

INCOME TAX (COMMONWEALTH) COLLECTION ACT.

Act No. 16, 1923.

An Act to authorise the making of arrangements George V,
between the Commonwealth of Australia and No. 16,
the State of New South Wales respecting the
collection by the State Commissioner of Taxa-
tion of the State of the income tax payable
in the State under Commonwealth law, and
respecting

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respecting the transfer to the Public Service of the State of certain Commonwealth officers and their retransfer from the service of the State to the service of the Commonwealth, and the rights and obligations of such officers ; to ratify a certain agreement, and make certain provisions as to compensation of officers of the Public Service who may be retired in pursuance of the agreement ; to amend the Income Tax Management Act, 1912, and certain other Acts ; and for purposes connected therewith. [Assented to, 26th October, 1923.]

Preamble.

WHEREAS the Prime Minister of the Commonwealth and the Premier of the State of New South Wales have entered into an agreement (in this Act referred to as "the agreement") a copy of which is set out in the Schedule to this Act : And whereas it is desirable to ratify the agreement and provide for its being carried into effect : Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title
and
commencement.

1. (1) This Act may be cited as the "Income Tax (Commonwealth) Collection Act, 1923."

(2) This Act shall be deemed to have commenced on the thirtieth day of June, one thousand nine hundred and twenty-three.

(3) This Act shall bind the Crown.

Definitions.

2. In this Act, unless the contrary intention appears—

"Arrangement" means an arrangement made or deemed to be made in pursuance of section three of this Act.

"State" means the State of New South Wales.

Arrangement
as to
collection.

3. (1) The State may arrange with the Commonwealth for the collection by the Commissioner of Taxation of the State of the whole or part of the income tax payable in the State under Commonwealth law.

(2)

(2) Any agreement relating to any such arrangement may make provision for any other matters necessary or convenient to be provided for carrying out the arrangement, including the transfer of officers from the service of the Commonwealth and their retransfer from the service of the State to the service of the Commonwealth, and the rights and obligations of such officers.

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(3) The agreement, a copy of which is set out in the Schedule to this Act, shall be deemed to be an arrangement made in pursuance of this section.

(4) The State may, with the consent of the Commonwealth, vary any such arrangement or any agreement relating thereto.

(5) Any such arrangement, agreement or variation shall be made in the name and on behalf of the State by the Premier of the State or by some Minister authorised in that behalf by the Governor.

(6) Any such arrangement, agreement or variation shall be valid and effectual for all purposes, provided that, except in the case of the agreement set out in the Schedule to this Act, the arrangement, agreement or variation shall not take effect unless approved by a resolution of each House of Parliament.

(7) If any such arrangement, agreement or variation is so approved, the Governor shall notify the approval in the Gazette.

(8) Any such arrangement, agreement, or variation so approved and notified, and the agreement set out in the Schedule to this Act may be carried out, and effect may be given thereto by the authority of this Act and notwithstanding the provisions of any other Act.

4. Notwithstanding the provisions of the Public Service Act, 1902, the present Commissioner of Taxation may continue to hold such office for such period as the Governor deems advisable.

5. Notwithstanding the oath of secrecy taken by the Commissioner of Taxation of the State, he may allow any taxation officer thereto authorised in writing by the Commonwealth Commissioner of Taxation to inspect any records kept in the income tax office of the State.

6.

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Regulations.

6. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or to any arrangement thereunder.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days of the making thereof if Parliament is in session, and if not then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof such regulation or part shall thereupon cease to have effect.

(4) The regulations may—

- (i) impose a penalty for any breach thereof, and also distinct penalties in case of successive breaches thereof, but no such penalty shall exceed one hundred pounds;
- (ii) impose also a daily penalty for any continuing breach thereof not exceeding five pounds per day.

(5) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate or any two or more justices.

Compensa-
tion to State
officers who
are retired.

