

# INCOME TAX ASSESSMENT (No. 2).

## No. 28 of 1944.

### An Act to amend the *Income Tax Assessment Act* 1936-1943, as amended by the *Income Tax Assessment Act* 1944.

[Assented to 6th October, 1944.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title  
and citation.

1.—(1.) This Act may be cited as the *Income Tax Assessment Act* (No. 2) 1944.

(2.) The *Income Tax Assessment Act* 1936-1943\*, as amended by the *Income Tax Assessment Act* 1944†, is in this Act referred to as the Principal Act.

(3.) Section one of the *Income Tax Assessment Act* 1944 is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1936-1944.

Commencement.

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

Officers to  
observe  
secrecy.

3. Section sixteen of the Principal Act is amended—

(a) by omitting from paragraph (f) of sub-section (4.) the word “or” (last occurring); and

(b) by adding at the end of sub-section (4.) the following word and paragraph :—

“; or

(h) the Secretary, Department of Defence, the Secretary, Department of the Navy, the Secretary, Department of the Army, or the Secretary, Department of Air, for the purpose of the administration of any law of the Commonwealth relating to payments in respect of dependants of members of the Defence Force.”.

4. After section fifty-three of the Principal Act the following sections are inserted :—

“53A.—(1.) The estimated cost of deferred maintenance shall, subject to this section, be an allowable deduction.

Deferred  
maintenance.

\* 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; and No. 10, 1943.  
† Act No. 3, 1944.

“(2.) A deduction shall be allowable in respect of deferred maintenance where the taxpayer—

- (a) has, during the year of income during which the need for the deferred maintenance first arose, made an application in writing to the Commissioner for the allowance thereof as a deduction ;
- (b) has furnished with the application a detailed statement of particulars of the deferred maintenance and the estimated cost thereof ; and
- (c) has paid to the Commissioner, at the time of making the application, a sum equal to the estimated cost of the deferred maintenance.

“(3.) The amount allowable as a deduction shall be such amount as, in the opinion of the Commissioner, is reasonable.

“(4.) Where the sum paid by a taxpayer in pursuance of paragraph (c) of sub-section (2.) of this section exceeds the amount allowable as a deduction under this section, the Commissioner shall repay to the taxpayer the amount of the excess.

“(5.) Where, in pursuance of the last preceding sub-section, the Commissioner has repaid the amount of any excess and the Board of Referees, in pursuance of the powers conferred upon it by section fifty-three E of this Act, has increased the amount allowable as a deduction, the taxpayer shall pay to the Commissioner, within thirty days after service on the taxpayer of notice of the decision of the Board, a sum equal to the amount of the increase.

“(6.) For the purposes of this section, maintenance—

- (a) the need for which first arose during any of the three years of income next preceding the year of income ending on the thirtieth day of June, One thousand nine hundred and forty-five ; and
- (b) which the taxpayer was unable to undertake by reason of circumstances attributable to the present war,

shall be deemed to be maintenance the need for which first arose during the year of income ending on the thirtieth day of June, One thousand nine hundred and forty-five.

“(7.) Where—

- (a) the estimated cost of deferred maintenance in respect of which an application is made under sub-section (2.) of this section includes an amount representing the estimated cost of maintenance the need for which is, by virtue of the last preceding sub-section, deemed to have first arisen during the year of income ending on the thirtieth day of June, One thousand nine hundred and forty-five ;
- (b) the total amount allowable as a deduction from the income of that year of income, in respect of the estimated cost of deferred maintenance, exceeds the amount of income remaining after deducting from the assessable income of that year all other allowable deductions ; and

(c) the Commissioner considers it would be just and reasonable in the circumstances to do so,

the total amount allowable as a deduction may be deducted partly from the assessable income of that year of income and partly from the assessable income of any one or more of the three immediately preceding years of income.

“(8.) In this section, ‘deferred maintenance’ means the maintenance of property, whether real or personal, in a normal state of repair or upkeep where—

- (a) the need for the maintenance first arose in the year of income and prior to the termination of the present war ;
- (b) the taxpayer was unable to undertake the maintenance by reason of circumstances attributable to the present war ; and
- (c) the expenditure upon that maintenance would have been an allowable deduction under section fifty-one or fifty-three of this Act if it had been actually incurred by the taxpayer.

