

Income Tax Assessment Act (No. 3) 1973

No. 53 of 1973

AN ACT

To amend the Law relating to Income Tax in relation
to Reviews and Appeals.

[Assented to 18 June 1973]

BE IT ENACTED by the Queen, the Senate and the House of
Representatives of Australia, as follows:—

1. (1) This Act may be cited as the *Income Tax Assessment Act (No. 3)* 1973. Short title
and citation.

(2) The *Income Tax Assessment Act 1936–1972*,* as amended by the *Income Tax Assessment Act 1973*† and the *Income Tax Assessment Act (No. 2) 1973*,‡ is in this Act referred to as the Principal Act.

(3) Section 1 of the *Income Tax Assessment Act (No. 2) 1973* is amended by omitting sub-section (4).

(4) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act 1936–1973*.

* 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, 105 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; and Nos. 5, 46, 47, 65 and 85, 1972.

† Act No. 51, 1973.

‡ Act No. 52, 1973.

Commence-
ment.

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

Application
for appeal
or review.

3. Section 187 of the Principal Act is amended by omitting from paragraph (b) the words "either to the High Court or to the Supreme Court of a State" and substituting the words "to the Supreme Court of a specified State".

Appeal or
reference
to Supreme
Court.

4. Section 196 of the Principal Act is repealed and the following section substituted:—

"196. (1) The Commissioner or the taxpayer may appeal to the Supreme Court of a State from any decision of the Board which involves a question of law.

"(2) The Board shall, upon the request of the Commissioner or the taxpayer, refer a question of law arising before the Board to the Supreme Court of such State as is agreed on by the parties or, in the absence of any agreement, to the Supreme Court of such State as the Board considers appropriate.

"(3) An appeal or reference to the Supreme Court of a State under this section shall be heard by a single Judge of the Court.

"(4) Except as provided in sub-section (5), the decision of the Supreme Court of a State constituted by a single Judge on an appeal or reference under this section is final and conclusive.

"(5) The Commissioner or the taxpayer may, by leave of the High Court, appeal to the High Court against a decision of the Supreme Court of a State on an appeal or reference under this section."

5. After section 196 of the Principal Act the following section is inserted:—

Practice and
procedure
of Supreme
Courts.

"196A. (1) Until regulations have been made under this Act for or in relation to the practice and procedure of the Supreme Court of a State in proceedings to which this section applies, and so far as regulations so made do not make adequate provision, the High Court Rules as in force immediately before the date of commencement of this section under the *Judiciary Act 1903-1969* apply, so far as practicable, to and in relation to a proceeding to which this section applies in like manner as they applied immediately before that date to and in relation to the like proceeding in the High Court.

"(2) This section applies to a proceeding in the Supreme Court of a State, being—

- (a) a proceeding in respect of an objection to an assessment that has, under section 187, been forwarded to the Supreme Court of that State;

- (b) an appeal under section 196 to the Supreme Court of that State from a decision of the Board; or
- (c) a reference under section 196 of a question of law arising before the Board to the Supreme Court of that State.”.

6. Section 197 of the Principal Act is amended—

- (a) by omitting the words “ the High Court or ”; and
- (b) by omitting the words “ Justice or ”.

Constitution
of Court
on appeal.

7. Section 266 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Regulations.

“ (2) Without limiting the generality of sub-section (1), the Governor-General may make regulations, not inconsistent with this Act, for or in relation to the practice and procedure of the Supreme Courts of the States in respect of proceedings to which section 196A applies, including regulations—

- (a) prescribing matters relating to the costs of those proceedings and the assessment or taxation of those costs; and
- (b) prescribing the court fees to be charged in respect of those proceedings.”.

8. (1) Notwithstanding the amendments to Division 2 of Part V of the Principal Act made by this Act—

Application
and
transitional
provisions.

- (a) an appeal to the High Court—
 - (i) in accordance with the provisions of section 187 of the Principal Act in respect of an objection in respect of which notice of the Commissioner’s decision was served on the taxpayer before the date of commencement of this section; or
 - (ii) in accordance with the provisions of section 196 of the Principal Act against a decision of the Board of Review given before that date,
 may be instituted, heard and determined; and
- (b) an appeal to the High Court instituted before that date or a reference of a question of law to the High Court made before that date under Division 2 of Part V of the Principal Act may be heard and determined,

as if those amendments had not been made, and the provisions of Division 2 of Part V of the Principal Act continue to apply in relation to such an appeal or reference and matters arising out of such an appeal or reference.

(2) The High Court may remit to the Supreme Court of a State an appeal or reference referred to in sub-section (1) at any time and at any stage of the proceeding, and either with or without application by any of the parties to the proceeding.

(3) Where a proceeding is remitted by the High Court to the Supreme Court of a State under this section—

- (a) all documents filed of record in the High Court in the proceeding shall be transmitted by the Registrar or other proper officer of the High Court to the Registrar or other proper officer of the Supreme Court;
- (b) the Registrar or other proper officer of the High Court shall, unless the proceeding is remitted upon an application made by a party to the proceeding, cause the parties to the proceeding to be notified that the proceeding has been so remitted;
- (c) the Supreme Court shall proceed as if the proceeding had been originally instituted in that Court and as if the same proceedings had been taken in that Court as had been taken in the High Court, and all subsequent proceedings shall be in accordance with the practice and procedure that would be applicable if it had been instituted in the Supreme Court after the commencement of this section;
- (d) the proceeding shall be heard by a single Judge of the Supreme Court;
- (e) except as provided in paragraphs (f) and (g), the decision of the Supreme Court constituted by a single Judge in the proceeding is final and conclusive;
- (f) where the proceeding is an appeal in accordance with the provisions of section 187 of the Principal Act—the Commissioner or the taxpayer may appeal to the High Court against the decision of the Supreme Court in the proceeding; and
- (g) where the proceeding is an appeal or reference in accordance with the provisions of section 196 of the Principal Act—the Commissioner or the taxpayer may, by leave of the High Court, appeal to the High Court against the decision of the Supreme Court.

(4) Where a taxpayer has, before the commencement of this section, requested the Commissioner to treat his objection as an appeal and forward it to the High Court, the taxpayer may, at any time before the request is forwarded to the High Court, by an amendment of the request, request the Commissioner to forward the objection to the Supreme Court of a State and thereupon the provisions of Division 2 of Part V of the Principal Act as amended by this Act apply as if the taxpayer had originally requested the Commissioner to forward the objection to that Supreme Court.
