

Income Tax Assessment Act (No. 2) 1973

No. 52 of 1973

AN ACT

To amend the Law relating to Income Tax.

[Assented to 14 June 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

1. (1) This Act may be cited as the *Income Tax Assessment Act* (No. 2) 1973. Short title
and citation.

(2) The *Income Tax Assessment Act* 1936–1972,* as amended by the *Income Tax Assessment Act* 1973,† is in this Act referred to as the Principal Act.

(3) Section 1 of the *Income Tax Assessment Act* 1973 is amended by omitting sub-section (3).

(4) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1936–1973.

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

* Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; and Nos. 5, 46, 47, 65 and 85, 1972.

† Act No. 51, 1973.

Exemptions.

3. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (i) of paragraph (ka) the words “ *Social Services Consolidation Act 1947–1950*; and ” and substituting the words “ *Social Services Act 1947–1973*; ”;
- (b) by inserting after sub-paragraph (ii) of paragraph (ka) the following word and sub-paragraph:—
 - “ and
 - (iii) domiciliary nursing care benefit under Division 5B of Part V of the *National Health Act 1953–1973*; ”; and
- (c) by inserting in paragraph (zaa), after the words “ technical scholarships ”, the words “ or of assistance in connexion with the education of isolated children ”.

4. After section 24 of the Principal Act the following section is inserted:—

Income of visiting experts.

“ 24AA. Sub-paragraphs (vi) and (vii) of paragraph (c) of section 23 and section 160ABA do not apply in relation to income derived during a visit to Australia unless—

- (a) the income is derived in a year of income earlier than the year of income commencing on 1st July, 1978; and
- (b) the visit commenced on or before 30th June, 1973, or commenced after that date in pursuance of a contract to make the visit entered into on or before 14th May, 1973.”.

Calls paid on shares for the purposes of exploration or prospecting for minerals or of afforestation.

5. Section 77C of the Principal Act is amended—

- (a) by omitting from paragraph (a) of the definition of “ calls paid on shares ” in sub-section (1) the word “ or ” (last occurring);
- (b) by adding at the end of that definition the following paragraphs:—
 - “ (c) moneys paid to the company in respect of calls made after 7th May, 1973; or
 - (d) moneys paid to the company in respect of calls made on or before 7th May, 1973, where the shares were acquired, and the moneys paid, after that date; ”;
- (c) by omitting from sub-section (3) the words “ and section 79C ” and substituting the words “ and sections 77E and 79C ”; and
- (d) by inserting in sub-section (6), after the words “ for the purposes of this section ”, the words “ and section 77E ”.

Moneys paid on shares for the purposes of certain exploration, prospecting or mining.

6. (1) Section 77D of the Principal Act is amended—

- (a) by omitting from paragraph (b) of the definition of “ moneys paid on shares ” in sub-section (1) the word “ or ” (last occurring);
- (b) by adding at the end of that definition the following word and paragraph:—
 - “ or (d) moneys paid to the company after 7th May, 1973, other than moneys paid in respect of calls made on or

before that date in respect of shares of which the ownership or beneficial ownership, as the case may be, was acquired on or before that date;”;

- (c) by omitting from sub-section (3) the word “within” (first occurring) and substituting the words “before the expiration of”;
- (d) by inserting in sub-section (4), after the words “this section”, the words “and section 77E”;
- (e) by inserting in sub-section (5), after the words “any deduction”, the words “allowed or”;
- (f) by omitting from sub-section (6) the word “within” (first occurring) and substituting the words “before the expiration of”;
- (g) by omitting from paragraph (b) of sub-section (9) the word “within” and substituting the words “before the expiration of”;
- (h) by inserting in sub-section (10), after the word “section” (second occurring), the words “and section 77E”;
- (i) by omitting sub-section (11) and substituting the following sub-section:—
 - “(11) Where a company duly lodges a declaration under sub-section (6) in respect of any moneys—
 - (a) a deduction in respect of those moneys is not allowable under sub-section (4), under section 77C or under paragraph (b) of sub-section (1) of section 78, from the assessable income of the company; and
 - (b) where the company has, before or during a year of income, expended moneys included in the declaration in making payments to a mining company in respect of shares in that company for the purpose specified in paragraph (e) of sub-section (6), the amount of the expenditure shall not be allowable as a deduction from the assessable income of the company and shall not be taken into account for the purposes of this Act in ascertaining the amount of any profit or loss arising from sale of the shares.”;
- (j) by omitting from paragraph (a) of sub-section (13) the word “or” (last occurring);
- (k) by inserting after paragraph (a) of sub-section (13) the following paragraph:—
 - “(ab) is not satisfied, as to any moneys specified in a declaration so lodged, being moneys expended in making payments to a mining company for the purpose specified in paragraph (e) of that sub-section, that the moneys included in the payments have been or will be expended by the mining company on mining or prospecting outgoings; or”;

