

No. 85. *Income Tax and Social Services Contribution Assessment (No. 3).* 1959.

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT (No. 3).

No. 85 of 1959.

An Act to amend the Law relating to Income Tax.

[Assented to 2nd December, 1959.]

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

Short title
and citation.

1.—(1) This Act may be cited as the *Income Tax and Social Services Contribution Assessment Act (No. 3) 1959*.

(2) The *Income Tax and Social Services Contribution Assessment Act 1936–1958*,* as amended by the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1959*,† is in this Act referred to as the Principal Act.

(3) Section one of the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1959* is amended by omitting sub-sections (3.), (4.) and (5.).

(4) The Principal Act, as amended by this Act, may be cited as the *Income Tax and Social Services Contribution Assessment Act 1936–1959*.

(5) Section one of the *Income Tax and Social Services Contribution Assessment Act 1959*‡ is amended by omitting sub-section (2.) and inserting in its stead the following sub-sections:—

“(2.) The *Income Tax and Social Services Contribution Assessment Act 1936–1958*, as amended by the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1959* and by the *Income Tax and Social Services Contribution Assessment Act (No. 3) 1959*, is in this Act referred to as the Principal Act.

“(2A.) Section one of the *Income Tax and Social Services Contribution Assessment Act (No. 3) 1959* is amended by omitting sub-section (4.).”

* 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; and No. 55, 1958.

† Act No. 70, 1959.

‡ Act No. 12, 1959.

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2.—(1.) Subject to the next succeeding sub-section, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

(2.) Sub-section (5.) of the last preceding section shall come into operation on the day on which the *Income Tax and Social Services Contribution Assessment Act 1959* comes into operation.

3. Section five of the Principal Act is amended— Parts.

(a) by omitting the words—

“ Division 6.—Trustees (Sections 95–102AA).”

and inserting in their stead the words—

“ Division 6.—Trustees (Sections 95–102).”;

(b) by inserting after the words—

“ Division 11.—Interest paid by Companies (Sections 125–128).”

the words—

“ Division 11A.—Dividends paid to Non-residents (Sections 128A–128E).”;

(c) by omitting the words—

“ Division 18.—Partial Liability to Tax on Income of a Certain Period (Sections 160AF–160AM).

“ Division 19.—Tax Credit in Relation to Certain Plant and Machinery used in Connexion with the War (Sections 160AN–160AT).”;

(d) by omitting the words—

“ Division 3.—Provisional Tax and Contribution and Advance Payments (Sections 221YA–221YH).”

and inserting in their stead the words—

“ Division 3.—Provisional Tax and Contribution (Sections 221YA–221YH).

“ Division 4.—Collection of Dividend (Withholding) Tax (Sections 221YJ–221YY).”.

4. Section six of the Principal Act is amended— Definitions.

(a) by inserting in sub-section (1.), after the definition of “ dividend ”, the following definition:—

“ ‘ dividend (withholding) tax ’ means income tax and social services contribution payable in accordance with section one hundred and twenty-eight B of this Act; ” ; and

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(b) by inserting in sub-section (1.), after the definition of “ non-resident ”, the following definition:—

“ ‘ non-resident dividend income ’ means income upon which dividend (withholding) tax is payable; ”.

Exemptions. 5. Section twenty-three of the Principal Act is amended by omitting paragraph (w).

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

Redemption of Special Bonds redeemable at a premium.

“ 23E.—(1.) Subject to the next succeeding sub-section, no part of the amount received by a person upon the redemption of a Special Bond, other than a part of that amount paid as accrued interest, shall, for any purpose of this Act, be taken to be income derived by that person.

“ (2.) The last preceding sub-section does not affect the operation of this Act in relation to the redemption of a Special Bond owned by a person where, if the Special Bond had been sold by that person at the time of the redemption—

- (a) the proceeds of the sale would have been included in the assessable income of that person; or
- (b) any profit arising from the sale would have been included in the assessable income of that person.

“ (3.) In this section, ‘ Special Bond ’ means a security of the Commonwealth issued under the *Commonwealth Inscribed Stock Act 1911–1946* and bearing on its face the words ‘ Special Bond ’ ”.

7. After section twenty-six B of the Principal Act the following section is inserted:—

Disposal of seasonal securities.

