

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT (No. 3).

No. 94 of 1961.

An Act relating to Income Tax.

[Assented to 30th October, 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:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Income Tax and Social Services Contribution Assessment Act (No. 3) 1961*.

(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*† and the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1961*,‡ is in this Act referred to as the Principal Act.

* 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.

‡ Act No. 27, 1961.

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(3.) Section one of the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1961* is amended by omitting sub-section (4.).

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

3.—(1.) After section thirty-six of the Principal Act the following section is inserted:—

“ 36AA.—(1.) Where—

(a) live stock being assets of a business of primary production carried on by a taxpayer in Australia or in the Territory of Papua and New Guinea—

Compensation for death or compulsory destruction of live stock.

(i) dies by reason of a disease for the purpose of controlling or eradicating which provision is made by a law of the Commonwealth, of a State or of a Territory of the Commonwealth for or in relation to the compulsory destruction of live stock; or

(ii) is destroyed in pursuance of a law of the Commonwealth, of a State or of a Territory of the Commonwealth that makes provision for or in relation to the compulsory destruction of live stock for the purpose of controlling or eradicating a disease;

(b) the proceeds of the death of the live stock would, apart from this section, be included in the assessable income of the taxpayer of a year or years of income; and

(c) there is a profit arising in respect of the death of the live stock,

the taxpayer may elect that this section shall apply in relation to the profit arising in respect of the death of the live stock.

“ (2.) Where a taxpayer makes an election under the last preceding sub-section—

(a) the whole of the proceeds of the death of the live stock to which the election relates (whenever received) shall be included in the assessable income of the taxpayer of the year of income in which the live stock died or was destroyed and no part of those proceeds shall be included in the assessable income of the taxpayer of any other year of income;

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- (b) the assessable income of the taxpayer of the year of income in which the live stock died or was destroyed shall be reduced by an amount equal to four-fifths of the profit in relation to which the election is made; and
- (c) there shall be included in the assessable income of the taxpayer of each of the next four succeeding years of income an amount equal to one-fifth of the profit in relation to which the election is made, and the amount so included in the assessable income of the taxpayer of any year of income shall, for the purposes of this Act, be deemed to be derived by the taxpayer during that year of income from the carrying on by him in Australia, during that year of income, of a business of primary production.

“(3.) Where live stock is an asset of a partnership and, if that live stock were owned by a person other than as a partner or a trustee of a trust estate, that person would be entitled to make an election under sub-section (1.) of this section in relation to the live stock—

- (a) any partner in the partnership may make an election under that sub-section in relation to the part of the profit arising in respect of the death of the live stock that is included in his individual interest in the net income of the partnership; and
- (b) where a partner makes such an election, paragraph (a) of the last preceding sub-section does not apply but, for the purpose of assessments in respect of that partner, the net income of the partnership shall be ascertained as if the proceeds of the death of the live stock to which the election relates (whenever received) had been received by the partnership in the year of income in which the livestock died or was destroyed.

“(4.) Where live stock referred to in sub-section (1.) of this section is owned by the trustee of a trust estate—

- (a) the trustee may make an election under that sub-section in relation only to the part of the profit arising in respect of the death of the live stock that is included in the net income of the trust estate in respect of which the trustee is liable to be assessed and to pay tax under the provisions of Division 6 of this Part; and
- (b) each beneficiary in the trust estate who is not under a legal disability and is presently entitled to a share of the net income of the trust estate, being a share

that includes a part of the profit arising in respect of the death of the live stock, may make an election under that sub-section in relation to that part and, where a beneficiary makes such an election, paragraph (a) of sub-section (2.) of this section does not apply but, for the purpose of assessments in respect of that beneficiary, the net income of the trust estate shall be ascertained as if the proceeds of the death of the live stock to which the election relates (whenever received) had been received by the trustee in the year of income in which the live stock died or was destroyed.

“(5.) Where, in a year of income, a taxpayer who has made an election under sub-section (1.) of this section—

- (a) appears to the Commissioner to be about to leave Australia;
- (b) dies;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of any of his property for their benefit; or
- (d) being a company, commences to be wound up,

there shall, if the Commissioner so determines, be included in the assessable income of the taxpayer of that year of income any amount that would otherwise be included, in pursuance of this section, in the assessable income of any subsequent year of income, and the amount so included shall be deemed, for the purposes of this Act, to be derived by the taxpayer during that first-mentioned year of income from the carrying on by him in Australia, during that year of income, of a business of primary production.

