



ANALYSIS

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Application of this Act. 3. Time limit for requiring case to be stated to Magistrate. 4. Reducing special rebate to persons who have attained sixty-five years. 5. Trustees not entitled to rebate to persons who have attained sixty-five years. 6. New Zealand Forest Service liable for income tax in respect of commercial enterprises. 7. Exemption from income tax of pay of servicemen in operational areas. Repeal. 8. Extending period for allowance of special depreciation on buildings and plant. Repeal. 9. Universal superannuation to be assessable for income tax. | <ol style="list-style-type: none"> 10. Profits from dealing in property to form part of assessable income. 11. Meaning of "trading stock". 12. Amending provisions as to valuation of trading stock. 13. Extending time for applying to spread excess income derived on sale of livestock where unduly low standard values adopted. 14. Assessments may be amended at any time where liabilities remitted. 15. Deduction of testamentary annuities charged on property. Repeal. 16. Payment of excessive salary or share of profits to relative employed by or in partnership with taxpayer. 17. Leases for inadequate rent. 18. Amending provisions as to assignments or settlements of income. 19. Extending time for payment of tax before penalty accrues. |
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1951, No. 80

Title.

AN ACT to amend the Land and Income Tax Act 1923.

[6 December 1951

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. This Act may be cited as the Land and Income Tax Amendment Act 1951, and shall be read together with and deemed part of the Land and Income Tax Act 1923 (hereinafter referred to as the principal Act).

See Reprint
of Statutes,
Vol. VII, p. 271

2. Except as otherwise provided herein, this Act shall apply with respect to the tax for the year of assessment that commenced on the first day of April, nineteen hundred and fifty-one, and for every subsequent year.

Application of this Act.

3. (1) Section twenty-three of the principal Act is hereby amended by omitting the words " an objection which is not allowed by the Commissioner shall, if the objector so desires ", and substituting the words " if an objection is not allowed by the Commissioner, the objector may, within six months after the date on which notice of the disallowance is given to him by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by a Stipendiary Magistrate, and in that event the objection shall ".

Time limit for requiring case to be stated to Magistrate.

(2) This section shall apply with respect to every objection made after the passing of this Act whether the tax in respect of which the assessment is objected to is in respect of a year of assessment that ended before or after the passing of this Act.

4. Section four of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby amended by omitting from subsection one the words " fifteen pounds " wherever they occur, and substituting in each case the words " ten pounds ".

Reducing special rebate to persons who have attained sixty-five years. 1950, No. 87

5. Section four of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby further amended as from the passing of that Act by adding the following subsection:—

Trustees not entitled to rebate to persons who have attained sixty-five years.

"(3) This section shall not apply with respect to the assessment of any taxpayer in his capacity of trustee:

" Provided that where a trustee is assessable in respect of any income as the agent of any beneficiary under paragraph (a) of section one hundred and two of the principal Act, the trustee shall in respect of that assessment be entitled, irrespective of his age, to the same rebate as would have been allowable to that beneficiary under this section had the beneficiary been assessable directly in respect of that income."

New Zealand
Forest Service
liable for
income tax in
respect of
commercial
enterprises.
1940, No. 3

Exemption
from income
tax of pay of
servicemen in
operational
areas.

6. Section seventy-eight of the principal Act (as amended by section four of the Land and Income Tax Amendment Act 1940) is hereby further amended by adding to paragraph (b) the words “and the New Zealand Forest Service in respect of such of the commercial enterprises of that Service as may be determined by the Minister of Finance”.

7. (1) Where any person engaged in any naval, military, or air force raised in New Zealand or in any other part of the British Commonwealth is in receipt of pay and allowances in respect of that engagement directly from the New Zealand Government or of pay and allowances receivable in respect of that engagement which but for this section would be assessable for income tax in New Zealand, such portion of that person's pay and allowances as relates to the period of his service in an operational area as hereinafter defined shall not be assessable for income tax.

(2) Where any person entitled to exemption under subsection one of this section suffers any sickness, injury, or disablement during a period of service in an operational area and that sickness, injury, or disablement is not due to his negligence or misconduct, his service in the operational area shall, for the purposes of this section, be deemed to continue until such time as he is certified as fit for further service, whether in an operational area or elsewhere, or is discharged from the force.

