

15. If, in any proceedings against a person for the offence of black marketing, it appears to the court that any witness for the prosecution is implicated in the offence charged, but has made a full and truthful disclosure of all the circumstances within his knowledge relating to the offence, the court may issue to the witness a certificate to that effect, and any certificate so issued shall be a bar to any proceedings against that witness in respect of that offence.

Exemption from prosecution of witness who has made full disclosure.

16. Any fine or penalty or any sum of money adjudged to be paid by, or payable by reason of, any conviction or order of a court under this Act may, without prejudice to any other action which may be taken in relation to the fine, penalty or sum, be levied by distress.

Distress.

17. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Act, and, in particular, for—

Regulations.

- (a) declaring any act or thing done or omitted to be done, or any conduct, in contravention of the Regulations to be black marketing ;
- (b) making provision with respect to the proof of any matters in any prosecution for the offence of black marketing ; and
- (c) prescribing penalties not exceeding a fine of One hundred pounds or imprisonment for six months for offences against the regulations made under this Act.

18. This Act shall continue in operation until a date to be fixed by Proclamation, and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war.

Duration of Act.

INCOME TAX ASSESSMENT (No. 2).

No. 50 of 1942.

An Act to amend the *Income Tax Assessment Act* 1936-1941, as amended by the *Income Tax Assessment Act* 1942, and for other purposes.

[Assented to 6th October, 1942.]

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) 1942.

Short title and citation.

(2.) Section one of the *Income Tax Assessment Act* 1942* is amended by omitting sub-section (3.).

(3.) The *Income Tax Assessment Act* 1936-1941†, as amended by the *Income Tax Assessment Act* 1942, is in this Act referred to as the Principal Act.

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1936-1942.

(5.) The *Income Tax Assessment Act* 1940‡, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1940-1942.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Amendment of
*Income Tax
Assessment
Act* 1940.

3. Section three of the *Income Tax Assessment Act* 1940 is amended by omitting sub-section (2.).

Definitions.

4. Section six of the Principal Act is amended—

(a) by inserting after the definition of "Australia" the following definition :—

" 'Board of Referees' means a Board of Referees constituted under the *War-time (Company) Tax Assessment Act* 1940, or under that Act as amended ; " ; and

(b) by inserting after the definition of "person" the following definition :—

" 'present war' means the war which commenced on the third day of September, One thousand nine hundred and thirty-nine, and includes any other war in which His Majesty has become or becomes engaged during the continuance of that war ; " .

Exemptions.

5. Section twenty-three of the Principal Act is amended by omitting paragraph (ka) and inserting in its stead the following paragraph :—

" (ka) payments by way of—

(i) endowment under the *Child Endowment Act* 1941-1942 ;

(ii) pension under the *Invalid and Old-age Pensions Act* 1908-1942 ; and

(iii) pension or allowance under the *Widows' Pensions Act* 1942."

6. After section twenty-three of the Principal Act the following section is inserted :—

" 23A.—(1.) Where a person carries on mining operations in Australia (other than coal mining) for a purpose which includes the production of any base metal or rare mineral which is specified in the

Partial
exemption
of income
from certain
mining
operations.

* Act No. 22, 1942.

† Act No. 27, 1936, as amended by No. 88, 1936 ; No. 5, 1937 ; No. 46, 1938 ; No. 30, 1939 ; Nos. 17 and 65, 1940 ; and Nos. 58 and 69, 1941.

‡ Act No. 17, 1940.

regulations as required for use in, or in connexion with, the prosecution of the present war, an amount equal to twenty per centum of the amount remaining after deducting from the assessable income derived from those operations—

- (a) all allowable deductions which relate to that income; and
- (b) any other allowable deductions, or part thereof, which, in the opinion of the Commissioner, may appropriately be related to that income,

shall be exempt from income tax.

“(2.) Any person carrying on such operations may make an application in writing to the Commissioner for the exemption from income tax of a part of the income derived from mining operations in connexion with any mine to which the last preceding sub-section applies greater than that specified in that sub-section, on the ground that, in consequence of the national needs occasioned by the present war, the output of that mine has been, or will be, such that the value of the mine has depreciated, or will depreciate, to an extent which makes it just that a greater part of the income derived from mining operations in connexion with that mine than that specified in the last preceding sub-section should be exempt from income tax.

“(3.) The Commissioner shall refer every such application to a Board of Referees.

“(4.) If the applicant satisfies the Board of Referees that, for the reasons mentioned in sub-section (2.) of this section, it is just that a greater part of such income should be so exempt, such greater part of the income as the Board determines shall, in lieu of the part specified in sub-section (1.) of this section, be exempt from income tax.

