
INCOME TAX ASSESSMENT.

No. 18 of 1934.

An Act to amend the *Income Tax Assessment Act 1922-1933*.

[Assented to 4th August, 1934.]

BE it enacted by the King'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 Assessment Act 1934*.

(2.) The *Income Tax Assessment Act 1922-1933** 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 1922-1934*.

Parts.

2. Section three of the Principal Act is amended by inserting after the words "Part III.—Liability to Taxation" the words—

"Division 1.—General.

Division 2.—Private Companies."

* Act No. 37, 1922; as amended by No. 27, 1923; No. 51, 1924; No. 28, 1925; No. 32, 1927; No. 46, 1928; No. 11, 1929; No. 50, 1930; No. 60, 1930; No. 23, 1931; No. 76, 1932; No. 17, 1933; and No. 40, 1933.

3. Section four of the Principal Act is amended—

Definitions.

(a) by inserting after the definition of "Company" the following definition :—

" 'Dividend' means any distribution made by a company to its shareholders, whether in money or other property, out of its profits, and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents the capitalization of the whole or any part of the profits of the company, but does not include a reversionary bonus on a policy of life assurance ; " ;

(b) by inserting after the definition of "Mortgage" the following definition :—

" 'Paid' in relation to dividends includes credited and distributed ; " ;

(c) by inserting after the definition of "Person" the following definition :—

" 'Previous Act' means the *Income Tax Assessment Act 1915* and when used in relation to any time means that Act as in force at that time ; " ;

(d) by inserting in the definition of "Shareholder" before the word "stockholder" the words "member and" ;

(e) by inserting after the definition of "Shareholder" the following definition :—

" 'Special Property Tax' means the further income tax, if any, imposed as a percentage of the taxable income derived by any person—

(a) from property ;

(b) by way of interest, dividends, rents or royalties, whether derived from personal exertion or from property ; and

(c) in the course of carrying on a business, where the income is of such a class that, if derived otherwise than in the course of carrying on a business it would be income from property ; " ; and

(f) by inserting after the definition of "Trustee" the following definitions :—

" 'Year of income' means—

(a) the financial year next preceding the year of tax ; or

(b) the accounting period, if any, adopted under this Act in lieu of that financial year ;

'Year of tax' means the financial year for which tax is levied."

- Amendment of Part III.** 4. Part III. of the Principal Act is amended by inserting after the heading "Part III.—Liability to Taxation." the sub-heading "*Division 1.—General.*"
- Exemptions.** 5. Section fourteen of the Principal Act is amended by omitting paragraph (*m*) of sub-section (1.).
- What is included as income.** 6. Section sixteen of the Principal Act is amended by omitting paragraph (*b*) and inserting in its stead the following paragraph :—
 "(*b*) interest paid or credited to him as a depositor or debenture holder of a company ;".
7. Section sixteen B of the Principal Act is repealed and the following sections inserted in its stead :—
- Dividends.** "16AA.—(1.) The assessable income of a shareholder in a company (whether the company is a resident or an absentee) shall, subject to this section—
- (*a*) if he is a resident, include dividends paid to him by the company out of profits derived by it from any source ; and
 - (*b*) if he is an absentee, include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia.
- "(2.) The assessable income of a shareholder shall not include dividends—
- (*a*) received from a company that does not carry on business in, or derive income from sources in, Australia ;
 - (*b*) paid after the commencement of this section wholly and exclusively out of—
 - (i) income derived from sources outside Australia, not being income which under this Act is or has been assessable income of the company ;
 - (ii) profits arising from the sale or compulsory resumption for public purposes of assets not acquired for the purpose of resale at a profit ;
 - (iii) profits arising from the re-valuation of assets not acquired for the purpose of resale at a profit or from the issue of shares at a premium, if the dividends are paid in the form of shares ;
or
 - (iv) undistributed income accumulated before the first day of July, One thousand nine hundred and fourteen, not being income carried forward by the company in its profit and loss account, appropriation account, revenue and expenses account, or any account similar to any of the foregoing accounts, where the dividends are paid before the first day of July, One thousand nine hundred and thirty-six ;

- (c) paid before the commencement of this section, except to the extent to which the dividends would have been included in the assessable income of the shareholder if the assessment had been made under the law in force at the time when they were paid ; or
- (d) paid before the thirty-first day of December, One thousand nine hundred and thirty-four, in the form of shares, except to the extent that the paid-up value of those shares would have been included in the assessable income of the shareholder if the assessment of his income had been made under the law in force immediately prior to the commencement of this section.

