

INCOME TAX ASSESSMENT (No. 2).

No. 39 of 1916.

An Act to amend the *Income Tax Assessment Acts* 1915, as amended by the *Income Tax Assessment Act* 1916.

[Assented to 21st December, 1916.]

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 (No. 2)* 1916. Short title and citation.

(2.) The *Income Tax Assessment Acts* 1915, as amended by the *Income Tax Assessment Act* 1916, are in this Act referred to as the Principal Act.

(3.) Sub-section (3.) of section one of the *Income Tax Assessment Act* 1916 is repealed.

4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1915–1916.^(a)

2. Section three of the Principal Act is amended—

Amendment of s. 3.

(a) by inserting, after the definition of “Agent”, the following definition:—

“‘Assessable income’ means the gross income which is not exempt from taxation.”;

(b) by inserting, after the definition of “Company”, the following definition:—

“‘Dependant’ means a relative of a taxpayer by blood, marriage or adoption towards whose maintenance the taxpayer has contributed at least Twenty-six pounds during the year in which his taxable income was derived.”; and

(c) by inserting after the definition of “Person” the following definition:—

“ Shareholder ’ includes stockholder.”

3. Section nine of the Principal Act is repealed and the following section is inserted in its stead:—

“ 9.—(1.) Every officer executing any power or duty conferred or imposed on any officer under this Act or the Regulations shall, before entering upon his duties or exercising any power under this

Officers to observe secrecy.

(a) For copy of *Income Tax Assessment Act* 1915–1916 see *infra*, p. 81.

Act, make, before a Justice of the Peace or a Commissioner for taking affidavits or a Commissioner for Declarations, a declaration in the form prescribed.

“(2.) Any officer who acts in the execution of his office before he has made the prescribed declaration, or who, after making the declaration, divulges any information relating to the affairs of a taxpayer except in the performance of his duty under this Act, shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

“(3.) Notwithstanding anything contained in this section, the Commissioner, the Assistant Commissioner, or a Deputy Commissioner, may communicate any matter which comes to his knowledge in the performance of his official duties to the Commissioner of Income Tax for any State who has been authorized by legislation to afford similar information to the Commissioner, the Assistant Commissioner, or a Deputy Commissioner.”

Exemptions.

4. Section eleven of the Principal Act is amended—

(a) by omitting from paragraph (e) the words “the *War Loan Act (No. 1) 1915*” and inserting in their stead the words “Commonwealth War Loans authorized up to the first day of January One thousand nine hundred and seventeen”;

(b) by inserting in paragraph (f) after the word “business” the words “and the income of a fund established by any will or instrument of trust for public charitable purposes if the Commissioner is satisfied that the fund is being applied by the trustees to public charitable purposes”; and

(c) by adding at the end thereof the following sub-section:—

“(2.) If a company, which has derived income from the bonds, debentures, stock or securities specified in paragraph (e) of sub-section (1.) of this section, pays in any year any portion of that income in dividends to its shareholders, the exemption under that paragraph shall extend to the proportion of the dividend for that year which has been paid out of such income.”

What is included in income.

5. Section fourteen of the Principal Act is amended—

(a) by inserting in paragraph (b) at the end of the third proviso the words “but where it is proved to the satisfaction of the Commissioner that an amount standing to the credit of a profit and loss account before the first day of July One thousand nine hundred and fourteen, has been appropriated by a company for the purpose of crediting a dividend to the shareholders and the dividend or a part thereof is retained by the company for the purpose of paying for an increase in value or number of shares issued to the shareholders, the shareholders shall not be liable to pay tax on the dividend or the part of the dividend so retained”;

- (b) by inserting at the end of paragraph (d) the words “and the amount of any payment received by a lessee upon the assignment or transfer of a lease to another person, after deducting therefrom the part (if any) which, in the opinion of the Commissioner, is properly attributable to the transfer of any assets belonging to the lessee and so much of any fine, premium, or foregift paid by the lessee or any amount paid by the lessee for the assignment or transfer of the lease as, in the opinion of the Commissioner, is properly attributable to the period of the lease unexpired at the time of the assignment or transfer by the lessee”; and
- (c) by omitting from paragraph (e) all the words after the word “gain”.

6. Section fifteen of the Principal Act is repealed.

Repeal of s. 15.

7. Sub-section (1.) of section sixteen of the Principal Act is repealed and the following sub-sections inserted in its stead :—

Taxation of companies.