“(5.) A Board of Referees may, at any time, and from time to time, vary any determination made by it under this section.

“(6.) Subject to the last preceding sub-section, every determination made by a Board of Referees under this section, and every variation thereof, shall be final and conclusive.

“(7.) Any determination made by a Board of Referees under this section, and any variation thereof made in pursuance of sub-section (5.) of this section, shall apply in respect of the assessment for such year of tax (not being earlier than the year of tax beginning on the first day of July, One thousand nine hundred and forty-two) as the Board specifies in the determination or variation, as the case may be, and, subject to any variation by the Board, for each year of tax thereafter:

Provided that where the applicant has made an application under this section later than sixty days after the service of the notice of assessment for any year of tax, the Board shall not specify that year of tax or any earlier year of tax.

“(8.) This section shall not apply to any assessment for any year of tax subsequent to the first year of tax to commence after the termination of the present war.”

Dividends.

7. Section forty-four of the Principal Act is amended—

(a) by inserting in paragraph (b) of sub-section (2.), before sub-paragraph (iii), the following sub-paragraph :—

“(i) the amount of the income derived by a company which is exempt from income tax by reason of section twenty-three A of this Act ; or ” ; and

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

“(3.) Where, during the year ended on the thirtieth day of June, One thousand nine hundred and forty-two, or the accounting period adopted in lieu of that year, a company, the principal business of which is the carrying on of mining operations for the production of any base metal or rare mineral referred to in sub-section (1.) of section twenty-three A of this Act, has derived income which is exempt from income tax by reason of that section and has, during the year ended on the thirtieth day of June, One thousand nine hundred and forty-two, paid dividends to its shareholders—

(a) twenty per centum of those dividends shall, for the purposes of sub-paragraph (i) of paragraph (b) of sub-section (2.) of this section, be deemed to have been paid wholly and exclusively out of that exempt income ; and

(b) so much of that exempt income as does not exceed twenty per centum of those dividends shall, for the purposes of that sub-paragraph, be deemed to have been applied in payment of those dividends.”.

8. Section fifty-nine of the Principal Act is amended—

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

“(2A.) Notwithstanding anything contained in the last preceding sub-section or in section sixty-two of this Act, where, during the present war, a unit of property to which this section applies is lost or destroyed, and the whole or any part of the consideration received or receivable in respect of that loss or destruction would, but for this sub-section, be included in the assessable income of the taxpayer, the Commissioner may, if the taxpayer so requests in writing when lodging the return of income to which the request applies, or within such further time as the Commissioner allows, in lieu of including the consideration or part thereof in the assessable income of the taxpayer, successively reduce the depreciated values of—

(a) any unit of property acquired by the taxpayer during the year of income to replace the unit of property so lost or destroyed ; and

Disposal, loss
or destruction
of depreciated
property.

- (b) any other units of property in respect of which depreciation is allowable to the taxpayer under this Act,

by such amounts as, in the aggregate, are equal to the lesser of the following amounts :—

- (c) The amount of the consideration which would, but for this sub-section, be included in the assessable income ; or
- (d) The sum of the depreciated values which are to be so reduced,

and calculate the depreciation allowable in respect of those units of property on their depreciated value as so reduced.

“(2B.) Where the amount of consideration which would, but for the last preceding sub-section, be included in the assessable income of the taxpayer in accordance with sub-section (2.) of this section exceeds the sum of the reductions made under the first-mentioned sub-section, the amount of that excess shall be included in his assessable income.

“(2c.) Where, after the year of income in which the unit of property is so lost or destroyed, but not later than two years after the termination of the present war, the taxpayer acquires a unit of property to replace the unit of property so lost or destroyed, the Commissioner may, if the taxpayer so requests in writing not later than the date of lodgment of the return of income of the year during which the unit of property is so replaced—

- (a) amend any assessment in which the consideration received or receivable in respect of that loss or destruction or any part thereof was included in the assessable income by deducting from that assessable income the lesser of the following amounts :—

- (i) The amount of the consideration so included ; or
- (ii) The depreciated value of the unit of property so acquired ; and

- (b) reduce by the same amount the depreciated value of the unit of property so acquired, and calculate the depreciation allowable in respect of that unit of property on the depreciated value as so reduced.” ; and

- (b) by inserting in paragraph (b) of sub-section (3.), after the word “amount”, the words “or value”.

