

INCOME TAX ASSESSMENT AMENDMENT ACT (No. 2) 1977

No. 126 of 1977

An Act to amend the law relating to income tax.

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

1. (1) This Act may be cited as the *Income Tax Assessment Amendment Act (No. 2) 1977*.¹ Short title,
&c.
- (2) The *Income Tax Assessment Act 1936*² is in this Act referred to as the Principal Act.
2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment
3. Section 6C of the Principal Act is amended by omitting from sub-section (2) “and sections 25 and 255” and substituting “, section 25, Division 13A of Part III and section 255”. Source of
royalty
income
derived by
non-resident
4. Section 26AA of the Principal Act is amended by omitting sub-section (4) and substituting the following sub-section: Assessable
income—
annuities
- “(4) For the purposes of this section, ‘the undeducted purchase price’, in relation to an annuity, means so much of the purchase price of the annuity paid by the taxpayer as has not been allowed and is not allowable as a deduction, has not been, and is not to be, treated as a rebate amount for the purposes of section 159N and is not an amount in respect of which a rebate of income tax has been allowed or is allowable in assessments for income tax under this Act or any previous law of the Commonwealth.”.
5. Section 82AB of the Principal Act is amended— Deduction in
respect of
new plant
installed on
or after 1
January
1976
- (a) by omitting from paragraph (c) of sub-section (1) “1983” (wherever occurring) and substituting “1985”; and
- (b) by omitting from paragraph (d) of sub-section (1) “1984” and substituting “1986”.
6. (1) Section 99A of the Principal Act is amended— Certain trust
income to be
taxed at
special rate
- (a) by omitting sub-section (1);
- (b) by omitting from sub-section (2) “(other than a trust estate referred to in the last preceding sub-section)”; and

- (c) by omitting from paragraph (b) of sub-section (3) “, not being a trust estate referred to in sub-section (1)” (wherever occurring).

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

Interpret-
ation

7. Section 103 of the Principal Act is amended by inserting “or under section 136A” after “this Division” in paragraph (a) of the definition of “the distributable income” in sub-section (1).

Private
companies

8. (1) Section 103A of the Principal Act is amended—

- (a) by omitting from sub-section (2) “the last preceding sub-section, a company is, subject to the next succeeding sub-section and to sub-section (6)” and substituting “sub-section (1), a company is, subject to the succeeding provisions of this section”; and

- (b) by inserting after sub-section (3) the following sub-sections:

“(3A) Subject to sub-section (3B), a company shall not be taken for the purposes of sub-section (1) to be a public company in relation to a year of income by reason that a body constituted and established as mentioned in sub-paragraph (iii) of paragraph (d) of sub-section (2) (in this sub-section referred to as the ‘public body’) had a controlling interest in the company on the last day of the year of income if—

- (a) by reason of—

- (i) any of the provisions contained in the constituent document of the company as in force on the last day of the year of income; or

- (ii) any right, power, option or agreement in existence on the last day of the year of income that related to the management or conduct of the affairs of the company, including any right, power, option or agreement that related to the issue, allotment or redemption of shares, or the grant, withdrawal or variation of rights in respect of shares,

the exercise by the public body of any right or power in connexion with the company (being a right or power relating to the exercise by the public body of a controlling interest in the company), whether on the last day of the year of income or at any later time, could have been prevented;

- (b) rights or powers of the public body in connexion with the company were exercised during the year of income otherwise than for the benefit of the public body or were not

exercised in circumstances where it might reasonably have been expected that they would have been exercised;

- (c) any shares in the company that were held by the public body on the last day of the year of income were acquired by the public body for no consideration or for a consideration that, in the ordinary course of commercial dealing, would be considered inadequate;
- (d) in pursuance of any agreement entered into before the end of the year of income, the public body agreed to dispose of all or any of the shares in the company that were held by the public body on the last day of the year of income, being a disposal that was to take place at any time after the last day of the year of income;
- (e) a dividend was paid by the company at a time during the year of income when the public body had a controlling interest in the company, and less than one-half of the amount of that dividend was paid to the public body; or
- (f) a dividend was not paid by the company at a time during the year of income when the public body had a controlling interest in the company but the Commissioner is of the opinion that, if a dividend had been paid by the company at such a time, less than one-half of the amount of the dividend would have been paid to the public body.

