



ANNO QUINTO

GEORGI VI REGIS.

A.D. 1941.

No. 37 of 1941.**An Act to amend the Income Tax Assessment Act,
1936.**

[Assented to 20th November, 1941.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short titles.

1. (1) This Act may be cited as the "Income Tax Assessment Act Amendment Act, 1941".

(2) The Income Tax Assessment Act, 1936, as amended by this Act may be cited as the "Income Tax Assessment Act, 1936-1941".

(3) The Income Tax Assessment Act, 1936, is hereinafter called "the principal Act".

Incorporation.

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act.

Amendment of s. 4 of principal Act—Consequential amendment.

3. Section 4 of the principal Act is amended by adding after the word "Ships" in the line commencing "Division 11" the words "and Aircraft".

Amendment of s. 11 of principal Act—Arrangements with Commonwealth for collection of taxes and other moneys.

4. Section 11 of the principal Act is amended by striking out the words "the income tax payable" at the end of the second and the beginning of the third line of subsection (1) and inserting in lieu of those words the words "any tax, contribution or other money payable to the Commonwealth".

Amendment of s. 14 of principal Act—Commissioner of Taxes may hold office under the Commonwealth.

5. Section 14 of the principal Act is amended by striking out the words "income tax" in the third line and inserting in lieu thereof the words "any tax, contribution or other money payable to the Commonwealth".

6. Section 24 of the principal Act is amended—

Amendment of
s. 24 of
principal Act—
Exemptions
from tax.

- (a) by striking out paragraph (k) thereof and inserting in lieu thereof the following paragraphs :—

“ (k) pensions, attendants' allowances, detention allowances and payments of a like nature paid under the Australian Soldiers' Repatriation Act, 1920-1940, or under the Seamen's War Pensions and Allowances Act, 1940 ;

(ka) payments by way of endowment under the Child Endowment Act, 1941 ; ” and

- (b) by striking out in paragraph (m) thereof the words “ prior to the first day of July, nineteen hundred and forty-one ”.

7. Section 27 of the principal Act is amended—

Amendment of
s. 27 of
principal Act—
Assessable
income.

- (a) by inserting after the word “ employment ” in the fifth line of paragraph (n) thereof the words “ or profession, or calling ” ;

- (b) by adding after the end of paragraph (n) thereof the following passage—“ In this paragraph ‘ duties ’ includes work and services ”.

8. The following sections are enacted and inserted in the principal Act after section 27 thereof :—

Enactment of
s. 27a to
s. 27c of
principal Act—
Pensions.

27a. A pension received by a resident of the State for or in respect of or in relation to any past employment or service, irrespective of the source from which the pension is received, shall be deemed to be derived by him from a source in the State and shall be included in his assessable income to the following extent—

(a) if the whole of the employment or service was given or rendered in Australia—the full amount of the pension :

(b) if part of the employment or service was given or rendered in Australia—a part of the pension being a sum which bears the same ratio to the full amount of the pension as the period of the employment or service given or rendered in Australia bears to the whole period of the employment or service.

27b. Where the taxpayer is employed on a ship engaged in trading or going between places in Australia, or between Australia and territories under the authority of the Commonwealth, New Zealand, or the islands of the Pacific

Remuneration
of persons on
Australian
ships.

Ocean, and the usual place of abode of the taxpayer, when not on the ship, is in the State, the whole of the salary, wages, or remuneration derived by the taxpayer from such employment shall be deemed to be derived by him from a source in the State and shall be included in his assessable income.

Rebates of tax under two preceding sections.

27c. Where any person has paid, in any place outside the State, income tax (other than Commonwealth income tax) in respect of the whole or part of the amount which by virtue of section 27a or 27b is included in the assessable income, he shall be entitled to a rebate in his assessment of an amount equal either to the tax so paid, or to the proportion of the tax payable under this Act which is attributable to that amount, whichever is the less.

Amendment of s. 36 of principal Act—
Disposal of assets of a business.

9. Section 36 of the principal Act is amended by inserting after the word “crop-stools” in the sixth line of subsection (1) thereof the words “or standing or growing timber, being trees which have been planted for sale”.

Amendment of s. 37 of principal Act—
Devolution of assets on death.

10. Section 37 of the principal Act is amended by inserting after the word “crop-stools” in the fourth line of subsection (1) thereof the words “or standing or growing timber, being trees which have been planted for sale”.

Enactment of s. 40a of principal Act—

11. The following section is enacted and inserted in the principal Act after section 40 thereof :—

Income from sales in and out of State

40a. Except as otherwise provided in this Division—

(a) where goods are sold in the State by any person, the whole of the profit arising from the sale shall be deemed to be income derived in the State ;

(b) where goods are sold out of the State but in Australia by any person, the whole of the profit arising from the sale shall be deemed to be income derived out of the State.