9. After section fifty-nine of the Principal Act the following sections are inserted :—

Depreciation
of plant, &c.
in consequence
of use in
connexion with
war.

“59A.—(1.) Where a taxpayer has, after the thirtieth day of June, One thousand nine hundred and thirty-eight, acquired or installed any property, being plant or articles in respect of which depreciation is allowable under section fifty-four of this Act, he may, either prior to, or within two years after, the termination of the present war, make application in writing to the Commissioner to have the deduction allowable for depreciation in respect of that property ascertained in accordance with the provisions of this section, and the Commissioner shall refer the application to a Board of Referees.

“(2.) Every such application shall be accompanied by a certificate, obtained within the period specified in sub-section (4.) of this section, signed by the Secretary of the Department of Munitions, or the Secretary of the Department of Supply and Development, or the Secretary of the Department of Commerce, or by any person authorized in writing by the Secretary of any of those Departments to sign certificates for the purposes of this section, or by any other prescribed authority, certifying that the property in respect of which the application is made was acquired or installed, as the case may be, for use primarily and principally in, or in connexion with, the prosecution of the present war.

“(3.) If the taxpayer satisfies the Board of Referees—

- (a) that, either prior to, or within two years after, the termination of the present war, that unit of property has been discarded, sold or otherwise disposed of ;
- (b) that the value of any unit of that property as at the thirtieth day of June next succeeding the termination of the present war is less than its depreciated value ; or
- (c) that its actual effective life, as estimated by the Board after the termination of the present war, is, or will be, shorter than the effective life estimated by the Commissioner in pursuance of section fifty-five of this Act,

the Board may determine—

- (i) the annual depreciation per centum of that unit of property ; and
- (ii) the assessments to which that annual depreciation per centum shall apply,

and the Commissioner shall allow the amount of depreciation ascertained in accordance with the percentage so fixed by the Board in lieu of the amount which has been allowed, or would, but for this section, be allowable, under section fifty-four of this Act in respect of that unit of property.

“(4.) The period within which the certificate specified in sub-section (2.) of this section may be obtained shall be—

- (a) where the property has been installed or acquired prior to the date of the commencement of this section—the period of six months immediately succeeding that date ; or

- (b) where the property is acquired or installed on or after the date of the commencement of this section—the period of six months immediately succeeding the acquisition or installation of the property.

“(5.) The Commissioner may, in any case, in his discretion and upon reasonable cause being shown by the taxpayer, extend for a further period, not exceeding sixty days—

- (a) the period of two years specified in sub-section (1.) of this section ; or
(b) any period of six months specified in the last preceding sub-section.

“59B.—(1.) Where any building constructed or acquired by a taxpayer after the thirtieth day of June, One thousand nine hundred and thirty-eight, is used by him for the purpose of producing assessable income, or of carrying on a business for the purpose of producing assessable income, the taxpayer may, either prior to, or within one year after, the termination of the present war, make application in writing to the Commissioner for the allowance of a deduction ascertained in accordance with the provisions of this section, and the Commissioner shall refer the application to a Board of Referees.

Depreciation
of buildings
in consequence
of use in
connexion
with war.

“(2.) Every such application shall be accompanied by a certificate, obtained within the period specified in sub-section (5.) of this section, signed by the Secretary of the Department of Munitions, or the Secretary of the Department of Supply and Development, or the Secretary of the Department of Commerce, or by any person authorized in writing by the Secretary of any of those Departments to sign certificates for the purposes of this section, or by any other prescribed authority, certifying that the building was constructed or acquired, as the case may be, for use primarily and principally in, or in connexion with, the prosecution of the present war.

“(3.) If the taxpayer satisfies the Board of Referees that—

- (a) the building was sold or otherwise disposed of prior to the first day of July next succeeding the termination of the present war at a value which is less than the net cost of the building ; or
(b) the value of the building as at the thirtieth day of June next following the termination of the present war (or, where the Board determines the question prior to that date but after the termination of the present war, the value as at the date on which the Board determines the question) is less than the net cost of the building,

and, in either case, the loss or deficiency is wholly or mainly due to conditions arising as a consequence of the present war, an amount ascertained by distributing the loss or deficiency proportionately over the period commencing on the date when the building was constructed or acquired, as the case may be, and ending on the date when the building is sold or otherwise disposed of or on the thirtieth day of June next following the termination of the present war, whichever date first happens, shall be an allowable deduction.

