**Income Tax Assessment Amendment Act (No. 2) 1979**

**No. 27 of 1979**

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:

**Short title, &c.**

**1.** (1) This Act may be cited as the *Income Tax Assessment Amendment Act* (*No.* 2)1979.

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

**Commencement**

**2.** (1) Subject to sub-sections (2) and (3), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) The amendment made by section 5 shall be deemed to have come into operation on 5 December 1978.

(3) The amendment made by section 6 shall be deemed to have come into operation on 23 June 1977.

**Interpretation**

**3.** Section 6 of the Principal Act is amended by inserting after the definition of “minerals” in sub-section (1) the following definition:

“‘mining withholding tax’ means income tax payable in accordance with section 128v;”.

**4.** After section 23ad of the Principal Act the following section is inserted:

**Certain mining payments not included in assessable income**

“23ae. (1) In this section, ‘Aboriginal’, ‘distributing body’ and ‘mining payment’ have the same respective meanings as in section 128u.

“(2) Where a mining payment is made to a distributing body, no part of the amount of the payment shall be included in the assessable income of that distributing body.

“(3) Where a mining payment is made to, or applied for the benefit of, an Aboriginal or Aboriginals, no part of that amount shall be included in the assessable income of that Aboriginal or of those Aboriginals, as the case may be.

“(4) Where a distributing body has received a mining payment and expends the whole or a part of the amount of that payment (which whole or part is in this sub-section referred to as the ‘relevant amount’) in making a payment to or for the benefit of an Aboriginal or Aboriginals or in making a payment to another distributing body, the relevant amount shall not be included in the assessable income of that Aboriginal or those Aboriginals or of that other distributing body, as the case may be.

“(5) Where a distributing body has received a mining payment and expends the whole or a part of the amount of that payment in making a payment to another distributing body, the amount of the payment received by the other distributing body shall, for the purposes of any subsequent application or applications of sub-section (4) and for the purposes of any other application of this sub-section, be taken to be a mining payment received by that other distributing body.

“(6) The reference in sub-section (4) to the expenditure by a distributing body of the whole or a part of a mining payment shall be read as not including a reference to any amount expended by the distributing body for the purposes of meeting its administrative costs (whether in respect of remuneration or allowances or otherwise).

“(7) This section does not operate to exclude from the assessable income of a person an amount that is paid to, or applied for the benefit of, the person if the amount is paid to, or applied for the benefit of, the person by way of remuneration or as consideration for goods or services provided by the person.”.

**Expenditure on scientific research**

**5.** Section 73a of the Principal Act is amended by omitting “Department of Employment and Industrial Relations” from the definition of “an approved research institute” in sub-section (6) and substituting “Department of Industrial Relations”.

**Gifts, calls on afforestation shares, pensions, &c.**

**6.** Section 78 of the Principal Act is amended by omitting from sub-paragraph (xvi) of paragraph (a) of sub-section (1) “Department of Labour and National Service” and substituting “Department of Productivity”.

**7.** After section 128t of the Principal Act the following Division is inserted in Part III:

*“Division 11c—Payments in respect of Mining Operations on Aboriginal Land*

**Interpretation**

“128u. (1) In this Division, unless the contrary intention appears—

‘Aboriginal’ means a person who is—

(a) a member of the Aboriginal race of Australia; or

(b) a member of the race to which Torres Strait Islanders belong;

‘Aboriginal land’ means any estate or interest in land that, under provisions of a law of the Commonwealth or of a State or Territory that relate to Aboriginals, is held for the use or benefit of Aboriginals;

‘distributing body’ means—

(a) an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act* 1976;

(b) an Aboriginal Council established by Part III of the *Aboriginal Councils and Associations Act* 1976;

(c) an association, society or body incorporated under Part IV of the *Aboriginal Councils and Associations Act* 1976; and

(d) any other incorporated body that—

(i) is established by or under provisions of a law of the Commonwealth or of a State or Territory that relate to Aboriginals; and

(ii) is empowered or required (whether under that law or otherwise) to pay moneys received by the body to Aboriginals or to apply such moneys for the benefit of Aboriginals, either directly or indirectly;

‘mineral royalties’ means royalties payable in respect of the mining of minerals;