“(1.) For the purpose of ascertaining the taxable income of a company there shall be deducted from the total assessable income, in addition to any other deductions allowed by this Act, so much of the assessable income as is available for distribution and is distributed to the members or shareholders of the company :

Provided that in the case of a life insurance company there shall also be deducted so much of the income as consists of premiums paid upon the policies issued by the company.

“(1A.) A company shall also pay income tax on—

- (a) so much of the assessable income of the company as is distributed to the members, shareholders or stockholders of the company who are absentees ; and
- (b) the interest paid or credited by the company to any person who is an absentee in respect of debentures of the company or on money lodged at interest with the company :

Provided that where a company pays tax under this sub-section on any dividend or interest, and the member, shareholder or person pays tax on that dividend or interest, in addition to other income, the proportionate amount of tax paid by the company in respect of the dividend or interest shall be deducted from the total tax payable by the member, shareholder or person.

“(1B.) A company, notwithstanding any contract, agreement, or arrangement entered into by it, may, with the approval of the Commissioner, charge *pro rata* the amount of the tax actually paid by it against those beneficially interested in the income of the company.”

8. Section seventeen of the Principal Act is amended by omitting from paragraph (b) the words “prior to the financial year beginning the first day of July One thousand nine hundred

Taxation of a mining company.

and fourteen by that person" and inserting in their stead the words "by that person prior to the financial year in and for which income tax is being levied".

Fire and marine
insurance
companies.

9. Section seventeen A of the Principal Act is amended—

- (a) by inserting after the word "fire" (wherever occurring) the words "or marine";
- (b) by omitting the word "income" and inserting in its stead the word "premium"; and
- (c) by omitting the words "and the company carrying on business in Australia shall be deemed to be the agent of the company not carrying on business in Australia, so far as may be necessary for purposes of this Act.", and inserting in their stead the words "and to be income received by the company carrying on business in Australia as agent for the company not carrying on business in Australia."

Deductions.

10.—(1.) Sub-section (1.) of section eighteen of the Principal Act is amended—

- (a) by inserting after the word "total" (first occurring) the word "assessable";
- (b) by omitting from paragraph (a) the word "gross" and inserting in its stead the word "assessable";
- (c) by adding at the end of paragraph (b) the words "but including the amount of war-time profits tax payable in Australia in respect of any part of the income :

Provided that when a taxpayer receives a refund of the whole or part of any of the taxes mentioned in this section the amount of such refund shall be brought into account as income in the year in which the refund is received ;"

- (d) by adding at the end of the proviso to paragraph (c) the words "or for any premium or sum paid in respect of any such insurance, annuity, or other provision effected outside Australia ;"
- (e) by inserting in paragraph (d) after the words "occupied for the purpose of producing income" the words "or from which income is derived" ;
- (f) by omitting from paragraph (f) the word "on" and inserting in its stead the word "for" ;
- (g) by omitting from paragraph (f) the words "or the estimated annual value" and inserting in their stead the words "and for rent" ;
- (h) by adding at the end of paragraph (f) the following proviso :—

"Provided that where a taxpayer provides quarters for such employees in any property in respect of which the taxpayer returns as income five per centum on the capital value of the property, the proportion of such income found by the Commissioner to be applicable to the quarters so provided shall be deducted ;"

- (i) by inserting in paragraph (g) after the word "fund" the words "established in Australia";
- (j) by omitting from paragraph (k) the word "thirteen" and inserting in its stead the words "twenty-six"; and
- (k) by adding at the end of the sub-section the following paragraph :—

"and (m) the interest paid on a mortgage of land to which section fourteen paragraph (e) of this Act applies if the taxpayer satisfies the Commissioner that the mortgage was entered into in good faith."

(2.) Sub-section (2.) of section eighteen of the Principal Act is repealed and the following sub-section inserted in its stead :—

"(2.) Where a taxpayer makes a return of income derived from personal exertion and from property the following deductions shall be made from the income from property :—

- (a) the deductions specified in paragraph (b) of sub-section (1.) of this section ;
- (b) sums expended for repairs to or on any property in respect of which income taxable as income from property is returned ;
- (c) the interest paid on a mortgage of land to which section fourteen, paragraph (e), of this Act applies, together with interest paid on money used for the purpose of producing any other income taxable as income from property, and rent paid for property from which income taxable as income from property is derived ; and

(d) commissions paid for collection of income from property; and all other deductions allowed by this section shall be made from the income from personal exertion :

Provided that if the income from either source does not amount to the sum to be deducted from that source, the balance of the sum to be deducted shall be deducted from the income from the other source."

