

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

No. 108 of 1960.

An Act relating to Income Tax.

[Assented to 16th December, 1960.]

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)* 1960.

(2.) The *Income Tax and Social Services Contribution Assessment Act 1936–1959*,* as amended by the *Salaries (Statutory Offices) Adjustment Act 1960*,† the *Income Tax and Social Services Contribution Assessment Act 1960*‡ and the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1960*,§ 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) 1960* is amended by omitting sub-section (4.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax and Social Services Contribution Assessment Act 1936–1960*.

Commence-
ment.

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

Definitions.

3. Section six of the Principal Act is amended by inserting in sub-section (1.), after the definition of “shareholder”, the following definition:—

“ ‘ shares ’ includes stock;”.

* 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; and Nos. 12, 70 and 85, 1959.

† Act No. 17, 1960.

‡ Act No. 18, 1960.

§ Act No. 58, 1960.

4. After section fifty-one of the Principal Act the following sections are inserted:—

“ 51AA.—(1.) In this section, unless the contrary intention appears—

Provisions
with respect
to allowable
deductions
consisting
of interest.

‘ excepted interest ’ means, in relation to a company, interest—

(a) paid or payable by that company to—

- (i) a bank;
- (ii) a company or body in respect of which, on the day on which notice of the assessment of the amount of the taxable income of the first-mentioned company for the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one is served, there is in force a declaration by the Treasurer, made after consultation with the Reserve Bank Board, declaring the company or body to be a declared pastoral finance company, or a declared dealer in the short-term money market, for the purposes of this section;
- (iii) a body registered as a building society or as a co-operative housing society under the law of a State or Territory of the Commonwealth; or
- (iv) a company registered under the law of a State or Territory of the Commonwealth relating to co-operative companies, being a company the principal business of which is the provision of housing or of finance for housing;

(b) paid or payable to, or the payment of which is guaranteed by, the Commonwealth or a State or Territory of the Commonwealth or a public authority of the Commonwealth or of a State or Territory of the Commonwealth;

‘ excepted outgoings ’ means, in relation to a company, outgoings to which this section applies incurred by the company, being excepted interest;

‘ excepted outgoings of the 1959–60 year ’ means, in relation to a company, the total amount of the excepted outgoings incurred by the company during the year of income that ended on the thirtieth day of June, One thousand nine hundred and sixty;

‘excepted outgoings of the 1960–61 year’ means, in relation to a company, the total amount of the excepted outgoings incurred by the company during the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one;

‘interest’ means interest, or a payment in the nature of interest, in respect of—

- (a) money lent, advanced or deposited;
- (b) credit given; or
- (c) any other form of debt or liability,

whether security is given or not, but does not include interest paid or payable by a company to its shareholders as interest on shares, being a company that is, in respect of the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, a co-operative company for the purposes of Division 9 of Part III.;

‘outgoings of the 1959–60 year’ means, in relation to a company, the total amount of the outgoings to which this section applies incurred by the company during the year of income that ended on the thirtieth day of June, One thousand nine hundred and sixty, not being excepted outgoings;

‘outgoings of the 1960–61 year’ means, in relation to a company, the total amount of the outgoings to which this section applies incurred by the company during the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, not being excepted outgoings;

‘outgoings to which this section applies’ means, in relation to a company, outgoings consisting of interest that were—

- (a) incurred by the company in gaining or producing assessable income of the company; or
- (b) necessarily incurred by the company in carrying on a business for the purpose of gaining or producing such income,

but does not include an outgoing that, by reason of the next succeeding section, is deemed not to be an allowable deduction from the assessable income of the company.

“(2.) Interest paid or payable by—

- (a) a bank;
- (b) a company or body in respect of which, on the day on which the notice of assessment of the amount of the taxable income of the company or body for the

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year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, is served, there is in force a declaration by the Treasurer, made after consultation with the Reserve Bank Board, declaring the company or body to be a declared pastoral finance company, or a declared dealer in the short-term money market, for the purposes of this section;

- (c) a body registered as a building society or as a co-operative housing society under the law of a State or Territory of the Commonwealth;
- (d) a company registered under the law of a State or Territory of the Commonwealth relating to co-operative companies, being a company the principal business of which is the provision of housing or of finance for housing; or
- (e) a company the principal business of which is the supply and distribution, by a system of reticulation, of water, gas or electricity,

shall be deemed not to be outgoings to which this section applies.

“(3.) For the purposes of the definition of ‘excepted interest’ in sub-section (1.) of this section, interest paid or payable to a bank, company or body as a trustee, or on account of a customer or person dealing with the bank, company or body, shall be deemed not to be interest paid or payable to the bank, company or body.

“(4.) Where, in respect of a company, the outgoings of the 1960-61 year are greater than Ten thousand pounds, the outgoings of the 1960-61 year in respect of that company are not allowable deductions from the assessable income of that company of the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, to an extent greater than the outgoings of the 1959-60 year in respect of that company.

