

Income Tax Assessment (No. 4)

No. 85 of 1967

An Act to amend the Law relating to Income Tax.

[Assented to 8 November 1967]

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* (No. 4) 1967. Short title
and citation.

(2.) The *Income Tax Assessment Act* 1936–1966,* as amended by the *Income Tax Assessment Act* 1967,† by the *Income Tax Assessment Act* (No. 2) 1967‡ and by the *Income Tax Assessment Act* (No. 3) 1967,§ is in this Act referred to as the Principal Act.

*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; and Nos. 50 and 83, 1966.

† Act No. 19, 1967.

‡ Act No. 38, 1967.

§ Act No. 76, 1967.

(3.) Section 1 of the *Income Tax Assessment Act (No. 3) 1967* 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 1936-1967*.

Commence-
ment.

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

(2.) The amendments made by sub-sections (2.) and (3.) of section 4, section 5, sub-section (2.) of section 6, sections 7 to 11 (inclusive), section 18, sub-section (2.) of section 20 and sub-section (2.) of section 25 of this Act shall be deemed to have had effect from and including the nineteenth day of October, One thousand nine hundred and sixty-seven.

(3.) The amendments made by section 3, sub-section (1.) of section 4, sub-section (1.) of section 6, sections 12 to 17 (inclusive), section 19, sub-section (1.) of section 20, sections 22, 23 and 24, sub-section (1.) of section 25 and sections 26 to 34 (inclusive) of this Act have effect from and including the first day of January, One thousand nine hundred and sixty-eight.

Parts.

3. Section 5 of the Principal Act is amended—

(a) by omitting the words and figures—

“ Division 11.—Interest paid by Companies (Sections 125-128).

Division 11A.—Dividends paid to Non-residents (Sections 128A-128D).”

and inserting in their stead the words and figures—

“ Division 11.—Interest paid by Companies on Bearer Debentures (Sections 126-128).

Division 11A.—Dividends and Interest paid to Non-residents (Sections 128A-128E).”; and

(b) by omitting the words and figures—

“ Division 4.—Collection of Dividend (Withholding) Tax (Sections 221YJ-221YY).”

and inserting in their stead the words and figures—

“ Division 4.—Collection of Withholding Tax (Sections 221YJ-221YY).”.

Interpretation.

4.—(1.) Section 6 of the Principal Act is amended—

(a) by omitting from sub-section (1.) the definition of “ dividend (withholding) tax ”;

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

“ ‘ foreign superannuation fund ’ means a provident, benefit, superannuation or retirement fund—

(a) that was established in a country outside Australia;

- (b) that was established, and is maintained and applied, for the sole purpose of providing superannuation benefits for persons other than persons who are, or would ordinarily be or become, residents of Australia or residents of a Territory of the Commonwealth; and
- (c) the central management and control of which is carried on outside Australia by persons none of whom is a resident of Australia or a resident of a Territory of the Commonwealth,

not being a fund for which an amount has been set aside, or to which an amount has been paid, by a taxpayer that is an amount that has been allowed or is allowable as a deduction under any provision of this Act;”;

- (c) by omitting from sub-section (1.) the definition of “ non-resident dividend income ”; and
- (d) by inserting in sub-section (1.), after the definition of “ trustee ”, the following definition:—
 - “ ‘ withholding tax ’ means income tax payable in accordance with section one hundred and twenty-eight B of this Act;”.

(2.) Section 6 of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the definition of “ dividend ” and inserting in its stead the following definition:—

“ ‘ dividend ’ includes—

- (a) any distribution made by a company to any of its shareholders, whether in money or other property;
- (b) any amount credited by a company to any of its shareholders as shareholders; and
- (c) the paid-up value of shares issued by a company to any of its shareholders to the extent to which the paid-up value represents a capitalization of profits,

but does not include—

- (d) moneys paid or credited by a company to a shareholder or any other property distributed by a company to shareholders (not being moneys or other property to which this paragraph, by reason of sub-section (4.) of this section, does not apply), where the amount of the moneys paid or credited, or the amount of the value of the property, is debited against an amount standing to the credit of a share premium account of the company;

(e) moneys paid or credited, or property distributed, by a company by way of repayment by the company of moneys paid up on a share except to the extent that—

(i) if the share is cancelled or redeemed—the amount of those moneys or the value of that property, as the case may be, is greater than the amount to which the share was paid up immediately before the cancellation or redemption; or

(ii) in any other case—the amount of those moneys or the value of that property, as the case may be, is greater than the amount by which the amount to which the share was paid up immediately before the repayment exceeds the amount to which the share is paid up immediately after the repayment; or

(f) a reversionary bonus on a policy of life-assurance;”;

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

“ ‘share premium account’, in relation to a company, means an account, whether called a share premium account or not, to which the company has, in respect of premiums received by the company on shares issued by it, credited amounts, being amounts not exceeding the respective amounts of the premiums, but does not include—

(a) where any other amount is included in the amount standing to the credit of such an account—that account; or

