

INCOME TAX ASSESSMENT AMENDMENT (JURISDICTION OF COURTS) ACT 1976

No. 165 of 1976

An Act to amend the *Income Tax Assessment Act 1936*.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

Short
title, &c.

1. (1) This Act may be cited as the *Income Tax Assessment Amendment (Jurisdiction of Courts) Act 1976*.¹

(2) The *Income Tax Assessment Act 1936*² is in this Act referred to as the Principal Act.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by Proclamation, not being earlier than the day that is the commencing day for the purposes of the *Federal Court of Australia Act 1976*.

3. After section 184 of the Principal Act the following sections are inserted in Division 2 of Part V:—

Definition.

“184A. In this Division, unless the contrary intention appears, ‘Supreme Court’ means—

- (a) the Supreme Court of a State; or
- (b) the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia, being a Court having jurisdiction in the proceedings concerned.

Jurisdiction
of Supreme
Courts of
Territories.

“184B. (1) Jurisdiction under this Division is conferred on the Supreme Court of the Australian Capital Territory or the Supreme Court of the Northern Territory of Australia only in a proceeding arising out of an assessment—

- (a) in respect of a taxpayer (other than a taxpayer in the capacity of a trustee) who, at the time of the institution of the proceeding or during the whole or a part of the year of income to which the assessment relates—
 - (i) in the case of an individual—was ordinarily resident in the Australian Capital Territory or the Northern Territory of Australia, as the case may be; or
 - (ii) in the case of a company—had its principal place of business in the Australian Capital Territory or the Northern Territory of Australia, as the case may be; or

- (b) in respect of a taxpayer or taxpayers in the capacity of trustee or trustees of a trust estate the assets of which, at any time during the year of income to which the assessment relates, consisted of or included assets in the Australian Capital Territory or the Northern Territory of Australia, as the case may be.

“(2) In this section, ‘the Australian Capital Territory’ includes the Jervis Bay Territory.

“184C. (1) A Supreme Court in which proceedings under this Division have been instituted (whether it has jurisdiction in the proceedings or not) may, if the Court thinks fit, upon the application of a party made at any stage in the proceedings, by order, transfer the proceedings to another Supreme Court having jurisdiction under this Division.

Transfer of proceedings.

“(2) Where proceedings are transferred from a Court in pursuance of this section—

- (a) all documents filed of record in that Court shall be transmitted by the Registrar or other proper officer of that Court to the Registrar or other proper officer of the Court to which the proceedings are transferred; and
- (b) the Court to which the proceedings are transferred shall proceed as if the proceedings had been originally instituted in that Court and as if the same proceedings had been taken in that Court as had been taken in the Court from which the proceedings were transferred.”.

4. Section 187 of the Principal Act is amended by omitting from paragraph (b) the words “the Supreme Court of a specified State” and substituting the words “a specified Supreme Court”.

Application for appeal or review.

5. (1) Section 196 of the Principal Act is repealed and the following section substituted:—

“196. (1) The Commissioner or the taxpayer may appeal to a Supreme Court from any decision of the Board that involves a question of law.

Appeal or reference to the Supreme Court.

“(2) The Board shall, upon the request of the Commissioner or the taxpayer, refer a question of law arising before the Board to such Supreme Court as is agreed on by the parties or, in the absence of agreement, to such Supreme Court as the Board considers appropriate.

“(3) An appeal or reference to a Supreme Court under this section shall be heard by a single Judge of the Court.

“(4) Except as provided in sub-section (5), an appeal does not lie from the decision of a Supreme Court constituted by a single Judge on an appeal or reference under this section.

“(5) The Commissioner or the taxpayer may appeal against a decision of a Supreme Court on an appeal or reference under this section—

- (a) by leave of the Federal Court of Australia, to that Court; or
- (b) by special leave of the High Court, to that Court.”.

(2) The amendment made by this section does not affect the hearing and determination of an appeal to the High Court instituted before the date of commencement of this Act or the institution of an appeal to the High Court in pursuance of leave granted before that date and the hearing and determination of such an appeal.

Practice and
procedure
of Supreme
Courts.

6. Section 196A of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “the Supreme Court of a State” and substituting the words “a Supreme Court”;
- (b) by omitting from sub-section (2) the words “the Supreme Court of a State” and substituting the words “a Supreme Court”; and
- (c) by omitting from paragraphs (a), (b) and (c) of sub-section (2) the words “the Supreme Court of that State” and substituting the words “that Supreme Court”.

Constitution
of Court on
appeal.

7. Section 197 of the Principal Act is amended by omitting the words “the Supreme Court of a State” and substituting the words “a Supreme Court”.

8. (1) Sections 198, 199 and 200 of the Principal Act are repealed and the following sections substituted:—

Case stated
to Federal
Court of
Australia.

“198. (1) The Supreme Court in which an appeal is instituted in accordance with section 197 may, if it thinks fit, state a case in writing for the opinion of the Federal Court of Australia upon a question of law arising on the appeal.

“(2) A Full Court of the Federal Court of Australia shall hear and, by order, determine the question, and remit the case with its opinion to the Supreme Court, and may make such order as to the costs of the case stated as it thinks fit.

Order of
Court on
appeal.

“199. (1) The Supreme Court hearing an appeal under section 197 may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment.

“(2) An appeal does not lie from an order referred to in sub-section (1) except as provided in section 200.

Appeals.

“200. The Commissioner or the taxpayer may appeal against an order referred to in section 199—

- (a) to the Federal Court of Australia; or
- (b) with special leave of the High Court, to that Court.”.

(2) The amendment made by this section does not affect the hearing and determination of a case stated to the High Court before the date of

commencement of this Act or of an appeal to the High Court instituted before that date.

9. (1) Section 233 of the Principal Act is amended by omitting from sub-section (1) the words “in the High Court or”.

Taxation
prosecutions.

(2) The amendment made by this section does not affect an action instituted in the High Court before the date of commencement of this Act.

10. Sections 234 and 235 of the Principal Act are repealed and the following sections substituted:—

“234. In a taxation prosecution instituted in a court of summary jurisdiction, where the penalty exceeds \$500 and the excess is not abandoned, the defendant, within 7 days after service of process, may elect in the prescribed manner to have the case tried in the Supreme Court of the State or Territory in which the prosecution has been instituted, and thereupon the prosecution shall stand removed to that Supreme Court and shall be conducted as if it had been originally instituted in that Supreme Court.

Defendant
to have right
of trial in
Supreme
Court.

“235. In a taxation prosecution in a Supreme Court, the case shall be tried and the penalty, if any, adjudged by a Judge of the Court.”.

Mode of
trial.

11. Section 237 of the Principal Act is amended by omitting the words “the High Court or”.

Prosecution
in
accordance
with practice
rules.

12. Section 266 of the Principal Act is amended by omitting from sub-section (2) the words “the Supreme Courts of the States” and substituting the words “the Supreme Courts referred to in Division 2 of Part V”.

Regulations.

NOTES

1. Act No. 165, 1976; assented to 9 December 1976.
2. Act No. 27, 1936, as amended. For previous amendments *see* Act 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; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 60, 70, 87 and 148, 1968; Nos. 18, 93 and 101,

No. 165

*Income Tax Assessment Amendment
(Jurisdiction of Courts)*

1976

NOTES—continued

1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; and Nos. 50, 53, 56 and 98, 1976.