“(4.) For the purposes of this section—

- (a) the term ‘building’ shall include any alteration, addition or extension which is made, after the thirtieth day of June, One thousand nine hundred and thirty-eight, to any existing building ;
- (b) the net cost of the building shall be deemed to be an amount equal to all expenditure of a capital nature incurred in constructing or acquiring the building, and, where the taxpayer, in consequence of the construction or acquisition of the building, has ceased to use any other building which he had used in carrying on his business, shall include such amount of any loss (not being a loss which is an allowable deduction) sustained by him as a result of that cessation as the Board of Referees determines, less in any case—
 - (i) any sum provided, or to be provided, directly or indirectly, by the Commonwealth or a State, or by any public authority of the Commonwealth or a State, towards the cost of constructing or acquiring the building, not being a sum provided or to be provided by way of loan ;
 - (ii) an amount equal to any part of that expenditure in respect of which depreciation has been allowed or is allowable under section fifty-four or section fifty-nine A of this Act ; and
 - (iii) all amounts received or receivable under a policy of insurance or otherwise in respect of the loss, destruction, or diminution in value of, or damage to, the whole or any part of the building ; and
- (c) a building shall be deemed to have been constructed or acquired, as the case may be, on the date when it is first used for the purposes for which it is constructed or acquired, notwithstanding that the construction may not have actually been completed on that date.

“(5.) The period within which the certificate specified in sub-section (2.) of this section may be obtained by the taxpayer shall be—

- (a) where the building was constructed or acquired by the taxpayer prior to the date of the commencement of this section—the period of six months immediately succeeding that date ; or
- (b) where the building is constructed or acquired by the taxpayer on or after the date of the commencement of this section—the period of six months immediately succeeding the construction or acquisition of the building, as the case may be.

“(6.) The Commissioner may, in any case, in his discretion and upon reasonable cause being shown by the taxpayer, extend for a further period, not exceeding sixty days—

- (a) the period of one year specified in sub-section (1.) of this section ; or

(b) any period of six months specified in the last preceding sub-section.

"59c. For the purposes of the last two preceding sections, a Board of Referees may assign to any plant, article or building, or to any alteration, extension or addition to any building, such value as it thinks just.

Board of Referees may assign values.

"59d.—(1.) The Treasurer may, on the recommendation of a Board of Referees, appoint such expert and technical advisers as the Board recommends to assist the Board on the hearing of any application under section twenty-three A, section fifty-nine A, section fifty-nine B or section seventy-two B of this Act.

Expert advisers to assist Board of Referees.

"(2.) Any expert or technical advisers so appointed shall act in an advisory capacity only.

"(3.) There shall be payable to any expert or technical advisers so appointed such fees and expenses (if any) as are prescribed.

"59E. A decision of a Board of Referees under section fifty-nine A or fifty-nine B of this Act shall be final and conclusive."

Decision of Board of Referees to be final.

10. Section sixty-two of the Principal Act is amended by adding at the end thereof the words "less, in any case to which paragraph (a) or (b) of this section applies, any amount by which the depreciated value is reduced in pursuance of sub-section (2A.) or (2C.) of section fifty-nine of this Act."

Definition of depreciated value.

11. Section seventy-two of the Principal Act is amended—

Rates and taxes.

(a) by omitting from sub-section (1A.) the words "the thirtieth day of June, One thousand nine hundred and forty-one, but before the first day of July, One thousand nine hundred and forty-four" and inserting in their stead the words "the end of the year of income ended on the thirtieth day of June, One thousand nine hundred and forty-one (or the end of the accounting period adopted under this Act in lieu of that year of income) but before the commencement of the year of income beginning on the first day of July, One thousand nine hundred and forty-four (or the commencement of the accounting period adopted under this Act in lieu of that year of income)"; and

(b) by inserting in sub-section (2.), after the word "taxes" the words "(not being rates or taxes to which sub-section (3.) of section one hundred and sixty of this Act applies)".

12. After section seventy-two of the Principal Act the following sections are inserted :—

"72A.—(1.) Where, in any year, dividends are included in the assessable income of the taxpayer and the taxpayer has, in the year of income, paid any income tax which he was personally liable to pay in respect of those dividends under the law of any country outside Australia, the amount of income tax so paid shall be an allowable deduction :

Income tax paid abroad on ex-Australian dividends.

Provided that this sub-section shall not apply to any amount paid for income tax in respect of any dividends which represent income in respect of which the taxpayer is entitled to a rebate under section one hundred and fifty-nine of this Act.

“(2.) Where a taxpayer in the year of income receives a refund of any amount paid for income tax which has been allowed or is allowable under this section as a deduction to him in any assessment for income tax under this Act, his assessable income shall include that amount.

