

# INCOME TAX ASSESSMENT.

**No. 22 of 1942.**

An Act to amend the *Income Tax Assessment Act 1936-1941*.

[Assented to 7th June, 1942.]

**B**E 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 1942*.

(2.) The *Income Tax Assessment Act 1936-1941\** 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 1936-1942*.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. Section five of the Principal Act is amended by omitting the words "Part IIIb.—War Tax." Parts.

4. Section seventeen of the Principal Act is amended by adding at the end thereof the words "but not including a taxable income which does not exceed One hundred and fifty-six pounds derived by a person who is not a company." Income Tax.

5. Section twenty-three of the Principal Act is amended— Exemptions.

(a) by omitting from sub-paragraph (vi) of paragraph (c) the words "or development" and inserting in their stead the words "development or defence";

(b) by omitting from paragraph (s) the word "and" (last occurring); and

(c) by adding at the end thereof the following word and paragraph:—  
"and

(u) in the case of any person enlisted in or appointed to the Naval, Military or Air Forces of the Government of any country outside Australia, the pay and allowances earned in Australia by him as a member of those Forces, if the pay and allowances are not paid, given or granted by the Commonwealth."

6. Section forty-six of the Principal Act is amended—

(a) by adding at the end of sub-section (1.) the words "or, in the case of a company to which Division 8 of this Part applies, the rate of tax payable by mutual life assurance companies for the year of tax"; and

(b) by inserting in sub-section (2A.), after the word "company" (first occurring), the words "other than a company to which Division 8 of this Part applies,".

7. Section fifty of the Principal Act is amended by omitting the words "except the statutory exemption" Deduction in case of composite incomes.

8.—(1.) Section seventy-two of the Principal Act is amended—

(a) by omitting from sub-section (1.) all the words after the words "annually assessed;" and inserting in their stead the following words:—

"or

\* Act No. 27, 1936; as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; and Nos. 58 and 69, 1941.

(b) Federal land tax or land tax imposed under any law of a State or of a Territory being part of the Commonwealth (other than taxes which are deductible under section seventeen of the *Estate Duty Assessment Act 1914-1940*),

to the extent to which those rates or taxes are charged or levied in respect of property held by the taxpayer for the purpose of producing assessable income, shall be allowable deductions." ; and

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

"(1A.) Sums for which the taxpayer is personally liable and which are paid in Australia by him after the thirtieth day of June, One thousand nine hundred and forty-one, but before the first day of July, One thousand nine hundred and forty-four, for income tax imposed under any law of a State or of a Territory being part of the Commonwealth for the financial year beginning on the first day of July, One thousand nine hundred and thirty-eight, on the first day of July, One thousand nine hundred and thirty-nine, or on the first day of July, One thousand nine hundred and forty, shall be allowable deductions in his assessment for the financial year beginning on the first day of July, One thousand nine hundred and forty-one."

Gifts and contributions.

9. Section seventy-eight of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words "and of the statutory exemption" ;
- (b) by omitting paragraph (a) of sub-section (1.) ; and
- (c) by omitting sub-section (2.).

Concessional deductions.

10. Section seventy-nine of the Principal Act is repealed.

Losses of previous years.

11. Section eighty of the Principal Act is amended by omitting from sub-section (1.) the words "the concessional deductions and".

Statutory exemption.  
Definitions.

12. Section eighty-one of the Principal Act is repealed.

13. Section ninety of the Principal Act is amended—

- (a) by omitting from the definition of "net income" the words "concessional deductions, the statutory exemption, and" ; and
- (b) by omitting from the definition of "partnership loss" the words "concessional deductions, the statutory exemption and".

14. After section ninety-three of the Principal Act the following section is inserted :—

Concessional rebates in case of partners.

"93A. Where any amount specified in paragraph (g) or (h) of sub-section (2.) of section one hundred and sixty of this Act is, or any calls specified in section one hundred and sixty AA of this Act are, paid out of moneys forming part of the assets of a partnership,

each partner shall, for the purposes of that section, be deemed to have paid such portion of that amount or of those calls as bears to that amount or to those calls the same proportion as his individual interest in the net income of the partnership bears to that net income.”.

**15.** Section ninety-five of the Principal Act is amended by omitting all the words after the word “allowable” and inserting in their stead the words “deductions, except, in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate, or in respect of any life tenant, the deduction of such of the losses of previous years as are required to be met out of corpus.”.

