
INCOME TAX ASSESSMENT.

No. 31 of 1921.

An Act to amend Sections three, four, fourteen, eighteen and nineteen of; to repeal Sections thirty-seven, thirty-eight and forty of; and to insert new Sections ten A, twelve A, twenty-three, thirty-six A, thirty-seven, thirty-eight and forty in the *Income Tax Assessment Act 1915-1918*, and for other purposes.

[Assented to 17th December, 1921.]

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

1.—(1) This Act may be cited as the *Income Tax Assessment Act 1921*. Short title and citation.

(2.) The *Income Tax Assessment Act 1915-1918* is in this Act referred to as the Principal Act.

(3.) The Principal Act as amended by this Act may be cited as the *Income Tax Assessment Act 1915-1921*.

Definitions.

2. Section three of the Principal Act is amended—

- (a) by adding at the end of the definition of "Absentee" the words "or a resident of the Territory of Papua"; and
- (b) by adding at the end of the definition of "Income" the following—

" , but does not include (c) any rebate received by a member of a co-operative company based on his purchases from that company, where the company is one which usually sells goods only to its own members."

Application of Act.

3. Section four of the Principal Act is amended by adding at the end thereof the words "but shall not apply to income derived from sources in Papua by a resident of Papua nor to any income earned in Papua by personal exertion by any person while there".

4. After section ten of the Principal Act the following section is inserted :—

Rate of tax on income from primary production.

" 10A.—(1.) For the purpose of ascertaining the rates applicable to the income of primary producers the amount of so much of the taxable income of the taxpayer as is derived from primary production shall be taken to be—

- (a) for the year ending the thirtieth day of June, One thousand nine hundred and twenty-three, the average of the amounts of taxable income derived by the taxpayer during the last two preceding financial years from primary production ;
- (b) for the year ending the thirtieth day of June, One thousand nine hundred and twenty-four, the average of the amounts of taxable income derived by the taxpayer during the last three preceding financial years from primary production ;
- (c) for the year ending the thirtieth day of June, One thousand nine hundred and twenty-five, the average of the amounts of taxable income derived by the taxpayer during the last four preceding financial years from primary production ; and
- (d) for all subsequent financial years the average of the amounts of taxable income derived by the taxpayer during the last five preceding financial years from primary production.

" (2.) The rates so ascertained shall be applied to the actual taxable income of the taxpayer for the financial year.

" (3.) Where a primary producer has not been engaged in primary production for the number of consecutive years in respect of which the rate of income tax upon his income from primary production is required to be ascertained for the financial year next succeeding those years, the rate may be ascertained from the average of the number of consecutive years the primary producer has been so engaged immediately preceding that financial year.

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

‘Primary producer’ means a person engaged in primary production ;

‘Primary production’ means the production resulting directly from—

(a) cultivation of land ; or

(b) maintenance of animals or poultry,

and includes dairy produce manufactured by the person who produced the principal raw material used in the manufacture of that produce ;

‘Income from primary production’ means the income of a primary producer to the extent to which it is derived directly and in the first place from primary production ; and

‘The average of the amounts of taxable income’ means the amount obtained by dividing, by the number of years upon which the average is based, the sum of the amounts of taxable income derived by the taxpayer from primary production during each of those years, after deducting from that sum the amount, or the sum of the amounts (if any) by which the deductions allowable under this Act in any of those years in respect of income from primary production exceeds the assessable income of that year derived by the taxpayer from primary production.”.

5. After section twelve of the Principal Act the following section is inserted:—

“12A.—(1.) Any person who has an amount of income which is liable to income tax for any year of assessment—

(a) under this Act and in the United Kingdom ; or

(b) under this Act and in the United Kingdom and in a State of the Commonwealth of Australia,

and who satisfies the Commissioner as to—

(c) the amount of the income which is so liable ; and

(d) the amounts of taxes to which the income is so liable, together with the rate or rates of those taxes,

shall be entitled to a rebate of tax upon that amount of income at a rate which shall be ascertained as follows :—

(i.) In the case where the amount of income is liable to tax under this Act and in the United Kingdom, and the Commonwealth rate is greater than one-half of the British rate :—

(a) Where the Commonwealth rate is greater than the British rate, the rate of rebate shall be one-half of the British rate ;

(b) Where the Commonwealth rate is not greater than the British rate, the rate of rebate shall be the excess of the Commonwealth rate over one-half of the British rate :

Provided that no rebate shall be claimable under this paragraph with respect to any amount of income to which the next following paragraph is applicable ;

Rebates in cases of double and treble taxation.