“(3B) Sub-section (3A) does not apply in relation to a company in relation to a year of income if the Commissioner is satisfied that no shares in the company that were held by the public body referred to in that sub-section on the last day of the year of income were allotted or transferred to the public body for the purpose, or for purposes that included the purpose, of enabling the company to be treated as a public company in relation to the year of income for the purposes of sub-section (1), or in pursuance of an agreement entered into, or a course of conduct engaged in, for the purpose, or for purposes that included the purpose, of enabling the company to be so treated.”.

(2) Subject to sub-section (3), the amendments made by sub-section (1) apply to assessments in respect of income of the year of income that ended on 30 June 1977 and in respect of income of all subsequent years of income.

(3) In the case of a taxpayer who has adopted an accounting period that ended before 30 June 1977 in lieu of the financial year that ended on that date, the amendments made by sub-section (1) apply to assessments in respect of income of the year of income ending on 30 June 1978 and in respect of all subsequent years of income.

Rebates and
provisional
tax

9. (1) Section 121DD of the Principal Act is amended by inserting in paragraph (c) “ except where the superannuation fund is a superannuation fund in respect of the income of which the trustee is liable to be assessed and to pay tax as provided by section 121DA,” before “is not liable”.

(2) The amendment made by sub-section (1) applies in relation to the ascertainment of provisional tax payable in respect of income in the year of income commencing on 1 July 1978 and in respect of income of all subsequent years of income.

Allowable
capital
expenditure

10. Section 124AA of the Principal Act is amended—

(a) by inserting after paragraph (1) of sub-section (2) the following paragraph:

“(aa) expenditure of a capital nature to which this section applies incurred by the taxpayer on or after 25 August 1977 on plant for use solely in liquefying natural gas obtained from the carrying on by the taxpayer of prescribed petroleum operations;”; and

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

“(3) In this section, ‘natural gas’ means a mixture of hydrocarbons, or of hydrocarbons and other gases, that—

(a) consists principally of methane; and

(b) is in a gaseous state at a temperature of 15 degrees Celsius and a pressure of one atmosphere.”.

11. (1) Division 14 of Part III of the Principal Act is repealed and the following Division substituted:

“Division 13A—Film and Video Tape Royalties

Film and
video tape
royalties
derived by
non-
residents

“136A. (1) This section applies to income that—

(a) was or is derived on or after 17 August 1977 as consideration for the use of, or the right to use—

(i) motion picture films;

(ii) films or video tapes for use in connexion with television;
or

(iii) any copyright subsisting in relation to a motion picture film, a film mentioned in sub-paragraph (ii) or a video tape (whether or not for use in connexion with television) or in any advertising matter for use in connexion with any such motion picture film, film or video tape; and

(b) is income to which section 6C applies and is deemed by that section to have been derived from a source in Australia.

“(2) A person who derives income to which this section applies is liable to pay income tax upon that income at the rate declared by the Parliament to be the rate of tax imposed upon income to which this section applies.

“(3) Income tax payable by a person in accordance with sub-section (2) is in addition to any other income tax payable by the person upon income to which this section does not apply.

“(4) Income to which this section applies shall not be included in the assessable income of a person.

“(5) Where a person is liable to pay to a non-resident an amount in respect of which the non-resident is, or if the amount were paid to, or applied for the benefit of, the non-resident, would be, liable to pay income tax in accordance with sub-section (2), the person is liable to pay any income tax under this section that has been or may be assessed to be paid by the non-resident in respect of the amount that the person is so liable to pay to the non-resident.

“(6) A person who is liable to pay to a non-resident an amount in respect of which the non-resident is, or if the amount were paid to, or applied for the benefit of, the non-resident, would be, liable to pay income tax under sub-section (2) shall not—

- (a) make a payment to, or on behalf of, the non-resident in respect of the person's liability to the non-resident; or
- (b) transfer any moneys out of Australia for the purpose of making such a payment,

unless and until arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax under this section that has been or may be assessed to be paid by the non-resident in respect of that amount.