Net income  
of trust estate.

**16.** Section ninety-eight of the Principal Act is amended by omitting all the words after the word “deduction”.

Beneficiary  
under disability.

**17.** Section ninety-nine of the Principal Act is amended by omitting all the words after the word “deduction”.

Where no  
person  
presently  
entitled.

**18.** After section one hundred of the Principal Act the following section is inserted:

“100A. Where any amount specified in paragraph (g) or (h) of sub-section (2.) of section one hundred and sixty of this Act is, or any calls specified in section one hundred and sixty AA of this Act are, paid by a trustee in respect of the trust estate, the trustee and each beneficiary who is liable to be assessed in respect of a share of the net income of that trust estate shall, for the purposes of section one hundred and sixty or one hundred and sixty AA, as the case may be, be deemed to have paid such portion of that amount or of those calls as bears to that amount or to those calls the same proportion as that share bears to the net income of the trust estate.”.

Concessional  
rebate in case  
of trust estate.

**19.** Section one hundred and three of the Principal Act is amended by omitting paragraph (a) of the definition of “distributable income” and inserting in its stead the following paragraph:—

Definitions.

“(a) all taxes which are paid in the year of income—

- (i) under this or the previous Act;
- (ii) under any law of a State or of a Territory being part of the Commonwealth imposing a tax upon incomes, if the taxes have not been allowed or are not allowable as deductions under section seventy-two of this Act in any assessment for any financial year; or
- (iii) in any country out of Australia in respect of income of the company which is taxable under this or the previous Act,

less any refund received in the year of income of any tax to which this paragraph refers; and”.

- Definitions.** 20. Section one hundred and ten of the Principal Act is amended by inserting after the definition of "life assurance company" the following definition :—  
 " 'mutual life assurance company' means a life assurance company the profits of which are divisible only among the policy holders ; "
- Deduction of three per centum of calculated liabilities.** 21. Section one hundred and fifteen of the Principal Act is amended by omitting the word "four" and inserting in its stead the word "three".
- Interest paid by a company to non-resident.** 22. Section one hundred and twenty-five of the Principal Act is amended by omitting from sub-section (1.) the words "Two hundred pounds" and inserting in their stead the words "One hundred and fifty-six pounds".
- Rebate in case of double and treble taxation.** 23. Section one hundred and fifty-nine of the Principal Act is amended by omitting from paragraph (a) of sub-section (3.) the words "before the deduction of" and inserting in their stead the words "after the deduction of all rebates other than the".
- Concessional rebates.** 24. Section one hundred and sixty of the Principal Act is repealed and the following section inserted in its stead :—  
 " 160.—(1.) A taxpayer shall be entitled to a rebate in his assessment of tax equal to an amount ascertained by applying—  
 (a) to each of the amounts set forth in sub-section (2.) of this section where the taxpayer is a resident ; or  
 (b) to each of the amounts set forth in paragraphs (g) and (h) of that sub-section where the taxpayer is not a resident,  
 the rate of tax appropriate to a taxable income from personal exertion equal to the taxable income of the taxpayer, or, where the taxpayer is a company, the rate appropriate to the taxable income of the company.  
 " (2.) The amounts in respect of which a rebate of tax shall be allowed under the last preceding sub-section shall be—  
 (a) in respect of the spouse of the taxpayer, or, where the taxpayer is a widower or widow, in respect of a female relative having the care of any of the taxpayer's children who are under sixteen years of age, if the spouse or relative is a resident and is wholly maintained by the taxpayer an amount—  
 (i) where the taxable income of the taxpayer exceeds Two hundred pounds but does not exceed Two hundred and fifty pounds—equal to half the taxable income ;  
 (ii) where the taxable income of the taxpayer exceeds Two hundred and fifty pounds but is less than Three hundred pounds—of One hundred pounds and half the amount by which the taxable income is less than Three hundred pounds ; and  
 (iii) in any other case—of One hundred pounds.