**Repayments.**

“53B.—(1.) The Commissioner shall repay the whole or part, as the case requires, of any sum paid in pursuance of the last preceding section—

- (a) upon application in writing made at any time after the expiration of six months from the date upon which the sum was paid ;
- (b) where the taxpayer—
  - (i) dies ;
  - (ii) becomes bankrupt or executes a deed of assignment or arrangement for the benefit of his creditors ; or
  - (iii) being a company, commences to be wound up, upon the Commissioner becoming aware of the death, bankruptcy, execution of the deed or winding up ; and
- (c) in any other case—after the expiration of two years after the termination of the present war.

“(2.) Where any amount is repaid to the taxpayer in pursuance of paragraph (a) or (c) of the last preceding sub-section, that amount shall be included in the assessable income of the taxpayer of the year of income in which it is repaid.

“(3.) Where any amount is repaid in pursuance of paragraph (b) of sub-section (1.) of this section, that amount shall be deemed to be assessable income derived by the taxpayer on the day prior to the date of the death, bankruptcy, execution of the deed or commencement of the winding up, as the case may be.

“ 53c.—(1.) Where a deduction in respect of the estimated cost of the deferred maintenance of any property has been allowed under section fifty-three A of this Act and—

Excess  
deductions  
of deferred  
maintenance.

(a) it appears to the Commissioner that the amount of the deduction, or the total amount of the deductions, so allowed exceeds the amount which the taxpayer has actually incurred or will incur, either prior to, or within two years after, the termination of the present war in undertaking that deferred maintenance; or

(b) that property is destroyed, discarded, sold or otherwise disposed of before that deferred maintenance is undertaken,

the Commissioner may, if he considers the circumstances warrant it, determine the excess of the amount or total amount so allowed over the amount which it would be reasonable to allow.

“(2.) Any excess so determined shall be included in the assessable income of such one or more of the years of income from the income of which a deduction was so allowed as the Commissioner determines, and the amount included, or to be included, as assessable income in pursuance of sub-section (2.) or (3.) of the last preceding section shall be reduced by the excess so determined.

“ 53D.—(1.) Where a taxpayer has, for purposes primarily and principally connected with the prosecution of the present war, made alterations to, or in the position of, any property (being plant or articles in respect of which depreciation is allowable as a deduction under section fifty-four of this Act), expenditure (not being expenditure incurred in making structural alterations or additions to buildings) incurred by him during the year of income in making those alterations, or in re-establishing, removing or re-arranging that property after those alterations have been made, shall be an allowable deduction.

Alterations  
to plant.

“(2.) Where any such expenditure creates an enduring benefit to the taxpayer which would not have arisen if the alterations had not been made, the deduction otherwise allowable under the last preceding sub-section shall be reduced by an amount equal to the value of the enduring benefit so created.

“(3.) The amount of the deduction which would otherwise be allowable under this section shall be reduced by the amount (if any) of the expenditure which the taxpayer has been recouped or is entitled to be recouped by any person, where the amount recouped or to be recouped is not or will not be included in assessable income.

“(4.) Expenditure which is allowable as a deduction under this section shall not be taken into account as part of the cost of the property for the purposes of section sixty-two of this Act.

“ 53E.—(1.) Where a taxpayer is dissatisfied with any decision of the Commissioner under section fifty-three A, section fifty-three C or section fifty-three D of this Act, he may, within sixty days after

Reference  
to a Board  
of Referees.

service on him of notice of the decision, request the Commissioner, in writing, to refer the decision to a Board of Referees, and the Commissioner shall refer the decision accordingly.

“(2.) Upon every such reference, the Board of Referees shall review the decision of the Commissioner and shall give a decision in writing either varying or confirming the decision of the Commissioner.

“(3.) Every decision under this section by a Board of Referees shall be final and conclusive, and the Commissioner shall give effect to the decision.

“(4.) The provisions of Division 2 of Part V. of this Act shall not apply in respect of any matter which, under sub-section (1.) of this section, may be referred to a Board of Referees.”.

Expenditure  
for enemy  
raids  
precautions.

