

DIVIDEND DUTIES.

No. 32 of 1902

(*as amended by No. 30 of 1906, No. 24 of 1915, No. 22 of 1918, No. 40 of 1918, No. 32 of 1920, and No. 35 of 1924).

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*, 1902. Short title.

2. In this Act—

“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
- (b) a life assurance company as hereinafter defined in relation to its life assurance business, except in respect of interest on its investments.

“Dividend” includes every dividend, profit, advantage, or gain intended to be paid or credited to or distributed among any members or directors of any company, except the salary or other ordinary remuneration of directors.

Interpretation.
Amended by No. 30
of 1906, s. 2, and
No. 22 of 1918,
s. 2.

* See No. 22 of 1918, s. 14, and No. 40 of 1918, s. 4; No. 30 of 1906, assented to 14th December, 1906; No. 24 of 1915, assented to 19th February, 1915; No. 22 of 1918, assented to 13th June, 1918; No. 40 of 1918, assented to 24th December, 1918; No. 32 of 1920, assented to 31st December, 1920; No. 35 of 1924, assented to 31st December, 1924.

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

“Commissioner of Taxation” means the Commissioner of Taxation appointed under the Land and Income Tax Assessment Act, 1907.

“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.

Administration of Act.

New section inserted by No. 22 of 1918, s. 4, in lieu of s. 3 of principal Act.

3. (1.) The Commissioner of Taxation, under the Colonial Treasurer, shall be charged with the administration of this Act.

(2.) The Commissioner of Taxation and all other persons appointed for carrying out the provisions of this Act shall keep secret and aid in preserving secrecy with regard to all matters which may come to their knowledge in their official capacity, and shall not, except as hereinafter provided, communicate any such matter to any other person unless in the performance of their duties.

Oath of fidelity and secrecy.

Amended by No. 22 of 1918, s. 5.

4. (1.) The Commissioner of Taxation and all persons appointed for carrying out the provisions of this Act shall, before entering upon their 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.

Amended by No. 22 of 1918, s. 3.

5. There shall be levied and paid to the Commissioner of Taxation, for the use of His Majesty, the duties hereinafter provided.

6.* (1.) On or before the first day of April, One thousand nine hundred and three, every company carrying on business in Western Australia, 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.

(a) forward to the Commissioner of Taxation 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

Amended by No. 30 of 1906, s. 4; No. 24 of 1915, s. 3; No. 22 of 1918, ss. 3 and 6. No. 35 of 1924, s. 2.

(b) forward to the Commissioner of Taxation a copy of the company's or firm's balance-sheets for the period during which the profits were earned.

(2.) The Commissioner of Taxation 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 Commissioner of Taxation a duty equal to One shilling and threepence for every Twenty shillings of profits so assessed.†

No. 22 of 1918, s. 6.

* This section was originally numbered 7. See No. 22 of 1918, s. 14 (2).

Section 6 of the principal Act was repealed by No. 24 of 1915, s. 2.

† By the Dividend Duties Act Amendment Act, 1918, it is enacted as follows:—

13. (1.) Duty shall be payable on all profits made on and after the first day of July, One thousand nine hundred and seventeen, and in the case of insurance companies on all premiums received on and after that date at the increased rates as prescribed by this Act.

Increased duty to be payable on profits from 1st January, 1917.

(2.) In the case of companies which balance their accounts on some other day than the thirtieth day of June, duty at the prescribed rate shall, in respect of the period from the first day of July, One thousand nine hundred and seventeen, to the next following balancing day, be payable on profits apportioned to that period in ratio to the whole of the profits made during the year ending with such balancing day.

By the Dividend Duties Act Amendment Act, 1920, it is enacted as follows:—

1. This Act shall be read as one with the Dividend Duties Act, 1902 (hereinafter referred to as the principal Act) and its amendments.

2. (1.) In addition to the duty payable under the principal Act and its amendments, by companies on the profits made or premiums received or charged in account by companies, on and after the 1st day of July, 1919, there shall be paid by every company to the Commissioner of Taxation, by way of increased duty, a sum equal to fifteen per centum of the amount of the duty imposed by the principal Act as amended prior to the commencement of this Act.

