

INCOME TAX ASSESSMENT.

4 GEO. VI., No. XII.

No. 12 of 1940.

AN ACT to amend the Income Tax Assessment Act, 1937-1939.

[Assented to 24th October, 1940.]

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 *Income Tax Assessment Act Amendment Act, 1940*, and shall be read as one with the Income Tax Assessment Act, 1937-1939 (No. 13 of 1937 as amended by the Act No. 25 of 1939), hereinafter referred to as the principal Act.

Short title
of No. 25 of
1939, s. 7.

2. Section four of the principal Act is amended by deleting the figures "133" where they appear in the line reading "Division 12—Oversea Ships ss. 127-133" and inserting in lieu thereof the figures and letter "133A."

Amendment
of s. 4.

3. (1) Section nine of the principal Act is amended by deleting from paragraph (b) of subsection (4) the word "Court" and inserting in lieu thereof the word "Board."

Amendment
of s. 9.

(2) Subsection (1) of this section shall have effect and be deemed to have had effect as from the date of the coming into operation of the principal Act.

*Amendment
of s. 15.*

4. Section fifteen of the principal Act is amended by adding at the end thereof a paragraph as follows:—

(S) Subject as in this paragraph hereafter provided, in the case of any person enlisted in or appointed to the naval, military, or air forces of the Commonwealth of Australia or any part of the King's Dominions, or of any Ally of Great Britain, for service outside Australia during the war existing at the date of the coming into operation of this paragraph, between His Majesty the King on one side and Germany and Italy on the other side—the pay and allowances earned by him as a member of the said forces during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, or the date of his enlistment or appointment (whichever is the later date), and terminating on the date of his discharge or the termination of his appointment, as the case may be:

Provided that—

- (i) this paragraph shall continue in force during the continuance of the said War and thereafter until the expiration of twelve months after the date of the issue of a proclamation by the Governor General of the Commonwealth that the said war has ceased, and no longer;
- (ii) this paragraph shall apply to all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, and to all subsequent years; and
- (iii) this paragraph shall not apply to any pay or allowances earned as aforesaid during the year of income by a member of the said forces, who does not at any time during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, and terminating one year after the close of that year of income—

(a) in the case of a member of the naval forces of the Commonwealth—serve in a seagoing ship; or

(b) in the case of a member of the military or air force of the Commonwealth—embark for service outside Australia.

5. (1) Section seventeen of the principal Act is amended by adding at the end of subsection (1) a proviso as follows:—

Amendment
of s. 17.

Provided that, where goods are exported by a resident of the State to a place outside Australia and sold by him or by a branch of his business or by an agent, the whole of the sale price of such goods shall, unless the Commissioner is satisfied that income tax has been paid in the country of sale upon the profit derived by the exporter from such sale, be deemed to be assessable income derived from a source in the State.

(2) Section seventeen of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

6. A section is inserted in the principal Act after section thirty-two as follows:—

New section.

32A. (1) Except as otherwise provided in this subdivision—

Interstate
trading.

- (a) where goods are sold in the State by any person, the whole of the profit arising from the sale shall be deemed to be income derived in the State;
- (b) where goods are sold out of the State but in Australia by any person, the whole of the profit arising from the sale shall be deemed to be income derived out of the State.

(2) This section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

Amendment
of s. 38.

7. (1) Section thirty-eight of the principal Act is amended as follows:—

- (a) by deleting the word “principally” in line two of the section;
- (b) by deleting the whole of the proviso to the section.

(2) Section thirty-eight of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

Amendment
of s. 39.

8. (1) Section thirty-nine of the principal Act is amended as follows:—

- (a) by deleting the word “principally” in line two of the section;
- (b) by deleting the whole of the proviso to the section.

(2) Section thirty-nine of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

Amendment
of s. 51.

9. (1) Section fifty-one of the principal Act is amended by deleting paragraphs (a), (b), and (c) and inserting in lieu thereof paragraphs as follows:—

- (a) where a deduction or part of a deduction relates directly to income from dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively from income from dividends, from income from property other than dividends, and from income from personal exertion;
- (b) where a deduction or part of a deduction relates directly to income from property other than dividends (whether of the year of income or of a previous year of income), the deduction or part of the deduction, as the case requires,

shall be made successively from income from property other than dividends, from income from dividends, and from income from personal exertion; and

- (c) in all other cases, the deduction or part of the deduction, as the case requires, shall be made successively from income from personal exertion, from income from property other than dividends, and from income from dividends.

(2) Section fifty-one of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

10. (1) Section seventy-eight of the principal Act is amended as follows:— Amendment
of s. 78.

