



Western Australia.

ANNO SECUNDO

EDWARDI VII. REGIS.

No. XXXII.

AN ACT to impose Duties in respect of Dividends or Profits of Incorporated Companies.

[Assented to, 20th December, 1902.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as the Dividend Duties Act, Short title. 1902.

2. IN this Act—

Interpretation.

“Company” includes every incorporated company or association (wheresoever and howsoever incorporated) which carries on business in Western Australia, but does not include

(a.) A Friendly Society registered under the Friendly Societies Act, 1894, or

Dividend Duties.

(b.) A Life Assurance Company as hereinafter defined; or

(c.) Any Brewery or other Company paying duties of excise.

“Dividend” includes every dividend, profit, advantage, or gain intended to be paid or credited to or distributed among any members of any company.

“Life Assurance Company” means a company, association, or body which carries on the business of life assurance.

“Minister” means the Colonial Treasurer or other Minister charged with the administration of this Act.

“Officer” includes public officer, director, manager, and secretary, and the person whose appointment as attorney of any company is registered as required by the Companies Act, 1893.

“Prescribed” means prescribed by the regulations.

Persons may be employed.

3. THE Minister may employ such persons as he may think fit to aid in the execution of this Act.

Every such person shall keep secret and aid in preserving secrecy with regard to all matters which may come to his knowledge in his official capacity, and shall not communicate any such matter to any other person except in the performance of his duties.

Oath of fidelity and secrecy.

4. (1.) EVERY person employed by the Minister shall, before entering upon his duties, take and subscribe the prescribed oath of fidelity and secrecy.

(2.) Any person who acts in his employment before he has taken the prescribed oath is liable, on summary conviction, to a penalty of not less than Ten pounds or more than One hundred pounds.

(3.) Any person who, in contravention of the true intent of such oath, reveals any matter or thing which comes to his knowledge in his official capacity, is guilty of a misdemeanour and liable to imprisonment for any term not exceeding two years, with or without hard labour.

Duties on dividends.

5. THERE shall be levied and paid to the Minister, for the use of His Majesty, the duties hereinafter provided.

Dividend Duties.

6. (1.) WITHIN seven days from the time any dividend is declared by a company carrying on business in Western Australia, and not elsewhere, such company shall—

Returns of dividends declared and payment of duty.

- (a.) Forward to the Minister a return in the prescribed form, containing the prescribed particulars, verified by a statutory declaration ;
- (b.) Forward to the Minister a copy of the company's balance-sheets for the period during which the dividend was earned ; and
- (c.) Pay to the Minister a duty equal to One shilling for every Twenty shillings of the amount or value of such dividend.

(2.) If the Minister is not satisfied with the declared value of any dividend, not being money, he may assess such value, and the excess duty on such valuation shall be paid within fourteen days thereafter.

(3.) This section shall not apply to any company which comes within the operation of section eight.

(4.) A company having a registered office outside Western Australia shall not, for that reason only, be deemed to be carrying on business elsewhere than in Western Australia.

7. (1.) ON or before the first day of April, One thousand nine hundred and three, every company carrying on business in Western Australia and elsewhere, and on or before the first day of April in every succeeding year, every such company shall—

Returns by companies carrying on business in Western Australia and elsewhere.

- (a.) Forward to the Minister a return, in the prescribed form, setting forth the amount and details of all profits made by such company in Western Australia during the year ending the thirty-first day of December immediately preceding the return, and verified by a statutory declaration ; and
- (b.) Forward to the Minister a copy of the company's or firm's balance-sheets for the period during which the profits were earned.

(2.) The Minister shall thereupon assess the profits made by such company in Western Australia, and upon such assessment the company shall, within fourteen days, pay to the Treasurer a duty equal to One shilling for every Twenty shillings of profits so assessed.

(3.) This section shall not apply to any company which comes within the operation of section eight.

Dividend Duties.

(4.) Companies which balance their accounts on other days than the thirty-first day of December shall comply with the provisions of subsection one within three months after each balancing day, and the return shall set forth the profits made between the last balancing day and the balancing day immediately preceding the last balancing day.

Returns by insurance companies and duty payable.