- (ii.) In the case where the amount of income is liable to tax under this Act and in a State and in the United Kingdom, and the sum of the Commonwealth and State rates is greater than one-half of the British rate, the proportion which the Commonwealth rate bears to the sum of the Commonwealth and State rates shall be ascertained, and the rate of rebate shall be that proportion of the following rates :—
- (a) Where the sum of the Commonwealth and State rates is greater than the British rate—one-half of the British rate ;
- (b) where the sum of the Commonwealth and State rates is not greater than the British rate—the excess of the sum of the Commonwealth and State rates over one-half of the British rate.

“(2.) In this section the following expressions, in relation to an amount of income, have the following meanings :—

- (a) ‘ Commonwealth rate ’ means the rate ascertained by dividing the total amount of income tax paid or payable for the year by the taxpayer (before the deduction of the rebate granted under this section) by the amount of the total taxable income in respect of which the tax paid or payable under this Act has been charged for that year ; except that, where the tax is charged on an amount other than the ascertained amount of actual profits, the rate of tax shall be as determined by the Commissioner ;
- (b) ‘ State rate ’ has a corresponding meaning in relation to the income tax paid or payable on the amount of income under the law of a State ;
- (c) ‘ British rate ’ means the appropriate rate of the tax in the United Kingdom upon the amount of income.

“(3.) For the purposes of this section a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show—

- (a) what is the appropriate rate of United Kingdom tax ; and
- (b) the particular amount of income which is liable to tax under this Act and in the United Kingdom.”.

What is included in income.

6. Section fourteen of the Principal Act is amended by inserting at the end of paragraph (d) thereof the following proviso :—

“ Provided that this paragraph shall not apply to the proceeds of the sale, transfer or assignment of the lease of a mining property (other than coal mining) where the Commissioner is satisfied that the lease has been sold, assigned or transferred—

- (i.) by a *bonâ fide* prospector ; or
- (ii.) by a person, partnership, syndicate or company who or which does not make a business of buying and selling mining properties and who or which purchased the lease from a *bonâ fide* prospector and worked the property in a proper and efficient manner ; ”.

7. Section eighteen of the Principal Act is amended by omitting from paragraph (*k*) of sub-section (1.) thereof the word "Twenty-six" and inserting in its stead the word "Thirty".

Deductions.

8. Section nineteen of the Principal Act is amended—

Special deduction.

- (a) by inserting in sub-section (2.) thereof after the words "One hundred" (wherever occurring) the words "and four"; and
- (b) by omitting from sub-section (2.) thereof the word "Five" and inserting in its stead the word "Three".

9. After section twenty-two of the Principal Act the following section is inserted :—

" 23.—(1.) Where a non-resident person carries on business with a resident person, and it appears to the Commissioner that, owing to the close connexion between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person, the course of business between these persons can be so arranged and is so arranged, that the business done by the resident person in pursuance of his connexion with the non-resident person produces to the resident person either no taxable income or less than the ordinary taxable income which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

Taxation of income of non-resident persons.
Cf. 8 & 9 Geo. 5,
c. 40. Gen.
Rules 7 & 8.

" (2.) Where it appears to the Commissioner that the true amount of the taxable income of any non-resident person chargeable with tax in the name of a resident person cannot in any case be readily ascertained, the Commissioner may, if he thinks fit, assess and charge in terms of section thirty-two of this Act the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable as aforesaid.

" (3.) Nothing in this section shall render a non-resident person chargeable in the name of a broker or general commission agent or in the name of an agent not being—

- (a) an authorized person carrying on the regular agency of the non-resident person; or
- (b) a person chargeable as if he were an agent in pursuance of this section,

in respect of profits or gains arising from sales or transactions carried out through such a broker or agent."

10. Sections thirty-seven and thirty-eight of the Principal Act are repealed and the following sections inserted in their stead :—

" 36A.—(1.) For the purposes of this Part, there shall be a Board or Boards of Appeal.

Boards of Appeal.

“(2.) Each Board shall consist of a Chairman and two other members, who shall be appointed by the Governor-General.

“(3.) The members of a Board shall hold office for a term of seven years, but shall be eligible for re-appointment.

“(4.) If any officer of the Public Service of the Commonwealth is appointed a member of a Board, his service as member shall, for the purpose of determining his existing and accruing rights, be counted as public service in the Commonwealth.

“(5.) If any member of the Public Service of a State is appointed a member of a Board, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

“(6.) In the case of the illness, suspension or absence of any member of a Board, the Governor-General may appoint a person to act as the deputy of the member during his illness, suspension or absence, and the deputy shall, whilst so acting, have all the powers and perform all the duties of a member.

“(7.) In the case of the illness, suspension or absence of the Chairman, the Governor-General shall appoint one of the other members to act as Chairman during such illness, suspension or absence.

“(8.) For the conduct of the business of a Board any two members shall form a quorum.