Amendment of ss. 46 and 47 of principal Act—
Sales by merchants.

12. Sections 46 and 47 of the principal Act are amended by striking out the provisos to those sections.

Amendment of s. 52 of principal Act—
Determination of questions of doubt.

13. Section 52 of the principal Act is amended by striking out the words “any, and if so” in the second and third lines and inserting in lieu thereof the words “the whole or any part, and, if a part,”.

14. Section 54 of the principal Act is amended by striking out in paragraph (b) of subsection (2) thereof the words " before the first day of July, nineteen hundred and forty-one ".

Amendment of s. 54 of principal Act—
Dividends from exempt income of mining companies.

15. Section 62 of the principal Act is amended by striking out paragraphs (a), (b), and (c) and inserting in lieu thereof the following paragraphs :—

Amendment of s. 62 of principal Act—
Deductions in case of composite incomes.

(a) Where a deduction or part of a deduction relates directly to income from dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively from income from dividends, from income from property other than dividends, and from income from personal exertion :

(b) Where a deduction or part of a deduction relates directly to the income from property other than dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively from income from property other than dividends, from income from dividends, and from income from personal exertion : and

(c) In all other cases, the deduction or part of the deduction shall be made successively from income from personal exertion, from income from property other than dividends, and from income from dividends.

16. Section 79 of the principal Act is amended by adding at the end thereof the following subsections (the previous part of the section being read as subsection (1) thereof) :—

Amendment of s. 79 of principal Act—
Contributions to pension funds.

(2) Where a taxpayer who has been allowed a deduction under subsection (1) of this section in respect of any sum set aside or paid as or to such a fund, receives from that fund any payment, asset, or other benefit which has a money value, his assessable income shall include that payment or the money value of that asset or benefit.

17. Section 85 of the principal Act is amended—

Amendment of s. 85 of principal Act—
Deduction of rates and taxes.

(a) by striking out in the second and third lines of subsection (1) the words " on land used for primary production " ;

(b) by striking out subsection (2) thereof and inserting in lieu thereof the following subsections :—

(2) Sums payable by the taxpayer in the year of income for sales tax and pay-roll tax under the laws of the Commonwealth to the extent to which such sums are payable in connection with the earning of assessable income shall be allowable deductions.

(3) Except as provided in subsections (1) and (2) of this section sums payable by the taxpayer for any tax shall not be allowable deductions.

Amendment of
s. 89 of
principal Act—
Contribution
to pension
funds.

18. Section 89 of the principal Act is amended by adding at the end thereof the following subsection (the previous part of the section being read as subsection (1) thereof :—

(2) Where a taxpayer who has been allowed a deduction under paragraph (a) of subsection (1) of this section in respect of any sum set aside or paid as or to such a fund receives from that fund any payment, asset or other benefit which has a money value, his assessable income shall include that payment or the money value of that asset or benefit.

Enactment of
s. 89a of
principal Act—

19. The following section is enacted and inserted in the principal Act after section 89 thereof :—

Loss in
earning exempt
income.

89a. (1) Where a loss is incurred in the year of income by a taxpayer in carrying on in the State a business the income from which, if any, would be exempt income (which business is, in this section, called "the exempt business") that loss shall be an allowable deduction.

(2) In calculating the amount of that loss, no deduction shall be made which would not have been an allowable deduction if the income (if any) had been assessable income.

(3) Notwithstanding any other provision of this Act, where a deduction allowable under this section has been made from the income of any of the three years next preceding the year of income, profits derived by the taxpayer from the exempt business in the year of income shall be included in his assessable income, provided that the amount so included shall not exceed the amount, if any, by which the deductions so made from the income of those three years exceed the profits included under this subsection in the assessable income of those years in respect of those deductions.

20. Section 90 of the principal Act is amended as follows :—

Amendment of s. 90 of principal Act—
Concessional deductions.

(a) The words “ and his net income does not exceed six hundred and fifty pounds ” in the third and fourth lines of subsection (1) are struck out :

(b) After paragraph (b) of subsection (1) thereof the following paragraph is inserted—

(b1) Where during the year of income the taxpayer is a widower, not having any child under sixteen years of age, and is the occupier of residential premises, in which one or more of his children reside with him, the sum of thirty pounds :

(c) Subsections (6), (7) and (8) are struck out.

21. Section 97 of the principal Act is amended by adding at the end thereof the following subsection (the previous part of section 97 being read as subsection (1) thereof) :—

Amendment of s. 97 of principal Act—
Lease sold with other assets.

(2) Where a lease is sold together with other assets, the amount of the consideration attributable to the lease shall, subject to subsection (3) of section 36 and subsection (3) of section 72, be—

(a) where a separate amount is allocated to the lease in any contract of sale or arrangement and the Commissioner is satisfied that that separate amount is fair and reasonable—the amount so allocated ; or

(b) where no separate amount is so allocated or the Commissioner is not satisfied that the amount allocated is fair and reasonable—the amount determined by the Commissioner.