(3) There is hereby established for the purposes of this section a Special Committee comprising the Prime Minister, the Minister of Defence, and the Minister in Charge of the Land and Income Tax Department.

(4) The Committee may from time to time—

(a) Define any specified area to be an operational area for the purposes of this section:

(b) Prescribe rules as to the method of computing a person's period of service in an operational area.

(5) Notice of all determinations of the Committee under this section shall be given in orders issued from time to time by the Service Board concerned.

(6) In this section the expression "pay and allowances" does not include the amount of any Regular force gratuity or the amount of any bonus or bounty paid or payable in consideration of re-engagement in any Regular force.

(7) This section shall apply to pay and allowances in respect of any period after the first day of April, nineteen hundred and fifty.

(8) Section fourteen of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby repealed as from the passing thereof. Repeal.
1950, No. 87

8. (1) Section fifteen of the Land and Income Tax Amendment Act 1945 (as amended by section seven of the Land and Income Tax Amendment Act (No. 2) 1950) is hereby further amended by omitting from subsection one the words "nineteen hundred and fifty-two", and substituting the words "nineteen hundred and fifty-three". Extending
period for
allowance of
special
depreciation
on buildings
and plant.
1945, No. 37

(2) Section seven of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby consequentially repealed. Repeal.

9. (1) Section five of the Land and Income Tax Amendment Act 1940 is hereby amended by adding to paragraph (a) of subsection three the words "other than a superannuation benefit payable in respect of any period after the thirtieth day of September, nineteen hundred and fifty-one". Universal
superannuation
to be assessable
for income tax.
1940, No. 3

(2) Section four of the Land and Income Tax Amendment Act 1932-33 is hereby amended by inserting in subsection three (as enacted by section three of the Land and Income Tax Amendment Act 1945), after the words "Social Security Act 1938", the words "other than a superannuation benefit payable in respect of any period after the thirtieth day of September, nineteen hundred and fifty-one,". 1932-33, No. 40

(3) Section two of the Land and Income Tax Amendment Act 1933 is hereby amended by inserting in subsection three (as enacted by section four of the Land and Income Tax Amendment Act 1945), after the words "Social Security Act 1938", the words "other than a superannuation benefit payable in respect of any period after the thirtieth day of September, nineteen hundred and fifty-one,". 1933, No. 43

Profits from dealing in property to form part of assessable income.

10. Section seventy-nine of the principal Act is hereby amended by repealing paragraph (c) of subsection one, and substituting the following paragraph:—

“(c) All profits or gains derived from the sale or other disposition of any real or personal property or any interest therein, if the business of the taxpayer comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and all profits or gains derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit:”.

Meaning of “trading stock”.
See Reprint of Statutes, Vol. VII, p. 343

11. (1) Section five of the Land and Income Tax Amendment Act 1926 is hereby amended by inserting, after subsection two, the following subsection:—

“(2A) For the purposes of this section the expression ‘trading stock’ includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture, sale, or exchange; and also includes any other real or personal property sold or disposed of by the taxpayer where the business of the taxpayer comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal; and also includes livestock.”

1949, No. 29

(2) Section nine of the Land and Income Tax Amendment Act 1949 is hereby amended by omitting from subsection three the words “but does not include land”, and substituting the words “and also includes any other real or personal property where the business of the person by whom it is sold or disposed of comprises dealing in such property or the property was acquired by him for the purpose of sale or other disposal”.

Amending provisions as to valuation of trading stock.
1939, No. 34

12. Section sixteen of the Land and Income Tax Amendment Act 1939 is hereby amended as follows:—

(a) By inserting in subsection two, after the word “taxpayer”, the words “owns or”:

(b) By inserting in subsection seven, after the words “assets of a business”, the words “owned or”.

13. Section eight of the Land and Income Tax Amendment Act 1949 is hereby amended as from the passing of that Act by omitting from subsection two the words "not later than twelve months after the date of the sale or other disposition", and substituting the words "within twelve months after the sale or other disposition or within such further period as the Commissioner in his discretion may allow in any case or class of cases".