- (a) by deleting from subparagraph (vi) of paragraph (a) of subsection (1) the word “and” where it appears at the end of the said subparagraph (vi);

- (b) by adding at the end of paragraph (a) of subsection (1) subparagraphs, as follow:—

(ix) a public institution or public fund established and maintained for the comfort, recreation, or welfare of members of the naval, military, or air forces of the Commonwealth of Australia; and

(x) the Commonwealth of Australia, when made for purpose of defence.

(2) Section seventy-eight of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

11. (1) Section seventy-nine of the principal Act is amended by deleting paragraph (a) thereof. Amendment
of s. 79.

(2) Section seventy-nine of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for

the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

Amendment
of s. 82.

12. (1) Section eighty-three of the principal Act is amended by adding thereto a subsection as follows:—

(2) Where a lease is sold together with other assets, the amount of the consideration attributable to the lease shall, subject to subsection (2) of section twenty-seven, and to subsection (3) of section sixty-one of this Act, be—

(a) where a separate amount is allocated to the lease in any contract of sale or arrangement and the Commissioner is satisfied that that separate amount is fair and reasonable the amount so allocated; or

(b) where no separate amount is so allocated or the Commissioner is not satisfied that the amount allocated is fair and reasonable—the amount determined by the Commissioner.

(2) Section eighty-three of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

Amendment
of s. 94.

13. (1) Section ninety-four of the principal Act is amended by deleting subsection (1) and inserting in lieu thereof a subsection as follows:—

(1) Where a partnership is so constituted or controlled or its operations are so conducted that any partner has not the real and effective control and disposal of his share of the net income of the partnership, the Commissioner may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one—

(a) had been received by the partner who has the real and effective control of that share; or

(b) had been divided between such other partners as have the real and effective control of that share in proportion to the extent to which, in the opinion of the Commissioner, they respectively have the real and effective control of that share—

as the case may be, and had been added to and included in his or their assessable income, and the partnership shall be liable to pay the tax so assessed.

(2) Section ninety-four of the principal Act as amended by subsection (1) of this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

14. A section is inserted in the principal Act after section one hundred and thirty-three and as a section in Division 12 of Part III. of the principal Act, as follows:—

New section.

133A. (1) Where goods are shipped in pursuance of an agreement of the kind specified in section seven C of the Australian Industries Preservation Act, 1906-1937, of the Commonwealth, the amount paid or payable to the owner or charterer of the ship in respect of the carriage of those goods, shall, for the purposes of this Division, be deemed to be the amount remaining after deducting from the amount which would be payable according to the gross rate of freight specified in the agreement the amount of any rebate allowed in pursuance of the agreement or any payment, whenever made, by the owner or charterer, or out of funds provided by the owner or charterer, to any person or persons, being the owner or shipper of the goods, or the agent of either of them, in respect of the shipment.

Freights payable under certain agreements.

(2) This section shall apply to all assessments made after the twentieth day of November, one thousand nine hundred and thirty-nine.

15. Section one hundred and forty-seven of the principal Act is repealed and a section is inserted in lieu thereof as follows:—

Amendment of s. 147. Repeal and new section.

Re-insurance
with non-
resident.

147. (1) Notwithstanding anything contained in this Act, where a person carrying on the business of insurance in the State re-insures the whole or part of any risk with another person carrying on a similar business but not in the State—

(a) the premium paid or credited in respect of any such re-insurance shall not be—

(i) an allowable deduction to the person carrying on the business of insurance in the State; or

(ii) included in the assessable income of the person carrying on the business of insurance outside the State; and

(b) the income of the person carrying on the business of insurance in the State shall not include sums recovered from the person carrying on business outside the State in respect of a loss or risk so re-insured.

(2) This section shall have effect and operate and shall be deemed to have had effect and to have been in operation as from the date of the coming into operation of this Act.

Amendment
of s. 167.

16. (1) Section one hundred and sixty-seven of the principal Act is amended by inserting in subsection (5) after the word "Act" in line two of the said subsection the words "and any other appeal in respect of an objection lodged under the provisions of section one hundred and sixty-eight of this Act."

(2) Subsection (1) of this section shall have effect and shall be deemed to have had effect as from the date of the coming into operation of the principal Act.

Amendment
of s. 178.

17. Section one hundred and seventy-eight of the principal Act is amended by inserting in subsection (1) after the word "time" in line four of the said subsection the words "or, where an extension of time has been granted under the last preceding section of this Act, from such date as the Commissioner determines, not being a date prior to the date on which the tax was originally due and payable."

18. Section one hundred and eighty-one of the principal Act is repealed and a section is inserted in lieu thereof as follows:—

Amendment
of s. 181.
Repeal and
new section.

181. Upon the application of any person about to leave Australia, the Commissioner may, if he is satisfied—

Persons leaving
Australia
to obtain cer-
tificate.