(b) where an amount that has been credited to such an account in respect of a premium received by the company on a share issued by it (not being an amount that has been so credited immediately after the receipt by the company of the premium) could not, at any time before it was so credited, be identified in the books of the company as such a premium—that account;”;

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

“(4.) Subject to the next succeeding sub-section, where, in pursuance of or as part of an agreement or an arrangement, whether oral or in writing, being an agreement or arrangement made after the commencement of this sub-section—

(a) a company issues shares at a premium, being a premium in respect of which the company credits an amount to a share premium account of the company; and

- (b) the company pays or credits any moneys, or distributes any other property, to shareholders in the company and the amount of the moneys so paid or credited or the amount of the value of the property so distributed is debited against an amount standing to the credit of that share premium account,

paragraph (d) of the definition of 'dividend' in sub-section (1.) of this section does not apply to the moneys so paid or credited or to the property so distributed.

“(5.) Where moneys so credited are, in pursuance of or as part of the agreement or arrangement, applied or to be applied in paying up an amount on a share issued or to be issued by the company, the credit shall be disregarded for the purposes of the last preceding sub-section unless, in pursuance of or as part of the agreement or arrangement, the company, by means of the redemption or cancellation, or of a reduction in the paid-up value, of that share or any other share in the company, is to pay or transfer to, or pay, transfer or apply on behalf of or at the direction of, the holder of the share, any money or other property other than shares in the company.”

(3.) The definition of “dividend” inserted in sub-section (1.) of section 6 of the Principal Act by sub-section (2.) of this section does not apply in relation to moneys paid or credited, or any distribution made, by a company before the date on which that sub-section is deemed to have had effect.

5. After section 6A of the Principal Act the following section is inserted:—

“6B.—(1.) For the purposes of this Act, an amount of income derived by a person, not being a dividend paid by a company to the person as a shareholder in the company, shall be deemed to be attributable to a dividend—

Income
attributable
to dividends.

- (a) if the person derived the amount of income by reason of being the beneficial owner of the share in respect of which the dividend was paid; or
- (b) if the person derived the amount of income as a beneficiary in a trust estate and the amount of income can be attributed, directly or indirectly, to the dividend or to an amount that is deemed, by any application or successive applications of this sub-section, to be an amount of income attributable to the dividend.

“(2.) Where—

- (a) a person has, as a beneficiary in a trust estate, derived an amount of income attributable to a dividend, being a dividend paid on or after the nineteenth day of October, One thousand nine hundred and sixty-seven;
- (b) the dividend was paid by a company that is a resident of a country outside Australia;

- (c) income tax for which that person, or another person deriving the dividend or an amount of income attributable to the dividend, was personally liable under the law of that country has been paid in respect of the dividend or an amount of income attributable to the dividend, either directly or by deduction from the dividend or an amount of income attributable to the dividend; and
- (d) the amount of income attributable to the dividend derived by the person is, by reason of the payment of that income tax, less than the amount that would otherwise have been the amount of income attributable to the dividend derived by the person,

the amount of income attributable to the dividend derived by the person shall, for the purposes of this Act, be deemed to be increased by the difference between those two amounts.

“(3.) Where a beneficiary in a trust estate is presently entitled to income of the trust estate, that income shall, for the purposes of this section, be deemed to be an amount of income derived by the person.”

Exemptions.

6.—(1.) Section 23 of the Principal Act is amended by inserting after paragraph (ja) the following paragraph:—

- “(jb) the income of a provident, benefit, superannuation or retirement fund that, at all times during the year of income, was a foreign superannuation fund, being income that consists of—
 - (i) interest; or
 - (ii) dividends paid by a company that is a resident;”

(2.) Section 23 of the Principal Act is amended by inserting in paragraph (q), after the word “income” (first occurring), the words “(other than an amount of income attributable to a dividend, being a dividend paid on or after the nineteenth day of October, One thousand nine hundred and sixty-seven)”

(3.) Section 23 of the Principal Act is amended by omitting paragraph (za) and inserting in its stead the following paragraph:—

- “(za) income derived by way of payments under a grant made by the Australian-American Educational Foundation, being payments from funds made available to the Foundation under the Agreement dated the twenty-eighth day of August, One thousand nine hundred and sixty-four, between the Government of the United States of America and the Government of the Commonwealth under which the Foundation was established.”

(4.) Paragraph (za) inserted in section 23 of the Principal Act by the last preceding sub-section applies, and shall be deemed to have applied, in respect of income derived on or after the twenty-eighth day of August, One thousand nine hundred and sixty-four.