“ 16AB.—(1.) A shareholder shall be entitled to a rebate in his assessment of the amount obtained by applying to that part of the dividends which is included in his taxable income a rate equivalent to—

Rebates on dividends.

- (a) the rate of tax payable by him on income from property ; or
 (b) the rate of tax payable by companies for the year of tax, whichever is the less.

“ (2.) In determining the rate of rebate any special property tax shall not be taken into account.

“ (3.) The part of the dividends so included in the taxable income of the shareholder shall be the amount remaining after deducting from the amount of dividends included in his assessable income the deductions allowable to him under this Act from income from dividends.

“ 16B.—(1.) Amounts distributed to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid-up capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company.

Distributions by liquidators.

“ (2.) Any amount deemed, under the last preceding sub-section, to be a dividend, shall, to the extent to which it represents any income or profits specified in paragraph (b) of sub-section (2.) of section sixteen AA of this Act be deemed, for the purposes of that sub-section to be a dividend paid wholly and exclusively out of that income or those profits.”

8. Section twenty of the Principal Act is amended by omitting sub-sections (4.), (4A.) and (4B.).

Taxation of companies.

9. Sections twenty-one and twenty-one A of the Principal Act are repealed:

Repeal.

Provided that those sections shall continue in force in relation to income derived by a company during any year prior to the year ending on the thirtieth day of June, One thousand nine hundred and thirty four or the accounting period adopted in lieu of any such year.

Deductions.

10. Section twenty-three of the Principal Act is amended by omitting sub-section (2.).

11. After section twenty-three of the Principal Act the following sections are inserted :—

Successive deductions.

“ 23A. Where by this Act it is provided that any deduction shall be made successively from two or more classes of income, the deduction shall be set off against the income of the first of those classes, and, if it exceeds the income of that class, the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.

Deductions in case of composite incomes.

“ 23B. Where the assessable income is derived from more than one of the following classes of income, that is to say, income from personal exertion, income from property other than dividends, and income from dividends, the following provisions shall apply to all deductions allowable under this Act except the statutory exemption :—

- (a) where a deduction relates directly to the income from dividends, it shall be made successively from that income, from the other income from property, and from the income from personal exertion ;
- (b) where a deduction relates directly to income from property other than dividends, it shall be made successively from that income, from the income from dividends, and from the income from personal exertion ;
- (c) in all other cases, the deduction shall be made successively from the income from personal exertion, from the income from property other than dividends, and from the income from dividends.”

12. Section twenty-four of the Principal Act is repealed and the following section inserted in its stead :—

Statutory exemption.

“ 24.—(1.) The following amount (in this Act called “ the statutory exemption ”) shall be a deduction allowable under this Act to any person other than a company or an absentee :—

- (a) the sum of Two hundred and fifty pounds, less One pound for every Two pounds by which the income exceeds Two hundred and fifty pounds; or
- (b) where the income does not exceed Two hundred and fifty pounds, the amount of the income.

In this sub-section “ income ” means the residue after deducting from the assessable income all other deductions allowable under this Act.

“ (2.) The deduction of the statutory exemption shall be made successively from the income from property other than dividends, from the income from dividends and from the income from personal exertion.

“ (3.) Where special property tax is imposed upon the taxable income derived from any sources by any person (other than a company or absentee) the preceding provisions of this section shall not be applied in calculating the amount of the taxable income

subject to that tax but, for the purpose of making that calculation, there shall be deducted, from that part of the assessable income derived from those sources which remains after all other deductions allowable under this Act have been made, the amount of that part or the sum of Two hundred and fifty pounds whichever is the less.”