For the purpose of this paragraph, the spouse or relative shall be deemed to be wholly maintained by the taxpayer if the separate net income derived from all sources by the spouse or relative in the year of income does not exceed Fifty pounds and the taxpayer contributes to the maintenance of the spouse or relative, and not otherwise :

Provided that, if that spouse or relative is wholly maintained by the taxpayer during part only of the year of income, the amount shall be such part of what the amount otherwise would be as, in the opinion of the Commissioner, is reasonable in the circumstances :

Provided further that the rebate of tax allowed in respect of this paragraph shall not exceed Forty-five pounds ;

(b) in respect of each child who is a resident and under the age of sixteen years at the beginning of the year of income and wholly maintained by the taxpayer—

(i) in respect of an only child or in respect of the elder or eldest of such children—an amount of Seventy-five pounds ; and

(ii) in respect of a child who is not an only child or the elder or eldest of such children—an amount of Thirty pounds :

Provided that, where a child is born during the year of income, or attains the age of sixteen years during the year, or is wholly maintained by the taxpayer during part only of the year, or is only partially maintained by him during the whole or part of the year, the sum of the amounts for the purposes of this paragraph shall be such part of what that sum would be if the child had, throughout the year of income, been a child under the age of sixteen years wholly maintained by the taxpayer as, in the opinion of the Commissioner, is reasonable in the circumstances :

Provided further that the rebate of tax allowed in respect of sub-paragraph (i) of this paragraph shall not exceed Forty-five pounds, and the rebate of tax allowed in respect of sub-paragraph (ii) of this paragraph shall not exceed Five pounds in respect of each such child ;

(c) an amount of One hundred pounds in respect of the mother of the taxpayer if she is a resident and is wholly maintained by the taxpayer :

Provided that, if the mother is wholly maintained by the taxpayer during part only of the year of income, the amount shall be such part of the sum of One hundred pounds as, in the opinion of the Commissioner, is reasonable in the circumstances :

Provided further that the rebate of tax allowed in respect of this paragraph shall not exceed Forty-five pounds ;

- (d) amounts not exceeding Fifty pounds in the aggregate paid by the taxpayer in the year of income to any legally qualified medical practitioner, nurse or chemist, or public or private hospital, in respect of any illness of or operation upon the taxpayer or his spouse or any of his children under the age of twenty-one years, if the spouse or child is a resident ;
- (e) amounts not exceeding Twenty pounds in the aggregate paid by the taxpayer in the year of income for funeral and burial or cremation expenses arising out of the death of his spouse, or of any of his children under the age of twenty-one years, if the spouse or child was, at the time of death, a resident, to the extent to which those expenses are not recouped to him by any society or association ;
- (f) amounts paid by the taxpayer in the year of income, not exceeding in the aggregate One hundred pounds, and being—
  - (i) premiums or sums for insurance on the life of the taxpayer or of his spouse or children, or for a deferred annuity or other like provision for his spouse or children ;
  - (ii) payments to superannuation, sustentation, widow's or orphans' funds, or to any friendly society, for the personal benefit of the taxpayer or of his spouse or children ; or
  - (iii) payments made by the taxpayer to any fund established by any Act or State Act relating to insurance for the personal benefit of the taxpayer or of his spouse or children ;
- (g) gifts (not exceeding in the aggregate an amount equal to the taxable income) of the value of One pound and upwards of money or of property other than money which was purchased by the taxpayer within twelve months immediately preceding the making of the gift, made by the taxpayer in the year of income to any of the following funds, authorities or institutions in Australia :—
  - (i) a public hospital ;
  - (ii) a public benevolent institution ;
  - (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions in Australia, or for the establishment of such hospitals or institutions, or for the relief of persons in Australia who are in necessitous circumstances ;
  - (iv) a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants, where the gift is for such research, or a public institution engaged solely in such research ;

- (v) a public university or a public fund for the establishment of a public university ;
  - (vi) a residential educational institution affiliated under statutory provisions with a public university, or established by the Commonwealth ;
  - (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the war which commenced on the fourth day of August, One thousand nine hundred and fourteen or the third day of September, One thousand nine hundred and thirty-nine ;
  - (viii) a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the armed forces of any part of His Majesty's dominions, or of any allied or other foreign force serving in association with His Majesty's armed forces ; and
  - (ix) the Commonwealth, when made for purposes of defence ; and
- (h) amounts for which the taxpayer is personally liable and which are paid in Australia by him in the year of income for--
- (i) rates which are annually assessed ;
  - (ii) Federal land tax or land tax imposed under any law of a State or of a Territory being part of the Commonwealth (other than taxes which are deductible under section seventeen of the *Estate Duty Assessment Act 1914-1940*),
- not being rates or taxes which are allowable as deductions under section seventy-two of this Act.