“(7) A person who makes a payment to, or on behalf of, a non-resident, or transfers any moneys for the purpose of making such a payment, in contravention of sub-section (6) is guilty of an offence and is punishable, on conviction, by a fine not exceeding the sum of \$200 and—

- (a) the amount of income tax that is, or becomes, payable under this section by the non-resident in respect of the amount so paid; or
- (b) the amount of income tax that would be payable under this section by the non-resident if the moneys transferred were paid to the non-resident,

as the case may be.”.

(2) Notwithstanding the repeal effected by sub-section (1), Division 14 of Part III of the Principal Act continues to have effect in relation to income derived before 17 August 1977.

Average
income

12. (1) Section 149 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Subject to sub-section (2), for” and substituting “For”; and
- (b) by omitting sub-section (2).

(2) The amendments made by sub-section (1) apply to assessments in respect of income of the year of income commencing on 1 July 1978 and in respect of income of all subsequent years of income.

Permanent
reduction of
income

13. (1) Section 155 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of the application of sub-section (1) in relation to a taxpayer in relation to a year of income, a reference in that sub-section to the average taxable income of the taxpayer shall be construed as a reference to the amount that would be the average income of the taxpayer in relation to that year of income ascertained in accordance with section 149 if there were excluded from the assessable income of the taxpayer of the average years any income received by him from sources from which he does not usually receive income.”

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income commencing on 1 July 1978 and in respect of income of all subsequent years of income.

Election that
Division
shall not
apply

14. Section 158A of the Principal Act is amended—

- (a) by omitting from sub-section (3) “the next two succeeding sections” and substituting “sub-section (4) and to section 158AA”; and
- (b) by adding at the end thereof the following sub-section:

“(4) A taxpayer is not entitled to make an election under sub-section (1) that specifies the year of income commencing on 1 July 1978 or a subsequent year of income and any election made by a taxpayer under that sub-section that specifies a year of income preceding the year of income commencing on 1 July 1978 does not have effect for the purposes of tax upon his taxable income of the year of income commencing on 1 July 1978 or a subsequent year of income.”

Election that
this Division
shall apply

15. Section 158AA of the Principal Act is amended—

- (a) by omitting from sub-section (3) “An election” and substituting “Subject to sub-section (3A), an election”; and
- (b) by inserting after sub-section (3) the following sub-section:

“(3A) Sub-section (3) does not prevent an election under sub-section (2) from having any effect if the year of income specified in the election is the year of income commencing on 1 July 1977.”

16. (1) Sections 158AB and 158AC of the Principal Act are Repeals repealed.

(2) The repeals effected by sub-section (1) apply for the purposes of tax upon income of the year of income commencing on 1 July 1978 and of income of all subsequent years of income.

17. (1) Section 159N of the Principal Act is amended by omitting sub-sections (2), (3), (4) and (5) and substituting the following sub-section: General concessional rebates

“(2) Where—

(a) a rebatable amount is, or rebatable amounts are, applicable to a taxpayer in respect of a year of income; and

(b) that rebatable amount, or the aggregate of those rebatable amounts, exceeds \$1,590,

the taxpayer is entitled to a rebate of tax in his assessment in respect of income of that year of income of an amount equal to 32 per centum of the amount by which that rebatable amount or the aggregate of those rebatable amounts, as the case may be, exceeds \$1,590.”

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

18. (1) Section 159Z of the Principal Act is amended by omitting Indexation “and (d) an amount of \$610 specified in section 159N;” from the definition of “relevant amount” in sub-section (1).

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

19. (1) Section 160 of the Principal Act is amended by adding at the end thereof the following sub-sections: Rebate in case of disposal of assets of a business of primary production

“(6) This section does not apply to assessments in respect of income of the year of income commencing on 1 July 1978 or in respect of income of any subsequent year of income.

