

## INCOME TAX (MANAGEMENT) AMENDMENT ACT.

Act No. 34, 1940.

George VI.  
No. 34, 1940.

An Act to amend the Income Tax (Management) Act, 1936, in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 15th November, 1940.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

**1.** This Act may be cited as the "Income Tax (Management) Amendment Act, 1940."

Amendment  
of Act No.  
41, 1936.  
Sec. 16.  
(Exemptions.)

**2.** The Income Tax (Management) Act, 1936, as amended by subsequent Acts, is amended—

(a) by omitting from paragraph (p) of section sixteen the word "thirty-nine" and by inserting in lieu thereof the word "forty-two";

(b) by inserting at the end of the same section the following new paragraph:—

cf. Act No.  
17, 1940  
(Commonwealth), s. 3.

(x) in the case of any person enlisted in or appointed to the naval, military or air forces of the Commonwealth or any part of the King's dominions or of any Ally of Great Britain for service outside Australia during the present war between His Majesty the King and Germany and her Allies—the pay and allowances earned by him as a member of those forces during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, or on the date of his enlistment or appointment (whichever is the later

later date) and terminating on the date of his discharge or the termination of his appointment:

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Provided that this paragraph shall not apply to any pay or allowance so earned during the year of income by a member of the forces who does not at any time during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, and terminating one year after the close of that year of income—

- (i) in the case of a member of the naval forces of the Commonwealth—serve in a sea-going ship; or
- (ii) in the case of a member of the military or air forces of the Commonwealth—embark for service outside Australia.

The amendment effected by this paragraph shall continue in force until twelve months after the date of the issue of a proclamation that the war between His Majesty the King and Germany and her Allies has ceased, and no longer.

- (c) by omitting from paragraph (f) of section fifty-three the word “thirty-nine” and by inserting in lieu thereof the word “forty-two”;

Sec. 53.  
(Exclusion of certain dividends from assessable income.)

- (d) (i) by omitting from subparagraph (vii) of paragraph (a) of subsection one of section eighty-eight the word “and” where lastly occurring;

Sec. 88.  
(Gifts and contributions.)

- (ii) by inserting at the end of the same paragraph the following new subparagraphs:—

- (ix) a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the naval, military or air forces of the Commonwealth; and
- (x) the Commonwealth, when made for purposes of defence.

cf. Act No. 17, 1940  
(Commonwealth),  
s. 6.

(e)

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New sec.  
94A.Loss upon  
assignment  
or surrender  
of a lease.

(e) by inserting next after section ninety-four the following new section:—

94A. Where a loss is incurred by a taxpayer upon the assignment or surrender of a lease the following provisions shall apply:—

- (a) any loss incurred in the year of income or in any of the three years next preceding that year shall (to the extent to which it has not previously been allowed as a deduction) be allowable as a deduction from the amount, if any, which would otherwise be included in his assessable income under paragraph (b) of subsection one of section ninety-four of this Act;
- (b) the amount of the loss shall be calculated by deducting the consideration for such assignment or surrender from the sum of the amounts referred to in paragraphs (a) and (b) of subsection one of section ninety-five of this Act;
- (c) a loss shall not be allowable as a deduction under this section where the lease (other than a lease of premises in respect of which a publican's license or an Australian wine license is for the time being in force) assigned or surrendered was acquired by the taxpayer before the sixth year prior to the year of income in which the lease is assigned or surrendered;
- (d) where two or more losses are allowable as a deduction they shall be taken into account in the order in which they were incurred.

Sec. 97.  
(Rate of tax  
where lease  
granted.)

Sec. 106.  
(Profits  
from sale  
of personal  
property.)

(f) by omitting from subsection three of section ninety-seven the word "less" and by inserting in lieu thereof the words "not more";

(g) by inserting at the end of section one hundred and six the following new subsection:—

(4) Where the proceeds of the sale of any shares or securities after the commencement of the Income Tax (Management) Amendment Act, 1940,

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1940, by a taxpayer who is a resident are not included as assessable income under any other provision of this Act and the sale was effected out of this State but in Australia, and the shares or securities were bought by the taxpayer in the year of income or in any of the two years next preceding that year, his assessable income shall include the casual profit, if any, arising from the sale, unless the taxpayer is liable to income tax (other than Commonwealth income tax) in respect of such profit in the place out of this State in which the sale was effected.

- (h) by omitting from subsection three of section one hundred and ten the word "less" and by inserting in lieu thereof the words "not more";
- (i) by inserting at the end of section one hundred and twelve the following new paragraph:—
  - (c) if he is a resident—any amount derived from the sale out of this State but in Australia after the commencement of the Income Tax (Management) Amendment Act, 1940, of rights to take up shares or debentures in a company, unless the taxpayer is liable to income tax (other than Commonwealth income tax) in respect of such amount in the place out of this State in which the sale was effected.
- (j) by omitting section one hundred and ninety-one and by inserting in lieu thereof the following section:—
 

191. Notwithstanding anything contained in this Act, where a person carrying on the business of insurance in this State reinsures the whole or part of any risk with another person carrying on a similar business, but not in Australia—

  - (a) the premiums paid or credited in respect of any such reinsurance shall not be—
    - (i) an allowable deduction to the person carrying on the business of insurance in this State; or
    - (ii)

Sec. 110.  
(Rate of tax where casual profit included in assessable income.)

Sec. 112.  
(Assessable income to include amounts from sale of rights and from granting of option.)

Substituted sec. 191.

Re-insurance with persons resident out of Australia.

- (ii) included in the assessable income of the person carrying on the business of insurance out of Australia; and
- (b) the income of the person carrying on the business of insurance in this State shall not include sums recovered from the person carrying on business out of Australia in respect of a loss on any risk so reinsured.

This section shall apply to assessments for the year of income ended on the thirtieth day of June, one thousand nine hundred and thirty-six (or the accounting period, if any, accepted by the Commissioner in lieu of that year), and for each year of income thereafter.

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