Expenditure
for enemy
raids
precautions.

“72B.—(1.) Expenditure incurred by the taxpayer in the year of income for the purpose of protecting from hostile action by the forces of any country with which His Majesty is at war—

- (a) any persons employed by him for the purpose of gaining or producing assessable income ; or
- (b) any premises, or part of premises, plant, machinery, implements, utensils, rolling stock, articles, live-stock or other property held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose,

shall be an allowable deduction.

“(2.) Where any such expenditure creates an enduring benefit to the taxpayer, other than the benefit of such protection, the deduction otherwise allowable under the last preceding sub-section shall be reduced by an amount equal to the value of the enduring benefit so created.

“(3.) The amount of the deduction which would otherwise be allowable under this section shall be reduced by the amount (if any) of the expenditure in respect of which the taxpayer has been recouped or is entitled to be recouped by the Commonwealth or a State or any public authority of the Commonwealth or a State or by any other person.

“(4.) Where any expenditure on any property has been allowed or is allowable as a deduction under this section, and the taxpayer sells, transfers or otherwise disposes of that property or any part thereof, or the property or part thereof is lost or destroyed—

- (a) the consideration received or receivable in respect of the disposal, loss or destruction ; or
- (b) where the Commissioner is of opinion that part only of that consideration relates to the disposal, loss or destruction of an asset, benefit or advantage, acquired or created by that expenditure—that part of the consideration,

shall, to the extent of the expenditure so allowed or allowable as a deduction, be included in the assessable income of the year of income in which the disposal, loss or destruction occurs.

“(5.) For the purposes of the last preceding sub-section the expression ‘consideration received or receivable in respect of the disposal, loss or destruction’ means—

- (a) in the case of a sale of the property—the sale price less the expenses of the sale of the property ;
- (b) in the case where the property is sold with other assets and no separate value is allocated to the property—the amount determined by the Commissioner ;
- (c) in the case where property is disposed of otherwise than by sale—the value, if any, of the property at the date of disposal ;
- (d) in the case of loss or destruction of property—the amount or value received or receivable under a policy of insurance or otherwise in respect of the loss or destruction.

“(6.) Where, in any assessment, the amount claimed by the taxpayer to be an allowable deduction under sub-section (1.) of this section is reduced by the Commissioner in pursuance of sub-section (2.) of this section, the taxpayer may, within sixty days after service of the notice of the assessment, in writing request the Commissioner to refer the claim to a Board of Referees and the Commissioner shall refer the claim accordingly.

“(7.) Upon every such reference the Board of Referees shall determine whether the amount of the deduction allowed by the Commissioner should be confirmed, increased or reduced and every determination made by the Board under this section shall be final and conclusive.

“(8.) The provisions of Division 2 of Part V. of this Act shall not apply in respect of any matter which, under sub-section (6.) of this section, may be referred to a Board of Referees.”

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

*Gifts and
contributions.*

- (a) by inserting in sub-section (1.), before paragraph (b), the following new paragraph :—

“(a) In the case of a taxpayer which is a company, gifts of the value of One pound and upwards of money or of property other than money which was purchased by the company within twelve months immediately preceding the making of the gift, made by the company in the year of income to any of the following funds, authorities or institutions in Australia :—

- (i) a public hospital ;
- (ii) a public benevolent institution ;
- (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions in Australia, or for the establishment of such hospitals or

institutions, or for the relief of persons in Australia who are in necessitous circumstances ;

- (iv) a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants, where the gift is for such research, or a public institution engaged solely in such research ;
- (v) a public university or a public fund for the establishment of a public university ;
- (vi) a residential educational institution affiliated under statutory provisions with a public university, or established by the Commonwealth ;
- (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the war which commenced on the fourth day of August, One thousand nine hundred and fourteen or the third day of September, One thousand nine hundred and thirty-nine ;
- (viii) a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the armed forces of any part of His Majesty's dominions, or of any allied or other foreign force serving in association with His Majesty's armed forces ; and
- (ix) the Commonwealth, when made for purposes of defence." ; and

(b) by inserting after sub-section (1.) 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 company for the property, whichever is the less."

14. After section eighty of the Principal Act the following section is inserted :—

"81.—(1.) Where the income of any member of the Defence Force includes pay or allowances earned by him as a member of that Force and—

- (a) the income does not exceed Two hundred and fifty pounds—the amount of that income ;
- (b) the income exceeds Two hundred and fifty pounds but does not exceed Two hundred and sixty-one pounds—the amount of Ninety-four pounds ; or

Deduction for
member of
defence force.