“(3.) Where a taxpayer in the year of income receives a refund of any amount paid for rates or taxes to which paragraph (h) of the last preceding sub-section refers, and in respect of which a rebate has been allowed or is allowable in any assessment for income tax under this Act, or in respect of which a deduction has been allowed or is allowable in any assessment for income tax under this Act or any previous law of the Commonwealth, the amount upon which the rebate under that paragraph would otherwise be based shall be reduced by the amount of that refund.”

25. Section one hundred and sixty AA of the Principal Act is amended by omitting paragraphs (a) and (b) of sub-section (1.) and inserting in their stead the following paragraph :—

Rebate of tax in respect of calls to companies.

“(a) where the taxpayer is not a company—one-third of the rate of tax appropriate to a taxable income from personal exertion equal to the taxable income of the taxpayer ; or ”.



26. After section one hundred and sixty AA of the Principal Act the following sections are inserted in Part III. :—

Rebate in respect of loan interest.

“ 160AB. A taxpayer shall be entitled to a rebate in his assessment of an amount of two shillings for every pound of interest which is included in his taxable income and which is derived from bonds, debentures, stock or other securities issued by—

- (a) the Government of the Commonwealth, except securities to which section twenty of the *Commonwealth Debt Conversion Act* 1931 or sub-section (2) of section fifty-two B of the *Commonwealth Inscribed Stock Act* 1911–1940 applies ;
- (b) the Government of a State ; or
- (c) any public or municipal trust, body, corporation or bank constituted under any State Act if, under the law of that State, the interest was, at the commencement of this section, exempt from tax imposed upon incomes by that law, irrespective of whether the interest was payable to a resident or a non-resident of that State, or, where the bonds, debentures, stock, or other securities are issued after the commencement of this section, if the prospectus or conditions of the loan provide that the interest shall be exempt from tax imposed by the law of that State irrespective of whether the interest is payable to a resident or a non-resident of that State.

Where rebatable amounts exceed taxable income.

“ 160AC. Notwithstanding anything contained in section one hundred and sixty or one hundred and sixty AA of this Act, where the sum of the amounts in respect of which the taxpayer is entitled to a rebate under paragraph (g) of sub-section (2.) of section one hundred and sixty and section one hundred and sixty AA exceeds his taxable income, each such amount in respect of which he would, but for this section, be so entitled to a rebate shall, for the purpose of ascertaining that rebate, be reduced by an amount which bears to the excess of the sum of those amounts over his taxable income the same proportion as that first-mentioned amount bears to the sum of those amounts.

Rebates to be calculated to nearest shilling.

“ 160AD. Notwithstanding anything contained in this or any other Act—

- (a) the sum of the rebates allowable under this Act shall not exceed the amount of tax which would otherwise be payable by the taxpayer ; and
- (b) where the sum of all the rebates allowable under this Act leaves an amount of pence remaining when expressed in pounds and shillings—
  - (i) if the remaining pence do not exceed six--the sum of the rebates shall be the amount so expressed in pounds and shillings ; or
  - (ii) if the remaining pence exceed six--the sum of the rebates shall be the amount so expressed in pounds and shillings plus one shilling.

“ 160A~~B~~. For the purposes of this Division, other than section one hundred and fifty-nine—

Rate of tax  
for rebate  
purposes.

- (a) any reference to a rate of tax appropriate to a taxable income shall be read as a reference to a rate per pound ascertained by dividing by that taxable income the tax which, but for any rebate to which he is entitled in his assessment (other than the rebate allowable under section one hundred and seven of this Act), would be payable by the taxpayer in respect of that taxable income ;
- (b) tax payable by a taxpayer which is a company shall not include—
  - (i) any tax imposed by any Act as a super-tax on part of the taxable income of a company ; or
  - (ii) any further tax imposed on that portion of the taxable income of a company which has not been distributed as dividends ; and
- (c) the value of a gift of property other than money shall be the value of the property at the time of the making of the gift or the amount paid by the taxpayer for the property whichever is the less.”.

27. Section one hundred and sixty c of the Principal Act is amended—

Undistributed  
income of  
company.