“ 26c.—(1.) Where—

- (a) a taxpayer disposes of a seasonal security by sale, gift, conversion or otherwise and the value of the security on the day of the disposal exceeds the cost of the security to the taxpayer; or
- (b) a seasonal security owned by a taxpayer is redeemed and the amount received by the taxpayer upon the redemption exceeds the cost of the security to the taxpayer,

an amount equal to the excess shall be included in the assessable income of the taxpayer.

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

(a) where a seasonal security is disposed of to a person by sale, gift or otherwise, that person shall be deemed to have purchased it at a cost equal to its value on the day of the disposal; and

(b) where a person who owns a seasonal security dies—

(i) that person shall be deemed to have sold the security on the day of his death; and

(ii) the person upon whom the security devolves by reason of the death shall be deemed to have purchased it at a cost equal to its value on the day of the death.

“(3.) An amount that is included in the assessable income of a taxpayer in accordance with this section shall, for all purposes of this Act, be deemed to be interest of a kind to which section one hundred and sixty AB of this Act applies.

“(4.) In this section, ‘seasonal security’ has the same meaning as in the *Loan (Short-term Borrowings) Act 1959*, and includes an interest in a seasonal security.”.

8. Section forty-four of the Principal Act is amended by inserting in sub-section (1.), after the words “subject to this section”, the words “and to section one hundred and twenty-eight D of this Act”.

Dividends.

9. Section seventy-two of the Principal Act is amended by omitting sub-section (1A.).

Rates and taxes.

10. Section seventy-two B of the Principal Act is repealed.

Expenditure for enemy raids precautions.

11. Section eighty of the Principal Act is amended by inserting in paragraph (b) of sub-section (3.), after the word “Australia”, the words “(other than non-resident dividend income, if any, included in his exempt income)”.

Losses of previous years.

12. Section one hundred and two AA of the Principal Act is repealed.

Payments to fund providing benefits to persons on war service.

13. Section one hundred and three of the Principal Act is amended by omitting from paragraph (a) of the definition of “the distributable income” in sub-section (1.) the words “, before the allowance of any credit in pursuance of paragraph (a) of sub-section (1.) of section two hundred and twenty-one YE of this Act”.

Interpretation.

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Companies
which are
private
companies.

14. Section one hundred and five of the Principal Act is amended by omitting from sub-section (5.) the words “ of the year ” (first occurring).

Election to
have taxes paid
deducted in
ascertaining
distributable
income.

15. Section one hundred and five c of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “, and any advance payment (as defined in section two hundred and twenty-one YA of this Act),”;
- (b) by omitting from sub-section (1.) the words “ or advance payment (as so defined) ”; and
- (c) by omitting sub-section (3.).

Loans to
shareholders.

16. Section one hundred and eight of the Principal Act is amended by omitting from sub-section (1.) the words “ for all purposes of this Act ” and inserting in their stead the words “ for the purposes of this Act other than the purposes of Division 11A of Part III. and Division 4 of Part VI.”.

Payments to
shareholders
and directors.

17. Section one hundred and nine of the Principal Act is amended by omitting the words “ for all purposes of this Act ” and inserting in their stead the words “ for the purposes of this Act other than the purposes of Division 11A of Part III. and Division 4 of Part VI.”.

18. After Division 11 of Part III. of the Principal Act the following Division is inserted:—

“ Division 11A.—Dividends paid to Non-residents.

Interpretation.

“ 128A.—(1.) In this Division, unless the contrary intention appears, ‘ dividend ’ includes part of a dividend.

“ (2.) For the purposes of this Division, a beneficiary who is presently entitled to a dividend included in the income of a trust estate shall be deemed to have derived income consisting of that dividend at the time when he became so entitled.

“ (3.) In sections two hundred and fourteen, two hundred and eighteen, two hundred and twenty-six, two hundred and twenty-seven, two hundred and thirty, two hundred and fifty-one, two hundred and sixty and two hundred and sixty-five of this Act, but, unless the contrary intention appears, not in any other section of this Act, ‘ income tax ’ or ‘ tax ’ includes dividend (withholding) tax.