11. Section nineteen of the Principal Act is repealed and the following section inserted in its stead :—

"19.—(1.) In the case of a person (other than a company, an absentee, or a person without a dependant) there shall be deducted, in addition to the sums set forth in the last preceding section, the following sums :—

Special deductions.

- (a) in respect of the income derived from personal exertion, the sum of One hundred and fifty-six pounds less One pound for every Four pounds by which the income exceeds One hundred and fifty-six pounds ;
- (b) in respect of income derived from property, the sum of One hundred and fifty-six pounds less Five pounds for every Eleven pounds by which the income exceeds One hundred and fifty-six pounds.

“(2.) When the total taxable income consists partly of income from personal exertion and partly of income from property the deduction under this section shall be apportioned *pro rata* between the income from each source.

“(3.) In the case of a person (not being an absentee) without a dependant there shall be deducted, in addition to the sums set forth in the last preceding section, the sum of One hundred pounds less One pound for every Four pounds by which the income exceeds One hundred pounds.”

Deductions not to be allowed in certain matters.

12. Section twenty of the Principal Act is amended—

(a) by inserting, after the second proviso to paragraph (g), the following proviso :—

“ Provided further that if it is shown to the satisfaction of the Commissioner that in any business the annual provision made to cover bad debts written off each year represents the equivalent of the amount that would be allowable as a deduction under this paragraph, the amount of such annual provision or such portion thereof as the Commissioner considers fairly represents the equivalent of the allowable deduction may be allowed as the deduction under this paragraph.” ; and

(b) by omitting the proviso to paragraph (i) and inserting in its stead the following proviso :—

“ Provided that where it is proved to the satisfaction of the Commissioner that any taxpayer (being the lessee under a lease or the assignee or transferee of a lease) has paid any fine, premium, or foregift, or consideration in the nature of a fine, premium, or foregift for a lease, or a renewal of a lease, or an amount for the assignment or transfer of a lease of premises or machinery used for the production of income, the Commissioner may allow, as a deduction for the purpose of arriving at the income, the sinking fund according to calculations based on the prescribed tables for the calculation of values required to recoup the taxpayer the amount so paid for the lease or renewal of the lease or the assignment or transfer of the lease.”

Repeal of s. 24.

13. Section twenty-four of the Principal Act is repealed.

Deduction where income is distributed.

14. Section twenty-seven of the Principal Act is amended—

(a) by omitting from sub-section (1.) the words “ person (other than a company or a trustee) who ” and inserting in their stead the words “ partnership which ” ;

(b) by omitting from sub-section (1.) the words “ that person ” and inserting in their stead the words “ the partnership ” ;

(c) by adding, at the end of sub-section (2A.) the following proviso:—

“ Provided that where any income is in the opinion of the Commissioner held by the trustee for the benefit of a beneficiary who is a minor, the trustee shall pay tax in respect of that income as if the beneficiary had received it as his only income.”; and

(d) by adding at the end of sub-section (3.) the words “ and to retain out of the income held by him for the benefit of a beneficiary who is a minor so much as is necessary to pay the tax due by him under this section in respect of that income.”

15. Section twenty-eight of the Principal Act is amended by adding at the end of sub-section (1.) the following paragraph:—

Amendment of
s. 28.

“(c) in the case of a person who is not married, has no dependants, and is not an absentee, the total income from all sources in Australia amounts to the sum of One hundred pounds or upwards.”

16. Section thirty-seven of the Principal Act is amended by adding at the end of sub-section (4.) the words “A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection.”

Objections.

17. Section forty-one of the Principal Act is amended by adding at the end thereof the following proviso:—

Date of payment
of tax.

“ Provided that when the Commissioner has reason to believe that a taxpayer may leave Australia before the tax on an assessment or the additional tax on an amended assessment becomes due and payable, the tax or additional tax shall be due and payable on such date as the Commissioner fixes and notifies to the taxpayer.”

18. Section fifty-eight of the Principal Act is amended by adding thereto the following sub-section:—

Amendment of
s. 58.

“(2.) A prosecution in respect of an offence against paragraph (a) of sub-section (1.) of this section may be commenced at any time.”

19.—(1.) The amendments to the Principal Act made by this Act shall, subject to this section, apply to all assessments made for the financial year beginning on the first day of July, One thousand nine hundred and sixteen, and subsequent years.

Application of
Act.

(2.) The amendments made to the Principal Act by paragraph (a) of section five and paragraph (c) of sub-section (1.) of section ten of this Act shall apply to all assessments made under the Principal Act.