7. Section 26A of the Principal Act is repealed and the following section inserted in its stead:—

“ 26A. Where—

- (a) a dividend, or an amount of income attributable to a dividend, being a dividend paid on or after the nineteenth day of October, One thousand nine hundred and sixty-seven, is or has been included in the assessable income of a taxpayer of the year of income or of any previous year of income;
- (b) under the law of a country outside Australia, the company that paid the dividend deducted or was authorized to deduct income tax from the dividend, being income tax that neither the taxpayer nor any other person to whom the dividend or an amount of income attributable to the dividend was paid was personally liable to pay; and
- (c) the taxpayer, in the year of income, in relation to the dividend or the amount of income attributable to the dividend, as the case may be—
 - (i) receives payment, or is allowed a credit, of an amount in respect of the income tax that the company deducted or was authorized to deduct; or
 - (ii) receives payment of, or becomes entitled to, an amount by reason that another person has received payment, or has been allowed a credit, of an amount in respect of the income tax that the company deducted or was authorized to deduct,

Assessable
income to
include
repayment of
tax paid abroad
in respect of
dividends.

the assessable income of the taxpayer of the year of income shall include the amount of which he received payment or was allowed a credit or to which he became entitled, as the case may be, and that amount shall, for the purposes of this Act, be deemed to be a dividend.”

8. Section 44 of the Principal Act is amended—

Dividends.

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

“ (1B.) Where—

- (a) the amount of the moneys or of the value of other property of which a dividend paid by a company consists is debited against an amount standing to the credit of a share premium account of the company; or
- (b) a dividend paid by a company is a repayment by the company of moneys paid up on a share,

the dividend shall, for the purposes of this section, be deemed to have been paid by the company out of profits derived by it.”; and

(b) by omitting from sub-paragraph (iii) of paragraph (b) of sub-section (2.) the words “ from the issue of shares at a premium ” and inserting in their stead the words “ from the issue at a premium of any instrument that is a convertible note for the purposes of section fifty-one AB of this Act ”.

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

9. Section 45 of the Principal Act is amended by inserting after sub-section (1.) the following sub-section:—

“(1A.) Where—

- (a) there is included in the assessable income of a year of income of a taxpayer who is a resident of Australia an amount of income that is attributable to a dividend, being a dividend paid on or after the nineteenth day of October, One thousand nine hundred and sixty-seven, by a company that is a resident of a country outside Australia; and
- (b) income tax for which the taxpayer, or another person deriving the dividend or an amount of income attributable to the dividend, was personally liable under the law of that country has been paid in respect of the dividend or an amount of income attributable to the dividend, either directly or by deduction from the dividend or an amount of income attributable to the dividend,

the taxpayer shall, subject to sub-sections (6.), (7.) and (8.) of this section, be entitled to a credit of an amount equal to the credit to which he would have been entitled under the last preceding sub-section if the amount of income attributable to the dividend that is included in his assessable income had been the dividend and, in a case where he was not personally liable for the income tax referred to in paragraph (b) of this sub-section, he had been so liable and had paid that tax but, if the amount of income attributable to the dividend is not attributable to the whole of the dividend, he is entitled to the credit only to the extent to which the amount is so attributable.”.

Distributions by liquidator.

10. Section 47 of the Principal Act is amended by inserting after sub-section (2.) the following sub-sections:—

“(2A.) Where—

- (a) the business of a company has been, or is in the course of being, discontinued otherwise than in the course of a winding up of the company under any law relating to companies;
- (b) in connexion with the discontinuance, any moneys of the company have been or other property of the company has been, on or after the nineteenth day of October, One thousand nine hundred and sixty-seven, distributed, otherwise than by the company, to shareholders of the company; and
- (c) the moneys or other property so distributed are not, for the purposes of this Act, dividends,

the distribution shall, subject to the next succeeding sub-section, be deemed to be, for the purposes of this section, a distribution to the shareholders by a liquidator in the course of winding up the company.

“(2B.) Where—

- (a) the last preceding sub-section would, but for this sub-section, apply in relation to any moneys or other property of a company distributed to shareholders of the company; and

(b) the company is not dissolved within a period of three years after the distribution, or within such further period as the Commissioner allows,

the last preceding sub-section shall not apply, and shall be deemed never to have applied, in relation to those moneys or that other property, and those moneys or that other property so distributed shall, for the purposes of this Act, be deemed to be dividends paid by the company to the shareholders out of profits derived by it.”.

11. Section 51AB of the Principal Act is amended by omitting sub-section (8.). Interest on convertible notes.

12. Section 80 of the Principal Act is amended by omitting from paragraph (b) of sub-section (3.) the words “(other than non-resident dividend income, if any, included in his exempt income)” and inserting in their stead the words “(other than income, if any, to which section one hundred and twenty-eight D of this Act applies)”.

Losses of previous years.

13. The heading to Division 11 of Part III. of the Principal Act is omitted and the following heading inserted in its stead:— Heading.

“ Division 11.—Interest paid by Companies on Bearer Debentures.”.

14. Section 125 of the Principal Act is repealed.

15. Section 126 of the Principal Act is amended by inserting in sub-section (3.), after the word “ person ”, the words “(not being a non-resident who, but for sub-paragraph (iii) of paragraph (h) of sub-section (3.) of section one hundred and twenty-eight B of this Act, would be liable to pay withholding tax upon the interest)”.