- (c) the income exceeds Two hundred and sixty-one pounds—the amount of Ninety-four pounds less One pound for every One pound by which the income exceeds Two hundred and sixty-one pounds,

shall be an allowable deduction.

“(2.) In paragraphs (a), (b) and (c) of the last preceding sub-section, the word ‘income’ means the amount remaining after deducting from the assessable income all allowable deductions other than the deduction allowable under this section.

“(3.) The deduction of the amount allowable by sub-section (1.) of this section shall be made successively from income from property and from income from personal exertion.”.

15. After section one hundred and two of the Principal Act the following section is inserted in Division 6 :—

“102AA. Where, under the terms of an agreement, a taxpayer carrying on a business has undertaken to pay part of the proceeds of that business to the trustees of a fund out of which payments may be made by the trustees to persons who normally carry on a similar business and who, during the present war, are engaged on war service, the following provisions shall apply :—

Payments to fund providing benefits to persons on war service.

- (a) All amounts paid by the taxpayer to the trustees in pursuance of the agreement shall be allowable deductions ;
- (b) Subject to paragraph (d) of this section, the trustees shall not be liable to be assessed in respect of any payments to them in accordance with the agreement ;
- (c) All payments made by the trustees in accordance with the agreement to any person shall be included in the assessable income of that person ;
- (d) Where, on the thirtieth day of June next following the termination of the present war, any amount is held by the trustees as part of the fund, that amount shall, for the purposes of this Act, be deemed to be the net income of a trust estate to which no person is presently entitled and to have been derived on that date.”.

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

Definitions.

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

“Provided that this paragraph 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.”; and

(b) by adding at the end thereof the following sub-sections :—

“(5.) After the commencement of this sub-section, any election in pursuance of sub-section (3.) of this section shall be made in writing, signed by the public officer of the company, and notified to the Commissioner—

(a) where the election commences to apply in ascertaining the distributable income of the year ended on the thirtieth day of June, One thousand nine hundred and forty-one or of the year ended on the thirtieth day of June, One thousand nine hundred and forty-two, or the accounting period adopted under this Act in lieu of either of those years—on or before the thirty-first day of December, One thousand nine hundred and forty-two, or within such further time as the Commissioner may allow; and

(b) where the election commences to apply in ascertaining the distributable income of any subsequent year—on or before the date of lodgment of the return for that year or within such further time as the Commissioner may allow.

“(6.) Where a private company makes or has made an election under sub-section (3.) of this section, the income tax payable under this Act in respect of income derived during the year ended on the thirtieth day of June, One thousand nine hundred and forty-two, or the accounting period adopted under this Act in lieu of that year, shall, for the purpose of this section, be calculated as if in paragraph (a) of the Seventh Schedule to the *Income Tax Act 1942* the words ‘forty-eight pence’ were substituted for the words ‘seventy-two pence’.”

**Taxable
Income.**

17. Section one hundred and thirty-eight of the Principal Act is amended—

(a) by omitting the word “thirty” and inserting in its stead the word “ten”; and

(b) by omitting the proviso and inserting in its stead the following sub-section :—

“(2.) In ascertaining the gross income for the purpose of the last preceding sub-section there shall be deducted from what would otherwise be the gross income—

(a) the amount of any customs duty paid in respect of the importation of any film imported for the purpose of carrying on the business;

(b) the amount of any sales tax paid in respect of any copies of any such film which are printed in Australia; and

(c) the amount of any customs duty paid in respect of the importation of any unexposed sensitized film on which any such copies have been printed,

which, in the year of income, is paid to the Commonwealth (whether directly or indirectly) by the non-resident and which is not an allowable deduction to the person carrying on the business in Australia.”

18. Section one hundred and fifty-seven of the Principal Act is amended by omitting sub-section (4.) and inserting in its stead the following sub-section :—

Application of
Division to
Primary
Producers.

“(4.) If in any year in respect of which this Division applies only to taxpayers who are primary producers, a taxpayer was not carrying on business as a primary producer, that year shall not be counted as an average year and the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.”.

19. Section one hundred and sixty of the Principal Act is amended by inserting in paragraph (g) of sub-section (2.), after the words “year of income” the words “(not being gifts which are allowable as deductions under this Act in the assessment of the taxpayer)”.

Concessional
rebates.

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

Rebate of
tax in respect
of calls to
companies.

