings ; ” ;
 and
- (d) by omitting paragraph (s) and inserting in its stead the following paragraph :—
“ (s) in the case of any person enlisted in or appointed to the Defence Force the pay and allowances earned by him as a member of that Force—
 - (i) out of Australia ;
 - (ii) in Australia if, within twelve months after the close of the year of income he embarks for service out of Australia or serves in a sea-going ship, and—
 - (1) during the period of twelve months immediately following the date on which he embarks or commences to serve is, for a period of, or periods which aggregate, not less than six months, or service out of Australia or borne in a sea-going ship ; or
 - (2) returns to Australia or is discharged from his ship owing to injury or illness ; and

- (iii) in Australia until the expiration of the period of three months immediately following his resumption of duty in Australia if he is a member whose pay and allowances have been exempted under the preceding provisions of this paragraph :

Provided that sub-paragraph (ii) or (iii) of this paragraph shall not apply to exempt the pay and allowances—

- (a) earned by a member of the Defence Force who is not appointed as a member of a body, contingent or detachment of that Force out of Australia ; or
- (b) earned by a member of the Defence Force prior to the date of his enlistment in or appointment to that Force for service beyond the limits of the Commonwealth.

For the purposes of this paragraph—

- ‘ Australia ’ does not include any Territory of the Commonwealth which is not part of Australia ;
- ‘ Commonwealth ’ includes any Territory of the Commonwealth ; and
- ‘ sea-going ship ’ does not include a depot ship or a ship principally employed on or in connexion with port or harbour defence ; ”.

5. Section twenty-six of the Principal Act is amended by inserting after paragraph (e) the following paragraph :—

Certain items of assessable income.

- “ (ea) the value to any taxpayer who is a member of the Defence Force of all allowances given or granted in respect of his service as such a member, whether so given or granted in money, goods, meals, sustenance, the use of premises or quarters, or otherwise ; ”.

6. Section thirty-six of the Principal Act is amended by inserting in sub-section (1.), after the word “ crop-stools, ” the words “ or trees which have been planted and tended for the purpose of sale ”.

Disposal of assets of a business.

7.—(1.) Section forty-four of the Principal Act is amended :—

Dividends.

- (a) by omitting paragraph (a) of sub-section (2.) ; and
- (b) by omitting sub-paragraphs (i) and (ii) of paragraph (b) of sub-section (2.).

(2.) The amendments effected by the last preceding sub-section shall not apply to any dividends paid, credited or distributed if the dividends—

(a) were declared prior to the thirtieth day of October, One thousand nine hundred and forty-one; or

(b) are paid out of profits arising from the sale or the compulsory resumption for public purposes of assets not acquired for the purpose of resale at a profit and that sale or resumption, as the case may be, took place prior to the thirtieth day of October, One thousand nine hundred and forty-one.

Extent of
liability to
tax of certain
dividends.
Rebate of
dividends.

8. Section forty-five of the Principal Act is repealed.

9. Section forty-six of the Principal Act is amended by omitting from sub-section (1.) all the words after the words "taxable income" and inserting in their stead the words "the rate of tax payable by companies for the year of tax."

Distributions
by liquidator.

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

"(3.) For the purposes of this section, 'paid-up capital' does not include the paid-up value of shares which have been issued by the company in satisfaction of dividends which have been paid out of profits arising from the revaluation of assets not acquired for the purposes of re-sale at a profit but includes capital which has been paid up in money or by other valuable consideration and which has been cancelled and has not been repaid by the company to the shareholders."

Loss on
property
acquired for
profit-making.

11. Section fifty-two of the Principal Act is amended by adding at the end thereof the following proviso:—

"Provided that, in respect of property acquired by the taxpayer after the date of the commencement of this proviso, no deduction shall be allowable under this section (except where the Commissioner, being satisfied that the property was acquired by the taxpayer for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme, otherwise directs) unless the taxpayer, not later than the date upon which he lodges his first return under this Act after having acquired the property, notifies the Commissioner that the property has been acquired by him for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme;".

Contribution
to pension fund.

12. Section sixty-six of the Principal Act is amended by adding at the end thereof the following sub-sections:—

"(2.) In the case of a taxpayer which is a private company within the meaning of Division 7 of this Part, the provisions of the last preceding sub-section shall not apply to so much of any sum so set apart or paid as is attributable to the provision of benefits, pensions

or retiring allowances for any person who is both a shareholder and an employee or director of that company if, in the opinion of the Commissioner, the benefits, pensions or retiring allowances are provided for that person as a shareholder.