22. Section 101 of the principal Act is amended—

Amendment of s. 101 of principal Act—
Rate of tax where premium received.

(a) by striking out the word “ less ” in the first line of subsection (3) and inserting in lieu thereof the words “ not more ” ;

(b) by adding at the end of subsection (4) thereof the words “ or where the premium or premiums for the lease is or are payable in each of three or more years of the lease ”.

23. Section 109 of the principal Act is amended by striking out the words “ had been received by the other partner if only one, or divided between the other partners, if more than one, in proportion to their respective shares in the partnership ” in the seventh, eighth and ninth lines thereof and inserting in lieu thereof the words—

Amendment of s. 109 of principal Act—
Partner not in receipt and control of share.

- (a) had been received by the partner who has the real and effective control of that share ; or (as the case may be)
- (b) had been divided between such other partners as have the real and effective control of that share in proportion to the extent to which, in the opinion of the Commissioner, they respectively have the real and effective control of that share.

Enactment of
s. 109 a—

24. The following section is enacted and inserted in the principal Act after section 109 thereof :—

Family
partnerships.

109a. (1) Where a taxpayer carries on business in partnership with a relative or relatives (with or without other persons), the share in the income of the partnership of a relative who is a minor and unmarried, or is the spouse of the taxpayer, shall for the purposes of this Act, and subject to subsection (3) of this section, be added to and be deemed to be part of the share of the taxpayer.

(2) Any amount which has been paid to any such relative for services performed by him in the business and is in the opinion of the Commissioner just and reasonable, shall be an allowable deduction in arriving at the net income of the partnership.

(3) Where any such relative has introduced capital into the partnership (not being capital derived directly or indirectly from, or through the instrumentality of, the taxpayer) and has been actively engaged in the production of the assessable income of the business during the major portion of the year of income, an amount ascertained in accordance with subsection (4) of this section shall, if such relative has the real and effective control of that amount, be included in the assessable income of such relative and shall not be added to the share of the taxpayer.

(4) The amount referred to in subsection (3) of this section shall be such part of the sum of the shares of the taxpayer and of such relative in the income of the partnership as bears to that sum the same proportion as the amount of capital introduced into the partnership by such relative (not being capital derived directly or indirectly from or through the instrumentality of the taxpayer) bears to the total amount of capital introduced into the partnership by the taxpayer and such relative.

25. The following sections are enacted and inserted in the principal Act after section 116 thereof:—

Enactment of
s. 116a and
s. 116b of
principal Act—

116a. (1) Where, in any year of income, the trustee of the estate of a deceased person receives any amount which is in the nature of corpus in the hands of the trustee and which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that amount shall be included in the assessable income of that year of the trust estate and the trustee shall be liable as trustee to pay tax upon that amount.

Income
received by
trustees of
estates of
deceased
persons.

(2) Where, in the opinion of the Commissioner the amount so included includes an amount which accrued due to the deceased person prior to the year of income and the tax payable under this section exceeds the tax which would have been payable if the income had been received on its due date he shall make such adjustment as is just.

116b. Where a trustee is assessed in respect of the whole or any part of the taxable income derived by a deceased taxpayer during the whole or part of either or both of the following periods, namely, the last complete year of income before the death of the taxpayer, and the period between the end of that year of income and the death of the taxpayer, the rate of tax payable by the trustee on that taxable income, shall be the rate of tax which would have been payable on that taxable income if an assessment in respect thereof had been made against the taxpayer on the date of his death.

Time as at
which tax on
certain income
of deceased
taxpayer to be
assessed.

26. Section 132 of the principal Act is amended by striking out the figure “(1)” occurring in the second line of subsection (4) and in the last line of subsection (6) and inserting in lieu thereof in each case the figure “(3)”.

Amendment of
s. 132 of
principal Act—
Income of
banks.

27. The heading of Division 11 of Part III. of the principal Act is amended by inserting after the word “Ships” therein the words “and Aircraft”.

Amendment of
heading to
Division 11
of Part III.

28. Section 138 of the principal Act is amended—

Amendment of
s. 138 of
principal Act—

(a) by inserting after the word “ship” in the first line thereof the words “or aircraft”;

Extension of
provision to
aircraft.

(b) by inserting after the word “shipped” in the third line thereof the words “or taken on board”.

29. The following section is enacted and inserted in the principal Act after section 138 thereof:—

Enactment of
s. 138a of
principal Act—

Calculation of amount of freight.

138a. For the purposes of this Division the amount paid in respect of the carriage of any passengers, livestock, mails, or goods shall be the amount remaining after deducting from the gross amount of such freight, the amount of any rebate, discount or other like sum allowed by the owner or charterer of the ship as a deduction from the freight.