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“(4.) For the purposes of this Division, a non-resident shall, subject to the next succeeding sub-section, be deemed to be engaged in business through a permanent establishment in Australia only if, in connexion with a business carried on by him—

- (a) he has in Australia a branch, agency, place of management, office, factory, workshop, mine, quarry, oilwell, agricultural, pastoral or forestry property or other place of business;
- (b) he has, is using or is installing, in Australia, substantial equipment or machinery;
- (c) he is engaged in selling goods manufactured, assembled, processed, packed or distributed in Australia by a person for, or at or to the order of, the non-resident and—
 - (i) the non-resident participates in the management, control or capital of the person by whom the goods are manufactured, assembled, processed, packed or distributed; or
 - (ii) that last-mentioned person participates in the management, control or capital of the non-resident; or
- (d) he is engaged in a construction project in Australia.

“(5.) A non-resident shall not be deemed to be engaged in business through a permanent establishment in Australia by reason only that—

- (a) he engages in business dealings in Australia through a *bona fide* commission agent or broker who, in relation to those dealings, acts in the ordinary course of his business as a commission agent or broker and does not, in relation to those dealings, receive remuneration otherwise than at a rate customary in relation to dealings of that kind;
- (b) he maintains in Australia a place of business solely for the purchase of goods or merchandise;
- (c) he has in Australia an agent—
 - (i) who does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the non-resident; or
 - (ii) whose authority extends to filling orders on behalf of the non-resident from a stock of goods or merchandise situated in Australia but who does not regularly exercise that authority; or

(d) where the non-resident is a company, a subsidiary company of the non-resident is engaged in business in Australia.

Liability to dividend (withholding) tax.

“ 128B.—(1.) This section applies to income that—

(a) is derived on or after the first day of July, One thousand nine hundred and sixty, by a non-resident, other than a non-resident engaged in business through a permanent establishment in Australia; and

(b) consists of a dividend paid by a company that is a resident, not being income that—

(c) is exempt from income tax by virtue of paragraph (e), (ea), (f), (g), (h), (i), (j), (ja) or (x) of section twenty-three, or sub-section (2.) of section twenty-three c, of this Act;

(d) consists of a dividend to which sub-section (2.) of section forty-four, or section one hundred and seven, of this Act applies;

(e) consists of a dividend included in income on which a trustee is liable to be assessed under section ninety-nine of this Act; or

(f) consists of a dividend included in income—

(i) that is derived by a trustee, being a trustee in relation to a trust created by a person who, at the time the income is derived, is a resident; and

(ii) in respect of which the Commissioner is empowered, under section one hundred and two of this Act, to assess the trustee to pay income tax.

“ (2.) A person who derives income to which this section applies is liable to pay, at the rate declared by the Parliament for the purposes of this section, income tax and social services contribution upon that income.

“ (3.) Income tax and social services contribution payable by a person in accordance with the last preceding sub-section is in addition to any other income tax and social services contribution payable by him.

Payment of dividend (withholding) tax.

“ 128C.—(1.) Dividend (withholding) tax is due and payable by the person liable to pay the tax at the expiration of twenty-one days after the end of the month in which the non-resident dividend income to which the tax relates was derived by him or of such further period as the Commissioner, in special circumstances, allows.

“(2.) Dividend (withholding) tax, when it becomes due and payable, is a debt due to the Queen on behalf of the Commonwealth and payable to the Commissioner.

“(3.) Subject to the next succeeding sub-section, if any dividend (withholding) tax remains unpaid at the expiration of sixty days after the time when it became due and payable, additional tax is due and payable at the rate of ten per centum per annum on the amount unpaid, computed from the expiration of that period.

“(4.) The Commissioner may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

“(5.) Any unpaid dividend (withholding) tax, and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

“(6.) The ascertainment of the amount of any dividend (withholding) tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

“(7.) The Commissioner may, by post or otherwise, serve on a person a notice in which is specified—

- (a) the amount of any dividend (withholding) tax that the Commissioner has ascertained is payable by that person; and
- (b) the date on which that tax became due and payable.

“(8.) The production of a notice served under the last preceding sub-section, or of a document under the hand of the Commissioner, the Second Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is evidence that the amount of dividend (withholding) tax specified in the notice became due and payable by the person on whom the notice was served on the date so specified.

“128D.—(1.) Subject to this section, non-resident dividend income shall not be included in the assessable income of a person.