“(3.) Where any taxpayer who has been allowed a deduction under sub-section (1.) of this section in respect of any sum set aside or paid as or to such a fund, receives from that fund, during the year of income, any payment or other benefit which has a money value, his assessable income shall include that payment or the money value of that benefit.”.

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

*Gifts and
contributions.*

- (a) by adding at the end of paragraph (b) of sub-section (1.) the following proviso :—

“ Provided that, in the case of a taxpayer which is a private company within the meaning of Division 7 of this Part, no deduction shall be allowed under this paragraph in respect of so much of any sum so set apart or paid as is attributable to the provision of benefits, pensions or retiring allowances for any person who is both a shareholder and an employee or director of that company if, in the opinion of the Commissioner, the benefits, pensions or retiring allowances are provided for that person as a shareholder.” ;

- (b) by omitting paragraph (d) of sub-section (1.) ; and

- (c) by inserting after sub-section (2.) the following sub-section :—

“(3.) Where any taxpayer who has been allowed a deduction under paragraph (b) of sub-section (1.) of this section in respect of any sum set aside or paid as or to such a fund, receives from that fund, during the year of income, any payment or other benefit which has a money value, his assessable income shall include that payment or the money value of that benefit.”.

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

*Concessional
deductions.*

- (a) by inserting at the end of paragraph (b) the following proviso :—

“ Provided further that where an endowment may be granted under the *Child Endowment Act 1941* in respect of any child or children maintained by the taxpayer he shall not be allowed a deduction under this paragraph in respect of more than one child ; ” ; and

- (b) by inserting after paragraph (b) the following paragraph :—

(baa) where in any assessment for the financial year beginning on the first day of July, One thousand nine hundred and forty-one, a deduction is not, by reason of the second proviso to the last preceding paragraph, allowed in respect of any

child who attains the age of sixteen years during the period commencing on the first day of July, One thousand nine hundred and forty and terminating on the thirtieth day of June, One thousand nine hundred and forty-two—

- (i) in the case of a child who attains the age of sixteen years during the financial year commencing on the first day of July, One thousand nine hundred and forty—a sum which bears the same proportion to fifty pounds as the portion of that financial year during which the child was under the age of sixteen years bears to a year; or
- (ii) in the case of a child who attains the age of sixteen years during the financial year commencing on the first day of July, One thousand nine hundred and forty-one—a sum which bears the same proportion to fifty pounds as the portion of that financial year during which the child is over the age of sixteen years bears to a year,

shall be an allowable deduction for the purpose of that assessment.

Notional income
of a taxpayer
deriving a
premium.

15.—(1.) Section eighty-six of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1.) the word “less” and inserting in its stead the words “not more”;
- (b) by omitting from paragraph (a) of sub-section (2.) the word “or”; and
- (c) by inserting after paragraph (a) the following paragraph :—
“(ab) where a premium or premiums for the lease is or are payable in each of three or more years of the lease; or”.

(2.) The amendments effected by the last preceding sub-section shall not apply to any premium in respect of any lease granted, assigned or surrendered prior to the thirtieth day of October, One thousand nine hundred and forty-one.

16. After section one hundred and one of the Principal Act the following section is inserted :—

Income of
deceased
received after
death.

“101A. Where in the year of income, the trustee of the estate of a deceased person receives any amount which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that amount shall be included in the assessable income of that year of the trust estate and shall be deemed to be income to which no beneficiary is presently entitled.”.

17. Section one hundred and two of the Principal Act is amended—

Revocable trusts.

- (a) by omitting from sub-section (1.) all the words after the words "income-producing assets," and inserting in their stead the words "and—

(a) he has power, whenever exercisable, to revoke or alter the trusts so as to acquire a beneficial interest in the income derived during the year of income, or the assets producing that income or any part of that income or of those assets ; or

(b) income is, under that trust, in the year of income, payable to or accumulated for, or applicable for the benefit of a child or children of that person who is or are under the age of twenty-one years and unmarried,

the Commissioner may assess the trustee to pay income tax, under this section, and the trustee shall be liable to pay the tax so assessed." ; and

- (b) by omitting from sub-section (2.) the words "so much of the net income of the trust estate as is attributable to the beneficial interest which he had power so to acquire," and inserting in their stead the words "the net income of the trust estate, or so much thereof as is attributable to the beneficial interest, as the case may be,".