Duty increased by 15 per cent.

(2.) In the case of companies which are liable to duty on the profits made and which balance their accounts on some day other than the thirtieth day of June, the fifteen per centum increased duty shall, in respect of the period from the 1st day of July, 1919, to the next following balancing day, be

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

(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.

Inserted by No. 30
of 1906, s. 4.

(5.) The Governor may enter into agreements with companies carrying on any business to which the provisions of this section cannot be conveniently applied for the assessment of profits made by such companies in Western Australia, or for the satisfaction of the duty in such manner, or upon such basis or terms, as may be mutually agreed upon: Provided that no such agreement shall be entered into until after one month's notice of intention to do so has been published in the *Government Gazette*.

Inserted by No. 30
of 1906, s. 4, and
amended by No. 22
of 1918, s. 6.

(6) Subject to any agreement under the last preceding subsection, the duty to be paid by shipping companies shall be as follows:—

- (a) Six and one-fourth per centum of five per centum upon all inward and outward traffic, including passenger fares.
- (b) Six and one-fourth per centum of the profits on sales of coal or other goods.
- (c) Six and one-fourth per centum of the profits of vessels trading exclusively within the State:

Provided that duty shall be payable under the several paragraphs of this subsection separately, and without regard to any loss incurred under either of the other paragraphs.

payable on profits apportioned to that period in ratio to the whole of the profits made during the year ending with such balancing day:

*Now numbered *str.*
See No. 22 of 1918,
s. 14 (2).

Provided that the duty payable under an agreement made pursuant to subsection five of section seven* of the principal Act (inserted by the Act No. 30 of 1906, and amended by the Act No. 22 of 1918) shall be deemed duty payable on profits:

Provided also that this Act shall not apply to life assurance companies.

Deduction allowed
for payments to
charitable institu-
tions, etc.

*Now numbered *str.*
See *Ibid.*

3. In assessing the profits made by a company on the returns forwarded under section seven* of the principal Act, the Minister shall allow as a deduction therefrom any payment made by the company to the board or trustees of any charitable institution, incorporated or otherwise, or of a public park or reserve, or of a university or public school, or of a library, art gallery, museum, or other institution for public education, recreation, or enjoyment subsidised by the Government; provided that such payment is applied solely to such charitable or other public purpose.

(7.) The Commissioner of Taxation may disallow as expenditure any money paid by a company as salary, fees, or otherwise to any director, officer, or employee of the company in so far as, in the opinion of the Commissioner, such payment was not made *bonâ fide* as remuneration for services rendered, but as a means of avoiding taxation.

Inserted by No. 2:
of 1918, s. 6.

(8.) The profits made in any year on and after the 1st day of July, 1917, by a mining company, shall be assessed after allowing as a deduction the cost actually incurred during the year by the company for labour and materials employed in development work, as prescribed, including the cost incurred on and after the 1st day of July, 1918, in testing and working mines held under an option of purchase.

Inserted by No. 40
of 1918, s. 2.

(9.) A mining company other than a coal mining company shall not be liable to pay duty on profits made after the 30th day of June, 1924, until such profits shall have equalled so much of the share capital of the company (if any) as may have been paid up in cash after that date; and duty shall only be payable on the assessed profits of the company so far as, from the 30th day of June, 1924, such profits exceed the amount of the share capital paid up in cash after such date.

Inserted by No. 35
of 1924, s. 2.

7. If any company to which section six applies shall have declared no dividend or shall have made no profits in Western Australia, as the case may be, during any year or other period to which any balance sheet of the company relates, such company shall, within three months of its balancing day, forward to the Commissioner of Taxation a copy of its balance sheet, with a statutory declaration stating that no dividend has been declared or profit made, as the case may be.

Balance sheet when
no dividend de-
clared.

Inserted by No. 30
of 1906, s. 5.

Amended by No. 22
of 1918, ss. 3 and 14.

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—

Returns by insur-
ance companies
and duty payable.