Inclusion of non-resident dividend income in assessable income.

“(2.) A person who, in a year of income, derives non-resident dividend income may, within one year after the end of that year of income (or within such further period, not exceeding one year, as the Commissioner in special circumstances allows), give to the Commissioner a notice in writing that he elects that this section shall apply to him in relation to that year of income.

“(3.) A notice given by a person under the last preceding sub-section shall be accompanied by a full and complete statement

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signed by the person, or by another person duly authorized to sign the statement on his behalf, of—

- (a) all non-resident dividend income derived by the person during the year of income;
- (b) all other income derived by the person during the year of income, other than income included in a return furnished by the person under section one hundred and sixty-one of this Act or income (not being income consisting of dividends to which paragraph (b) of sub-section (1.) of section forty-four of this Act applies) derived by the person from sources outside Australia; and
- (c) any deductions claimed by the person in respect of income included in the statement.

“(4.) Where a person makes an election under this section in relation to a year of income, all non-resident dividend income (other than income exempt from income tax) derived by him during the year of income shall be included in his assessable income of that year of income.

“(5.) A reference in this Act to a return shall, unless the contrary intention appears, be read as including a reference to a statement referred to in sub-section (3.) of this section.

“(6.) Where, in a year of income, a non-resident does not derive non-resident dividend income but incurs expenditure that would have been an allowable deduction if he had derived income of that kind in that year of income and had made an election under sub-section (2.) of this section in relation to that year of income, an amount equal to that expenditure shall be an allowable deduction.

Credits and rebates where election made.

“128E.—(1.) Where a person makes an election under the last preceding section in relation to a year of income—

- (a) he is entitled to a credit of an amount equal to the dividend (withholding) tax paid or payable by him in respect of the non-resident dividend income derived by him during that year of income; and
- (b) he is entitled in his assessment to a rebate of an amount equal to the amount, if any, by which the income tax, if any, payable by him in respect of his taxable income of that year of income exceeds the sum of the dividend (withholding) tax referred to in the last preceding paragraph and the income tax, if any, that, if he had not made the election, would have been so payable by him.

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“(2.) Subject to this section, the amount of a credit to which a person is entitled under this section is a debt due and payable to the person entitled to the credit by the Commissioner on behalf of the Commonwealth.

“(3.) The Commissioner may apply the whole or a part of the credit in total or partial discharge of any liability to the Commonwealth of the person entitled to the credit arising under, or by virtue of, this Act or any other Act of which the Commissioner has the general administration.

“(4.) Where, under the last preceding sub-section, the Commissioner has applied an amount of credit in discharge of the liability of a person to the Commonwealth, that person shall be deemed to have paid the amount so applied for the purpose for which, and at the time at which, it has been so applied.

“(5.) Where the amount applied or paid by the Commissioner as a credit to which a person is entitled under this section exceeds the amount of the credit to which that person is so entitled, the Commissioner may recover the amount of the excess as if it were income tax due and payable by that person.

“(6.) An amount that the Commissioner is liable to pay in pursuance of this section is payable out of the Consolidated Revenue Fund, which, to the necessary extent, is appropriated accordingly.”.

19.—(1.) Division 18 of Part III. of the Principal Act is repealed. Repeal of
Division 18
of Part III.

(2.) The provisions of the Division repealed by this section continue to apply for the purposes of the making, after the commencement of this section, of an assessment for the financial year that ended on the thirtieth day of June, One thousand nine hundred and forty-five, or of an amendment of an assessment for that financial year.

20. Division 19 of Part III. of the Principal Act is repealed. Repeal of
Division 19 of
Part III.

21. Section one hundred and sixty-one of the Principal Act is amended by inserting in sub-section (1.), after the words “total income”, the words “(other than non-resident dividend income)”. Annual returns.

22. Section one hundred and seventy of the Principal Act is amended by omitting sub-section (10.) and inserting in its stead the following sub-section:— Amendment of
assessments.

“(10.) Nothing in this section shall prevent the amendment, at any time, of an assessment for the purpose of giving effect to the provisions of sub-section (7.) of section fifty-three A,

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sub-section (3.) of section fifty-three B, section fifty-three C, sub-section (2D.) of section fifty-nine, section seventy-seven A or sub-section (4.) of section one hundred and twenty-eight D, of this Act.”.