7. (1) There shall be payable to any officer who is retired in pursuance of the provisions of paragraph six (a) of the agreement (copy of which is contained in the Schedule) compensation in the proportion of one month's pay for each year of service.

(2) The amount so payable to an officer shall not be less than the equivalent of six months' pay provided that the compensation so payable to any officer shall not exceed the total of the salary which would have been payable to him had his services been continued at his current rate of salary until he attained the age of sixty years.

(3)

(3) This section shall not apply to an officer who George V, has at the time his services are dispensed with attained No. 16. the age of sixty years.

8. The compensation payable under the last preceding Compensation to be in addition to section shall be in addition to—

- (a) payment in lieu of extended leave due under Compensation to be in addition to the provisions of section thirteen of the Public pay in lieu of extended leave. Service (Amendment) Act, 1919; and
- (b) the equivalent of the amount of salary which would be payable to the officer for recreation leave, and which he is eligible to take under the provisions of the regulations under the Public Service Act, 1902.

9. (1) If it appears that the officer who is so retired is entitled to any pension, retiring allowance, gratuity, or compensation under any other law (not including Australian Soldiers Repatriation Act, 1920-1922, and not including any pension, retiring allowance, gratuity or compensation under any Imperial or Dominion war provisions) compensation under this Act shall only be allowed upon the officer undertaking not to claim the pension, retiring allowance, gratuity or compensation under that other law.

(2) This section shall not be construed to affect the rights of an officer on retirement to refund of his contributions to the Civil Service Superannuation Account under the Civil Service Act, 1884, or to the State Superannuation Fund under the Superannuation Act, 1916, and any Acts amending same, or to both of such funds.

10. The compensation payable under this Act shall not be liable to income tax under any law of the State.

11. A person to whom compensation has been paid in pursuance of this Act shall not be appointed to any position in the Public Service until he has, if so required by the authority making the appointment, paid or agreed to pay into the Treasury an amount equal to the compensation so paid to him, or such proportionate amount as the authority determines.

12. This Act shall not apply to any officer whose Non-application of Act in retirement has been in the nature of a penalty or on account of unsatisfactory service or inefficiency or medical unfitness.

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Compensation
not payable as
a right.
C'wealth, 1923.
No. 28, s. 14.

Provision for
payment
when officer
dies before
payment.
Ibid. s. 15.

Non-
application to
Common-
wealth
officers
transferred.

13. Compensation payable under section seven or paragraph (b) of section eight of this Act shall not be claimable or recoverable by any person as a matter of right but shall be deemed to be a free gift by the State.

14. Where any person entitled to compensation under section seven or to the monetary value of recreation leave as provided in paragraph (b) of section eight of this Act dies before payment is made the amount so payable shall not form part of the estate of the deceased and shall not be claimable by the executor or administrator of the estate but may be paid to the dependents of the deceased in such proportion and under such conditions as the Minister approves.

15. The provisions of the eight preceding sections shall not be applied to any officer who has been transferred to the service of the State from the service of the Commonwealth in pursuance of the said agreement.

SCHEDULE.

THE AGREEMENT.

AN AGREEMENT made the thirty-first day of July, one thousand nine hundred and twenty-three, between the Commonwealth of Australia (hereinafter called the "Commonwealth") of the one part and the State of New South Wales (hereinafter called the "State") of the other part.

WHEREAS it is desirable in the public interest and to avoid duplication of services that the income tax payable from time to time to the Commonwealth (hereinafter called the "Commonwealth tax") and the income tax payable from time to time to the State (hereinafter called the "State tax") should so far as practicable be assessed and collected by the one agency:

And whereas it is necessary that any arrangement for that purpose should preserve inviolate the respective sovereign powers and rights of the Commonwealth and the State:

And whereas the Commonwealth and the State have agreed to co-operate in the collection of the Commonwealth tax and the State tax under the conditions hereinafter contained:

Now

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Now it is agreed as follows:—

1. The Commonwealth and the State agree to collect the Commonwealth tax within the State and the State tax in the manner and subject to the conditions set forth in this Agreement.