- (a) that such person is not liable to pay income tax; or
- (b) that arrangements have been made to the satisfaction of the Commissioner for the payment of all income tax which is or may become payable by such person; or
- (c) that the income tax payable by such person is irrecoverable—

issue a certificate that for the purposes of this Act there is no objection to the departure of such person from Australia.

19. Section one hundred and ninety-one in Division 2 of Part VI. of the principal Act (inserted by section four of the Act No. 25 of 1939) is amended, as follows:—

Amendment
of s. 191.

- (a) by deleting the definition of “employee” and inserting in lieu thereof a definition, as follows:—

“Employee” means any person who receives or is entitled to receive any salary or wages under a contract of service, and includes—

- (a) a director of a company;
- (b) an insurance or time-payment canvasser or collector paid wholly or in part by commission;
- (c) a person in receipt of superannuation, pension, or retiring allowance;
- (d) a member of Parliament;
- (e) any person who receives or is entitled to receive any salary or wages as defined in paragraph (b) of the definition of “salary or wages” hereunder.

(b) by adding to the definition of salary or wages, further paragraphs, as follow:—

(d) any allowance paid to a member of Parliament;

(e) any payment by way of superannuation, pension, or retiring allowance; and

(f) any payment by way of commission to an insurance or time-payment canvasser or collector.

(c) by deleting from the definition of "Salary or wages" the word "such" in line four of the said definition and inserting in lieu thereof the words "an employee under a contract of service."

Amendment
of s. 193.

20. Section one hundred and ninety-three in Division 2 of Part VI. of principal Act (inserted by section four of the Act No. 25 of 1939) is amended by adding at the end of subsection (1) the following proviso:—

Provided that no deduction shall be made from such salary or wages paid to any aboriginal native or person subject to the Native Administration Act, 1905-1936.

Amendment
of s. 205.

21. Section two hundred and five in Division 2 of Part VI. of the principal Act (inserted by section four of the Act No. 25 of 1939) is amended by adding thereto a subsection as follows:—

(3) If at any time hereafter any lawful and valid arrangement is made between the Governor General of the Commonwealth of Australia and the Governor of the State, or between the said Commonwealth and the State, as provided for in section two hundred and five A of this Act and pursuant thereto tax stamps issued by the Commonwealth authority under the income tax laws of the Commonwealth in relation to the payment under those laws of income tax by employees liable to pay the same by deductions from their salary or wages may be used under and for the purposes of this Act in lieu of tax stamps prepared and placed on sale by the Commissioner as

provided for in subsection (1) of this section, the operation of subsections (1) and (2) of this section shall, so long as the said arrangement continues in force and Commonwealth tax stamps are used as aforesaid, be suspended.

22. (1) Where the Parliament of the Commonwealth has enacted legislation which is similar to the provisions of this Division and tax stamps are prepared and placed on sale by the Commonwealth Authority for the purposes of that legislation, the Governor of the State may arrange with the Governor General of the Commonwealth, or the State may arrange with the Commonwealth, as the case may require, for the use by the State for the purposes of this Division of tax stamps, prepared and placed on sale by the Commonwealth Authority as aforesaid.

Use of Commonwealth tax stamps by the State.

(2) The agreement relating to any such arrangement may make provision for any other matters necessary or convenient to be provided for carrying out the arrangement.

(3) The agreement relating to any such arrangement shall contain a provision for ascertaining what proportion of the proceeds of the sales of Commonwealth tax stamps in the State shall be deemed to be attributable to sales for the purposes of this Division and what proportion shall be deemed to be attributable to sales for the purposes of the Commonwealth legislation, and the proceeds shall, in the first instance, be divided between the State and the Commonwealth accordingly.

(4) As soon as possible after the close of each financial year, the State and the Commonwealth shall, in accordance with such method as is specified in the arrangement, determine what proportion of the proceeds of sales of Commonwealth tax stamps in the State during that financial year was attributable to sales for the purposes of this Division and what proportion was attributable to sales for the purposes of the Commonwealth legislation and the State or the Commonwealth, as the case requires, shall make such payment to the other party as is necessary in order that each shall receive the proportion to which, under the terms of the arrangement, it is entitled.

Amendment
of s. 206.

23. Section two hundred and six in Division 2 of Part VI. of the principal Act (inserted by section four of the Act No. 25 of 1939) is amended by adding thereto a subsection, as follows:—

(6) This section shall operate and have effect subject to any arrangement mentioned in subsection (3) of section two hundred and five of this Act whilst such arrangement continues in force.

Citation of
principal Act
as amended.

24. The principal Act as amended by this Act may be cited as the Income Tax Assessment Act, 1937-1940.