“(7) Notwithstanding sub-section (2), a taxpayer to whom this section applies in relation to the year of income that commenced on 1 July 1977 is not entitled to a rebate under that sub-section in his assessment in respect of income of that year of income but is entitled in his assessment to a rebate under this sub-section of such amount (if any) as the Commissioner, having regard to all the relevant circumstances, considers reasonable.”

20. (1) Section 221YA of the Principal Act is amended by omitting from sub-section (1A) “or tax assessed in accordance with section 99A”. Interpretation

(2) The amendment made by sub-section (1) applies in relation to the ascertainment of provisional tax payable in respect of income of the year of income commencing on 1 July 1978 and in respect of income of all subsequent years of income.

Amount of
provisional
tax

21. (1) Section 221YC of the Principal Act is amended by inserting after sub-section (1A) the following sub-sections:

“(1B) Where, having regard to the circumstances that existed at the end of the year of income next preceding the year of income or any other relevant circumstances, the Commissioner is of the opinion that—

(a) in the case of a taxpayer by whom an amount of health insurance levy (in this sub-section referred to as the ‘previous amount’) was payable in respect of income of that preceding year of income—

(i) an amount (in this sub-paragraph referred to as the ‘relevant amount’) of health insurance levy is likely to be payable by the taxpayer in respect of income of the year of income and the relevant amount is likely to be greater than the previous amount;

(ii) an amount (in this sub-paragraph referred to as the ‘relevant amount’) of health insurance levy is likely to be payable by the taxpayer in respect of income of the year of income and the relevant amount is likely to be less than the previous amount; or

(iii) no health insurance levy is likely to be payable by the taxpayer in respect of income of the year of income; or

(b) in the case of a taxpayer by whom no health insurance levy was payable in respect of income of that preceding year of income—an amount of health insurance levy is likely to be payable by the taxpayer in respect of income of the year of income, the Commissioner may determine—

(c) in a case to which sub-paragraph (i) of paragraph (a) applies—that the provisional tax payable in accordance with this section apart from this sub-section be increased by such amount, not exceeding the amount by which the relevant amount referred to in that sub-paragraph exceeds the previous amount, as the Commissioner considers reasonable;

(d) in a case to which sub-paragraph (ii) of paragraph (a) applies—that the amount of provisional tax payable in accordance with this section apart from this sub-section be reduced by such amount, not exceeding the amount by which the previous amount exceeds the relevant amount referred to in that sub-paragraph, as the Commissioner considers reasonable;

(e) in a case to which sub-paragraph (iii) of paragraph (a) applies—that the amount of provisional tax payable in accordance with this section apart from this sub-section be reduced by such

amount, not exceeding the previous amount, as the Commissioner considers reasonable; and

- (f) in a case to which paragraph (b) applies—that the amount of provisional tax payable in accordance with this section apart from this sub-section be increased by such amount, not exceeding the amount referred to in that paragraph, as the Commissioner considers reasonable,

and the amount of provisional tax payable by the taxpayer is increased or reduced accordingly.

“(1C) In forming an opinion for the purposes of sub-section (1B) as to the amount of health insurance levy that is likely to be payable by a taxpayer in respect of income of the year of income, the Commissioner shall assume that the rate of health insurance levy applicable to that income is the same as the rate that was applicable to income of the next preceding year of income and that the taxable income of the taxpayer of the year of income will be the same as his provisional income of the year of income.

“(1D) In sub-sections (1B) and (1C), ‘health insurance levy’ means health insurance levy payable in accordance with Part VIIB.”

(2) The amendment made by sub-section (1) applies in relation to the ascertainment of provisional tax payable in respect of income of the year of income commencing on 1 July 1977 and in respect of income of all subsequent years of income.

22. (1) Section 251S of the Principal Act is amended by inserting in paragraph (c) of sub-section (1) “(other than a trust estate of a deceased person)” after “a trust estate”. Health insurance levy

(2) The amendment made by sub-section (1) applies to assessments in respect of income of the year of income that commenced on 1 July 1977 and in respect of income of all subsequent years of income.