5. Section seventy-two B of the Principal Act is amended—

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

“(1.) Where, in the year of income, the taxpayer has incurred expenditure on or in connexion with premises or a part of premises owned or used by him primarily and principally for the purpose of producing assessable income, or in carrying on a business for that purpose, being expenditure incurred—

(a) in providing means for the protection of persons or property from hostile action by the forces of any country with which His Majesty is at war ; or

(b) in demolishing or removing any such means of protection,

that expenditure shall be an allowable deduction.” ; and

(b) by omitting sub-section (4.) and inserting in its stead the following sub-section :—

“(4.) Where any expenditure has been allowed or is allowable as a deduction under this section and—

(a) the taxpayer sells, transfers or otherwise disposes of the premises or any part thereof ;

(b) the premises or any part thereof is destroyed : or

(c) any property used for the purposes of the protection is lost, destroyed, sold, transferred or otherwise disposed of,

the consideration received or receivable in respect of the disposal, loss or destruction shall, to the extent of the expenditure so allowed or allowable as a deduction, be included in the assessable income of the year of income in which the disposal, loss or destruction occurs :

Provided that where the Commissioner is of opinion that part only, or no part, of that consideration relates to the disposal, loss or destruction of any property, benefit or advantage acquired or created by that expenditure, that part, or no part, as the case may be, of the consideration shall be included in the assessable income.”.

6. Section one hundred and sixty of the Principal Act is amended—

Concessional  
rebates.

(a) by inserting after paragraph (ba) of sub-section (2.) the following paragraph:—

“(bb) in respect of each child who—

- (i) is a resident ;
- (ii) is not under sixteen years of age but is under eighteen years of age at the beginning of the year of income ;
- (iii) is receiving full-time education at a school (including a technical school) or a university (including a university college) ; and
- (iv) is wholly maintained by the taxpayer, an amount of Seventy-five pounds, less the value of any assistance (consisting of money, accommodation or sustenance) provided by the government of the Commonwealth or of a State, during the year of income, in connexion with the education of the child :

Provided that where a child—

- (i) attains the age of sixteen years or eighteen years during the year of income ;
- (ii) receives full-time education at a school (including a technical school) or a university (including a university college) during part only of the year of income ; or
- (iii) is wholly maintained by the taxpayer during part only of the year of income, or is partially maintained by him during the whole or part only of the year of income,

the amount for the purposes of this paragraph shall be such amount (not exceeding Seventy-five pounds, less the value of any assistance (consisting of money, accommodation or sustenance) provided by the government of the Commonwealth or of a State, during the year of income, in connexion with the education of the child) as, in the opinion of the Commissioner, is reasonable in the circumstances :

Provided further that, in determining, for the purposes of this paragraph, whether a child is wholly or partially maintained by a

taxpayer, any assistance provided, in connexion with the education of the child, by the government of the Commonwealth or of a State, or by means of a scholarship, bursary, exhibition or prize, shall not be taken into account :

Provided also that the rebate of tax allowed in respect of this paragraph shall not exceed Forty-five pounds in respect of each child ; ” ;

(b) by omitting paragraph (d) of sub-section (2.) and inserting in its stead the following paragraph :—

“ (d) the amount of any payments (other than payments in relation to which paragraph (da) of this sub-section applies) made by the taxpayer in the year of income to any legally qualified medical practitioner, dentist, nurse or chemist, or to any public or private hospital, in respect of any illness of or operation upon, or dental services or treatment rendered to, the taxpayer or his spouse, or any of his children under the age of twenty-one years, if the spouse or child is a resident :

Provided that—

(i) if the total sum of the payments made in respect of dental services or treatment rendered to any such person exceeds Ten pounds, the amount of the excess shall not be included for the purposes of this paragraph ; and

(ii) if the total sum of all the payments made in relation to any such person, after deducting therefrom the amount (if any) required to be excluded by the last preceding sub-paragraph, exceeds Fifty pounds, the amount of the excess shall not be included for the purposes of this paragraph ; ” ;

(c) by inserting after paragraph (d) of sub-section (2.) the following paragraph :—

“ (da) the amount of any payments made by the taxpayer during the year of income in respect of any artificial limb (or part of a limb) or artificial eye required for the personal use of the taxpayer or his spouse, or any of his children under the age of twenty-one years, if the spouse or child is a resident ; ” ; and

(d) by inserting in sub-section (4.), after the letters and symbols “ (ba) ”, the letters and symbols “, (bb) ”.