Amended by No. 22
of 1918, ss. 3 and 7,
and No. 35 of 1924,
s. 8, sub-sec. (1).

(a) forward to the Commissioner of Taxation 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;

No. 22 of 1918, s. 7.

(b) pay to the Commissioner of Taxation a sum equal to Forty 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.

Inserted by No. 22
of 1918, s. 7.

(3.) Where any company not engaged in insurance business exclusively carries on within Western Australia, insurance business (not being life assurance) whether as principal or as agent for another company carrying on business outside Western Australia, or where any such first-mentioned company, under the authority of a general cover or floating policy issued by any company or person carrying on insurance business outside Western Australia, issues declaration of insurance or other documents in the nature thereof in Western Australia, such first-mentioned company shall be liable to forward returns and to pay duty in respect of such business in the manner and at the rate prescribed by this section.

8a. (1.) Every life assurance company shall—

Life Assurance
Companies.

Inserted by No. 22
of 1918, s. 8.

Amended by No. 35
of 1924, s. 3, sub-
sec. (2).

See s. 36.

- (a) on or before the first day of September in every year, or within three months after each of its annual balancing days, forward to the Commissioner of Taxation a return in the prescribed form stating the amount of interest on its investments received by the company during the year ending the thirtieth day of June next preceding, or ending on such other balancing day; and
- (b) pay to the Commissioner of Taxation, as from the first day of July, One thousand nine hundred and seventeen, as duty a sum equal to One shilling and threepence for every Twenty shillings of interest so received, subject to such deductions as are permitted in calculating the profits of a company under this Act.

(2.) Notwithstanding paragraph (2) of Section 19 of the Land and Income Tax Assessment Act, 1907†, a life assurance

* See section two of the Dividend Duties Act Amendment Act, 1920, set out on page 3 hereof.

† Section 18, as reprinted with amendments in the Schedule to the Volume of Statutes of 1924. (See No. 36 of 1924, ss. 11 and 13.)

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company shall be exempt from income tax under that Act, in respect of interest on investments received on and after the 1st day of July, 1917.

9. The Commissioner of Taxation 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.

Production of balance-sheets.

Amended by No. 22 of 1918, s. 3 and No. 35 of 1924, s. 3, subsec. (3).

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.

Case of companies carrying on business by trustees or agents.

(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

To be deducted from dividends.

dividend as to the amount payable to such person bears to the total dividend upon which such duty has been paid.

Credit to be given for duty paid on dividends.

Inserted by No. 24 of 1915, s. 4, and No. 22 of 1918, s. 14.

Amended by No. 22 of 1918, s. 3.

14. If it is proved to the satisfaction of the Commissioner of Taxation that any company carrying on business in Western Australia has, during the year One thousand nine hundred and fourteen, or in any subsequent year, distributed a dividend or dividends out of profits made by the company during such year, and has paid duty thereon, the company shall receive credit for the duty so paid as a payment on account of the duty payable by such company on its profits for that year.

Undistributed profits.

Inserted by No. 24 of 1915, s. 5, and No. 22 of 1918, s. 14. Amended by No. 22 of 1918, ss. 10 and 14.

15. When any undistributed profits standing on the first day of January, One thousand nine hundred and fourteen, to the credit of profit and loss account, or of any appropriation, reserve, or other like account, of any company, are at any time thereafter distributed, or otherwise applied as dividend, or converted into capital in any way, the amount of such profits shall, when so distributed, applied or converted, if duty has not already been paid thereon, be liable to duty under this Act as if such profits had been made during the year in which such distribution, application, or conversion is made:

Provided that profits earned before the 11th day of July, 1899, shall not be liable to duty: Provided also that this section shall not apply to any company which comes within the operation of section eight or section eight *a*.

Subsidiary companies.

Inserted by No. 24 of 1915, s. 6.

Amended by No. 22 of 1918, ss. 3 and 11.