“(5.) Where the Commissioner is satisfied that a company was incorporated after the fifteenth day of November, One thousand nine hundred and sixty, with a view to the affairs of that company and of another company being so arranged that this section would, but for this sub-section, have effect more favourably in relation to either or both of those companies than would otherwise have been the case, the outgoings of the 1960-61 year are not allowable deductions from the assessable income of the first-mentioned company of the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one.

“(6.) Subject to the next succeeding sub-section, where the Commissioner is satisfied that, after the fifteenth day of November, One thousand nine hundred and sixty, a change

occurred in the control of, or ownership of shares in, a company and that that change was made with a view to the affairs of that company and of another company being so arranged that this section would, but for this sub-section, have effect more favourably in relation to either or both of those companies than would otherwise have been the case, the outgoings of the 1960-61 year in respect of the first-mentioned company are not allowable deductions from the assessable income of that company of the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, to an extent greater than the outgoings of the 1959-60 year in respect of that company.

“(7.) Where, in respect of a company, the excepted outgoings of the 1959-60 year exceed the excepted outgoings of the 1960-61 year, the amount that is, by reason of the operation of sub-section (4.) or (6.) of this section, the maximum extent to which outgoings to which this section applies, not being excepted outgoings, may be allowable deductions is increased by the amount of the excess.

“(8.) The amount of the allowable deductions from the assessable income of a company in respect of outgoings to which this section applies shall not, by reason of the operation of sub-section (4.) of this section, be less than the sum of the excepted outgoings of the 1960-61 year and Ten thousand pounds.

“(9.) For the purposes of Division 7 of Part IEL, the amount of the distributable income of a private company shall be reduced by the extent (if any) to which the outgoings to which this section applies incurred by the company during the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, are not allowable deductions from the assessable income of the company of that year.

“(10.) If a company elects that this sub-section shall be applied in relation to the company—

(a) sub-section (4.) or (6.), as the case may be, of this section has effect as if for the reference to the outgoings of the 1959-60 year there were substituted a reference to the amount that the Commissioner is satisfied represents the annual amount of interest, not being excepted interest, payable by the company as at the fifteenth day of November, One thousand nine hundred and sixty, being interest that, if it were incurred by the company during the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, would, but for this section, be an outgoing allowable as a deduction from the assessable income of the company; and

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(b) sub-section (7.) of this section has effect as if for the reference to the excepted outgoings of the 1959-60 year there were substituted a reference to the amount that the Commissioner is satisfied represents the annual amount of excepted interest payable by the company as at the fifteenth day of November, One thousand nine hundred and sixty, being interest that, if it were incurred by the company during the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, would, but for this section, be an outgoing allowable as a deduction from the assessable income of the company.

“(11.) For the purposes of the last preceding sub-section, where the Commissioner is satisfied—

(a) that—

- (i) as at the fifteenth day of November, One thousand nine hundred and sixty, the company was bound by agreement to borrow a sum of money specified in the agreement; and
- (ii) the company has borrowed that sum of money or a part of that sum; or

(b) that—

- (i) on or before that date, the company made an offer to borrow a sum of money specified in the offer; and
- (ii) under an agreement or agreements arising from the acceptance of that offer, the company has borrowed that sum of money or a part of that sum,

and that, if the annual amount of interest payable in respect of money so borrowed were incurred by the company during the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, it would, but for this section, be an outgoing allowable as a deduction from the assessable income of the company, the Commissioner shall include that amount in the amount as to which he is satisfied under paragraph (a) or (b) of the last preceding sub-section, as the case requires.

“(12.) For the purposes of the last preceding sub-section, where a company issued convertible notes (as defined by the next succeeding section) after the fifteenth day of November, One thousand nine hundred and sixty, being convertible notes—

(a) the terms of the issue of which were announced by the company on or before that date; or

(b) that the company was, in pursuance of an agreement made on or before that date, bound to issue,

the company shall be deemed to have been bound by agreement, as at that date, to borrow money under the convertible notes.

“(13.) Where a company makes an election under sub-section (10.) of this section, the company is entitled in its assessment to a rebate of the amount (if any) by which the amount of the income tax payable by the company exceeds the amount that would have been the amount of the income tax so payable if the company had not made the election.

“(14.) An election for the purposes of sub-section (10.) of this section—

- (a) shall be made in writing signed by or on behalf of the company; and
- (b) shall be delivered to the Commissioner on or before the last day for the furnishing of the return of income of the year of income ending on the thirtieth day of June, One thousand nine hundred and sixty-one, or within such further time as the Commissioner allows.

Interest on
convertible
notes.