- (a) by omitting paragraph (i) of sub-section (1.) and inserting in its stead the following paragraph :—

“ (i) all taxes which are paid in the year of income—

- (a) under this or the previous Act ;
- (b) under any Act passed by the Parliament imposing a war-time tax upon companies ;
- (c) under any law of a State or of a Territory being part of the Commonwealth imposing a tax upon incomes, if the taxes have not been allowed or are not allowable as deductions under section seventy-two of this Act in any assessment for any financial year ; or
- (d) in any country out of Australia in respect of income of the company which is taxable under this or the previous Act,

less any refund received in the year of income of any tax to which this paragraph refers ; ” :

- (b) by omitting from paragraph (ii) of sub-section (1.) the word “ and ” ;

(c) by adding at the end of sub-section (1.) the following word and paragraph :—

“; and

(iv) in the case of a life assurance company, the amount of mutual income remaining after deducting therefrom that portion of any taxes deducted from the taxable income in accordance with paragraph (i) of this sub-section which, in the opinion of the Commissioner, is attributable to mutual income.”; and

(d) by inserting after sub-section (1.) the following sub-section :—

“(1A.) For the purposes of paragraph (iv) of the last preceding sub-section—

‘life assurance company’ means a company the sole or principal business of which is life assurance ;

‘mutual income’ means so much of that part of the taxable income of a life assurance company (other than a mutual life assurance company) which has been derived from its life assurance business as bears the same proportion to such part of the taxable income as the amount of the profits divided for the same year of income among the life assurance policy holders of the company bears to the total profits of the company’s life assurance business for the same year of income ;

‘mutual life assurance company’ means a life assurance company the profits of which are divisible only among the policy holders.”.

Division not to apply to certain companies.

**28.** Section one hundred and sixty E of the Principal Act is amended by inserting after the words “apply to” the words “a mutual life assurance company or to”.

Repeal of Part III B.

**29.** Part III B. of the Principal Act is repealed.

Amendment assessments.

**30.** Section one hundred and seventy of the Principal Act is amended by adding at the end thereof the following sub-section :—

“(10.) Nothing in this section shall prevent the amendment, at any time, of an assessment for the purpose of allowing the deduction provided in sub-section (1A.) of section seventy-two of this Act.”.

**31.** After section two hundred and twenty of the Principal Act the following section is inserted in Division 1 of Part VI. :—

“221.—(1.) For the better securing to the Commonwealth of the revenue required for the efficient prosecution of the present war—

(a) a taxpayer shall not pay any tax imposed by or under any State Act on the income of any year of income in respect of which tax is imposed by or under any Act with which

Payment of Tax to have priority over all other tax

this Act is incorporated until he has paid that last-mentioned tax or has received from the Commissioner a certificate notifying him that the tax is no longer payable ; and

(b) notwithstanding anything contained in any other Act or State Act—

(i) a person who is a trustee within the meaning of the *Bankruptcy Act* 1924–1933 shall apply the estate of the bankrupt in payment of tax due under this Act (whether assessed before or after the date of the order of sequestration) in priority to all other unsecured debts other than debts of the classes specified in paragraphs (a), (d) or (e) of sub-section (1.) of section eighty-four of that Act ; and

(ii) the liquidator of a company which is being wound up shall apply the assets of the company in payment of tax due under this Act (whether assessed before or after the date of the commencement of the winding up) in priority to all other unsecured debts :

Provided that, where, under the law of any State relating to the payment of debts on the winding up of a company, debts of the classes specified in paragraph (a), (d) or (e) of sub-section (1.) of section eighty-four of the *Bankruptcy Act* 1924–1933 are preferred to all unsecured debts due to the Crown in the right of that State, debts of those classes may also be paid in priority to any tax due under this Act.

Penalty : One hundred pounds or imprisonment for six months, or both, and, in addition, the court may order the person, trustee or liquidator, as the case may be, to pay to the Commissioner a sum not exceeding double the amount of tax due by him, or by the bankrupt estate or company in liquidation, as the case may be, on the date on which the offence occurred.

“(2.) This section shall have operation during the present war and until the last day of the first financial year to commence after the day on which His Majesty ceases to be engaged in the present war, and no longer.”.

**32.** The amendments effected by this Act, other than that effected by section thirty-one, shall apply to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty-two and all subsequent years. Application of Act.