8. (1.) ON or before the first day of March in every year, every company which carries on, within Western Australia, any insurance or assurance business exclusively (not being a Life Assurance Company) shall—

(a.) Forward to the Minister a return, in the prescribed form, stating the amount of the premiums received, or in any manner charged in account, by such company, or by its agent in Western Australia, during the year ending on the preceding thirty-first day of December, and verified by statutory declaration.

(b.) Pay to the Minister a sum equal to Twenty shillings for every One hundred pounds, and a proportionate sum for every part of One hundred pounds of such premiums.

(2.) Such premiums shall be the gross premiums, and shall exclude any portion of such premiums actually paid away by way of re-insurance effected in Western Australia with any other company.

Production of balance-sheets.

9. THE Minister may require any company to forward to him any further or other balance-sheets and documents which, in his opinion, are necessary to enable the amount of duty payable to be correctly assessed or ascertained, and may require such balance-sheets and documents to be verified by statutory declaration.

Case of companies carrying on business by trustees or agents.

10. (1.) ANY person—

(a.) Who carries on business in Western Australia as trustee or agent for a company shall, together with the company, be liable to pay the duties and discharge the obligations which the company would be liable under this Act to pay and discharge ; and

(b.) All property in Western Australia held by the trustee or agent on behalf of the company shall be liable to be taken in execution or otherwise made available for the discharge and satisfaction of such obligation.

2° EDWARDI VII., No. 32.

Dividend Duties.

(2.) A company which solicits or obtains orders in Western Australia shall be deemed to be carrying on business in Western Australia.

(3.) Where any trustee or agent pays duty under this Act, the amount paid shall be a debt due to such trustee or agent by the company on whose behalf it was paid.

11. THE duties imposed by this Act are debts due to His Majesty from the companies by which such duties are respectively payable, and shall become due and payable at the times when the returns required by this Act to be made ought respectively to be made.

When payable.

12. NO company, and no person acting on behalf of a company, shall distribute any dividend or profits chargeable with duty until the duty payable in respect thereof has been paid.

Duty to be paid before dividend paid.

13. EVERY officer, manager, trustee, or agent of any company who pays the duty upon any dividend may deduct and retain for the use of such company, from all moneys payable to any person entitled thereto, a sum bearing the same proportion to the total duty payable by the company upon the dividend as the amount payable to such person bears to the total dividend upon which such duty has been paid.

To be deducted from dividends.

14. IN the event of the winding up of any company, duty shall only be payable on any moneys distributed among the shareholders in excess of the amount actually paid up on the shares.

In case of winding up.

15. WHEN a dividend is distributed before the duty payable in respect thereof is deducted and paid, the duty shall be a debt due by the person receiving the dividend to His Majesty.

Remedy against persons receiving dividends when duty is unpaid.

16. EVERY person who, as trustee, agent, receiver, guardian, committee, or otherwise in a fiduciary capacity, receives a dividend on which duty is imposed by this Act, is personally liable to pay such duty, and may, out of any moneys so coming into his hands, retain so much from time to time as shall amount to the duty so paid, and is hereby indemnified against all persons in respect of such payment.

Indemnity to persons in a fiduciary capacity.

17. EVERY company shall, when required in writing by the Minister, permit any person named by the Minister to inspect and take copies of its minute books, balance sheets, books of account, and all other books containing any entries or information relating to any dividends declared or profits made by the company, or relating

Inspection of books

Dividend Duties.

to any other matter with respect to which the company is required by this Act to forward returns; and, in the case of a company which carries on insurance business, to inspect and take a copy of any of the books of the company containing any entries relating to premiums received or charged in account.

Penalty for omission to make true returns.

18. IF any company—

- (a.) Makes default in transmitting to the Minister any return required by this Act; or
- (b.) Supports any return by a declaration false in any particular; or
- (c.) Contrary to this Act distributes any dividends or profits before the duty payable in respect thereof has been paid,

the company shall be liable to pay to His Majesty treble the amount of duty payable under this Act in respect of the matters concerning which such return is required to be made, or in respect of dividends or profits distributed in contravention of this Act.

Penalty for default.

