

WAR-TIME (COMPANY) TAX ASSESSMENT.

No. 52 of 1942.

An Act to amend the *War-time (Company) Tax Assessment Act 1940-1941*.

[Assented to 6th October, 1942.]

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 *War-time (Company) Tax Assessment Act 1942*.

(2.) The *War-time (Company) Tax Assessment Act 1940-1941** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *War-time (Company) Tax Assessment Act 1940-1942*.

Commencement.

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

Definitions.

3. Section three of the Principal Act is amended—

(a) by inserting after the definition of “ person ” the following definition :—

“ ‘ present war ’ means the war which commenced on the third day of September, One thousand nine hundred and thirty-nine, and includes any other war in which His Majesty has become or becomes engaged during the continuance of that war ; ”

* Act No. 90, 1940, as amended by No. 56, 1941.

(b) by omitting from paragraph (b) of the definition of "taxable profit" the word "and";

(c) by adding at the end of that definition the following paragraphs:—

"(d) so much of any income tax imposed under the law of a State or of a Territory being part of the Commonwealth for which a company is liable and which is paid by it in the accounting period as is not deductible under the Income Tax Assessment Act in ascertaining the taxable income of any year; and

"(e) in the case of a life assurance company which, in the accounting period, has any mutual income as defined in sub-section (1A.) of section one hundred and sixty c of the Income Tax Assessment Act—the amount remaining after deducting from that mutual income so much of the income tax payable in respect of the taxable income of the accounting period as is attributable to that mutual income."; and

(d) by inserting at the end thereof the following sub-section:—

"(2.) For the purpose of calculating the deduction under paragraph (a) of the definition of 'taxable profit' in the last preceding sub-section, the income tax payable by a company for the financial year commencing on the first day of July, One thousand nine hundred and forty-two, shall be calculated as if in paragraph (a) of the Seventh Schedule to the *Income Tax Act 1942* the words 'forty-eight pence' were substituted for the words 'seventy-two pence'."

4. Section thirteen of the Principal Act is amended by inserting after the word "thereafter", the words " , up to and including the financial year next succeeding that in which the present war terminates,".

War-time
(Company)
Tax.

5. Section twenty-two of the Principal Act is amended by adding at the end thereof the following sub-section:—

Board of
referees.

"(6.) A claim under sub-section (5.) of this section shall be made not later than the end of the first year of tax in the assessment for which it is claimed that the greater statutory percentage should apply:

Provided that a claim in respect of an assessment for the year of tax ended on the thirtieth day of June, One thousand nine hundred and forty-one or on the thirtieth day of June, One thousand nine hundred and forty-two, may be made at any time prior to the first day of January, One thousand nine hundred and forty-three."

Increase in statutory percentage in particular cases.

6. Section twenty-three of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5.) A claim under this section shall be made not later than sixty days after service of the notice of assessment upon the taxable profit of the accounting period in respect of which the claim is made:

Provided that where a notice of assessment of the taxable profit of any accounting period was served upon a company prior to the commencement of this sub-section, a claim in respect of that accounting period may be made at any time prior to the first day of January, One thousand nine hundred and forty-three.”.

Ascertainment of capital.

7. Section twenty-four of the Principal Act is amended—

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

(b) by adding at the end of that sub-section the following word and paragraph:—

“; and (iv) in the case of a life assurance company which, in the accounting period, has any mutual income as defined in sub-section (1A.) of section one hundred and sixty c of the Income Tax Assessment Act - so much of the amount which would, but for this paragraph, be the capital employed as bears to that amount the same proportion as that mutual income bears to the company's total taxable income of the accounting period as assessed under the Income Tax Assessment Act.”.

Increase by Board of referees of capital employed.

8. Section twenty-five of the Principal Act is amended by adding at the end thereof the following sub-section: -

“(6.) An application under this section shall be made not later than sixty days after service of the notice of assessment upon the taxable profit of the accounting period in respect of which the application is made:

Provided that where a notice of assessment of the taxable profit of any accounting period was served upon a company prior to the commencement of this sub-section an application in respect of that accounting period may be made at any time prior to the first day of January, One thousand nine hundred and forty-three.”.

9. Section thirty-five of the Principal Act is repealed and the following section inserted in its stead:—

“35.—(1.) Where a company which has preference shareholders has, either before or after the commencement of this section, paid or become liable to pay tax under this Act it may, notwithstanding anything contained in its memorandum or articles of association or in any other document or agreement, deduct by one or more instalments from so much of any dividend subsequently declared as is

Dividends payable to preference shareholders.

payable to the holder of any preference share an amount which bears the same proportion to the amount of that tax as the amount paid out of the taxable profit on which the tax was assessed, as dividends on that share, bears to that taxable profit, and may retain the amount so deducted for its own use :

Provided that, for the purpose of calculating that proportion, the amount to be taken into account as the amount of dividends paid—

- (a) shall not include so much of any dividend paid to the holder of any participating preference share as represents a distribution made in excess of the fixed rate applicable to the share ; and
- (b) shall be deemed to include any amount deducted or to be deducted in pursuance of this section.

“(2.) For the purposes of this section, where a dividend on any share is paid out of profits which include the whole or part of the taxable profit, and the resolution declaring the dividend does not specify that any ascertained part of the dividend is to be payable out of the taxable profit, so much of the dividend as bears the same proportion to the whole dividend as the taxable profit included in those profits bears to the whole of those profits shall be deemed to be paid out of the taxable profit.”.

10. Section thirty-eight of the Principal Act is repealed.

Repeal of
sec. 38.

11. The amendments effected by sections three and seven of this Act shall apply to all assessments for the financial year which commenced on the first day of July, One thousand nine hundred and forty-two and all subsequent financial years.

Application
of Act.