Amendment of s. 139 of principal Act—
Consequential amendment.

30. Section 139 of the principal Act is amended by inserting after the word "ship" in the first line thereof the words "or aircraft".

Repeal of s. 153 of principal Act and enactment of other provisions.

31. Section 153 of the principal Act is repealed and the following section is enacted and substituted in lieu thereof:—

Re-insurance with non-residents.

153. Notwithstanding any other provision of this Act, where a person carrying on the business of insurance (other than life assurance) in the State re-insures 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 re-insurance shall not be an allowable deduction to the person carrying on the business of insurance in the State, or 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 the State shall not include sums recovered from the person carrying on business out of Australia in respect of a loss on any risk so re-insured.

Amendment of s. 194 of the principal Act—
Liquidators.

32. Section 194 of the principal Act is amended by inserting at the end thereof the following subsection:—

(6) Upon the winding up of any company, the Commissioner may, if all other creditors of that company whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise, permit all such costs, charges, and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator, including the remuneration of the liquidator, to be paid out of the assets of the company in priority to any tax payable by the company.

33. Section 198 of the principal Act is amended—

Amendment of
s. 198 of
principal Act—
Collection of
tax from person
owing money
to taxpayer.

(a) by striking out in sub-section (1) thereof all the words after the words "to pay to" in the thirteenth line and inserting in lieu thereof the words "the Commissioner, either forthwith upon the money becoming due or being held, or at or within a time specified in the notice (not being a time before the money becomes due or is held)—

(i) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act, or the whole of the money when it is equal to or less than that amount ; or

(ii) such amount as is specified in the notice out of each of any payments which the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act has been paid,

and may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice." ; and

(b) by omitting sub-section (3).

34. Section 200 of the principal Act is amended—

Amendment of
s. 200 of
principal Act—
Interpretation.

(a) by striking out in the definition of "employee" the words "but does not include a director, as such, of a company" ;

(b) by striking out paragraph (c) of the definition of salary or wages and inserting in lieu thereof the following paragraphs :—

(c) payments under any contract which is wholly or substantially for the labour of the person to whom the payments are made ;
or

(d) payments by way of commission to an insurance or time-payment canvasser or collector ; or

(e) payments by a company by way of remuneration to a director of the company ; or

(f) payments by way of superannuation pension or retiring allowance.

Enactment of s. 214a of principal Act—

35. The following section is enacted and inserted in the principal Act after section 214 thereof:—

Purchase of stamps by taxpayers other than employees.

214a. Any taxpayer, not being an employee, may at any time purchase tax stamps from any person authorized by the Commissioner to sell tax stamps; and the provisions of this Division shall, in respect of any tax stamps so purchased, apply to that taxpayer as if he were an employee and the tax stamps so purchased had been delivered to him in accordance with section 203 of this Act.

Enactment of s. 220a of principal Act—

36. The following section is enacted and inserted in the principal Act after section 220 thereof:—

Time for commencing prosecutions under this Division.

220a. A prosecution for any offence (whether committed before or after the enactment of this section) against any provision of this Division may be instituted at any time not later than two years after the time of the commission of the offence.

Amendment of s. 254 of principal Act—
Tax agents

37. Section 254 of the principal Act is amended by striking out subsection (3) thereof and inserting in lieu of that subsection the following subsections:—

(3) No person other than a barrister or solicitor or a person registered by the Registrar as a tax agent shall—

(a) hold himself out as a tax agent or as being willing for reward to prepare any income tax return for a taxpayer;

(b) carry on business as a tax agent.

(3a) Any person who contravenes subsection (2) or subsection (3) of this section shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

(3b) Proceedings for an offence of demanding, receiving or setting-off a fee contrary to this section may be instituted at any time not later than two years after the time of the commission of the offence.

Commence-
ment of Act.

38. (1) The amendments made by sections 6 to 24 inclusive of this Act shall apply to all assessments for the year of tax beginning on the first day of July nineteen hundred and forty-one and for all subsequent years of tax.

(2) The amendments made by sections 4 and 5 of this Act shall be deemed to have come into operation on the first day of July nineteen hundred and forty.

(3) The amendments made by section 116b of the principal Act, as enacted in section 25 of this Act, and by sections 32 to 37 inclusive of this Act, shall come into operation on the day on which this Act receives the Royal Assent.

(4) The amendments made by sections 3, 26, 27, 28, 29, 30 and 31 of this Act, shall be deemed to have come into operation on the same day as the principal Act.

(5) The amendments made by section 116a of the principal Act, as enacted in section 25 of this Act, shall apply to all assessments for the year of tax beginning on the first day of July, nineteen hundred and forty-two, and for all subsequent years of tax.

In the name and on behalf of His Majesty, I hereby assent
to this Bill.

C. M. BARCLAY-HARVEY, Governor.