- (1) by omitting from sub-section (13) the words—

“ the Commissioner may inform the company, by notice in writing given for the purposes of this sub-section, that he is not so satisfied or that he is of that opinion, as the case may be, and, upon the company being so informed—”

and substituting the words—

“ the Commissioner may inform the company that lodged the declaration and, where paragraph (ab) applies, the mining company, by notice in writing given for the purposes of this sub-section, that he is not so satisfied or that he is of that opinion, as the case may be, and, upon the company or companies being so informed—”;

- (m) by inserting in paragraph (c) of sub-section (13), after the words “ any deduction ”, the words “ allowed or ”;
- (n) by inserting in sub-section (15), after the words “ for the purposes of this section ”, the words, “, section 77E ”;
- (o) by omitting paragraphs (a) and (b) of sub-section (20) and substituting the following paragraphs:—

“ (a) so much of the amounts so specified, less the sum of—

- (i) such amounts as, for the purposes of assessments for years of income preceding that year of income, have been deemed to have been specified in relation to petroleum or to minerals other than petroleum; and

- (ii) such amount in relation to expenditure during that year of income as is deemed, by virtue of paragraph (b), to have been specified in relation to petroleum,

as does not exceed the amount expended by that company during that year of income by way of mining or prospecting outgoings in connexion with exploration, prospecting or mining for minerals other than petroleum shall be deemed to have been specified in relation to minerals other than petroleum; and

- (b) so much of the amounts so specified (less such amounts as, for the purposes of assessments for years of income preceding that year of income, have been deemed to have been specified in relation to petroleum or to minerals other than petroleum) as does not exceed the amount expended by that company during that year of income by way of mining or prospecting outgoings in connexion with exploration, prospecting or mining for petroleum shall be deemed to have been specified in relation to petroleum.”.

(2) The amendment made by paragraph (1) (b) does not prevent a mining company from lodging a declaration under sub-section (3) of section 77D of the Principal Act in respect of moneys paid to the mining

company by another company after 7th May, 1973, as payments of a kind referred to in paragraph (6) (e) of that section, if—

- (a) the moneys were received by that other company as moneys paid on shares in that other company, within the meaning of that section as amended by this Act; and
- (b) immediately before that date—
 - (i) the shares in that other company were listed for quotation on the official list of a stock exchange in Australia; and
 - (ii) that other company had a substantial interest in the capital of the mining company.

7. After section 77D of the Principal Act, the following section is inserted:—

“ 77E. (1) In this section—

‘ Australia ’ includes the Territory of Papua and New Guinea;

‘ eligible operations ’ and ‘ mining or prospecting outgoings ’ have the same respective meanings as in section 77D;

‘ prescribed company ’ means a company that carries on, or that the Commissioner is satisfied proposes to carry on, either or both of the following businesses:—

- (a) eligible operations; and
- (b) the investment in shares in a company that carries on, or that the Commissioner is satisfied proposes to carry on, eligible operations in Australia as its principal business;

‘ share ’ includes a beneficial interest in a share.

“ (2) Where, in a year of income (in this sub-section referred to as ‘ the year of the sale ’) a person sells or otherwise disposes of a share in a company to a prescribed company and moneys paid on the share by the person in the year of the sale or any preceding year of income are included in moneys specified in a declaration or declarations lodged in respect of the year of the sale or of a preceding year of income by the first-mentioned company under section 77C or 77D, and the Commissioner is not satisfied that the first-mentioned company had, on or before the date of the sale or disposal of the share, expended on mining or prospecting outgoings all of the moneys specified in the declaration or declarations and all other moneys (if any) that were paid on shares in the first-mentioned company by any person before or during the year of the sale and specified in a declaration or declarations lodged in respect of the year of the sale or a preceding year of income by the first-mentioned company under section 77C or 77D—

- (a) for the purposes of determining the amount of any deduction allowable from assessable income derived by the person under section 77C or sub-section (4) or (10) of section 77D, the moneys paid on the share by the person shall be deemed to be, and be deemed to have been, reduced by an amount equal to so much

Sale of
shares in
mining
companies.

of the consideration received by the person on the sale or disposal of the share as does not exceed the moneys actually paid on the share by the person; and

- (b) the moneys specified in the first-mentioned declaration or declarations shall, for the purposes of this Act, be deemed not to include that amount.

“(3) Where—

- (a) in relation to moneys paid by a company on a share in another company, an amount is, by virtue of sub-section (2), deemed not to be included in moneys specified in a declaration lodged by that other company under sub-section (3), or paragraph (a) of sub-section (8), of section 77D; and
- (b) the first-mentioned company has lodged a declaration under sub-section (6) of section 77D which, in the opinion of the Commissioner, specified moneys that include moneys that have been paid to that other company,

the Commissioner may inform the first-mentioned company, by notice in writing given for the purposes of this sub-section, that he is of that opinion and, upon the company being so informed, the declaration referred to in paragraph (b) shall, for the purposes of this Act, be deemed not to have specified so much of the moneys included in that declaration as is equal to the amount referred to in paragraph (a).