23. (1) Subject to sub-section (2), the following taxpayers are prescribed taxpayers for the purposes of this section: Provisional tax

- (a) a taxpayer by whom an amount (in this section referred to as the “relevant amount”) of health insurance levy was payable in respect of income of the year of income that commenced on 1 July 1976 and in respect of whom the Commissioner has not, for the purposes of provisional tax in respect of income of the taxpayer of the year of income that commenced on 1 July 1977, made a determination under sub-section 221YC (1B) of the Principal Act as amended by this Act;
- (b) a taxpayer by whom an amount of health insurance levy was payable in respect of income of the year of income that commenced on 1 July 1976 and in respect of whom the Commissioner has, for the purposes of provisional tax in respect of

income of the taxpayer of the year of income that commenced on 1 July 1977, made a determination under sub-section 221YC (1B) of the Principal Act as amended by this Act reducing the amount of provisional tax payable in accordance with section 221YC apart from that sub-section by an amount (in this section also referred to as the “relevant amount”) less than the amount of that health insurance levy;

- (c) a taxpayer by whom an amount of health insurance levy was payable in respect of income of the year of income that commenced on 1 July 1976 and in respect of whom the Commissioner has, for the purposes of provisional tax in respect of income of the taxpayer of the year of income that commenced on 1 July 1977, made a determination under sub-section 221YC (1B) of the Principal Act as amended by this Act increasing by an amount (in this section also referred to as the “relevant amount”) the amount of provisional tax payable in accordance with section 221YC apart from that sub-section; and
- (d) a taxpayer by whom no health insurance levy was payable in respect of income of the year of income that commenced on 1 July 1976 and in respect of whom the Commissioner has, for the purposes of provisional tax in respect of income of the taxpayer of the year of income that commenced on 1 July 1977, made a determination under sub-section 221YC (1B) of the Principal Act as amended by this Act increasing by an amount (in this sub-section also referred to as the “relevant amount”) the amount of provisional tax payable in accordance with section 221YC apart from that sub-section.

(2) A trustee of a trust estate of a deceased person who is liable to be assessed and to pay tax in pursuance of section 99 of the Assessment Act in respect of the net income or a part of a net income of that trust estate is not, for the purposes of provisional tax upon that net income or that part of the net income, a prescribed taxpayer for the purposes of this section.

(3) The amount of provisional tax that would, but for this section, be payable by a prescribed taxpayer in respect of income of the year of income that commenced on 1 July 1977 shall be increased by an amount equal to one-third of—

- (a) in the case of a taxpayer to whom paragraph (1) (a) applies—the relevant amount referred to in that paragraph;
- (b) in the case of a taxpayer to whom paragraph (1) (b) applies—the amount ascertained by deducting from the amount of the health insurance levy referred to in that paragraph the relevant amount referred to in that paragraph;
- (c) in the case of a taxpayer to whom paragraph (1) (c) applies—the sum of the amount of the health insurance levy referred to in that paragraph and the relevant amount referred to in that paragraph; and

- (d) in the case of a taxpayer to whom paragraph (1) (d) applies—the relevant amount referred to in that paragraph.

(4) For the purposes of the application of sub-section 221YC (1) of the Principal Act in ascertaining the amount of provisional tax payable by a trustee of a trust estate of a deceased person who is liable to be assessed and to pay tax in pursuance of section 99 of that Act in respect of income of the year of income that commenced on 1 July 1977—

- (a) if paragraph (a) of that sub-section applies to the trustee—the amount of provisional tax payable by him in respect of the income of the year of income by virtue of that paragraph shall be reduced by the amount (if any) of health insurance levy payable in respect of his taxable income of the year of income next preceding the year of income; or
- (b) if paragraph (b) of that sub-section applies to the trustee—the amount of provisional tax payable by him in respect of the income of the year of income by virtue of that paragraph shall be reduced by the amount (if any) of health insurance levy that would have been payable in respect of his taxable income of the year of income next preceding the year of income if his taxable income of that next preceding year of income had been equal to his provisional income.

(5) In this section, “health insurance levy” means health insurance levy payable in accordance with Part VIIB of the *Income Tax Assessment Act 1936*.

NOTES

1. Act No. 126, 1977; assented to 10 November 1977.
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, 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; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; and No. 57, 1977.