13. After Part III. of the Principal Act the following Division and sections are inserted :—

“ *Division 2.—Private Companies.*

“31A.—(1.) In this Division, unless the contrary intention appears— Definitions.

‘ distributable income ’ means the amount obtained by deducting from the taxable income of a company all taxes, which, in the year of income, are paid under this or the previous Act, or paid in any country outside Australia, in respect of taxable income of the company under this or the previous Act ;

‘ investment company ’ means a company the income of which, other than dividends from private companies, is ordinarily derived solely or principally from such sources that income derived from those sources by an individual would be income from property ;

‘ nominee ’ of any person means one who may be required to exercise his voting power at the direction of, or holds shares directly or indirectly on behalf of, that person and includes a relative of that person ;

‘ private company ’ means a company which is under the control of not more than seven persons, and which is not a company in which the public are substantially interested or a subsidiary of a public company ;

‘ relative ’ means a husband or wife or a relative by blood, marriage or adoption ; and

‘ undistributed amount ’ means—

(a) the amount by which the dividends paid by a private company out of its taxable income of the year of income fall short of a sufficient distribution ; or

(b) where no dividends have been so paid, the amount which would have been a sufficient distribution.

“ (2.) For the purposes of this Division—

(a) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power, have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year of income beneficially held by, the public (not including a private company) and any such shares have in the course of that year been quoted in the official list of a stock exchange ;

- (b) a company shall be deemed to be a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company is in the hands of one or more companies none of which is a private company ;
- (c) a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons ;
- (d) persons in partnership and persons interested in the estate of a deceased person or in property held in trust shall respectively be deemed to be a single person ;
- (e) a private company shall be deemed to have made a sufficient distribution of its income of the year of income if, before the expiration of nine months after the close of the year, it has paid in dividends out of the taxable income of that year—
 - (a) where it is an investment company—the whole of its distributable income ;
 - (b) where it is not an investment company—
 - (i) if the whole or part of its distributable income consists of dividends received from other private companies—that whole or part, together with two-thirds of the remainder, if any, of the distributable income ; and
 - (ii) in any other case—two-thirds of its distributable income.

Assessment of
additional tax.

“31B.—(1.) Where a private company has not before the expiration of nine months after the close of the year of income made a sufficient distribution of its income of the year, the Commissioner may assess the tax and additional tax which would have been payable by its shareholders if the company had on the last day of the year of income paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive it, and the company shall be liable to pay the tax and additional tax so assessed.

“(2.) Where there is more than one class of shareholders of the company, then for the purpose only of determining which shareholders would have been so entitled, dividends paid within nine months after the close of the year of income out of the taxable income of that year shall be deemed to have been paid in the order in which they were actually paid, but before the last day of that year.

Dividends
paid before
31st March,
1935.

“31c. Any dividend paid by a company on or before the thirty-first day of March, One thousand nine hundred and thirty-five out of the taxable income of the last preceding year of income shall be deemed to have been paid within nine months after the close of that year.

" 31D.—(1.) Where in relation to any private company there an undistributed amount, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of that amount if there had been successive distributions of the relative parts of that amount to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may, in addition to any tax assessed under section thirty-one B of this Act assess the tax and additional tax, if any, which would in that event have been payable by that person, and the private company shall be liable to pay the tax and additional tax so assessed.

Interposition of
companies
trustees and
partnerships.

" (2.) If any company so interposed between the private company and that person is not incorporated in Australia, and the Commissioner is unable to ascertain the identity of that person, or the part of the amount which he would have received, the Commissioner may assess the tax or additional tax, if any, which would have been payable if the company so interposed had only one shareholder, and the private company shall be liable to pay the tax or additional tax so assessed.

" 31E.—(1.) Where the total amount of dividends paid by a private company out of its taxable income of the period of four years next preceding the year of income exceeds the aggregate of the smallest amounts that would have been a sufficient distribution in each of those years, the excess shall, for the purpose of calculating the undistributed amount, be deemed to be a dividend paid out of the taxable income of the year of income.