“(4) Where a person has sold or otherwise disposed of a share in a company to another person under a contract, agreement, arrangement or understanding to which a prescribed company is a party and which concerns—

- (a) the management or control of, or the use of moneys belonging to, the first-mentioned company; or
- (b) the resale or disposal of that share to the prescribed company,

this section has effect as if the first-mentioned person had sold the share to a prescribed company.

“(5) Where a person sells or otherwise disposes of a share in a company to another person and the Commissioner is satisfied, having regard to any connexion between the persons or to any other relevant circumstances, that—

- (a) those persons were not dealing with each other at arm's length; and
- (b) the consideration for the sale or disposal of the share was less than the amount that, in the opinion of the Commissioner, was the value of the share at the time of the sale or disposal,

the consideration shall, for the purposes of the application of sub-section (2), be deemed to have been that amount.

“(6) Where a person has sold or otherwise disposed of a share in a company that has, in accordance with a declaration lodged by the company under sub-section (6) of section 77D, expended moneys paid on the share by the person in making a payment to another company for the purpose

specified in paragraph (e) of that sub-section and the Commissioner is satisfied that an amount included in the payment has been expended by the last-mentioned company on mining or prospecting outgoings, sub-section (2) of this section has effect as if that amount had been expended on mining or prospecting outgoings by the first-mentioned company.

“(7) This section does not apply in relation to moneys paid by a person on a share if the Commissioner is satisfied that—

- (a) the share is included in shares that, at the time of, or within three months after, the making of the payment, were listed for quotation on the official list of a stock exchange in Australia; and
- (b) at the time of the making of the payment—
 - (i) no contract, agreement, arrangement or understanding; and
 - (ii) no right, power or option (including a contingent right, power or option),

that, in any way, directly or indirectly, related to, affected, or depended for its operation on the right of the person to sell or otherwise dispose of that share was or had been entered into by, or granted to, a prescribed company.”.

8. (1) Section 78 of the Principal Act is amended by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:—

Gifts, calls
on mining
shares,
pensions,
&c.

- “(b) One-third of the amount of calls paid by the taxpayer in the year of income on shares owned by him in a company carrying on as its principal business afforestation in Australia, other than shares that are, or at the option of the company may become, liable to be redeemed, being calls for use by the company in that business.”.

(2) The amendment made by sub-section (1) applies, and shall be deemed to have applied, in relation to—

- (a) moneys paid to the company in respect of calls made after 7th May, 1973; and
- (b) moneys paid to the company in respect of calls made on or before 7th May, 1973, where the shares were acquired, and the moneys paid, after that date.

9. Section 82B of the Principal Act is amended by adding at the end of paragraph (a) of the definition of “separate net income” in sub-section (5) the words “or domiciliary nursing care benefit paid under Division 5B of Part V of the *National Health Act 1953-1973*”.

Deductions
for
dependants.

Medical expenses.

10. Section 82F of the Principal Act is amended by inserting after sub-section (1) the following sub-section:—

“(1A) For the purposes of sub-section (1), an amount paid to a person, or which a person is entitled to be paid, as domiciliary nursing care benefit under Division 5B of Part V of the *National Health Act 1953–1973* shall be deemed not to be in respect of medical expenses.”.

Education expenses.

11. Section 82J of the Principal Act is amended by inserting in the definition of “scholarship benefits” in sub-section (6), after the words “technical scholarships”, the words “or of assistance in connexion with the education of isolated children”.

Rebate of tax payable by visiting industrial experts.

12. Section 160ABA of the Principal Act is amended by inserting in sub-section (1), after the word “section” (last occurring), the words “and to section 24AA”.

Amendment of assessments.

13. Section 170 of the Principal Act is amended by inserting in sub-section (10), before the words “sub-section (3) of section 82s”, the words “section 77E”.

Application of amendments.

14. (1) The amendments made by section 3, paragraph 6 (1) (o) and sections 9, 10 and 11 apply to assessments in respect of income of the year of income that commenced on 1st July, 1972, and in respect of income of all subsequent years of income.

(2) The amendments made by paragraphs 6 (1) (j), (k) and (l) apply in relation to moneys included in a declaration lodged by a company under sub-section 77D (6) of the Principal Act, being moneys that have been paid after 16th July, 1972, by that company to a mining company.

(3) The amendments made by paragraphs 5 (c) and (d), 6 (d), (h) and (n) and section 7 apply in relation to shares sold after 16th July, 1972.

(4) The amendment made by paragraph 6 (1) (i) applies in relation to moneys included in a declaration lodged by a company under sub-section 77D (6) of the Principal Act, being moneys received by the company after 16th July, 1972.