(a) by inserting in sub-section (1.), after the word “business”, the words “(not being calls which are allowable deductions under this Act)” ; and

(b) by omitting sub-section (2.).

21. Section one hundred and sixty AC of the Principal Act is amended by omitting all the words after the words “taxable income” (first occurring) and inserting in their stead the words “the amount in respect of which he would, but for this section, be entitled to a rebate under section one hundred and sixty AA of this Act shall, for the purpose of ascertaining the rebate thereon, be reduced by the amount of that excess.”.

Where
rebateable
amounts
exceed
tax ble income.

22. Section one hundred and sixty AE of the Principal Act is amended—

Rate of tax
for rebate
purposes.

(a) by omitting paragraph (a) and inserting in its stead the following paragraph :—

“(a) any reference to a rate of tax appropriate to a taxable income from personal exertion shall be read as a reference to a rate per pound ascertained by dividing by that taxable income the tax which, but for any rebate to which he is entitled in his assessment, would be payable by a taxpayer for the year of tax in respect of that taxable income if it were derived wholly from personal exertion ;” ; and

(b) by inserting in sub-paragraph (ii) of paragraph (b), after the word “dividends”, the words “, or any additional amount of tax assessed under Division 7 of Part III. of this Act”.

Undistributed
income of
company.

23. Section one hundred and sixty c of the Principal Act is amended—

(a) by omitting from sub-section (1A.) the definition of “mutual income” and inserting in its stead the following definition :—

“ ‘mutual income’, in relation to a life assurance company (other than a mutual life assurance company), means—

(a) so much of that part of the taxable income of the company which has been derived from its life assurance business as bears the same proportion to that part of the taxable income as the amount of the profits divided for the same year of income among the life assurance policy holders of the company bears to the total profits divided among those policy holders and the shareholders of the company in respect of the company's life assurance business for the same year of income ; or

(b) where no profits in respect of the company's life assurance business are divided for the year of income but, by virtue of the company's memorandum or articles of association, any profits to be divided among the life assurance policy holders of the company are required to be a certain proportion of the total profits to be divided—that proportion of that part of the taxable income of the company which has been derived from its life assurance business ; ” ; and

(b) by adding at the end thereof the following sub-sections :—

“(5.) For the purpose of ascertaining that portion of the taxable income of a company which has not been distributed as dividends, the company may elect that, in lieu of deducting from its taxable income any income tax paid in the year of income under this Act (other than the further tax paid under this Part) or any tax paid under any Act passed by the Parliament imposing a war-time tax upon companies, there shall be deducted any income tax payable under this Act (other than the further tax payable under this Part) or any tax payable under any Act passed by the Parliament imposing a war-time tax upon companies in respect of the income of that year of income.

“(6.) Where any company has made an election under sub-section (5.) of this section, that election shall, unless the Commissioner otherwise directs, be deemed to have been made also for the purpose of ascertaining that portion of the taxable income of that company which has not been distributed as dividends, for all subsequent years.

“(7.) The election which may be made in pursuance of sub-section (5.) of this section shall be made in writing, signed by the public officer of the company, and notified to the Commissioner—

(a) where the election commences to apply in ascertaining that portion of the taxable income derived by the company during the year ended on the thirtieth day of June, One

thousand nine hundred and forty-two, or the accounting period adopted under this Act in lieu of that year, which has not been distributed as dividends—on or before the thirty-first day of December, One thousand nine hundred and forty-two, or within such further time as the Commissioner may allow; and

- (b) where the election commences to apply in ascertaining that portion of the taxable income derived by the company during any subsequent year which has not been distributed as dividends—on or before the date of lodgment of the return for that year, or within such further time as the Commissioner may allow.

“(8.) Where a company makes an election under sub-section (5.) of this section, the income tax payable under this Act in respect of income derived during the year ended on the thirtieth day of June, One thousand nine hundred and forty-two, or the accounting period adopted under this Act in lieu of that year, shall, for the purpose of this section, be calculated as if in paragraph (a) of the Seventh Schedule to the *Income Tax Act 1942*, the words ‘forty-eight pence’ were substituted for the words ‘seventy-two pence’.”

24. Section one hundred and sixty E of the Principal Act is amended by inserting after the words “mutual life assurance company” the words “(as defined in sub-section (1A.) of section one hundred and sixty c of this Act)”.

Part not
to apply to
certain
companies.

25. Section one hundred and seventy of the Principal Act is amended by inserting in sub-section (10.), after the word “seventy-two”, the words “, or of giving effect to the provisions of section twenty-three A, sub-section (2c.) of section fifty-nine, or section fifty-nine A or fifty-nine B,”.