“(6.) An election by a taxpayer under sub-section (1.) of this section shall be made in writing and lodged with the Commissioner on or before—

- (a) the date of lodgment of the return of income of the taxpayer of the year of income in which the proceeds of the death of the live stock to which the election relates were received; or
- (b) if the whole of those proceeds was not received in one year of income—the date of lodgment of the return of income of the taxpayer of the latest year of income in which any part of those proceeds was received,

or on or before such later date as the Commissioner allows.

“(7.) In this section, a reference to the proceeds of the death of any live stock shall be read as a reference to the sum of—

- (a) any amount received by the person who owned the live stock from the Commonwealth, from a State, from the Administration of a Territory of the Commonwealth or from an authority constituted by or under a law of the Commonwealth, of a State or of a Territory of the Commonwealth by way of compensation for the death or destruction of the live stock; and
- (b) any amount received by the person who owned the live stock as payment for the carcasses, or any part of the carcasses, of the live stock.

“(8.) In this section, a reference to profit arising in respect of the death of any live stock shall be read as a reference to the amount remaining after deducting from the proceeds of the death of the live stock the sum of—

- (a) in respect of any of the live stock that was on hand at the beginning of the year of income in which the live stock died or was destroyed—the value at which that live stock is, for the purposes of this Act, to be taken into account at the beginning of that year of income; and
- (b) in respect of any of the live stock that was not on hand at the beginning of that year of income—
 - (i) in the case of live stock acquired by purchase—the purchase price of that live stock; and
 - (ii) in the case of live stock acquired otherwise than by purchase, but not including natural increase bred during that year of income by the person who owned the live stock at the time of its death or destruction—the amount that, under this Act, is deemed to be the purchase price of that live stock.”.

(2.) Notwithstanding anything contained in sub-section (6.) of section thirty-six AA of the *Income Tax and Social Services Contribution Assessment Act 1936–1961*, an election under sub-section (1.) of that section in relation to live stock that died or was destroyed during the year of income that ended on the thirtieth day of June, One thousand nine hundred and sixty-one, may be lodged with the Commissioner on or before the thirty-first day of December, One thousand nine hundred and sixty-one, or on or before such later date as the Commissioner allows.

4. Section thirty-six A of the Principal Act is amended by omitting from sub-sections (1.) and (2.) the words “the last preceding section” and inserting in their stead the words “section thirty-six of this Act”.

Disposal on change of ownership or interests.

5. Section fifty-one A of the Principal Act is amended by omitting from the definition of “living-away-from-home allowance” in sub-section (3.) the words “the last preceding section” and inserting in their stead the words “section fifty-one of this Act”.

Deduction in respect of living-away-from-home allowances.

6. Section fifty-four of the Principal Act is amended by omitting sub-paragraph (ii) of paragraph (b) of sub-section (2.) and inserting in its stead the following sub-paragraph:—

Depreciation.

“(ii) structural improvements, bores, wells or pipes expenditure on which has been allowed, or is or has been allowable, as a deduction under paragraph (g), (h), (i) or (j) of sub-section (1.) of section seventy-five of this Act from the assessable income, of any year of income, of the taxpayer or of any other person; and”.

7. Section seventy-five of the Principal Act is amended—

(a) by omitting from paragraph (h) of sub-section (1.) the word “and”;

Certain expenditure on land used for primary production.

(b) by inserting after paragraph (i) of sub-section (1.) the following paragraphs:—

“(j) the purchase of pipes—

(i) that are placed underground by the taxpayer in that year of income for the purpose of conveying water for use in carrying on primary production on the land; or

(ii) that are not placed underground in that year of income but are intended by the taxpayer to be placed underground by him for that purpose and were not disposed of by him in that year of income,

not being pipes the expenditure on the purchase of which has been allowed, or is or has been allowable, as a deduction under this paragraph from the assessable income, of any other year of income, of the taxpayer or from the assessable income, of any year of income, of any other person; or

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“(k) the placing of pipes underground for the purpose referred to in sub-paragraph (i) of the last preceding paragraph,”; and

(c) by omitting from sub-section (2.) the words “ paragraph (g), (h) or (i) ” and inserting in their stead the words “ paragraph (g), (h), (i), (j) or (k) ”.

Moneys paid on shares for the purposes of petroleum exploration.

8. Section seventy-seven A of the Principal Act is amended by omitting from sub-sections (11.) and (16.) the words “ the next succeeding section ” (wherever occurring) and inserting in their stead the words “ section seventy-eight of this Act ”.

9. After section seventy-seven A of the Principal Act the following section is inserted:—

Calls paid by certain holding companies.

