

Income Tax Assessment

No. 4 of 1968

An Act to amend the Law relating to Income Tax.

[Assented to 8 May 1968]

BE it enacted by the Queen'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* 1968. Short title and citation.

(2) The *Income Tax Assessment Act* 1936–1967* 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* 1936–1968.

2.—(1) Subject to the next succeeding sub-section, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

(2) The amendments made by paragraph (b) of section 3, and by sections 4, 5, 12 and 13, of this Act shall have effect from and including the first day of July, One thousand nine hundred and sixty-eight.

3. Section 6 of the Principal Act is amended— Interpretation.

(a) by inserting in sub-section (1.), after the definition of “pearling operations”, the following definition:—

“ ‘ permanent establishment ’, in relation to a person (including the Commonwealth, a State or an authority of the Commonwealth or a State), means a place at or through which the person carries on any business and, without limiting the generality of the foregoing, includes—

- (a) a place where the person is carrying on business through an agent;
- (b) a place where the person has, is using or is installing substantial equipment or substantial machinery;
- (c) a place where the person is engaged in a construction project; and

* Act No. 27, 1936, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; and Nos. 19, 38, 76 and 85, 1967.

(d) where the person is engaged in selling goods manufactured, assembled, processed, packed or distributed by another person for, or at or to the order of, the first-mentioned person and either of those persons participates in the management, control or capital of the other person or another person participates in the management, control or capital of both of those persons—the place where the goods are manufactured, assembled, processed, packed or distributed,

but does not include—

(e) a place where the person is engaged in business dealings through a *bona fide* commission agent or broker who, in relation to those dealings, acts in the ordinary course of his business as a commission agent or broker and does not receive remuneration otherwise than at a rate customary in relation to dealings of that kind, not being a place where the person otherwise carries on business;

(f) a place where the person is carrying on business through an agent—

(i) who does not have, or does not habitually exercise, a general authority to negotiate and conclude contracts on behalf of the person; or

(ii) whose authority extends to filling orders on behalf of the person from a stock of goods or merchandise situated in the country where the place is located, but who does not regularly exercise that authority,

not being a place where the person otherwise carries on business; or

(g) a place of business maintained by the person solely for the purpose of purchasing goods or merchandise;”;

(b) by inserting in sub-section (1.), before the definition of “Second Commissioner”, the following definition:—

“ ‘royalty’ includes any payment to the extent that the payment falls within the definition of ‘royalties’ in paragraph (5) of Article 10 of the Agreement between the Government of the Commonwealth and the Government of the United Kingdom a copy of which is set out in the First Schedule to the *Income Tax (International Agreements) Act 1953-1968*;” ; and

(c) by adding at the end thereof the following sub-section:—

“(6.) Where a place is, by virtue of paragraph (d) of the definition of ‘permanent establishment’ in sub-section (1.) of this section, a permanent establishment of a person, the person shall,

for the purposes of this Act, be deemed to be carrying on at or through that permanent establishment the business of selling the goods manufactured, assembled, processed, packed or distributed by the other person at the place that is that permanent establishment.”.

4. After section 6B of the Principal Act the following section is inserted:—

“ 6c.—(1.) This section applies to income that is derived on or after the first day of July, One thousand nine hundred and sixty-eight, by a non-resident and consists of royalty that—

Source of
royalty
income derived
by a non-
resident.

- (a) is paid to the non-resident by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident and is not an outgoing wholly incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country; or
- (b) is paid to the non-resident by a person who is, or by persons each of whom is, a non-resident and is, or is in part, an outgoing incurred by that person or those persons in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia.

“ (2.) For the purposes of sections twenty-five and two hundred and fifty-five of this Act, but subject to the next two succeeding sub-sections, income to which this section applies shall be deemed to have been derived from a source in Australia.

“ (3.) Where—

- (a) income to which this section applies is paid to the non-resident by whom it is derived by the Commonwealth, by a State, by an authority of the Commonwealth or of a State or by a person who is, or by persons at least one of whom is, a resident; and
- (b) the royalty of which the income consists is, in part, an outgoing incurred by the Commonwealth, the State, the authority or that person or those persons in carrying on business in a country outside Australia at or through a permanent establishment of the Commonwealth, the State, the authority or that person or those persons in that country,

the last preceding sub-section has effect in relation to so much only of the income as is attributable to so much of the royalty as is not an outgoing so incurred.

“ (4.) Where—

- (a) income to which this section applies is paid to the non-resident by whom it is derived by a person who, or by persons each of whom, is a non-resident; and

(b) the royalty of which the income consists is, in part only, an outgoing incurred by the person or persons by whom it is paid in carrying on business in Australia at or through a permanent establishment of that person or those persons in Australia, sub-section (2.) of this section has effect in relation to so much only of the income as is attributable to so much of the royalty as is an outgoing so incurred.”.