Payment of tax to have priority in case of bankruptcy or liquidation.

23. Section two hundred and twenty-one of the Principal Act is amended by omitting paragraph (a) of sub-section (1.).

Employer not accounting for deductions.

24. Section two hundred and twenty-one P of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(3.) Where a trustee, being the trustee of the estate of a bankrupt or the liquidator of a company that is being wound up, is liable to pay an amount to the Commissioner in pursuance of this section, the last preceding sub-section does not operate so as to make that amount payable in priority to any costs, charges or expenses of the administration of the estate or of the winding up of the company (including costs of a creditor or other person upon whose petition the sequestration order or the winding up order, if any, was made and remuneration of the trustee) that are lawfully payable out of the assets of the estate or of the company except where, in the case of the winding up of a company, the Crown in right of a State or any other creditor is entitled to payment of a debt by the liquidator in priority to all or any of those costs, charges and expenses and has not waived that priority.”.

Heading to Division 3 of Part VI.

25. The heading to Division 3 of Part VI. of the Principal Act is amended by omitting the words “ and Advance Payments ”.

Interpretation.

26. Section two hundred and twenty-one YA of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the definition of “ advance payment ”;
- (b) by omitting from sub-section (2.) the words “ and advance payments ”; and
- (c) by omitting from sub-section (3.) the words “ or advance payment ”.

27.—(1.) After section two hundred and twenty-one YA of the Principal Act the following section is inserted:—

Provisional tax and contribution not payable in respect of non-resident dividend income.

“ 221YAB.—(1.) A reference in this Division, other than in this section, to assessable income shall be read as not including a reference to non-resident dividend income.

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“(2.) Where the assessable income of a taxpayer of a year of income includes non-resident dividend income—

- (a) the taxable income of the taxpayer for that year of income shall, for the purposes of this Division, be deemed to be the amount that would have been his taxable income if his assessable income had not included non-resident dividend income; and
- (b) the income tax assessed in respect of the taxable income of the taxpayer for that year of income shall, for the purposes of paragraph (a) of sub-section (1.) of section two hundred and twenty-one YC of this Act, be deemed to be the amount that would have been the income tax assessed in respect of the amount that would have been his taxable income if his assessable income had not included non-resident dividend income.

“(3.) In making an estimate of his taxable income for a year of income for the purposes of section two hundred and twenty-one YDA of this Act, a taxpayer may disregard any non-resident dividend income that may be included in his assessable income of that year of income.”.

(2.) For the purpose of ascertaining the amount of provisional tax and contribution payable by a taxpayer in accordance with Division 3 of Part VI. of the Principal Act as amended by this Act in respect of income of the year of income commencing on the first day of July, One thousand nine hundred and sixty, a reference in section two hundred and twenty-one YAB of that Act as so amended to non-resident dividend income shall be read as including a reference to income derived before that day that would have been non-resident dividend income if it had been derived on or after that day.

28. Section two hundred and twenty-one YBA of the Principal Act is repealed. Liability to advance payment.

29. Section two hundred and twenty-one YC of the Principal Act is amended by inserting in sub-section (5.), after the word “wages”, the words “or non-resident dividend income”. Amount of provisional tax.

30. Section two hundred and twenty-one YCA of the Principal Act is repealed. Amount of advance payment.

31. Section two hundred and twenty-one YD of the Principal Act is amended— When provisional tax payable.

- (a) by omitting from sub-section (1.) the words “or advance payment”; and

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(b) by omitting from paragraph (a) of sub-section (1.) the words “(other than tax payable under Division 7 of Part III. of this Act)”.

32. Section two hundred and twenty-one YE of the Principal Act is repealed and the following section inserted in its stead:—

Provisional
tax to be
credited against
tax assessed.

“ 221YE. Where a taxpayer has paid provisional tax in respect of income of any year of income, and an assessment of income tax in respect of that income has been made, or the Commissioner is satisfied that no income tax will be payable in respect of that income, the Commissioner shall credit the amount of that provisional tax in payment successively of—

- (a) such income tax (if any) as is payable by the taxpayer in respect of that income;
- (b) any provisional tax notified to the taxpayer in respect of income of the year next succeeding that year of income; and
- (c) any other income tax or any dividend (withholding) tax payable by the taxpayer,

and shall be liable to refund to the taxpayer the amount of that provisional tax not so credited.”.