“ 77B.—(1.) In this section—

‘ beneficial shareholder ’, in relation to a company, means a beneficial owner of shares in the company;

‘ moneys paid on shares ’, in relation to a company, means moneys paid to the company in respect of shares in the company (whether on application for or allotment of the shares, to meet calls or otherwise) by the owners of the shares, including owners who are beneficial owners only, being moneys applied by the company towards the paid-up value of those shares, but does not include moneys paid to the company before the first day of July, One thousand nine hundred and sixty-one;

‘ prescribed beneficial shareholder ’, in relation to a company, means a beneficial shareholder of the company, being the beneficial owner of shares in the company representing not less than one-half of the paid-up capital of the company.

“(2.) For the purposes of this section, moneys paid in respect of shares in a company by the owner of those shares, being an owner who is not the beneficial owner of the shares, shall be deemed to have been paid by the beneficial owner of the shares.

“(3.) Where a company has, in a year of income, paid calls on shares in—

(a) a mining or prospecting company carrying on as its principal business mining or prospecting operations in Australia or the Territory of Papua and New Guinea for gold, silver, base metals or rare minerals (not including oil); or

(b) a company carrying on as its principal business afforestation in Australia or the Territory of Papua and New Guinea,

and the company paying the calls was, at the time of paying the calls, the beneficial owner of all the issued shares in the company receiving the calls, the company paying the calls may, subject to the next succeeding sub-section, lodge with the Commissioner a notice in writing stating that that company elects that this section shall apply in relation to such of those calls as are specified in the notice.

“(4.) A company is not entitled to specify in a notice under this section calls paid by the company in a year of income unless the calls were paid by the company out of moneys paid on shares in the company during that year of income.

“(5.) Where a company has lodged a notice under this section and a taxpayer, being a company that is a resident of Australia, has, during the year of income of the first-mentioned company in which the calls specified in the notice were paid, paid to the first-mentioned company moneys, being moneys paid on shares, at a time at which that taxpayer was a prescribed beneficial shareholder of the first-mentioned company, a deduction is, subject to section seventy-nine c of this Act, allowable from the assessable income of that taxpayer of the year of income of that taxpayer in which the calls specified in the notice were paid of one-third of so much of the amount of the calls specified in the notice as bears to the amount of those calls the same proportion as the amount of those moneys paid on shares bears to the whole of the moneys paid on shares received by the first-mentioned company in the first-mentioned year of income.

“(6.) Where a company lodges a notice under this section in respect of any calls, the amount of any deduction that is, subject to section seventy-nine c of this Act, allowable under paragraph (b) of sub-section (1.) of the next succeeding section in respect of those calls shall be reduced by the amount of any deduction that is, subject to section seventy-nine c of this Act, allowable under the last preceding sub-section in respect of those calls.

“(7.) If—

- (a) a company has lodged a notice under this section; and
- (b) the sources from which the company received the moneys out of which the calls specified in the notice were paid cannot be readily ascertained from the records of the company,

the Commissioner may, having regard to all the circumstances of the case, determine the sources from which those moneys shall, for the purposes of this section, be regarded as having been

received by the company and those moneys shall, for those purposes, be deemed to have been received from those sources.

“(8.) Where calls specified in a notice lodged by a company under this section include calls that the company is not entitled to specify in the notice, the notice nevertheless has effect in relation to the calls specified in the notice that the company is entitled to specify.

“(9.) A notice by a company under this section in respect of any calls—

- (a) shall be in accordance with a form authorized by the Commissioner and be signed by the public officer of the company;
- (b) shall contain such information with respect to the affairs of the company as is relevant to the operation of this section by reason of the lodging of the notice; and
- (c) shall be lodged with the Commissioner within one month after the end of the year of income of the company in which those calls were paid, or within such further time as the Commissioner allows.”.

Gifts, calls
on mining
shares,
pensions, &c.

10. Section seventy-eight of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “this section” and inserting in their stead the words “sub-section (11.) of section seventy-seven A, section seventy-seven B and section seventy-nine C of this Act”;
- (b) by adding at the end of paragraph (a) of sub-section (1.) the following sub-paragraph:—
 “(xxxvii) the Ian Clunies Ross Memorial Foundation;”; and
- (c) by omitting sub-section (3.).

Contributions
to fund for
benefit of
employees of
persons
other than
taxpayer.

11. Section seventy-nine of the Principal Act is amended by omitting from sub-section (1.) the words “sub-section (3.) of the last preceding section” and inserting in their stead the words “section seventy-nine C of this Act”.

Deduction for
residents of
isolated areas.

12. Section seventy-nine A of the Principal Act is amended by omitting from sub-section (1.) the words “sub-section (3.) of section seventy-eight” and inserting in their stead the words “section seventy-nine C”.

Deductions for
members of
Defence Force
serving
overseas.