Amendment of
assessments.

26.—(1.) Section two hundred and twenty-one c of the Principal Act is amended by omitting from sub-section (1.) the words “seventeen shillings”.

Deductions
by employer
from salaries
and wages.

(2.) This section shall be deemed to have come into operation on the twenty-eighth day of July, One thousand nine hundred and forty-two, and Statutory Rules 1942, No. 339 shall be, and be deemed at all times to have been, as valid and effectual as if this section had been in force on that date.

27. Section two hundred and twenty-one d of the Principal Act is amended by omitting from paragraph (c) of sub-section (1.) the words “with any employer” and inserting in their stead the words “, or the requirements of any notice given,”.

Variation of
deductions.

28. Section two hundred and twenty-one k of the Principal Act is amended by inserting after sub-section (2.) the following sub-section :—

Group schemes.

“(2A.) The Commissioner may enter into an arrangement with the appropriate authority of the Commonwealth or any State or Territory of the Commonwealth providing for deductions from persons

employed by, or in the public service of, the Commonwealth or that State or Territory, to be made and dealt with in accordance with the terms of the arrangement, and thereupon those deductions shall, notwithstanding anything contained in this Division, be made and dealt with in accordance with those terms."

Person in receipt or control of money for non-resident.

29. Section two hundred and fifty-five of the Principal Act is amended—

- (a) by omitting from sub-section (2.) the words "under any contract"; and
- (b) by omitting from sub-section (2.) the words "under the contract" and inserting in their stead the words "to the non-resident".

Person paying royalty to a non-resident taxpayer.

30. Section two hundred and fifty-six of the Principal Act is amended by omitting from sub-section (1.) the words "under any contract".

Release of taxpayers in case of hardship.

31. Section two hundred and sixty-five of the Principal Act is amended—

- (a) by inserting in sub-section (9.), after the word "Board" (first occurring), the words "of Review"; and
- (b) by adding at the end thereof the following sub-sections:—

"(10.) In lieu of referring any application to a member of a Board of Review in accordance with sub-section (3.) of this section, the Board constituted under this section may refer the application to the Chairman of a Valuation Board constituted under the *Land Tax Assessment Act* 1910 (or under that Act as amended), in which case sub-sections (5.) to (9.) of this section shall apply as if the references to the member of the Board of Review were references to the Chairman of the Valuation Board.

"(11.) In any case where the amount of the liability does not exceed Twenty pounds, the powers conferred by sub-section (1.) of this section on the Board specified in that sub-section may be exercised by the Commissioner."

Gifts and contributions.

32.—(1.) In so far as the amendments effected to the *Income Tax Assessment Act* 1936–1941 by the *Income Tax Assessment Act* 1942—

- (a) omitted paragraph (a) of sub-section (1.), and sub-section (2.), of section seventy-eight of that first-mentioned Act;
 - (b) inserted paragraph (g) of sub-section (2.) of section one hundred and sixty of the Principal Act; and
 - (c) contain any reference to paragraph (g) of sub-section (2.) of section one hundred and sixty of the Principal Act,
- those amendments shall not apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty-two.

(2.) For the purposes of assessments for the financial year which commenced on the first day of July, One thousand nine hundred and forty-two, paragraph (a) of sub-section (1.) of section seventy-eight of the *Income Tax Assessment Act 1936-1941* shall apply as if, instead of sub-paragraphs (vii) and (viii), there were read sub-paragraphs (vii) and (viii) of paragraph (g) of sub-section (2.) of section one hundred and sixty of the Principal Act.

33.—(1.) The amendment effected by section 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 forty-one and all subsequent years.

Application of Act.

(2.) The amendment effected by section 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-two and, subject to the provisions of the section inserted by that amendment, for all subsequent years.

(3.) The amendments effected by paragraph (a) of section seven, sections eight and ten, paragraph (b) of section eleven, and sections twelve, fourteen, fifteen, sixteen, seventeen, eighteen, twenty, twenty-two, twenty-three and twenty-four 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 and all subsequent years.

(4.) The amendments effected by sections thirteen, nineteen and twenty-one 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-three and all subsequent years.

INCOME TAX (No. 2).

No. 51 of 1942.

An Act to amend the *Income Tax Act 1942*.

[Assented to 6th October, 1942.]

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 Act (No. 2)* 1942.

Short title and citation.

(2.) The *Income Tax Act 1942**, as amended by this Act, may be cited as the *Income Tax Acts 1942*.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Commencement.