Provisional tax
not to be
notified where
tax assessed.

33. Section two hundred and twenty-one YF of the Principal Act is amended by omitting the words “ or advance payment ”.

Alteration of
notice of
provisional tax.

34. Section two hundred and twenty-one YG of the Principal Act is amended by omitting the words “ or advance payment ” (wherever occurring).

Notice of
provisional tax
to be *prima*
facie evidence.

35. Section two hundred and twenty-one YH of the Principal Act is amended by omitting the words “ or advance payment ” (wherever occurring).

36. After Division 3 of Part VI. of the Principal Act the following Division is inserted:—

“ Division 4.—Collection of Dividend (Withholding) Tax.

Object of
Division.

“ 221YJ. The object of this Division is to facilitate the collection of dividend (withholding) tax, and this Division shall be construed and administered accordingly.

Interpretation.

“ 221YK.—(1.) In this Division, unless the contrary intention appears, ‘ dividend ’ includes part of a dividend.

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“(2.) A reference in this Division to a company shall, in relation to distributions by a liquidator of the company that, by virtue of section forty-seven of this Act, are deemed to be dividends paid by the company, be read as including a reference to the liquidator.

“ 221YL.—(1.) Where—

Deductions
from dividends.

- (a) the holder, or (if there is more than one holder) any holder, of a share or stock in a company that is a resident is shown, in relation to the share or stock, in the register of members of the company as having an address outside Australia; or
- (b) the holder of a share or stock in a company that is a resident has authorized or directed the company to pay dividends in respect of the share or stock to himself, or to any other person, at a place outside Australia,

the company shall, subject to this section and to the next succeeding section, before or at the time when a dividend of the company is paid by the company in respect of the share or stock, make a deduction from the dividend of an amount determined in accordance with the regulations.

Penalty: One hundred pounds.

“(2.) Subject to this section and to the next succeeding section, where—

- (a) a dividend of a company that is a resident is paid to a person in Australia; and
- (b) another person who is a non-resident is entitled to receive the dividend, or a part of the dividend, from the first-mentioned person,

the first-mentioned person shall, except as provided by the regulations, forthwith make a deduction from the dividend, or the part of the dividend, of an amount determined in accordance with the regulations.

Penalty: One hundred pounds.

“(3.) A person is not required to make a deduction from a dividend under either of the last two preceding sub-sections—

- (a) if dividend (withholding) tax is not payable in respect of the dividend; or
- (b) if an amount has or amounts have previously been deducted from the dividend under this section and that amount or the sum of those amounts is not less than the dividend (withholding) tax payable in respect of the dividend.

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“(4.) This section does not apply in relation to a dividend that is not paid in money or is not credited to a person.

“(5.) In the last preceding sub-section, ‘money’ includes postal notes, money orders, bills of exchange, promissory notes, drafts and letters of credit.

Exemptions and variations.

“221YM. The Commissioner may, for the purpose of meeting the special circumstances of a case or of the cases included in a class of cases, by notice in writing to a person—

- (a) exempt that person from an obligation imposed on him by the last preceding section; or
- (b) vary the amount to be deducted under that section by that person from a dividend or from the dividends included in a class of dividends.

Deductions to be forwarded to Commissioner, &c.

“221YN.—(1.) Where a person has made a deduction from a dividend and that deduction was made, or purports to have been made, under section two hundred and twenty-one YL of this Act—

- (a) that person shall, within twenty-one days after the end of the month in which the deduction was made, pay to the Commissioner an amount equal to the deduction; and
- (b) that person shall, before the expiration of two months after the end of the financial year in which the deduction was made or within such further time as the Commissioner allows, furnish to the Commissioner a statement with respect to the deduction, in a form authorized by the Commissioner, signed by or on behalf of the person who made the deduction.

“(2.) A person who fails to comply with paragraph (a) of the last preceding sub-section is guilty of an offence against this Act punishable, upon conviction, by a fine not exceeding Five hundred pounds or imprisonment for a period not exceeding six months.

“(3.) A person who fails to comply with paragraph (b) of sub-section (1.) of this section is guilty of an offence against this Act punishable, upon conviction, by a fine not exceeding One hundred pounds.