Interest paid by a company to a non-resident.
Interest paid by a company on bearer debentures.

16. Section 127 of the Principal Act is amended by adding at the end thereof the following sub-section:— Rebate or refund of tax paid by company.

“ (2.) Where—

(a) the company pays tax under this Division on any interest;

(b) but for sub-paragraph (iii) of paragraph (h) of sub-section (3.) of section one hundred and twenty-eight B of this Act, withholding tax would be payable in respect of that interest by a person; and

(c) the company has, under sub-section (2.) of the last preceding section, deducted and retained for its own use from the interest an amount in respect of the tax payable under this Division,

the Commissioner shall refund to that person so much of the tax paid under this Division in respect of the interest as exceeds the amount of withholding tax that would have been so payable.”.

17. Division 11A of Part III. of the Principal Act is repealed and the following Division inserted in its stead:—

“ Division 11A.—Dividends and Interest paid to Non-residents.

“ 128A.—(1.) In this Division, unless the contrary intention appears— Interpretation.

‘ dividend ’ includes part of a dividend;

'interest' includes an amount in the nature of interest, but does not include an amount deemed to be interest by section twenty-six c of this Act;

'non-resident' does not include a resident of a Territory of the Commonwealth.

"(2.) For the purposes of this Division, interest shall be deemed to have been paid by a person to another person although it is not actually paid over to the other person but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the other person or as the other person directs.

"(3.) For the purposes of this Division, a beneficiary who is presently entitled to a dividend or to interest included in the income of a trust estate shall be deemed to have derived income consisting of that dividend or interest at the time when he became so entitled.

"(4.) In sections two hundred and fourteen, two hundred and eighteen, two hundred and twenty-seven, two hundred and thirty, two hundred and fifty-one, two hundred and sixty, two hundred and sixty-one and two hundred and sixty-five of this Act, but, unless the contrary intention appears, not in any other section of this Act, 'income tax' or 'tax' includes withholding tax.

"(5.) Where a person has a place of business in a country, whether the country is Australia or another country, then, for the purposes of this Division, that place of business shall be deemed to be a permanent establishment of that person in that country.

"(6.) In the last preceding sub-section, 'place of business', in relation to a person, means any place at or through which that person carries on any business and, without limiting the generality of the foregoing, includes—

- (a) a place where that person is carrying on business through an agent;
- (b) a place where that person has, is using or is installing substantial equipment or substantial machinery;
- (c) a place where that person is engaged in a construction project; and
- (d) where that 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 or both of those persons—the place where the goods are manufactured, assembled, processed, packed or distributed,

but does not include—

- (e) a place where that 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 that person otherwise carries on business;

- (f) a place where that 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 that person; or
 - (ii) whose authority extends to filling orders on behalf of that 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 that person otherwise carries on business; or
- (g) a place of business maintained by that person solely for the purpose of purchasing goods or merchandise.

“(7.) Where a place is, by virtue of paragraph (d) of the last preceding sub-section, a place of business of a person, that person shall be deemed to be carrying on at or through that place the business of selling the goods manufactured, assembled, processed, packed or distributed by the other person.

“128B.—(1.) Subject to sub-section (3.) of this section, this section applies to income that—

Liability to withholding tax.

- (a) is derived, on or after the first day of January, One thousand nine hundred and sixty-eight, by a non-resident, other than a non-resident who carries on business in Australia at or through a permanent establishment of the non-resident in Australia; and
- (b) consists of a dividend paid by a company that is a resident.

“(2.) Subject to the next succeeding sub-section, this section also applies to income that—

- (a) is derived, on or after the first day of January, One thousand nine hundred and sixty-eight, by a non-resident; and
- (b) consists of interest that—
 - (i) 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, 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

- (ii) is paid to the non-resident by a person who, or by persons each of whom, is not a 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.

“ (3.) This section does not apply to—

- (a) income derived by a non-resident that is exempt from income tax by virtue of paragraph (e), (ea), (f), (g), (h), (i), (j) or (jb) of section twenty-three of this Act and is exempt from income tax in the country in which the non-resident resides;
- (b) income that is exempt from income tax by virtue of paragraph (x) of section twenty-three, or sub-section (2.) of section twenty-three c, of this Act;
- (c) income that consists of a dividend to which sub-section (2.) of section forty-four, or section one hundred and seven, of this Act applies;
- (d) income in respect of which a trustee is liable to be assessed under section ninety-nine or section ninety-nine A of this Act;
- (e) income that is derived by a trustee, being a trustee in relation to a trust created by a person who, at the time the income is derived, is a resident and in respect of which the Commissioner is empowered, under section one hundred and two of this Act, to assess the trustee to pay income tax;
- (f) income that is derived by a provident, benefit, superannuation or retirement fund, not being income to which paragraph (jb) of section twenty-three of this Act applies;
- (g) income that consists of interest that is derived from bonds, debentures, stock or other securities issued before the first day of January, One thousand nine hundred and sixty-eight, and in respect of which the non-resident by whom the income is derived is entitled to a rebate in his assessment by virtue of section one hundred and sixty AB of this Act; or
- (h) income that consists of—
 - (i) interest on money lodged at interest outside Australia with a body corporate that is a resident and is a bank as defined by sub-section (1.) of section five of the *Banking Act 1959–1967*;
 - (ii) interest derived by a non-resident in carrying on business in Australia at or through a permanent establishment of the non-resident in Australia;
 - (iii) interest upon which income tax is payable under section one hundred and twenty-six of this Act; or
 - (iv) interest specified in section one hundred and twenty-eight E of this Act as interest to which this Division does not apply.