Excess
distribution of
previous years.

" (2.) For the purpose of calculating the excess—

- (a) any part of the company's taxable income of that period upon which it has paid or is liable to pay tax under this Division or under section twenty-one of the *Income Tax Assessment Act 1922* as in force at any time at which, prior to the commencement of this section, the company so paid or so became liable to pay tax shall be deemed to be a dividend paid by the company during that period; and
- (b) any dividend or part of a dividend paid out of that part of the company's taxable income shall be deemed not to be a dividend.

" 31F. A shareholder of any company shall be entitled to a rebate of the amount by which his income tax is increased by the inclusion in his assessable income of—

Rebates.

- (a) so much of the dividends paid to him by the company before the commencement of this section as is paid out of any amount or amounts in respect of which the company has paid or is liable to pay tax under this Division or under section twenty-one of the *Income Tax Assessment Act 1922* as in force at any time at which, prior to the commencement of this section, the company so paid or so became liable to pay tax; and
- (b) dividends paid to him by the company after the commencement of this section wholly and exclusively out of any such amount or amounts.

Loans to
shareholders.

“ 31G.—(1.) If any amounts are advanced or any assets distributed by a private company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of, or for the individual benefit of, any of its shareholders so much, if any, of those advances, loans or payment as, in the opinion of the Commissioner, represents distributions of income shall, for all purposes of this Act, be deemed to be dividends paid by the company to those shareholders.

“(2.) Where the amount of any advance, loan or payment is deemed, under the last preceding sub-section, to be a dividend paid by a company to its shareholders, and in any year subsequent to that in which the dividend is so deemed to be paid, the company sets off any dividend, distributed by it in that subsequent year, in satisfaction in whole or in part of the amount of that advance, loan or payment, that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for any purpose of this Act.

Payments to
shareholders
and directors.

“ 31H. So much of any sum paid or credited by a private company in any manner to any shareholder or to a director, or to a relative of a shareholder or a director, of the company, and being, or purporting to be, remuneration for services, as exceeds an amount which the Commissioner considers reasonable, shall not be an allowable deduction and the excess shall, for all purposes of this Act, be deemed to be dividends paid to the recipient and received by him as a shareholder of the company.”

Persons to
furnish returns.

14. Section thirty-two of the Principal Act is amended by omitting paragraph (a) of sub-section (1.) and inserting in its stead the following paragraph :—

“(a) in the case of a resident (not being a company) the total assessable income is not less than Two hundred and fifty pounds ;”

Alteration of
Assessment.

15. Section thirty-seven of the Principal Act is amended—

(a) by omitting from paragraph (b) of sub-section (1A.) the word “ and ” (last occurring) ;

(b) by inserting after paragraph (b) of sub-section (1A.) the following paragraph :—

“(ba) Where an application for an alteration in his assessment is made by the taxpayer within three years from the date when the tax payable on the assessment was originally due and payable, and the taxpayer has supplied to the Commissioner, within that period, all information needed by the Commissioner for the purpose of deciding the application—at any time ; and ” ; and

(c) by omitting from paragraph (c) of sub-section (1A.) the words “ that tax ” and inserting in their stead the words “ the tax payable on the assessment ”.

16. Section fifty-one B of the Principal Act is amended by omitting the words " section twenty-one A,".

Objections and
appeals in
certain cases.

17.—(1.) The amendments effected by sections two to eight (inclusive), ten to twelve (inclusive), fourteen and sixteen of this Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-four and all subsequent years.

Application
of Act.

(2.) The amendments effected by section thirteen of this Act shall apply to income derived by a company during the year ending on the thirtieth day of June, One thousand nine hundred and thirty-four, or the accounting period adopted in lieu of that year, and all subsequent years or accounting periods.

(3.) Notwithstanding anything contained in sections six, seven, eight, ten, twelve and fourteen of this Act, the provisions of the Principal Act, which those sections amend or repeal, shall, for all purposes in connection with assessments for financial years prior to the financial year commencing on the first day of July, One thousand nine hundred and thirty-four, continue in force as if this Act had not been passed.