2. (a) Subject to this Agreement the Commonwealth tax and the State tax shall be collected by an officer acting for the Commonwealth and the State (in this Agreement referred to as the "State Commissioner").

(b) The Commonwealth shall appoint the State Commissioner of Taxation for the time being to be the Deputy Commissioner for the State under the Income Tax Assessment Acts of the Commonwealth (hereinafter called the "Deputy Federal Commissioner").

3. (a) The State Commissioner in his capacity as such Deputy Federal Commissioner shall be responsible to the Commonwealth Commissioner of Taxation for the due assessment and collection of the Commonwealth tax and the administration of the laws of the Commonwealth relating thereto, and shall in relation to such assessment, collection, and administration be free from interference or control by the State. The Commonwealth Commissioner of Taxation shall delegate to the State Commissioner such powers and functions of the Commonwealth Commissioner as are necessary or convenient for the purpose of the administration in the State of the laws of the Commonwealth relating to income tax;

(b) All matters arising in connection with the exercise by the State Commissioner of his powers and functions under the laws of the State shall be determined by him in accordance with those laws and without interference by the Commonwealth.

(c) The receipt of money by any person employed in connection with the Commonwealth tax and State tax shall be as against the Commonwealth and in favour of the State a receipt thereof by the Commonwealth and as against the State and in favour of the Commonwealth a receipt thereof by the State.

4. (a) The State shall transfer to the permanent service of the State all officers who on the first day of July, One thousand nine hundred and twenty-three, were and at the date when this Agreement comes into operation are permanent or probationary permanent officers in the service of the Commonwealth engaged in Income Tax work in the State of New South Wales (not including officers employed in what is known as the Central Office of the Commonwealth Taxation Branch);

(b) Subject to this Agreement each officer so transferred—

(i) shall be subject in all respects to the laws of the State regulating the Public Service; and

(ii) without prejudice to the last preceding clause shall preserve all his existing and accruing rights, and shall be required to continue to contribute to the Superannuation Fund of the Commonwealth such sums as he would have been liable to contribute if he had remained an officer of the Commonwealth, and shall be entitled to retire from office at the time and on the pension or retiring allowance which would be permitted by the laws of the Commonwealth if his service with the State were a continuation of his service with the Commonwealth; and

(iii) shall so far as practicable be employed on duties of a status not less than the status of the duties now performed by him;

(c)

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(c) Any contributions to any Superannuation Fund of the Commonwealth which would but for this Agreement be payable by the Commonwealth in respect of an officer so transferred shall be payable by the State, and shall be included in the cost of administration, assessment and collection of taxes, and for this purpose the annual sum so payable by the State shall be determined by the actuary appointed under the Superannuation Act, 1922, of the Commonwealth;

(d) On the determination of this Agreement from any cause whatever, the Commonwealth shall retransfer to the Commonwealth Service all officers of the State who have, pursuant to this Agreement, been transferred from the Commonwealth Service to the State Service, and the State shall permit such retransfer;

(e) where --

(i) an officer so transferred from the Commonwealth Service to the State Service has, while in the State Service, been promoted to a higher position in the Taxation Office not previously occupied by the officer so transferred, or to any position in the State Service other than a position in the Taxation Office ; and

(ii) the officer so promoted elects to remain in the State Service ; and

(iii) the State desires to retain the services of such officer ; he shall not be retransferred to the Commonwealth Service in accordance with the last preceding paragraph but the Commonwealth shall transfer to the Commonwealth Service in his place another State officer holding a position of equal status and with similar duties to that from which the first-named officer was promoted if there be any such officer and the State shall permit such transfer : Provided that in respect of any officer so remaining in the State Service all contributions made by him to the Superannuation Fund of the Commonwealth and the sum representing the liability of the Commonwealth in respect of such officer to such Fund as ascertained by the certificate of the actuary appointed under the Superannuation Act, 1922, aforesaid, shall be paid to the State Superannuation Fund, and such officer shall be allowed to contribute to such fund and to count his service with the Commonwealth as if it were service with the State for such purpose.