“51AB.—(1.) In this section, unless the contrary intention appears—

‘convertible note’ includes a note that provides, whether in pursuance of a trust deed or otherwise—

(a) that the amount of the loan to the company that is evidenced, acknowledged or created by the note or to which the note relates—

- (i) whether with or without interest;
- (ii) whether at par or not;
- (iii) whether at the option of the holder or owner of the note or of some other person or not;
- (iv) whether in whole or in part; or
- (v) whether exclusively or otherwise,

is to be or may be converted into shares in the capital of the company or of another company or is to be or may be redeemed, repaid or satisfied by—

- (vi) the allotment or transfer of shares in the capital of the company or of some other company, whether to the holder or owner of the note or to some other person;
- (vii) the acquisition of such shares, whether by the holder or owner or by some other person, otherwise than as mentioned in the last preceding subparagraph; or

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(viii) application in or towards paying-up, in whole or in part, the balance unpaid on shares issued or to be issued by the company or by some other company, whether to the holder or owner or to some other person; or

(b) that the owner or holder of the note is to have, or may have, any right or option to have allotted or transferred to him or to some other person, or for him or some other person otherwise to acquire, shares in the capital of the company or of some other company;

‘instrument’ includes debenture, bond, certificate, receipt or any other document or writing;

‘issued’ includes given and executed and ‘issue’ has a corresponding meaning;

‘loan to the company’, in relation to a company, means—

(a) a loan, advance or deposit of money to or with the company;

(b) money subscribed to the company; or

(c) any other form of debt or liability of the company, whether secured or unsecured and whenever redeemable, repayable or to be satisfied;

‘note’ means a note or other instrument issued by a company that evidences, acknowledges, creates or relates to a loan to the company.

“(2.) Where the combined effect or operation of two or more related instruments, whether issued at the same time or not, would have the effect or operation of a convertible note, those instruments shall, for the purposes of this section, be deemed to be together a convertible note.

“(3.) Where—

(a) a company issues a note that provides that the amount of the loan to the company that is evidenced, acknowledged or created by the note or to which the note relates—

(i) whether with or without interest;

(ii) whether at par or not;

(iii) whether at the option of the holder or owner of the note or of some other person or not;

(iv) whether in whole or in part; or

(v) whether exclusively or otherwise,

is to be or may be redeemed, repaid or satisfied by the issue, whether by the same company or by another company, of an instrument or a series of instruments; and

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(b) that instrument, or any instrument in that series of instruments, is to provide, whether in pursuance of a trust deed or otherwise, as mentioned in paragraph (a) or (b) of the definition of 'convertible note' in sub-section (1.) of this section,

that note, and the instrument, or that note and each of the instruments in the series of instruments, shall, for the purposes of this section, be deemed to be a convertible note.

“(4.) Where, in pursuance of the terms upon which any convertible notes were issued by a company, a person was entitled to have a convertible note issued to him by that company, the company shall, for the purposes of the next succeeding sub-section, be deemed to have issued the convertible note to that person at the time when that person first became entitled to have the convertible note issued to him.

“(5.) The following provisions of this section have effect in relation to convertible notes that were issued by a company after the fifteenth day of November, One thousand nine hundred and sixty, not being convertible notes—

(a) the terms of the issue of which were announced by the company on or before that date; or

(b) that the company was, in pursuance of an agreement made on or before that date, bound to issue.

“(6.) An outgoing consisting of interest, or a payment in the nature of interest, under the convertible notes shall be deemed not to be an allowable deduction from the assessable income of the company.

“(7.) Where a payment has been made by a person (whether under a guarantee or otherwise) that represents, in effect, a payment of interest under the convertible notes and the company has incurred an outgoing by way of making good the first-mentioned payment to that person, whether by way of indemnification or otherwise, the amount of that outgoing shall, for the purposes of this section, be deemed to be an outgoing consisting of interest under the convertible notes.

“(8.) Any premium paid to the company upon the issue of the convertible notes shall, for the purposes of sub-paragraph (iii) of paragraph (b) of sub-section (2.) of section forty-four of this Act, be deemed to be profits arising from the issue of shares at a premium.

“(9.) Section sixty-seven of this Act does not apply to the expenditure incurred by the company in borrowing money by means of the convertible notes.

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“(10.) The interest, or payment in the nature of interest, under the convertible notes, shall, when paid, credited or distributed, be deemed, for the purpose of calculating the undistributed amount, as defined by section one hundred and three of this Act, in relation to the company, to be a dividend paid by the company.”.

5. Section fifty-one A of the Principal Act is amended by omitting from sub-section (1.) the words “the last preceding section,” and inserting in their stead the words “section fifty-one of this Act”.

Deduction in respect of living-away-from-home allowance.

6.—(1.) The amendment made by section four of this Act, in so far as it inserts section fifty-one AA in the Principal Act, applies to assessments in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and sixty.

Application of amendments.

(2.) The amendment made by section four of this Act, in so far as it inserts section fifty-one AB in the Principal Act, and the amendments made by sections three and five of this Act, apply to assessments in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and sixty, and in respect of income of all subsequent years.