Certain items of assessable income.

5. Section 26 of the Principal Act is amended by inserting in paragraph (f), after the word “royalty”, the words “, other than an amount that, but for the definition of ‘royalty’ in sub-section (1.) of section six of this Act, would not be such an amount”.

Credit in respect of tax paid abroad on ex-Australian dividends.

6. Section 45 of the Principal Act is amended by omitting subparagraph (ii) of paragraph (a) of sub-section (1.) and inserting in its stead the following subparagraph:—

“(ii) of the amount which, if it were necessary to ascertain the amount of Australian tax payable in respect of the dividend in accordance with the provisions of section fifteen of the *Income Tax (International Agreements) Act 1953–1968* and the dividend were a relevant part of the taxpayer’s income of the year of income for the purposes of that Act, would be the amount so ascertained.”.

Interpretation.

7. Section 103 of the Principal Act is amended by omitting paragraph (a) of the definition of “the distributable income” in sub-section (1.) and inserting in its stead the following paragraph:—

“(a) the tax payable under this Act before the allowance of any rebate under section sixteen of the *Income Tax (International Agreements) Act 1953–1968* (other than the tax payable under this Division) in respect of the income of the year of income;”.

Interpretation.

8. Section 128A of the Principal Act is amended by omitting sub-sections (5.), (6.) and (7.).

9. Section 160AG of the Principal Act is repealed and the following section inserted in its stead:—

Reduction of credit in certain circumstances.

“160AG.—(1.) Where—

- (a) a credit allowable under this Division relates wholly or in part to tax paid in respect of income to which this section applies;
- (b) a credit allowable under or by virtue of section forty-five of this Act or the *Income Tax (International Agreements) Act 1953–1968* also relates wholly or in part to tax paid in respect of that income; and
- (c) the amount that, but for this section, would be the sum of those credits in so far as they relate to tax paid in respect of that income

exceeds the amount that would be the amount of Australian tax payable in respect of that income as ascertained in accordance with section fifteen of the *Income Tax (International Agreements) Act 1953-1968* if that income were a relevant part of the taxpayer's income for the purposes of that Act,

the credit referred to in paragraph (a) of this sub-section shall be reduced by the amount of the excess.

“(2.) Where a credit referred to in the last preceding sub-section relates in part only to tax paid in respect of income to which this section applies, the amount of that credit that relates to tax paid in respect of that income is, for the purposes of that sub-section, such amount as the Commissioner, having regard to all the circumstances of the case, determines.

“(3.) In this section, ‘income to which this section applies’ means a dividend, a part of a dividend or an amount of income attributable to a dividend.”.

10. Section 160AH of the Principal Act is amended by omitting paragraph (a) of the definition of “non-Australian tax” and inserting in its stead the following paragraph:— Definitions.

“(a) tax, other than Australian tax, that is the subject of an agreement within the meaning of the *Income Tax (International Agreements) Act 1953-1968*; and”.

11. Section 160AM of the Principal Act is amended by omitting the words “any amount to which that person is entitled in respect of any relief or repayment of non-Australian tax” and inserting in their stead the words “any amount to which a person is entitled in respect of any relief or repayment of non-Australian tax in respect of income derived by the person claiming the credit”. Information for credit to be furnished within three years.

12. Section 255 of the Principal Act is amended by adding at the end thereof the following sub-section:— Person in receipt or control of money for non-resident.

“(3.) Where the Commonwealth, a State or an authority of the Commonwealth or a State has the receipt, control or disposal of money belonging to a non-resident, this section (other than paragraph (c) of sub-section (1.)) applies to and in relation to the Commonwealth, the State or the authority, as the case may be, in the same manner as it applies to and in relation to any other person.”.

13. Section 256 of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the word “person”, the words “(including the Commonwealth, a State or an authority of the Commonwealth or a State)”; and

Person paying royalty to a non-resident taxpayer.

(b) by adding at the end of sub-section (2.) the words “ and, where a person liable to pay money as or by way of royalty to a non-resident has, under the last preceding sub-section, ascertained from the Commissioner the amount to be retained in respect of tax which is due, or may become due, by the non-resident, paragraph (b) of sub-section (1.) of the last preceding section has effect as if it authorized and required the person to retain from the money the amount so ascertained.”.

Application of
amendments.

14. The amendments made by sections 6, 7, 9, 10 and 11 of this Act apply to assessments in respect of income, and determinations of credits in respect of tax upon income, of the year of income that commenced on the first day of July, One thousand nine hundred and sixty-seven, and of all succeeding years of income.