“(4.) A person who derives income to which this section applies that consists of a dividend is liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this sub-section applies.

“(5.) A person who derives income to which this section applies that consists of interest is, subject to the next two succeeding sub-sections, liable to pay income tax upon that income at the rate declared by the Parliament in respect of income to which this sub-section applies.

“(6.) Where—

(a) income to which this section applies consists of interest and is paid to the person 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, or by persons at least one of whom, is a resident; and

(b) the interest is, in part only, 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,

income tax is payable under the last preceding sub-section upon so much only of the income as is attributable to so much of the interest as is not an outgoing so incurred.

“(7.) Where—

(a) income to which this section applies consists of interest and is paid to the person by whom it is derived by a person who, or by persons each of whom, is not a resident; and

(b) the interest 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,

income tax is payable under sub-section (5.) of this section upon so much only of the income as is attributable to so much of the interest as is an outgoing so incurred.

“(8.) Income tax payable by a person in accordance with this section is in addition to any other income tax payable by him upon income to which this section does not apply.

“128c.—(1.) Withholding tax is due and payable by the person liable to pay the tax at the expiration of twenty-one days after the end of the month in which the income to which the tax relates was derived by him or of such further period as the Commissioner, in special circumstances, allows.

Payment of
withholding
tax.

“(2.) Withholding tax, when it becomes due and payable, is a debt due to the Queen on behalf of the Commonwealth and payable to the Commissioner.

“(3.) Subject to the next succeeding sub-section, if any withholding tax remains unpaid at the expiration of sixty days after the time when it became due and payable, additional tax is due and payable at the rate of ten per centum per annum on the amount unpaid, computed from the expiration of that period.

“(4.) The Commissioner may, in any case, for reasons that he thinks sufficient, remit the additional tax or any part of the additional tax.

“(5.) Any unpaid withholding tax, and any unpaid additional tax payable under this section, may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

“(6.) The ascertainment of the amount of any withholding tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

“(7.) The Commissioner may serve on a person, by post or otherwise, a notice in which is specified—

- (a) the amount of any withholding tax that the Commissioner has ascertained is payable by that person; and
- (b) the date on which that tax became due and payable.

“(8.) The production of a notice served under the last preceding sub-section, or of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is evidence that the amount of withholding tax specified in the notice became due and payable by the person on whom the notice was served on the date so specified.

Certain income not included in assessable income.

“128D. Income upon which withholding tax is payable, or upon which withholding tax would, but for sub-paragraph (iii) of paragraph (h) of sub-section (3.) of section one hundred and twenty-eight B of this Act, be payable, shall not be included in the assessable income of a person.

Interest paid by companies to non-residents on certain moneys.

“128E.—(1.) This Division does not apply to interest where—

- (a) the interest is paid by a company on or after the first day of January, One thousand nine hundred and sixty-eight;
- (b) the moneys on which the interest is paid were lent to the company—
 - (i) before the fifth day of May, One thousand nine hundred and sixty-seven (in this section referred to as ‘ the prescribed date ’);
 - (ii) on or after the prescribed date in pursuance of a contractual obligation entered into before that date to lend to the company a specific amount; or

- (iii) on or after the prescribed date in pursuance of a contractual obligation entered into on or after that date to lend to the company a specific amount as a result of negotiations relating to the lending of that amount carried on between the company and the other party or parties to the contractual obligation, being negotiations that the Commissioner is satisfied were being carried on immediately before the prescribed date and were being so carried on on the basis that section one hundred and twenty-five of the Income Tax Assessment Act as in force immediately before the prescribed date would not, by reason of sub-section (3.) of that section, apply to interest on moneys proposed to be lent to the company by the other party or parties to the negotiations;
- (c) the interest was not payable, in whole or in part, by reason of the amount of interest payable in respect of the loan having been increased, or some other act or thing having been done, otherwise than in pursuance of a contractual obligation entered into before the prescribed date or on or after the prescribed date as a result of negotiations that were being carried on immediately before the prescribed date;
- (d) the interest is interest of a kind referred to in sub-section (1.) of section one hundred and twenty-five of the Income Tax Assessment Act as in force immediately before the prescribed date but the Commissioner is satisfied that that section, if it had remained in force, would not have applied to the interest by reason of sub-section (3.) of that section, or, in the case of interest paid on moneys lodged at interest with a company otherwise than in Australia, the interest would be interest of that kind if the moneys had been lodged at interest with a company in Australia but the Commissioner is satisfied that that section, if the interest had been interest of that kind and if that section had remained in force, would not have applied to the interest by reason of sub-section (3.) of that section; and
- (e) in the case of interest on moneys lent before the prescribed date or interest on moneys lent on or after the prescribed date in pursuance of a contractual obligation to lend to the company a specific amount entered into before the prescribed date—the Commissioner is satisfied that the last preceding paragraph would not apply in relation to the interest but for a contractual obligation entered into before the prescribed date.