“(4.) Where an amount payable to the Commissioner by a person under this section remains unpaid after the expiration of the period within which, by this section, it is required to be paid—

- (a) that amount continues to be payable by that person to the Commissioner; and

- (b) an additional amount is, in addition to any other penalty to which that person may be liable, payable by that person to the Commissioner at the rate of ten per centum per annum on the amount unpaid, computed from the expiration of that period.

“(5.) The Commissioner may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under the last preceding sub-section or any part of such an additional amount.

“ 221YF.—(1.) Where—

- (a) a dividend is to be paid by a company to a person; and
(b) the company would, but for sub-section (4.) of section two hundred and twenty-one YL of this Act, be required to make a deduction under that section from the dividend,

Dividends not
in money not
to be paid
until payment
made to
Commissioner
on account
of tax.

the company shall not pay, credit or distribute the dividend to any person until an amount equal to the amount that, but for that sub-section, would have been required to be deducted has been paid to the Commissioner in respect of the dividend.

Penalty: One hundred pounds.

“(2.) Where—

- (a) a dividend is paid to a person in Australia; and
(b) that person would, but for sub-section (4.) of section two hundred and twenty-one YL of this Act, be required to make a deduction under that section from the dividend or a part of the dividend,

that person shall not pay, credit or distribute the dividend, or the part of the dividend, to any person until an amount equal to the amount that, but for that sub-section, would have been required to be deducted has been paid to the Commissioner in respect of the dividend.

Penalty: One hundred pounds.

“(3.) A person who has paid an amount to the Commissioner in respect of a dividend for the purposes of this section may, in writing, request the Commissioner to inform the company by which the dividend is to be paid, or any person to whom the dividend has been paid, that that amount has been so paid in respect of that dividend, and, upon receipt of such a request, the Commissioner shall, in writing, inform that other person accordingly.

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Liability of
person who
fails to make
deductions, &c.

“ 221YQ.—(1.) Where a person has failed to make a deduction from a dividend in accordance with section two hundred and twenty-one YL of this Act or has contravened sub-section (1.) or (2.) of the last preceding section in relation to a dividend, that person is liable, in addition to any other penalty to which he may be liable, to pay to the Commissioner—

- (a) an amount equal to any unpaid dividend (withholding) tax payable in respect of that dividend; and
- (b) an amount equal to any unpaid additional tax payable under sub-section (3.) of section one hundred and twenty-eight c of this Act in respect of that dividend (withholding) tax.

“(2.) Where a person has paid to the Commissioner an amount payable by virtue of paragraph (a) of the last preceding sub-section, that person may recover an amount equal to that amount from the person liable to pay the dividend (withholding) tax to which that first-mentioned amount relates.

“(3.) Where an amount payable under sub-section (1.) of this section has been paid to the Commissioner, the person liable to pay the dividend (withholding) tax to which the amount relates is entitled to a credit equal to that amount.

“(4.) Where a person has paid to the Commissioner an amount payable by virtue of paragraph (b) of sub-section (1.) of this section and the additional tax or any part of the additional tax to which the amount relates is remitted by the Commissioner under sub-section (4.) of section one hundred and twenty-eight c of this Act—

- (a) any credit under the last preceding sub-section that relates to the amount shall be reduced by an amount equal to the additional tax that is remitted; and
- (b) the Commissioner shall pay to the person who paid the amount to the Commissioner an amount equal to the additional tax that is remitted.

Recovery of
amounts by
Commissioner.

“ 221YR.—(1.) An amount payable to the Commissioner under this Division by a person is a debt due to the Queen on behalf of the Commonwealth and payable to the Commissioner and—

- (a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name; or
- (b) a court before which proceedings are taken against that person for an offence against a provision of this Division may order that person to pay that amount to the Commissioner.

“(2.) The provisions of section two hundred and forty-three of this Act apply in proceedings for the recovery of an amount payable to the Commissioner under this Division in like manner as those provisions apply in proceedings by the Crown for the recovery of a pecuniary penalty under this Act.

“(3.) The provisions of section two hundred and forty-nine of this Act apply to an order for the payment of a sum of money to the Commissioner made under paragraph (b) of sub-section (1.) of this section in like manner as those provisions apply to an order for the payment of a sum of money to the Commissioner made under Part VII.