18. After Division 6 of Part III. of the Principal Act, the following Division is inserted :—**"DIVISION 6A. HUSBAND AND WIFE.**

" 102A.—(1.) Where after the twenty-ninth day of October, One thousand nine hundred and forty-one the wife of a taxpayer has acquired or acquires any property, whether directly or indirectly, as a result of any gift by the taxpayer made after that date or any transfer by him after that date without his receiving fully adequate consideration, and the taxable income derived by the wife during the year of income is in excess of Two hundred pounds, the Commissioner shall—

Where wife derives income from property given to her by taxpayer.

- (a) assess the taxpayer to pay the amount of tax which would be payable if the rate of tax applicable to his taxable income were the rate which would be applicable if there were added to his taxable income an amount equal to so much of the income from that property as is included in the taxable income of the wife ; and
- (b) assess the wife to pay the amount of tax which would be payable by her if—
- (i) the rate of tax applicable to so much of the income from that property as is included in her taxable income were the same as the rate at which the taxpayer is assessed in accordance with the last preceding paragraph ; and

- (ii) the rate of tax applicable to the remainder of her taxable income were the rate of tax which would be applicable to a taxable income equal to that remainder,

and the taxpayer and his wife shall respectively be liable to pay the amounts so assessed.

(2.) For the purposes of this section, the part of the income from the property included in the taxable income of the wife shall be the amount remaining after deducting from the income from the property—

- (a) the deductions allowable under this Act from that income ;
and
(b) where the property is a business, such amount as, in the opinion of the Commissioner, represents the value of any services rendered by her in carrying on that business.

Duration of
Division.

“ 102B. This Division shall continue in operation so long as the *National Security Act 1939-1940* continues in operation and no longer.”.

Definitions.

19. Section one hundred and three of the Principal Act is amended—

- (a) by inserting in paragraph (e) of sub-section (2.), after the word “year” (second occurring), the words “or, if the company is a non-resident, before the expiration of nine months after the close of that year”; and
(b) by adding at the end thereof the following sub-sections:—

“(3.) For the purpose of ascertaining the distributable income of a private company, the private company may elect that, in lieu of deducting from its taxable income any income tax paid under this Act (other than the tax paid under this Division) in the year of income, there shall be deducted any income tax payable under this Act (other than the tax payable under this Division) in respect of the income of that year of income.

“(4.) Where any private company has made an election under the last preceding sub-section, that election shall, unless the Commissioner otherwise directs, be deemed to have been made also for the purpose of ascertaining the distributable income of that company for all subsequent years.”.

Assessment of
additional tax.

20. Section one hundred and four of the Principal Act is amended—

- (a) by inserting in sub-section (1.), after the words “year of income” (first occurring), the words “or, if the company is a non-resident, before the expiration of nine months after the close of that year”; and
(b) by inserting in sub-section (2.), after the words “year of income”, the words “or, if the company is a non-resident, within nine months after the close of that year”.

21. After section one hundred and nine of the Principal Act the following section is inserted in Division 7 of Part III. :—

“109A. The foregoing provisions of this Division shall not apply to a private company which is a non-resident and does not carry on business in Australia by means either of a principal office or a branch.”.

Division
not to apply
to certain
non-residents.

22. The heading to Division 17 of Part III. of the Principal Act is amended by omitting the words “on Income Taxed Abroad and on Business Income.”.

Amendment of
heading to
Division 17
of Part III.

23. Section one hundred and fifty-nine of the Principal Act is amended by omitting from sub-section (6.) the words “has been lodged with the Commissioner prior to the date of the commencement of this sub-section” and inserting in their stead the words “, accompanied by all the information necessary for the purpose of ascertaining the amount of the rebate is lodged with the Commissioner prior to the thirtieth day of June, One thousand nine hundred and forty-two”.

Rebate in case
of double and
triple taxation.

24. Section one hundred and sixty of the Principal Act is repealed and the following sections inserted in its stead :—

Rebate in
respect of
business
income.

“160.—(1.) Where in respect of the income of any year of income the sum of the tax assessed under this Act and under the *War-time (Company) Tax Assessment Act 1940-1941* and the income tax imposed under any law of a State or of a Territory being part of the Commonwealth exceeds ninety per centum of an amount ascertained by adding to the taxable income of the taxpayer the amount of any deductions allowed under the provisions of paragraph (c) of sub-section (1.) of section seventy-two of this Act, a rebate shall be allowed of so much of that excess as bears to that excess the same proportion as the sum of the tax assessed under this Act and under the *War-time (Company) Tax Assessment Act 1940-1941* bears to the sum of those taxes and the income tax imposed under any law of any such State or Territory.

