

1961. *Income Tax and Social Services Contribution* No. 27.
Assessment (No. 2).

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT (No. 2).

No. 27 of 1961.

An Act relating to Income Tax.

[Assented to 19th May, 1961.]

[Date of commencement, 16th June, 1961.]

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 and Social Services Contribution Assessment Act (No. 2) 1961*. Short title and citation.

(2.) The *Income Tax and Social Services Contribution Assessment Act 1936–1960*,* as amended by the *Income Tax and Social Services Contribution Assessment Act 1961*,† is in this Act referred to as the Principal Act.

(3.) Section one of the *Income Tax and Social Services Contribution Assessment Act 1961* is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax and Social Services Contribution Assessment Act 1936–1961*.

2. Section twenty-three D of the Principal Act is amended by omitting from sub-section (1.) the words “One thousand nine hundred and sixty-five” and inserting in their stead the words “One thousand nine hundred and sixty-eight”. Exemption of income from mining and treating uranium.

3. After section fifty-one AB of the Principal Act the following section is inserted:—

“51AC.—(1.) In this section, unless the contrary intention appears— Export market development allowance.

‘associated company’, in relation to a taxpayer, means a company that is, at any time during the year of income, a company—

(a) the operations of which are, or are able to be, controlled, either directly or indirectly, by that taxpayer;

* 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; and Nos. 17, 18, 58 and 108, 1960.

† Act No. 17, 1961.

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(b) which controls, or is able to control, either directly or indirectly, the operations of that taxpayer; or

(c) the operations of which are controlled, or are able to be controlled, either directly or indirectly, by a person who controls or is able to control, or persons who control or are able to control, either directly or indirectly, the operations of that taxpayer;

‘export’ does not include the export of goods by way of gift or the taking or sending of goods out of Australia with the intention that the goods will at some later time be brought or sent back to Australia;

‘export market development expenditure’ means prescribed outgoings incurred primarily and principally for the purpose of seeking opportunities, or creating or increasing demand, for—

(a) the export from Australia of goods that have been manufactured, produced, assembled, processed or packed, or graded and sorted, in Australia;

(b) the supply for reward of services (including the furnishing of technical advice, training or assistance) outside Australia; or

(c) the grant or assignment, for reward, of rights exercisable outside Australia in connexion with patents of inventions, trade marks, designs or copyright,

but does not include—

(d) outgoings incurred in promoting the sale of goods (not being goods referred to in paragraph (a) of this definition) manufactured or produced outside Australia if the parts or materials from which the goods are manufactured or produced include, to a substantial extent, parts or materials not of Australian origin; or

(e) so much of any outgoings incurred by a person as—

(i) has been, or is to be, paid or reimbursed to him by another person; or

(ii) is incurred in or in connexion with services or doing any thing for which he has been, or is to be, paid by another person;

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‘ permanent employee ’, in relation to a taxpayer, means a person who has been a full-time employee of the taxpayer for a continuous period of not less than five years immediately preceding the time in relation to which the expression is used;

‘ prescribed agent ’, in relation to a taxpayer or an association referred to in sub-section (2.) of section seventy-three of this Act, means—

- (a) in the case of a taxpayer not being a company—the taxpayer himself;
- (b) in the case of a taxpayer being a company, or in the case of such an association—a director, or a member of the governing body, of the company or association; or
- (c) in any case—an employee of the taxpayer or association;

‘ prescribed outgoings ’ means outgoings incurred by a taxpayer or an association referred to in sub-section (2.) of section seventy-three of this Act by way of—

- (a) expenses of, contributions towards expenses of, or payments to an agent for the purposes of—
 - (i) the carrying out of market research or the obtaining of market information; or
 - (ii) advertising or other means of securing publicity or soliciting business (including business of a person other than the taxpayer where that business will be beneficial to the business of the taxpayer),

not being amounts paid or payable to—

- (iii) a person ordinarily employed in Australia by the taxpayer or an associated company, or by the association, as the case may be, in respect of services performed by him in Australia or in the course of a visit from Australia to a place or places outside Australia;
- (iv) a director of the taxpayer, where the taxpayer is a company;
- (v) a director of an associated company; or
- (vi) an associated company carrying on business in Australia;

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(b) expenses (including costs of delivery) directly attributable to providing, without charge, samples or technical information to a person outside Australia; or

(c) expenses directly attributable to the making of investigations and the preparation of information, designs, estimates or other material for the purpose of submitting a tender for the supply of goods that are not of the same kind and specification as goods that are being regularly produced or supplied by the tenderer, or for the supply of services outside Australia,

but not including—

(d) expenses, other than fares, in respect of travel, accommodation, sustenance or entertainment in respect of or in relation to a visit from Australia to a place or places outside Australia by the taxpayer or by a prescribed agent of the taxpayer or association ordinarily employed or carrying out duties in Australia;

(e) except to the extent provided in paragraph (c) of this definition, expenses of the preparation or submission of tenders or quotations;

(f) expenses of advertising in Australia in relation to the supply of services outside Australia;

(g) commission or other remuneration in respect of particular sales of goods, supplies of services or grants or assignments of rights; or

(h) amounts paid or payable by way of tax, levy or other contribution under a law of the Commonwealth or of a State or Territory of the Commonwealth or to an authority constituted by or under such a law;

‘the tax saving’, in relation to any amount of outgoings in respect of which a deduction has been allowed or is allowable under this section, means—

(a) in relation to the year of income from the assessable income of which the deduction has been allowed or is allowable—the amount by which the tax payable by the taxpayer for the year of tax is less than the amount that would have been payable but for the allowance of—

(i) the deduction under this section of that amount of outgoings; and

- (ii) the deduction or deductions allowed or allowable in respect of that year of income under section fifty-one or subsection (2.) of section seventy-three of this Act in respect of the same amount of outgoings; and
- (b) in relation to a subsequent year of income—the amount, if any, by which the tax payable by the taxpayer for the year of tax is less than the amount that would have been payable but for the taking into account of the deductions referred to in the last preceding paragraph in ascertaining, for the purposes of section eighty of this Act, the amount of a loss incurred in a previous year.