“(9.) At a meeting of a Board the decision of the majority shall prevail.

“(10.) The Chairman of a Board shall have a deliberative, but not a casting, vote.

“(11.) No action or suit shall be brought or maintained against any person who is or has been a member of a Board, for any non-feasance or misfeasance in connexion with his duties.

“(12.) The Chairman and each of the other members of a Board shall receive such remuneration and travelling allowance as the Governor-General determines, and the Consolidated Revenue Fund is, to the necessary extent, hereby appropriated accordingly.

“(13.) The Governor-General may remove any member of a Board from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

“(14.) The Governor-General may suspend any member of a Board from office for misbehaviour or incapacity.

“(15.) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant and the office shall thereupon become and be vacant.

“(16.) A member of a Board shall be deemed to have vacated his office if—

- (a) he engages, during his term of office, in any paid employment outside the duties of his office ;
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit ;
- (c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months ; or
- (d) he becomes permanently incapable of performing his duties.”.

“ 37.—(1.) A taxpayer who is dissatisfied with the assessment made by the Commissioner under this Act may, within thirty days after service by post of the notice of assessment, lodge with the Commissioner an objection in writing, in the prescribed form, against the assessment stating fully the grounds for the objection. Objections.

“(2.) The Commissioner shall consider the objection, and may either disallow it, or allow it, either wholly or in part.

“(3.) The Commissioner shall give to the objector written notice of his decision on the objection.

“(4.) A taxpayer who is dissatisfied with the decision of the Commissioner may, within thirty days after the service by post of notice of the decision of the Commissioner, in writing request the Commissioner to treat his objection as an appeal and to forward it, as required by the taxpayer, either to the High Court or the Supreme Court of a State (where the objection raises questions of law only), or to the High Court or a Supreme Court or a Board* of Appeal (where the objection raises questions of fact).

“(5.) Objections which are treated as appeals to a Board of Appeal shall, if the taxpayer's written request is accompanied by a deposit of such amount as is prescribed for the particular class of case, be forwarded to the Board of Appeal by the Commissioner not later than thirty days after receipt by him of the written request.

“(6.) A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection.

“(7.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment appealed from.

“(8.) When the appeal is to the High Court or a Supreme Court, it shall be heard by a single Justice of the Court.”.

“ 38.—(1.) On the hearing of the appeal, the Court or Board of Appeal may make such order as it thinks fit, and may either reduce or increase the assessment. Powers of Court and Board on hearing of appeals.

“(2.) An order of the Board on questions of fact shall be final and conclusive on all parties.

“(3.) An order by the Court shall be final and conclusive on all parties except as provided in this section.

“(4.) The costs of the appeal shall be in the discretion of the Court or the Board as the case may be.

“(5.) The Board shall, if it considers an appeal to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount mentioned in sub-section (5.) of the last preceding section.

“(6.) On the hearing of the appeal the Board shall, on the request of a party, and the Court may, if the Court thinks fit, state a case in writing for the opinion of the High Court upon any question arising in the appeal which in the opinion of the Board or of the Court, as the case may be, is a question of law.

“(7.) The High Court shall hear and determine the question, and remit the case with its opinion to the Court below or to the Board, as the case may be, and may make such order as to costs of the case stated as it thinks fit.

“(8.) An appeal shall lie to the High Court, in its appellate jurisdiction, from any order made under sub-section (1.) of this section, except a decision by the Board on a question of fact.”

11. Section forty of the Principal Act is repealed and the following section inserted in its stead :—

Rules of
Court or Board
of Appeal.

“40.—(1.) The Governor-General shall make rules for regulating the practice and procedure in relation to appeals dealt with by a Board of Appeal, and a Board shall not be bound in its consideration of any question by any rules of evidence, but in forming its decision shall be guided by good conscience and the facts of the case.

“(2.) The Justices of the High Court or a majority of them may make rules of Court for regulating the practice and procedure in relation to appeals to a Court against assessments.

“(3.) All rules by Boards of Appeal or by the Justices of the High Court shall—

(a) be notified in the *Gazette* ;

(b) take effect from the date of notification, or from a later date specified in the rules ; and

(c) be laid before both Houses of the Parliament within thirty days of the making thereof, or if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

“(4.) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before that House, disallowing any rule, that rule shall thereupon cease to have effect.”

Application of
Act.

12.—(1.) The amendments of the Principal Act made by paragraph (a) of section two and section three of this Act shall be deemed to have come into operation on the date of the commencement of the *Income Tax Assessment Act 1915*.

(2.) The amendments of the Principal Act made by paragraph (b) of section two and sections five, six, seven, eight, and nine of this Act shall apply to assessments for the financial year beginning on the first day of July One thousand nine hundred and twenty-one and all subsequent years.