“221YS.—(1.) A person whose income includes a dividend from which a deduction has been made, or purports to have been made, under section two hundred and twenty-one YL of this Act is entitled to a credit—

Credits in respect of deductions made from dividends.

- (a) where the whole of the deduction has been borne by that person—of an amount equal to the deduction; or
- (b) where part only of the deduction has been borne by that person—of an amount equal to that part.

“(2.) A person whose income includes a dividend in respect of which an amount has been paid to the Commissioner for the purposes of section two hundred and twenty-one YP of this Act is entitled to a credit—

- (a) where the whole of that amount has been met by that person—of an amount equal to that amount; or
- (b) where part only of that amount has been met by that person—of an amount equal to that part.

“221YT.—(1.) Subject to this section, the amount of a credit to which a person is entitled under this Division is a debt due and payable to that person by the Commissioner on behalf of the Commonwealth.

Application of credits.

“(2.) The Commissioner may apply the whole or a part of a credit to which a person is entitled under this Division in total or partial discharge of any liability to the Commonwealth of the person entitled to the credit arising under, or by virtue of, this Act or any other Act of which the Commissioner has the general administration.

“(3.) Where, under the last preceding sub-section, the Commissioner has applied an amount of credit in discharge of a liability of a person to the Commonwealth, that person shall be deemed to have paid the amount so applied—

- (a) for the purpose for which it has been so applied; and
- (b) at the time at which it has been so applied or at such earlier time as the Commissioner determines.

“(4.) Where the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit to which a person is entitled under this Division exceeds the amount of the credit to which that person is so entitled, the Commissioner may recover the amount of the excess as if it were income tax due and payable by that person.

Liability of trustee to pay deductions to Commissioner.

“ 221YU.—(1.) Where—

(a) an amount deducted from a dividend is payable to the Commissioner under this Division by a person; and

(b) the property of that person has become vested in, or the control of the property of that person has passed to, a trustee,

the trustee is liable to pay that amount to the Commissioner.

“(2.) Notwithstanding anything contained in any other Act or in a State Act, an amount payable to the Commissioner by a trustee in pursuance of this section has priority over all other debts (other than debts payable to the Commissioner), whether preferential, secured or unsecured.

“(3.) Where a trustee, being the trustee of the estate of a bankrupt or the liquidator of a company that is being wound up, is liable to pay an amount to the Commissioner in pursuance of this section, the last preceding sub-section does not operate so as to make that amount payable in priority to any costs, charges or expenses of the administration of the estate or of the winding up of the company (including costs of a creditor or other person upon whose petition the sequestration order or the winding up order, if any, was made and remuneration of the trustee) that are lawfully payable out of the assets of the estate or of the company except where, in the case of the winding up of a company, the Crown in right of a State or any other creditor is entitled to payment of a debt by the liquidator in priority to all or any of those costs, charges and expenses and has not waived that priority.

Persons discharged from liability in respect of deductions.

“ 221YV. Where a person has made a deduction from a dividend, being a deduction made, or purporting to have been made, under section two hundred and twenty-one YL of this Act, the person is, by force of this section, discharged from all liability to pay or account for the deduction to any person other than the Commissioner.

Payments to and from Consolidated Revenue Fund.

“ 221YW.—(1.) All moneys received by the Commissioner in pursuance of this Division shall be paid into the Consolidated Revenue Fund.

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“(2.) An amount that the Commissioner is liable to pay in pursuance of this Division is payable out of the Consolidated Revenue Fund, which, to the necessary extent, is appropriated accordingly.

“ 221yx. A prosecution for an offence against a provision of this Division may be commenced at any time. Time for prosecutions.

“ 221yy.—(1.) Charges against the same person for any number of offences against this Division may be joined in one complaint if those charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character. Joinder of charges under this Division.

“(2.) Where more than one charge is included in the same complaint in pursuance of the last preceding sub-section, particulars of each offence charged shall be set out in a separate paragraph.

“(3.) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

“(4.) If a person is found guilty of more than one offence, the court may, if it thinks fit, inflict one penalty in respect of all offences of which he has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be inflicted if penalties were imposed for each offence separately.”