‘minerals’ means—

(a) gold, silver, copper, tin and other metals;

(b) coal, shale, petroleum and valuable earths and substances;

(c) mineral substances;

(d) gems and precious stones; and

(e) ores and other substances containing minerals,

whether suspended in water or not, and includes water;

‘miner’s right’ means a miner’s right or other authority issued or granted under a law of the Commonwealth or of a State or Territory relating to mining of minerals, being a right or authority that empowers the holder to take possession of, mine or occupy land or take any other action in relation to land for any purpose in connection with mining;

‘mining’ includes the obtaining of minerals from alluvial or surface deposits;

‘mining interest’, in relation to any land, means any lease or other interest in the land (including a right to prospect or explore for minerals in or on the land) issued or granted under a law of the Commonwealth or of a State or Territory relating to mining of minerals;

‘mining payment’ means a payment made to a distributing body or made to, or applied for the benefit of, an Aboriginal or Aboriginals, being—

(a) a payment made on or after 1 July 1979 out of the Trust Account to the extent that the payment represents moneys paid into the Trust Account on or after 1 July 1979 in pursuance of sub-section (2) or (4) of section 63 of the *Aboriginal Land Rights (Northern Territory) Act* 1976;

(b) any payment made on or after 1 July 1979 that is of the kind referred to in sub-section (1) or (2) of section 44 of the *Aboriginal Land Rights (Northern Territory) Act* 1976; and

(c) any other payment made on or after 1 July 1979 under provisions of a law of the Commonwealth or of a State or Territory that relate to Aboriginals or under an agreement made in accordance with such provisions, being a payment made—

(i) in consideration of the issuing, granting or renewal of a miner’s right or mining interest in respect of Aboriginal land;

(ii) in consideration of the granting of permission to a person to enter or remain on Aboriginal land or to do any act on Aboriginal land in relation to prospecting or exploring for, or mining of, minerals; or

(iii) by way of payment of mineral royalties payable in respect of the mining of minerals on Aboriginal land or by way of payment of an amount determined by reference to an amount of mineral royalties received by the Commonwealth, a State or the Northern Territory in respect of the mining of minerals on Aboriginal land,

but does not include a payment made by a distributing body;

‘Trust Account’ means the Aboriginals Benefit Trust Account established by section 62 of the *Aboriginal Land Rights (Northern Territory) Act* 1976.

“(2) In sections 214, 218, 227, 230, 260 and 265, but, unless the contrary intention appears, not in any other section of this Act, ‘income tax’ or ‘tax’ includes mining withholding tax.

“(3) For the purposes of this Division, a mining payment shall be taken to include any amount that has been deducted from the mining payment for the purposes of section 221zb or purports to have been deducted from the mining payment for the purposes of that section.

“(4) For the purposes of the succeeding provisions of this Division, where a mining payment (in this sub-section referred to as the ‘relevant mining payment’) is made to, or applied for the benefit of, 2 or more persons, there shall be deemed to have been made to, or applied for the benefit of, each of those persons, a mining payment of an amount equal to so much of the relevant mining payment as bears to the relevant mining payment the same proportion as 1 bears to the number of persons to whom the relevant mining payment was made or for whose benefit the relevant mining payment was applied, as the case may be.

**Liability to mining withholding tax**

“128v. (1) Where a mining payment is made to, or applied for the benefit of, a person, that person is liable to pay income tax on the amount of the mining payment at the rate declared by the Parliament for the purposes of this section.

“(2) Income tax payable by a person in accordance with this section is in addition to any other income tax payable by that person upon amounts that are not mining payments.

**Payment of mining withholding tax**

“128w. (1) Mining withholding tax is due and payable by a person liable to pay the tax at the expiration of 21 days after the end of the month in which the payment of the amount to which the tax relates was made, or of such further period as the Commissioner, in special circumstances, allows.

“(2) Mining withholding tax, when it becomes due and payable, is a debt due to the Queen on behalf of the Commonwealth and payable to the Commissioner.

“(3) Any unpaid mining withholding tax may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

“(4) The ascertainment of the amount of any mining withholding tax shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

“(5) The Commissioner may serve on a person liable to pay mining withholding tax, by post or otherwise, a notice in which is specified—

(a) the amount of any mining withholding tax that the Commissioner has ascertained is payable by that person; and

(b) the date on which that tax became due and payable.