19. IF any company makes default in complying with any other provisions of this Act—

- (a.) The Company, and
- (b.) Every officer, manager, trustee, or agent of the company who makes or knowingly and wilfully authorises or permits such default

is liable to a penalty not exceeding Five pounds for every day the default continues.

Punishment for false declaration.

20. IF any statement, declaration, or other document required by this Act is false in any particular, the person who signs the same is guilty of a misdemeanour, and is liable to be imprisoned with or without hard labour for any term not exceeding two years, or to a penalty not exceeding Five hundred pounds.

Trustees, etc., receiving dividends for persons under disability to be personally liable for duty.

21. EVERY person who, as trustee of property, held in trust for the separate use of any married woman, or as trustee, receiver, guardian, or committee for any person under legal disability or of unsound mind, receives in Western Australia any dividend on behalf of such married woman or other person, whether such married woman or other person resides in Western Australia or not, is liable to pay the duties imposed by this Act in like manner and to the same amount as the married woman would be liable if she were a *femme sole*, or if the property were not held for her separate use, and as such other persons would be liable if not under disability.

Dividend Duties.

22. EVERY person, whether a married woman or not, and whether under disability or not, and whether residing in Western Australia or not, who, through a trustee, agent, receiver, guardian, or committee, receives any dividend on which duty is imposed by this Act, is liable to pay the duty through the trustee or other person as aforesaid through whom the dividend is received.

The principal is also liable.

23. EVERY married woman having any separate property, or being entitled to any property or profits to her separate use, is chargeable with and liable to pay the like duties and in like manner as if she were unmarried.

Married women.

24. NO company or person may refuse to make any discovery sought to be obtained in any action brought under this Act on the ground that the discovery would entail a forfeiture.

Discovery to be given.

25. ANY return made by or on behalf of a company under any other Act shall be admissible in evidence in any action brought against the company under this Act.

Evidence.

26. (1.) STATUTORY declarations required by this Act shall be made by an officer of the company or by the manager or agent of the company resident in Western Australia.

By whom declaration to be made.

(2.) The Minister may require any officer, member, manager, or agent to make a statutory declaration as to his knowledge, information, or belief in reference to any matter or thing arising out of any return made or out of any inspection under section seventeen.

27. WHEN a company is dissatisfied with any assessment made by the Minister, it may, after payment of the duty, appeal. Such appeal shall be conducted as follows:—

Appeal to Judge of Supreme Court.

- (1.) Within thirty days of the assessment the Minister shall be served with an originating summons under the Supreme Court Rules fixing a day for hearing the appeal, not being more than thirty or less than fourteen days after the date of service. Such summons shall be supported by affidavit setting forth the grounds and reasons upon which the assessment is objected to.
- (2.) Such summons shall be heard by a Judge in Chambers, who may decide the same on oral evidence or by affidavit, and may refer any questions of fact or any questions involving professional or technical knowledge to the determination of any other person.
- (3.) The Judge may, in his discretion, award costs to either party.

Dividend Duties.

Judge may state case for opinion of Full Court.

28. THE Judge may state a case for the opinion of the Full Court on any question of law.

The Full Court shall have power to deal with the costs of and incidental to the case.

The decision of the Court shall be final.

Right to recover duty not suspended by appeal.

29. THE obligation to pay and the right to receive and recover duty shall not be suspended by an appeal; but if the appellant succeeds, the amount (if any) of the duty received by the Minister in excess of the amount which, according to the decision on such appeal, was properly payable, shall forthwith be repaid.

Regulations.

30. THE Governor may from time to time make such regulations as may be necessary for prescribing the particulars to be given in any returns required to be made under this Act, and generally for carrying out the purposes of this Act.

Continuation of 63 Vict., No. 6.

31. THE Companies Duty Act, 1899, is continued until the thirty-first day of December, One thousand nine hundred and three, but only—

- (a.) For the recovery of duties accrued due thereunder at the commencement of this Act; and
- (b.) In relation to dividends declared before the commencement of this Act, and for the recovery of the duties thereon; and
- (c.) For the recovery of penalties in connection therewith.

In the name and on behalf of the King I hereby assent to this Act.

E. A. STONE, Administrator.