“(2.) In the last preceding sub-section, a reference to the Income Tax Assessment Act as in force immediately before the prescribed date shall be read as a reference to the *Income Tax Assessment Act 1936* as amended and in force immediately before that date.

“(3.) Where the period for which moneys have been lent is extended, the extension shall, for the purposes of sub-section (1.) of this section, be deemed to be a loan of the moneys to which the extension applies on the day as from which the extension has effect.”.

Interpretation. 18. Section 160AE of the Principal Act is amended by omitting sub-section (3.) and inserting in its stead the following sub-section:—

“(3.) For the purposes of this Division, a dividend, or an amount of income attributable to a dividend, being a dividend paid on or after the nineteenth day of October, One thousand nine hundred and sixty-seven, shall be deemed to be derived from sources in the Territory to the extent to which the dividend or the dividend to which the amount is attributable, as the case may be, is paid out of profits derived from sources in the Territory.”.

Annual returns. 19. Section 161 of the Principal Act is amended by omitting from sub-section (1.) the words “ non-resident dividend income ” and inserting in their stead the words “ income upon which withholding tax is payable ”.

Amendment of assessments. 20.—(1.) Section 170 of the Principal Act is amended by omitting from sub-section (10.) the words “ or sub-section (2.) of section one hundred and twenty-four DE,” and inserting in their stead the words “, sub-section (2.) of section one hundred and twenty-four DE or sub-section (2.) of section two hundred and twenty-one YRA,”.

(2.) Section 170 of the Principal Act is amended—

- (a) by inserting in sub-section (10.), after the words “section thirty-six. AA,” the words “ sub-section (2B.) of section forty-seven,”; and
- (b) by adding at the end thereof the following sub-section:—

“(12.) Nothing in this section prevents the amendment of an assessment for the purpose of giving effect to the provisions of sub-section (4.) of section six of this Act if the amendment is made within three years after the date upon which the tax became due and payable under that assessment.”.

Remuneration of members. 21. Section 182 of the Principal Act is amended by omitting the words “ but not exceeding the sum of One hundred and fourteen thousand dollars per annum,”.

Provisional tax to be credited against tax assessed. 22. Section 221YE of the Principal Act is amended by omitting from paragraph (c) the words “ dividend (withholding) tax ” and inserting in their stead the words “ withholding tax ”.

Heading. 23. The heading to Division 4 of Part VI. of the Principal Act is omitted and the following heading inserted in its stead:—

“ Division 4.—Collection of Withholding Tax.”.

24. Section 221YJ of the Principal Act is amended by omitting the words “ dividend (withholding) tax ” and inserting in their stead the words “ withholding tax ”.

Object of
Division.

25.—(1.) Section 221YK of the Principal Act is amended—

Interpretation.

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

- “ (1.) In this Division, unless the contrary intention appears—
 ‘ Australia ’ includes any Territory of the Commonwealth;
 ‘ dividend ’ includes a part of a dividend;
 ‘ interest ’ means interest as defined by sub-section (1.) of section one hundred and twenty-eight A of this Act;
 ‘ non-resident ’ does not include a resident of a Territory of the Commonwealth.”; and

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

- “ (3.) For the purposes of this Division—
 (a) interest shall be deemed to have been paid by a person to another person although it is not actually paid over to the other person but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the other person or as the other person directs; and
 (b) interest shall be deemed to be payable by a person to another person although it is not actually to be paid over to the other person but is to be reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or is otherwise to be dealt with on behalf of the other person or as the other person directs.”.

(2.) Section 221YK of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-section:—

“ (2.) A reference in this Division to a company shall, in relation to distributions by a liquidator of the company or by any other person that, by virtue of section forty-seven of this Act, are deemed to be dividends paid by the company, be read as including a reference to the liquidator or that other person.”.

26. Section 221YL of the Principal Act is amended—

Deductions
from dividends
and interest.