16. Where any company purchases or otherwise acquires its trading stock, or the main portion thereof, from or through some other company carrying on business either within or without Western Australia, and the share capital of the first-mentioned company, or the greater part of such share capital, is held by such other company or its nominees, or the greater part of the share capital of the first-mentioned company is held by shareholders of such other company, the Commissioner of Taxation may, in his discretion, assess the profits of the first-mentioned company either on a profit and loss basis, or at a sum equal to a percentage on the amount of its total sales actually made in Western Australia, the rate of such percentage being determined by the Commissioner of Taxation according to the nature of the company's business.

For the purposes of this section any share capital held by a shareholder or nominee of or trustee for a company shall be deemed to be held by the company.

17. When a company is in process of winding up, or ceases to carry on business in Western Australia, it shall not be relieved from its liability for duty under this Act, and such company, or its liquidator, shall furnish returns and pay duty on demand by the Commissioner of Taxation on any profits assessed by him for the period up to the date when such company ceased to carry on business in Western Australia and until such duty is paid such company shall, for the purposes of this Act, be deemed to carry on business in Western Australia.

In case of winding up.
Inserted by No. 24
of 1915, s. 7.

Amended by No. 22
of 1918, s. 3.

Any money, or its equivalent, distributed among the shareholders in excess of the amount paid up or deemed to be paid up on their shares, shall be deemed profits for the purposes of this section, and be liable to duty, except such portion thereof (if any) as may consist of undistributed profits made before the eleventh day of July, 1899.

18. 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.

19. 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.

20. Every company shall, when required in writing by the Commissioner of Taxation, permit any person named by the Commissioner of Taxation 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 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.

Inspection of
books.

Amended by No. 22
of 1918, s. 3.

Penalty for omission to make true returns.

Amended by No. 22 of 1918, ss. 3 and 9, and No. 35 of 1924, s. 4.

21. If any company—

- (a) makes default in transmitting to the Commissioner of Taxation 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; or
- (d) transmits to the Commissioner of Taxation a return, balance sheet, or document containing a false statement to evade or attempt to evade duty,

the company shall be liable to pay to His Majesty a sum not exceeding 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, or to a penalty not exceeding One hundred pounds.

Inserted by No. 35 of 1924, s. 4.

Penalty for default.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. (1.) [*Repealed by Section 5 of No. 35 of 1924.*]

By whom declaration to be made.

(2.) The Commissioner of Taxation 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 twenty.

Amended by No. 22 of 1918, s. 3, and No. 35 of 1924, s. 5.

30. When a company is dissatisfied with any assessment made by the Commissioner of Taxation, it may, after payment of one-fourth 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 Commissioner of Taxation 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.

Amended by No. 22 of 1918, s. 3, and No. 35 of 1924, s. 6.

- (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.

Judge may state case for opinion of Full Court.

31. 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. Amended by No. 22 of 1918, s. 3.

32. 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 Commissioner of Taxation in excess of the amount which, according to the decision on such appeal, was properly payable, shall forthwith be repaid.

Regulations.

33. 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.

See No. 9 of 1903, s. 2.

34. 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.

Exchange of information.

Inserted by No. 22 of 1918, s. 12.

35. It shall be lawful for the Commissioner of Taxation, and he is hereby authorised to communicate any matter which may come to his knowledge in the administration of this Act to the Commissioner or Deputy Commissioners of Taxation for the Commonwealth of Australia, or to the Commissioner

of Income Tax for any other State of the Commonwealth or any other person occupying a corresponding position in any such State with reference to the collection of duties:

Provided that this section shall not come into operation unless or until reciprocal authority to afford similar information to the Commissioner of Taxation in Western Australia has been duly conferred on the Commonwealth Commissioner of Taxation and his Deputy in Western Australia, or such other Commissioner of Taxation, as the case may be.

36. Interest on Western Australian Government debentures, inscribed stock, and treasury bills or bonds received on and after the 1st day of July, 1917, by any company, shall be exempt from duty under this Act:

Interest on Western Australian stocks.

Inserted by No. 40 of 1918, s. 3.

Provided that such exemption shall not affect the duty payable under section eight by insurance companies on the amount of premiums received.