“(6) The production of a notice served under sub-section (5), or of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of such a notice, is evidence that the amount of mining withholding tax specified in the notice became due and payable by the person on whom the notice was served on the date specified in the notice as the date on which that tax became due and payable.

**Power of Commissioner to obtain information**

“128x. Section 264 applies, for the purposes of this Division, as if the reference in paragraph (b) of sub-section (1) of that section to a person’s income or assessment were a reference to a matter relevant to the administration or operation of this Division. “.

**8.** After section 221yy of the Principal Act the following Division is inserted in Part VI:

“*Division 5-Collection of Mining Withholding Tax*

**Object of Division**

“221z. The object of this Division is to facilitate the collection of mining withholding tax, and this Division shall be construed and administered accordingly.

**Interpretation**

“221za. (1) In this Division, unless the contrary intention appears—

‘government’ means the Commonwealth, a State or the Northern Territory, or an authority of the Commonwealth, of a State or of the Northern Territory;

‘mining payment’ has the same meaning as in section 128u.

“(2) Unless the contrary intention appears, a reference in this Division to a person shall be read as including a reference to a government.

**Deductions from mining payments**

“221zb. (1) A person shall not make a mining payment to a person or persons or apply a mining payment for the benefit of a person or persons unless the person has made a deduction from the mining payment of an amount equal to 6.4% of the amount of the mining payment.

“(2) A person, other than a government, who contravenes subsection (1) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding $200.

**Deductions to be forwarded to Commissioner, &c.**

“221zc. (1) Where a person has made a deduction from a mining payment and that deduction was made, or purports to have been made, for the purposes of section 221zb—

(a) that person shall, before the expiration of 21 days after the end of the month in which the deduction was made, pay to the Commissioner an amount equal to the deduction; and

(b) that person shall, before the expiration of 2 months after the end of the financial year in which the deduction was made or within such further time as the Commissioner allows, furnish to the Commissioner a statement with respect to the deduction, in a form authorised by the Commissioner, signed by or on behalf of the person who made the deduction.

“(2) A person, other than a government, who fails to comply with paragraph (a) of sub-section (1) is guilty of an offence against this Act and is punishable, upon conviction, by a fine not exceeding $1,000 or imprisonment for a period not exceeding 6 months.

“(3) A person, other than a government, who fails to comply with paragraph (b) of sub-section (1) is guilty of an offence against this Act and is punishable, upon conviction, by a fine not exceeding $200.

“(4) Where an amount payable to the Commissioner by a person under this section remains unpaid after the expiration of the period before the expiration of which it is required by this section to be paid—

(a) that amount continues to be payable by that person to the Commissioner; and

(b) in the case of a person other than the Commonwealth—an additional amount is, in addition to any other penalty to which that person may be liable, payable by that person to the Commissioner at the rate of 10% per annum on the amount unpaid, computed from the expiration of that period.

“(5) The Commissioner may, in any case, for reasons that he thinks sufficient, remit any additional amount payable under sub-section (4) or any part of such an additional amount.

**Liability of person who fails to make deduction, &c.**

“221zd. (1) Where a person other than the Commonwealth contravenes sub-section (1) of section 221zb in relation to a mining payment, the person is liable, in addition to any other penalty to which that person may be liable, to pay to the Commissioner—

(a) an amount equal to any unpaid mining withholding tax payable in respect of that mining payment; and

(b) an amount equal to 10% per annum of the amount of that unpaid mining withholding tax, calculated in respect of the period commencing on the twenty-second day after the end of the month in which that mining payment was made and ending on the day on which that person pays to the Commissioner the amount referred to in paragraph (a).

“(2) Where a person has, in relation to a mining payment, paid to the Commissioner an amount referred to in paragraph (a) of sub-section (1), the person may recover as a debt, from the person or persons to whom the mining payment was made, or for whose benefit the mining payment was applied, as the case may be, an amount equal to the amount paid to the Commissioner.