Rebate where
taxes exceed
ninety per
centum of
taxable income.

(2.) For the purposes of the last preceding sub-section, any reference to tax assessed under this Act, or under the *War-time (Company) Tax Assessment Act 1940-1941*, or to any income tax imposed under any law of a State or Territory, shall not include any additional tax for which the taxpayer becomes liable by reason of any evasion or non-compliance with any provisions of this Act, the *War-time (Company) Tax Assessment Act 1940-1941* or the law of the State or Territory, as the case may be.

“160AA.—(1.) Where a taxpayer has, in the year of income, paid calls on shares owned by him in a mining company or syndicate carrying on mining operations in Australia for gold, silver, base metals, rare minerals or oil, or in any company carrying on afforestation in Australia as its principal business, he shall be entitled to a rebate in his assessment of the amount obtained by applying to the amount

Rebate of
tax in
respect of
calls to
companies.

of the calls (not exceeding the amount of the taxable income of the year of income) a rate equivalent to—

- (a) where the taxpayer is not a company and the taxable income is derived wholly from personal exertion—one-third of the rate of tax payable for the year of tax on a taxable income from personal exertion equal to the taxable income of the taxpayer ;
- (b) where the taxpayer is not a company and the taxable income is not derived wholly from personal exertion—one-third of the rate of tax payable for the year of tax on a taxable income from property equal to the taxable income of the taxpayer ; or
- (c) where the taxpayer is a company—one-third of the rate of tax payable by companies for the year of tax.

(2.) For the purposes of paragraph (c) of the last preceding sub-section tax payable by a taxpayer which is a company shall not include—

- (a) any tax imposed by any Act as a super tax on part of the taxable income of a company ; or
- (b) any tax assessed under the provisions of Part IIIA. of this Act.”.

Undistributed
income of
company.

25. Section one hundred and sixty c of the Principal Act is amended by omitting the proviso to sub-section (4.) and inserting in its stead the following proviso :—

“ Provided that this sub-section shall not apply to the profits or income specified in sub-section (2.) of section forty-four of this Act, to the extent of the amount of any dividend paid wholly and exclusively out of those profits or that income.”.

26. After section one hundred and sixty d of the Principal Act the following section is inserted in Part IIIA. :—

Division not
to apply to
certain
non-residents.

“ 160E. The foregoing provisions of this Part shall not apply to a company which is a non-resident and does not carry on business in Australia by means either of a principal office or a branch.”.

Liquidators,
&c.

27.—(1.) Section two hundred and fifteen of the Principal Act is amended by adding at the end thereof the following sub-section :—

“(6.) Upon the winding up of any company, the Commissioner may, if all other creditors of that company whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise, permit all such costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator, including the remuneration of the liquidator, to be paid out of the assets of the company in priority to any tax payable by the company.”.

(2.) This section shall be deemed to have commenced on the thirteenth day of October, One thousand nine hundred and thirty-nine.

28. Section two hundred and twenty-one of the Principal Act is repealed. Repeal of Section 221.

29. Section two hundred and twenty-one A of the Principal Act is amended— Definitions.

(a) by omitting from paragraph (a) of the definition of “employee”, the word “and” (last occurring);

(b) by adding at the end of the definition of “employee” the following word and paragraph:—

“; and (c) includes any member of the Defence Force;”;
and

(c) by omitting paragraph (a) of the definition of “salary or wages” and inserting in its stead the following paragraph:—

“(a) under any contract which is wholly or substantially for the labour of the person to whom the payments are made;”.

30.—(1.) The amendments effected by sections four to ten (both sections inclusive), sections twelve and thirteen, paragraph (a) of section fourteen, sections fifteen, seventeen, nineteen, twenty, twenty-four, twenty-five and twenty-eight of this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty-one and all subsequent years. Application of amendments.

(2.) The amendments effected by sections twenty-one and twenty-six of this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty and all subsequent years.

(3.) The amendment effected by section sixteen of this Act shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty-two.

STATES GRANTS.

No. 59 of 1941.

An Act to grant and apply out of the Consolidated Revenue Fund sums for the purposes of Financial Assistance to the States of South Australia, Western Australia and Tasmania.

[Assented to 3rd December, 1941.]

BE it enacted by the King's Most Excellent Majesty, the Senate, Preamble.
and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representatives, as follows:—

1. This Act may be cited as the *States Grants Act 1941*.

Short title.