7. Section one hundred and seventy of the Principal Act is amended by inserting in sub-section (10.), after the words "section twenty-three A," the words "sub-section (7.) of section fifty-three A, sub-section (3.) of section fifty-three B, section fifty-three C,".

Amendment  
of assessments.

8. Section two hundred and twenty-one C of the Principal Act is amended—

Deductions  
by employers  
from salaries  
and wages.

(a) by omitting from sub-section (3.) the word "Where" and inserting in its stead the words "Subject to the next succeeding sub-section, where"; and

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

"(4.) Where an employee is employed under the terms of an award, order or determination of an industrial tribunal, or under an industrial agreement, and the award, order, determination, or agreement specifies the value of sustenance or quarters, or both, provided by an employer to an employee, or provides that in lieu of providing an employee with sustenance or quarters, or both, an employer shall pay a money allowance to an employee, the employee shall, for the purpose of computing the deduction under this section, be deemed to have received as salary or wages, in addition to any money actually payable to him—

(a) for each week or part thereof during which he receives sustenance from the employer;

(b) for each week or part thereof during which he occupies quarters provided for him by the employer; or

(c) for each week or part thereof during which he receives sustenance from the employer and occupies quarters provided for him by the employer,

an amount calculated at the value specified therefor by the award, order, determination or agreement, or at the rate of the money allowance in lieu thereof provided by the award, order, determination or agreement, as the case may be, or such other amount as, in special circumstances, the Commissioner considers reasonable."

9. After section two hundred and twenty-one KD of the Principal Act the following section is inserted:—

"221KE. Where the Commissioner is satisfied—

(a) that a group employer has failed to pay to the Commissioner the whole or any part of the amount of the deductions made by him under this Division: or

Provisions  
where  
employers  
fail to  
account for  
or deal with  
deductions.



(b) that an employer (other than a group employer) has failed to deal, in the manner provided by or under this Division, with the whole or any part of the amount of the deductions made by him under this Division,

the Commissioner may—

(c) apply an amount equal to the amount which the employer has failed to pay or deal with, in satisfaction of any tax payable by the employee concerned ;

(d) issue an interim stamps receipt ; or

(e) make a payment in respect thereof,

in the same manner as if tax stamps or a group certificate of a face value equal to that amount had been produced to and defaced by the Commissioner.”.

Registration  
of tax agents.

**10.** Section two hundred and fifty-one J of the Principal Act is amended by adding at the end thereof the following sub-section :—

“(12.) Where, whether before or after the commencement of this sub-section—

(a) an application under this section has not been granted or has been withdrawn ; or

(b) the registration of a person or a partnership as a tax agent, or as a nominee of a tax agent, has ceased,

in circumstances which, in the opinion of the Board, justify the repayment of the lodgment fee paid under sub-section (2.) or (5.) of this section, the Board shall notify the Commissioner in writing accordingly, and the Commissioner shall repay the lodgment fee.”.

Unregistered  
tax agents  
not to  
charge fees.

**11.** Section two hundred and fifty-one L of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (2.) the word “ and ” ; and

(b) by omitting paragraph (b) of that sub-section.

Application of  
amendments.

**12.—(1.)** Section fifty-three A (other than sub-section (7.)) and section fifty-three D of the *Income Tax Assessment Act 1936-1944* shall apply—

(a) where the taxpayer is a company, other than a company in the capacity of a trustee—to all assessments for the financial year beginning on the first day of July, One thousand nine hundred and forty-five, and for all subsequent years ; and

(b) in any other case—to all assessments for the financial year which commenced on the first day of July, One thousand nine hundred and forty-four, and for all subsequent years.

(2.) Sub-section (7.) of section fifty-three A, and section fifty-three c, of the *Income Tax Assessment Act 1936-1944* shall apply to all assessments for the financial year which commenced on the first day of July, One thousand nine hundred and forty-two, and for all subsequent years.

(3.) The amendments effected by section five of this Act shall apply to all assessments for the financial year which commenced on the first day of July, One thousand nine hundred and forty-four, and for all subsequent years.

(4.) The amendments effected by section six of this Act shall apply to all assessments (other than assessments made for the purposes of Division 18 of Part III. of the *Income Tax Assessment Act 1936-1944*) for the financial year which commenced on the first day of July, One thousand nine hundred and forty-four, and for all subsequent years.