“(3) Where an amount payable under paragraph (a) of sub-section (1) has been paid to the Commissioner—

(a) in a case to which paragraph (b) of this sub-section does not apply—the person liable to pay the mining withholding tax to which the amount relates is entitled to a credit equal to that amount; and

(b) in a case where, by reason of the making of the mining payment to which the amount relates, separate mining payments are deemed by sub-section (4) of section 128u, for the purposes of Division 11c of Part III, to have been made to, or applied for the benefit of, 2 or more persons—each of those persons is entitled to a credit of an amount that bears to the amount paid to the Commissioner the same proportion as 1 bears to the number of those persons.

**Recovery of amounts by Commissioner**

“221ze. (1) An amount payable to the Commissioner under this Division by a person other than the Commonwealth is a debt due to the Queen on behalf of the Commonwealth and payable to the Commissioner and—

(a) that amount may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name; or

(b) a court before which proceedings are taken against that person for an offence against a provision of this Division may order that person to pay that amount to the Commissioner.

“(2) The provisions of section 243 apply in proceedings for the recovery of an amount payable to the Commissioner under this Division in like manner as those provisions apply in proceedings by the Crown for the recovery of a pecuniary penalty under this Act.

“(3) The provisions of section 249 apply to an order for the payment of a sum of money to the Commissioner made under paragraph (b) of sub-section (1) of this section in like manner as those provisions apply to an order for the payment of a sum of money to the Commissioner made under Part VII.

**Credits in respect of deductions made from mining payments**

“221zf. Where a deduction from a mining payment has been made, or purports to have been made, for the purposes of section 221zb—

(a) in a case to which paragraph (b) does not apply—the person liable to pay mining withholding tax upon that payment is entitled to a credit of an amount equal to that deduction; and

(b) in a case where, by reason of the making of the mining payment, separate mining payments are deemed by sub-section (4) of section 128u, for the purposes of Division 11c of Part III, to have been made to, or applied for the benefit of, 2 or more persons—each of those persons is entitled to a credit of an amount that bears to the amount of the deduction the same proportion as 1 bears to the number of those persons.

**Application of certain credits**

“221zg. (1) Subject to this section, the amount of a credit to which a person is entitled by virtue of this Division is a debt due and payable to that person by the Commissioner on behalf of the Commonwealth.

“(2) The Commissioner may apply the whole or a part of a credit referred to in sub-section (1) in total or partial discharge of any liability to the Commonwealth of the person who is entitled to the credit, being a liability arising under, or by virtue of, this Act or any other Act of which the Commissioner has the general administration.

“(3) Where, under sub-section (2), the Commissioner has applied an amount of a credit in discharge of a liability of a person to the Commonwealth, that person shall be deemed to have paid the amount so applied—

(a) for the purpose for which it was so applied; and

(b) at the time at which it was so applied or at such earlier time as the Commissioner determines.

“(4) Where the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit to which a person is entitled under this Division exceeds the amount of the credit to which the person is so entitled, the Commissioner may recover the amount of the excess as if it were income tax due and payable by that person.

**Persons discharged from liability in respect of deductions**

“221zh. Where a person has made a deduction from a mining payment and that deduction was made, or purports to have been made, for the purposes of section 221zb, the person is, by force of this section, discharged from all liability to pay or account for the deduction to any person other than the Commissioner.

**Payments to and out of Consolidated Revenue Fund**

“221zj. (1) All moneys received by the Commissioner in pursuance of this Division shall be paid into the Consolidated Revenue Fund.

“(2) An amount that the Commissioner is liable to pay in pursuance of this Division is payable out of the Consolidated Revenue Fund, which, to the necessary extent, is appropriated accordingly.

**Time for prosecutions**

“221zk. A prosecution for an offence against a provision of this Division may be commenced at any time.

**Joinder of charges under this Division**

“221zl. (1) Charges against the same person for any number of offences against this Division may be joined in one complaint if those charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

“(2) Where more than one charge is included in the same complaint in pursuance of sub-section (1), particulars of each offence charged shall be set out in a separate paragraph.

“(3) All charges so joined shall be tried together unless the court considers it just that any charge should be tried separately and makes an order to that effect.

“(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, impose one penalty in respect of all offences of which the person has been found guilty, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if penalties were imposed for each offence separately.”.