5. (a) All permanent officers of the State employed in the Taxation Office in the State and all Commonwealth officers transferred to the State pursuant to this Agreement shall be merged into and form one combined staff.

(b) The State shall provide all office accommodation required.

6. (a) If by reason of any economy effected by this Agreement the combined staff is greater than is required for the work to be performed and retrenchment is necessary, the number and grades of officers to be dispensed with shall, as between the officers who, prior to this Agreement, were respectively State and Commonwealth officers, be as far as practicable proportionate to the numbers of the respective staffs immediately prior to this Agreement ;

(b) If the employment of any person transferred to the service of the State pursuant to clause 4 (a) hereof is terminated by or for the State because his employment is not necessary, or a reduction in the number of employees is necessary on account of diminution in the work to be performed, or of any other like reason, the State will not be liable for

for any compensation allowance or other benefit arising to such person on such termination, but the same will be provided by or for the Commonwealth.

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7. Should any dispute or difference arise between the Commonwealth Commissioner and the State Commissioner on any administrative matter arising under this Agreement, and not otherwise herein provided for, the Treasurers of the Commonwealth and the State respectively shall confer and in the event of their failure to agree on the matter it shall be referred for settlement to some independent person selected for that purpose by the Treasurers, and the decision of that person shall be final and conclusive.

8. In order to secure uniformity throughout the Commonwealth of the interpretation of the laws of the Commonwealth the State Commissioner shall apply the rulings of the Commonwealth Commissioner in the interpretation of the laws of the Commonwealth.

9. Nothing in this Agreement shall be deemed to restrict or impede the Commonwealth or the State in the exercise of its rights and powers under the Constitution of the Commonwealth or the State and the laws of the Commonwealth or the State now or hereafter in force.

10. (a) The cost of collection of the Commonwealth tax and the State tax as provided for in this Agreement shall in each financial year ending thirtieth June be apportioned and borne by the Commonwealth and the State respectively on the basis of the actual cost of performing the work in connection with the administration, assessment, and collection of the respective taxes, and the cost of administration, assessment, collection, and recovery of the Commonwealth tax, assessable for periods up to and including the thirtieth June, one thousand nine hundred and twenty-three, shall be borne solely by the Commonwealth;

(b) The said cost of collection shall include—

(i) salaries of officers and employees including the State Commissioner and officers and employees of the Crown Law Department of the State;

(ii) all relevant contingent expenditure;

(iii) all other expenditure properly referable to the assessment and collection of the said taxes, including rent of and interest payable on the cost of premises occupied for the assessment and collection of the said taxes and costs and expenses of legal proceedings for recovery;

(c) The said cost and the apportionment thereof shall be determined by agreement between the Commonwealth Commissioner and the State Commissioner, and in default of agreement shall be determined by a person nominated by the two Commissioners, or, if they cannot agree on a nomination shall be determined by the Auditor-General for the Commonwealth. The State Commissioner will from time to time furnish the Commonwealth Commissioner such information as the Commonwealth Commissioner may require to enable him to ascertain the amount of such cost and the proper apportionment thereof;

(d) The estimated proportion of the said cost payable by the Commonwealth shall be paid to the State in quarterly instalments during each financial year and shall be adjusted at the end of such financial year.

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11. In order that the work of assessment and collection of taxes may proceed expeditiously and economically the Governments of the Commonwealth and the State respectively will submit to Parliament before the thirtieth day of September in each year or as early as practicable thereafter—

- (a) proposed laws fixing respectively the rates of the Commonwealth tax and the State tax for that year; and
- (b) proposed amendments of the income tax laws of the Commonwealth and State respectively;

and endeavour to have those proposed laws dealt with by the respective Parliaments without delay.