Extending time for applying to spread excess income derived on sale of livestock where unduly low standard values adopted.
1949, No. 29

14. (1) Section seventeen of the Land and Income Tax Amendment Act 1939 is hereby amended by inserting, after subsection three, the following subsection:—

Assessments may be amended at any time where liabilities remitted.
1939, No. 34

"(3A) For the purposes of giving effect to the provisions of this section, the Commissioner may at any time alter any assessment, notwithstanding anything to the contrary in section sixteen of the principal Act."

(2) This section shall apply with respect to tax for any year of assessment, whether before or after the passing of this Act.

15. (1) Notwithstanding anything to the contrary in the principal Act, where property has been devised or bequeathed by will subject to the payment of an annuity or has been made subject to the payment of an annuity by an order of the Court under Part II of the Family Protection Act 1908 or by a deed of family arrangement, and that property or any property substituted therefor has been transferred to a beneficiary and is charged with payment of the annuity or any part thereof, any amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year, so far as that income extends:

Deduction of testamentary annuities charged on property.

See Reprint of Statutes, Vol. III, p. 298

Provided that no deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that he assumes the liability for the whole or any part of the annuity charged thereon:

See Reprint
of Statutes,
Vol. III, p. 298

Provided also that, to the extent that an annuity payable by the owner of the property or substituted property under an order of the Court under Part II of the Family Protection Act 1908 or under a deed of family arrangement represents, in the opinion of the Commissioner, consideration for the purchase of the property or substituted property by the owner, the annuity shall not be allowed as a deduction under this section.

Ibid., Vol. VII,
p. 354

(2) In this section the term "beneficiary", in relation to any property, means a person to whom that property has been devised or bequeathed by will, or a person who is entitled, pursuant to a provision in a will, to purchase, subject to payment of an annuity, that property, being property that forms part of the estate of the testator and that also forms part of the succession of that person in that estate for the purposes of the Death Duties Act 1921; and includes a person who is entitled to the property pursuant to an order of the Court under Part II of the Family Protection Act 1908 or to a deed of family arrangement.

(3) This section shall apply with respect to the tax for the year of assessment that commenced on the first day of April, nineteen hundred and fifty, and for every subsequent year.

Repeal.
1950, No. 87

(4) Section eleven of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby repealed as from the passing thereof.

Payment of
excessive salary
or share of
profits to
relative
employed by or
in partnership
with taxpayer.
1939, No. 34

16. (1) Where—

(a) Any taxpayer carries on any business or undertaking and employs or engages any relative, or, being a company other than a proprietary company within the meaning of section twenty-three of the Land and Income Tax Amendment Act 1939, employs or engages any relative of a director or shareholder of the company, to perform services in connection with that business or undertaking; or

(b) Any taxpayer carries on business in partnership with any person, whether or not any other person is a member of the partnership, and—

(i) Any relative of the taxpayer is employed or engaged by the partnership to perform services in connection with the business; or

(ii) Where one of the partners is a company, any relative of a director or shareholder of the company is employed or engaged by the partnership to perform services in connection with the business; or

(c) Any taxpayer carries on business in partnership with any relative or with any company a director or shareholder of which is a relative of the taxpayer or, being a company, carries on business in partnership with any relative of a director or shareholder of the company, whether or not any other person is a member of the partnership,—

and the Commissioner is of opinion that the remuneration, salary, share of profits, or other income payable to or for the benefit of that relative or company under the contract of employment or engagement or the terms of the partnership exceeds such an amount as is reasonable having regard to the nature and extent of the services rendered, the value of the contributions made by the respective partners by way of services or capital or otherwise, and any other relevant matters, the Commissioner may for the purposes of the principal Act allocate the total profits or income of the business or undertaking before the deduction of any amount payable to that relative or company between the parties to the contract or the partners or any of them in such shares and proportions as he considers reasonable, and the amounts so allocated shall be deemed to be income derived by the persons to whom those amounts are so allocated and by no other person.

(2) Where any sum paid or credited by a company, being or purporting to be remuneration for services rendered by any person who is a relative of a director or shareholder of the company, is allocated to that company in accordance with subsection one of this section, the amount so allocated to the company shall be deemed to be a dividend paid by the company to that person and received by him as a shareholder of the company.