“(2.) Where a taxpayer is entitled to a deduction under subsection (2.) of section seventy-three of this Act by reason of the payment, in the year of income, of a subscription, contribution or levy to an association and the Commissioner is satisfied that the whole or any part of that subscription, contribution or levy has been or will be applied by the association for the purposes of export market development expenditure, the whole of that deduction or, as the case may require, so much of the amount of that deduction as the Commissioner is satisfied is attributable to the part of the subscription, contribution or levy that has been or will be so applied shall, for the purposes of this section, be deemed to be an amount of export market development expenditure incurred by the taxpayer in the year of income.

“(3.) Subject to the succeeding provisions of this section, where a taxpayer, after the thirtieth day of June, One thousand nine hundred and sixty-one, and before the first day of July, One thousand nine hundred and sixty-four, has, in the year of income, incurred export market development expenditure that is allowable as a deduction under either section fifty-one or subsection (2.) of section seventy-three of this Act, a deduction shall be allowable under this section of an amount equal to the amount of that expenditure.

“(4.) Where two or more persons who are prescribed agents of the taxpayer and are relatives of each other travel outside Australia at the same time, the following provisions apply with respect to the entitlement of the taxpayer to deductions under this section in respect of fares incurred in relation to that travel:—

- (a) if the taxpayer himself is one of those persons—such a deduction is not allowable in respect of any other of those persons who is not a permanent employee of the taxpayer;

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(b) if the taxpayer himself is not one of those persons, but any one of those persons is a permanent employee of the taxpayer—such a deduction is not allowable in respect of any of those persons who is not a permanent employee of the taxpayer; and

(c) if none of those persons is either the taxpayer himself or a person who is a permanent employee of the taxpayer—such a deduction is not allowable in respect of any of those persons other than such one of them as the taxpayer, by notice in writing to the Commissioner, nominates.

“(5.) The last preceding sub-section does not operate to exclude a deduction in respect of a person if the Commissioner is satisfied that there are special circumstances by reason of which the deduction should be allowed.

“(6.) Where the amount of any outgoing constituting or forming part of any export market development expenditure exceeds the amount that, in the opinion of the Commissioner, would reasonably be expected to be payable, in the ordinary course of business, for the services or goods upon which the outgoing was incurred, the Commissioner may, for the purposes of this section, treat the outgoing as being reduced by the amount of the excess.

“(7.) The amount of the deduction otherwise allowable to a taxpayer under this section in respect of an amount of outgoings incurred in the year of income shall be reduced to such extent (if any) as is necessary to ensure that the amount of the tax saving for the year of income in relation to that amount of outgoings does not exceed four-fifths of that amount of outgoings.

“(8.) Where the taxpayer is, for the purposes of section eighty of this Act, deemed to have incurred a loss in the year of income in respect of which a deduction under this section has been allowed or is allowable in relation to an amount of outgoings, the deduction otherwise allowable to the taxpayer under that section in respect of a subsequent year of income shall be reduced to such extent (if any) as is necessary to ensure that the amount of the tax saving for that subsequent year of income in relation to that amount of outgoings, together with the tax saving for any previous year or years in relation to the same amount of outgoings, does not exceed four-fifths of that amount of outgoings.

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“(9.) For the purposes of Division 7 of Part III., the taxable income of a company in respect of any year of income shall be deemed to be the amount that would have been the taxable income if this section had not been enacted.

“(10.) Notwithstanding the provisions of section eighty-two of this Act, the deduction allowable under this section in respect of an outgoing is allowable in addition to the deduction allowable in respect of that outgoing under section fifty-one, or sub-section (2.) of section seventy-three, of this Act.”.

4. Section one hundred and seventy of the Principal Act is amended by inserting in sub-section (10.), after the words “the provisions of”, the words “sub-section (7.) or (8.) of section fifty-one AC,”. Amendment
of assessments.

5.—(1.) Section two hundred and twenty-one YL of the Principal Act is amended by omitting paragraph (b) of sub-section (2.) and inserting in its stead the following paragraph:— Deductions
from
dividends.

“(b) another person who is a non-resident is entitled—

- (i) to receive the dividend or a part of the dividend, or the amount of the dividend or of a part of the dividend, from the first-mentioned person; or
- (ii) to have the dividend or a part of the dividend, or the amount of the dividend or of a part of the dividend, credited to him, or otherwise dealt with on his behalf or as he directs, by the first-mentioned person,”.

(2.) The amendment made by the last preceding sub-section shall be deemed to have come into operation on the first day of July, One thousand nine hundred and sixty, but a person shall not be convicted of an offence against sub-section (2.) of section two hundred and twenty-one YL of the Principal Act as amended by this Act by reason of a failure to make a deduction, where the failure—

- (a) occurred before the day on which this Act received the Royal Assent; and
- (b) would not have constituted an offence if this section had not been enacted.