(a) by omitting from sub-section (1.) the words—

“ Penalty: Two hundred dollars.”;

(b) by omitting from paragraph (a) of sub-section (2.) the words “ to a person in Australia ” and inserting in their stead the words “ to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person in Australia (in this sub-section referred to as ‘ the payee ’) ”;

- (c) by omitting from sub-section (2.) the words “ the first-mentioned person ” (wherever occurring) and inserting in their stead the words “ the payee ”;
- (d) by omitting from sub-section (2.) the words—
“ Penalty: Two hundred dollars.”;
- (e) by omitting sub-section (3.) and inserting in its stead the following sub-sections:—

“ (2A.) Where interest is payable by a person, including the Commonwealth, a State or an authority of the Commonwealth or of a State (in this section referred to as ‘ the borrower ’) to another person, or to other persons jointly, and—

- (a) that other person, or one or more of those other persons, is or are shown, in relation to the transaction to which the interest relates, in or on any book, document or record in the possession of or kept or maintained on behalf of the borrower, as having an address outside Australia; or
- (b) the borrower is authorized to pay the interest, either to the person or persons to whom it is payable or to another person or persons, at a place outside Australia,

the borrower shall, subject to this section and to the next succeeding section, before or at the time when the interest is paid by the borrower, make a deduction from the interest of an amount determined in accordance with the regulations.

“ (2B.) Subject to this section and to the next succeeding section, where—

- (a) interest is paid by a person to the Commonwealth, a State, an authority of the Commonwealth or of a State or a person in Australia (in this sub-section referred to as ‘ the payee ’); and
- (b) another person who is a non-resident is entitled—
 - (i) to receive the interest or a part of the interest, or the amount of the interest or of a part of the interest, from the payee; or
 - (ii) to have the interest or a part of the interest, or the amount of the interest or of a part of the interest, credited to him, or otherwise dealt with on his behalf, or as he directs, by the payee,

the payee shall, except as provided by the regulations, forthwith make a deduction from the interest, or the part of the interest, of an amount determined in accordance with the regulations.

“ (3.) A person is not required to make a deduction from a dividend or from interest under this section—

- (a) if withholding tax is not payable in respect of the dividend or the interest; or

- (b) if an amount has, or amounts have, previously been deducted from the dividend or the interest under this section and that amount, or the sum of those amounts, is not less than the withholding tax payable in respect of the dividend or the interest.

“(3A.) Notwithstanding anything contained in the regulations made for the purposes of this section, a person is not required to make a deduction from a dividend or from interest under this section of an amount that exceeds the withholding tax payable in respect of the dividend or interest.”; and

- (f) by inserting after sub-section (4.) the following sub-section:—

“(4A.) A person, other than the Commonwealth, a State or an authority of the Commonwealth or a State, who does not make a deduction from a dividend or from interest as required by this section is guilty of an offence against this Act punishable upon conviction by a fine not exceeding Two hundred dollars.”.

27. Section 221YM of the Principal Act is amended by adding at the end of paragraph (b) the words “, or from interest or from interest included in a class of interest ”. Exemptions and variations.

28. Section 221YN of the Principal Act is amended—

- (a) by inserting in sub-section (1.), after the word “ dividend ”, the words “ or from interest ”; and Deductions to be forwarded to Commissioner, &c.
- (b) by inserting in sub-sections (2.) and (3.), after the word “ person ”, the words “, other than the Commonwealth, a State or an authority of the Commonwealth or of a State,”.

29. Section 221YP of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words—
“ Penalty: Two hundred dollars.”; Dividends not in money not to be paid until payment made to Commissioner on account of tax.
- (b) by omitting from paragraph (a) of sub-section (2.) the words “ to a person in Australia ” and inserting in their stead the words “ to the Commonwealth, a State, an authority of the Commonwealth or a State or a person in Australia (in this section referred to as ‘ the payee ’) ”;
- (c) by omitting from sub-section (2.) the words “ that person ” (wherever occurring) and inserting in their stead the words “ the payee ”;
- (d) by omitting from sub-section (2.) the words—
“ Penalty: Two hundred dollars.”; and

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

“ (4.) A person, other than the Commonwealth, a State or an authority of the Commonwealth or of a State, who fails to comply with a provision of this section is guilty of an offence against this Act punishable upon conviction by a fine not exceeding Two hundred dollars.”.

Liability of
person who
fails to make
deductions,
&c.

30. Section 221YQ of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the word “ dividend ” (first occurring), the words “ or from interest ”;

(b) by omitting paragraphs (a) and (b) of sub-section (1.) and inserting in their stead the following paragraphs:—

“ (a) an amount equal to any unpaid withholding tax payable in respect of that dividend or interest; and

(b) an amount equal to any unpaid additional tax payable under sub-section (3.) of section one hundred and twenty-eight C of this Act in respect of that withholding tax.”;

(c) by omitting from sub-section (2.) the words “ dividend (withholding) tax ” and inserting in their stead the words “ withholding tax ”; and

(d) by omitting from sub-section (3.) the words “ dividend (withholding) tax ” and inserting in their stead the words “ withholding tax ”.

31. After section 221YR of the Principal Act the following section is inserted:—

“ 221YRA.—(1.) Where—

(a) a person, not being a resident, has not made a deduction from interest as required by sub-section (2A.) of section two hundred and twenty-one YL of this Act, or, having made a deduction under that sub-section from interest, has not complied with paragraph (a) of sub-section (1.) of section two hundred and twenty-one YN of this Act in relation to the deduction; and

(b) any withholding tax payable in respect of the interest has not been paid,

then, subject to the next succeeding sub-section, the interest is not an allowable deduction.