(3) For the purposes of this section the term "relative" means a husband or wife, or a relative by blood within the fourth degree of relationship

(whether legitimate or illegitimate), or a relative by marriage or adoption; and includes a trustee for a relative.

(4) Notwithstanding anything to the contrary in section thirty-eight of the principal Act, it shall be grounds for objection under Part III of that Act to an assessment of income tax that any determination of the Commissioner made for the purposes of this section is erroneous, and the Court hearing the objection shall have power to review the determination of the Commissioner, and shall for that purpose have all the powers and functions of the Commissioner in making that determination, and the decision of the Court shall, except for the purposes of objection thereto, take effect as if it were the determination of the Commissioner; but nothing in this subsection shall restrict the right of the Commissioner or the objector to appeal against the decision of the Court in accordance with Part III of the principal Act.

(5) This section shall apply with respect to income derived during the income year that ended on the thirty-first day of March, nineteen hundred and fifty-one, and during any subsequent income year, and shall apply whether the contract of service or employment or the partnership was entered into before or after the commencement of that income year.

Leases for inadequate rent.

17. (1) Where any property owned by any person or by two or more persons (whether jointly or in common) or by any partnership is leased to a relative of any of those persons or of any member of the partnership or to a related company or by a company to any person and the rent is less than an adequate rent for that property or the lease makes no provision for the payment of rent,—

(a) There shall be deemed to be payable under the lease a rent that is equal to an adequate rent for the property, and that rent shall be deemed to be payable by the lessee to the lessor on the days provided in the lease for payment thereof, or, if no rent is payable under the lease, on such days as the Commissioner determines, and shall be deemed to be income derived by the lessor on the days on which the rent is payable as aforesaid; and

(b) The rent deemed to be payable under paragraph (a) of this subsection shall be deemed to accrue from day to day during the period in respect of which it is payable, and shall be apportionable accordingly.

(2) The provisions of this section shall apply with respect to any leased property only if and to the extent that it is used by the lessee in the production of income.

(3) In this section—

“ Adequate rent ”, in relation to any property, means the amount of rent that the Commissioner determines to be adequate for that property during the period in respect of which the determination is made:

“ Lease ” means a tenancy of any duration, whether in writing or otherwise; and includes a sublease; and also includes a bailment; and “ lessor ” and “ lessee ” have corresponding meanings:

“ Related company ” means a company that is under the control of the lessor or any relative or relatives of the lessor or any one or more of them, or, where there are several lessors or the lessor is a partnership, under the control of any of the lessors or partners or any relative or relatives of any of the lessors or partners:

“ Relative ” means a husband or wife, or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate), or a relative by marriage or adoption:

“ Rent ” includes any premium or other consideration for the lease.

(4) Notwithstanding anything to the contrary in section thirty-eight of the principal Act, it shall be grounds for objection under Part III of the principal Act to an assessment of income tax that any determination of the Commissioner for the purposes of this section is erroneous, and the Court hearing the objection shall have power to review the determination of the Commissioner, and shall for that purpose have all the powers and functions of the Commissioner in making that determination, and the decision of the Court shall, except for the purposes of objection thereto, take effect as if it

were the determination of the Commissioner; but nothing in this subsection shall restrict the right of the Commissioner or the objector to appeal against the decision of the Court in accordance with Part III of the principal Act.

(5) This section shall apply with respect to income derived during the income year that ended on the thirty-first day of March, nineteen hundred and fifty-one, and during any subsequent income year, and shall apply whether the lease was granted before or after the commencement of that income year.

Amending provisions as to assignments or settlements of income.
1950, No. 87

18. Section thirteen of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby amended as from the passing of that Act by omitting from subsection seven the words "nor to any marriage settlement, nor to any transfer or settlement made for fully adequate consideration in money or money's worth".

Extending time for payment of tax before penalty accrues.

19. (1) Section one hundred and thirty-five of the principal Act is hereby amended by omitting from subsection one the words "twenty-one days", and substituting the words "one month".

(2) This section shall apply with respect to tax that becomes due and payable on or after the eighth day of February, nineteen hundred and fifty-two.