13. Section seventy-nine B of the Principal Act is amended by omitting from sub-section (1.) the words “sub-section (3.) of section seventy-eight of this Act” and inserting in their stead the words “the next succeeding section”.

14. After section seventy-nine B of the Principal Act the following section is inserted:—

“ 79C. The aggregate of the deductions allowable under the last five preceding sections shall not exceed the amount of income remaining after deducting from the assessable income all other allowable deductions except the deduction of losses of previous years and any deduction allowable under Division 10 of this Part.”.

Limitation on certain deductions.

15. Section eighty-two F of the Principal Act is amended by omitting from paragraph (b) of the definition of “ medical expenses ” in sub-section (3.) the words “, but not including so much of the amount of such payments in the year of income in respect of any one person as exceeds Thirty pounds ”.

Medical expenses.

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

Interpretation.

(a) by inserting in the definition of “ apportionable deductions ” in sub-section (1.), after the words “ section seventy-seven A,”, the words “ section seventy-seven B,”;

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

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

“; or (c) an amount is included in the assessable income of a taxpayer of a year of income under sub-section (2.) or sub-section (5.) of section thirty-six AA of this Act by virtue of an election made by the taxpayer under sub-section (1.) of that section in relation to the death or destruction of live stock being assets of a business of primary production carried on in the Territory,”.

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

Credit in respect of tax paid in Territory of Papua and New Guinea.

(a) by inserting after sub-section (1.) the following sub-section:—

“ (1A.) Where—

(a) the assessable income of a year of income of a taxpayer who is a resident of Australia includes income derived from sources in the Territory;

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(b) the Commissioner is satisfied that income tax is payable by the taxpayer in respect of the income so derived under the Income Tax Ordinances of the Territory of Papua and New Guinea, being tax for which he is personally liable under those Ordinances but not being tax payable as provisional tax or by way of penalty; and

(c) the Commissioner determines that this sub-section shall apply in relation to that income tax,

the taxpayer shall be deemed, for the purposes of this Act, to have paid that income tax on the date on which the determination is made.”; and

(b) by omitting from sub-section (2.) the words “the last preceding sub-section” and inserting in their stead the words “sub-section (1.) of this section”.

Determination
of claims for
credits.

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

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

“(1.) Where—

(a) a person makes a claim for a credit; or

(b) a person is, in pursuance of sub-section (1A.) of section one hundred and sixty AF of this Act, deemed for the purposes of this Act to have paid any income tax payable by him under the Income Tax Ordinances of the Territory of Papua and New Guinea,

the Commissioner shall determine whether a credit is allowable and, if so, the amount of the credit.”; and

(b) by omitting from sub-section (3.) the words “claiming the credit” and inserting in their stead the words “to whom the determination relates”.

Amendment of
determinations.

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

(a) by omitting from sub-section (2.) the words “claiming a credit”;

(b) by inserting in sub-section (2.), after the word “determination” (first occurring), the words “in relation to that person”; and

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- (c) by omitting from sub-section (4.) the words "who claimed the credit" and inserting in their stead the words "to whom the determination relates".

20. Section one hundred and sixty AM of the Principal Act is amended by omitting the word "A" and inserting in its stead the words "Where a person claims a credit, the".

Information
for credit to
be furnished
within three
years.

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

Application
of credits.

- (a) by inserting after sub-section (1.) the following sub-section:—

"(1A.) Where a person is entitled to a credit under Division 18 of this Part by reason of his being, in pursuance of sub-section (1A.) of section one hundred and sixty AF of this Act, deemed for the purposes of this Act to have paid an amount of tax payable by him under the Income Tax Ordinances of the Territory of Papua and New Guinea, the Commissioner shall pay the amount of that credit to the Chief Collector of Taxes for that Territory in total or partial discharge of the liability of the person to the Administration of that Territory for that tax.";

- (b) by omitting from sub-section (2.) the words "The Commissioner" (first occurring) and inserting in their stead the words "Subject to the last preceding sub-section, the Commissioner"; and

- (c) by omitting from sub-section (4.) the words "applied by the Commissioner or paid to the company" and inserting in their stead the words "applied or paid by the Commissioner".

22. 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 "section thirty-six AA,".

Amendment
of assessments.

23.—(1.) The amendments made by sections three, four and five and paragraphs (b) and (c) of section sixteen of this Act apply to assessments in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and sixty, and in respect of income of all subsequent years of income.

Application of
amendments.

(2.) The amendments made by sections six and seven, paragraph (b) of section ten and section fifteen of this Act apply to assessments in respect of income of the year of income that commenced on the first day of July, One thousand nine hundred and sixty-one, and in respect of income of all subsequent years of income.