“ (2.) Where, any interest would, but for the last preceding sub-section, be an allowable deduction in respect of a year of income and the withholding tax payable in respect of the interest is paid, the interest thereupon becomes an allowable deduction in respect of that year of income.

Interest
payable by
non-resident
not allowable
deduction until
payment
made to
Commissioner
on account of
tax.

“(3.) Where a member of a partnership is not a resident, then, for the purpose of calculating the amount that, in relation to him, is, for the purposes of Division 5 of Part III. of this Act, the net income of the partnership or the partnership loss, as the case requires, sub-section (1.) of this section applies in relation to the partnership as if it were a person who is not a resident.”.

32. Section 221ys of the Principal Act is amended by inserting in sub-section (1.), after the word “dividend”, the words “or interest”.

Credits in respect of deductions made from dividends or interest.

33. Section 221yu of the Principal Act is amended by inserting in paragraph (a) of sub-section (1.), after the word “dividend”, the words “or from interest”.

Liability of trustee to pay deductions to Commissioner.

34. Section 221yv of the Principal Act is amended by inserting after the word “dividend” the words “or from interest”.

Persons discharged from liability in respect of deductions.

35.—(1.) In this section—

“dividend (withholding) tax” means tax payable in respect of dividends paid before the commencing date, being dividend (withholding) tax as defined by sub-section (1.) of section 6 of the Principal Act;

Saving provisions in relation to dividend (withholding) tax.

“non-resident dividend income” means income upon which dividend (withholding) tax is payable;

“the commencing date” means the first day of January, One thousand nine hundred and sixty-eight;

“withholding tax” means withholding tax as defined by sub-section (1.) of section 6 of the Principal Act as amended by this Act.

(2.) Notwithstanding the repeal of Division 11A of Part III. of the Principal Act, and the amendments of Division 4 of Part VI. of the Principal Act, effected by this Act—

(a) Division 11A of Part III. of the Principal Act continues to apply on and after the commencing date to and in relation to dividend (withholding) tax;

(b) section 128D of the Principal Act continues to apply on and after the commencing date to non-resident dividend income; and

(c) Division 4 of Part VI. of the Principal Act continues to have effect on and after the commencing date for the purpose of facilitating the collection of dividend (withholding) tax.

(3.) A reference in section 214, 218, 227, 230, 251, 260 or 265 of the Principal Act as amended by this Act to “income tax” or “tax” shall, on and after the commencing date, unless the contrary intention appears, be read as including a reference to dividend (withholding) tax.

(4.) The reference in paragraph (b) of sub-section (3.) of section 80 of the Principal Act as amended by this Act to income to which section 128D of that Act as so amended applies, and the reference in sub-section (1.) of section 161 of the Principal Act as so amended to income upon which withholding tax is payable, shall, on and after the commencing date, be read as including a reference to non-resident dividend income.

(5.) The reference in paragraph (c) of section 221YE of the Principal Act as amended by this Act to withholding tax shall, on and after the commencing date, be read as including a reference to dividend (withholding) tax.

Calculation of provisional tax of non-resident in respect of year of income commencing on 1st July, 1968, where income includes interest.

36. For the purpose of ascertaining the amount of provisional tax payable by a taxpayer in accordance with Division 3 of Part VI. of the Principal Act as amended by this Act in respect of the year of income commencing on the first day of July, One thousand nine hundred and sixty-eight, being a taxpayer who, before the first day of January, One thousand nine hundred and sixty-eight, derived income (in this section referred to as “non-resident interest income”) upon which dividend (withholding) tax was not payable under the Principal Act but upon which withholding tax would have been payable if it had been derived on or after that last-mentioned date—

- (a) a reference in that Division to assessable income shall, in relation to that taxpayer, be read as not including a reference to non-resident interest income;
- (b) the taxable income of the taxpayer for the year of income that commenced on the first day of July, One thousand nine hundred and sixty-seven, shall be deemed to be the amount that would have been his taxable income for that year of income if his assessable income of that year of income had not included non-resident interest income; and
- (c) the income tax assessed in respect of the taxable income of the taxpayer for the year of income that commenced on the first day of July, One thousand nine hundred and sixty-seven, shall be deemed to be the amount that would have been the income tax assessed in respect of the amount that would have been his taxable income for that year of income if his assessable income of that year of income had not included non-resident interest income.

Transitional provisions relating to certain offences with respect to dividends.

37. A company or person shall not be convicted of an offence against section 221YL or section 221YP of the Principal Act as amended by this Act by reason of a failure to comply with a provision of that section in relation to a dividend before the day on which this Act received the Royal Assent if the dividend would not have been a dividend for the purposes of the Principal Act as amended by this Act at the time of that failure if the amendments made by sub-section (2.) of section 4, and by section 10, of this Act had not come into operation until the day on which this Act received the Royal Assent.