12. The State Commissioner in his capacity as Deputy Federal Commissioner shall in the manner required from time to time by the Commonwealth Treasurer deal with and account for all Commonwealth tax collected pursuant to this Agreement.

13. With a view to securing the greatest possible economy from the operation of this Agreement and to simplify the procedure in relation to the furnishing of taxation returns and information the Commonwealth and the State agree as far as practicable to have uniform Income Tax laws enacted by the respective Parliaments: the respective parties by their Governments undertake to endeavour to have these laws enacted not later than the thirtieth day of September, one thousand nine hundred and twenty-three.

14. (a) There shall be prepared a joint form of Income Tax return suitable for both Commonwealth and State tax purposes in the State of New South Wales;

(b) Returns furnished in the joint form by taxpayers deriving income from sources in the State of New South Wales only shall be accepted as sufficient so far as form is concerned;

(c) Taxpayers deriving incomes from sources in the State of New South Wales and elsewhere in Australia will be required to furnish returns in the Commonwealth prescribed form at the Commonwealth Central Income Tax Office, and, in addition, returns in the joint form at the office in the State of New South Wales in respect of income derived from sources in the State of New South Wales only;

(d) Any officer of the State Taxation Department thereto authorised in writing by the State Commissioner may inspect any records kept in the Central Office of the Commonwealth Department of Taxation, and any officer of the Commonwealth Department of Taxation thereto authorised in writing by the Commonwealth Commissioner may inspect any records kept in the Income Tax Office of the State of New South Wales, and the State undertakes to enact any necessary legislation for this purpose.

15. (a) Prosecutions for offences against the laws of the State relating to the State tax shall be conducted by and at the expense of the State, and prosecutions for offences against the laws of the Commonwealth relating to the Commonwealth tax shall be conducted at the expense of the Commonwealth and may be conducted by the State Commissioner in his capacity of Deputy Federal Commissioner: Provided that when the Commonwealth Commissioner and the State Commissioner agree or have agreed that the act or omission constitutes an offence under both the law of the Commonwealth and the law of the State, or that the decision of the question under the law of one party is likely to be useful in the administration of the law of the other party, the expense of the prosecution shall be borne jointly; (b)

(b) When an act or omission constitutes an offence under both the law of the Commonwealth and the law of the State—

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- (i) as a general rule the prosecution shall be instituted under the law which provides the greater penalty;
- (ii) any monetary penalty recovered shall be paid into the Consolidated Revenue of the party under whose law the prosecution is instituted; and
- (iii) the party into whose revenue the penalty is paid shall pay or credit to the other party one-half of the amount of the penalty;
- (iv) the expenses of such prosecution shall be shared equally by the Commonwealth and the State;

(c) When an act or omission constitutes an offence under one law only any monetary penalty recovered shall be paid into the Consolidated Revenue of the party under whose law the prosecution is instituted and be retained wholly by that party.

16. Where by reason of any act, default or omission of a taxpayer a sum has been collected as penalty or additional tax by way of penalty (not being a penalty imposed by a Court) such sum shall be applied as follows:—

- (a) If the sum is recoverable under one law only, it shall be retained wholly by the party under whose law it is recovered; or
- (b) if the sum is recoverable under both the law of the Commonwealth and the law of the State, it shall be divided proportionately according to the amount of penalty between the Commonwealth and the State.

17. If the taxpayer at any time pays less than the full amount due and payable by him for Commonwealth tax and State tax the amount paid shall (unless the taxpayer otherwise directs) be credited to the Commonwealth and the State respectively pro rata to the full amount then due and payable by the taxpayer to the Commonwealth and the State.

18. No appeal against an assessment under the law of the Commonwealth shall be referred to a Court by the State Commissioner in his capacity of Deputy Federal Commissioner, but every such appeal shall be submitted by him for consideration of the Commonwealth Commissioner: Provided that nothing herein contained shall preclude the State Commissioner in such capacity as aforesaid from dealing with objections.

19. (a) The Commonwealth will by its Government take any action within its power to obtain such amendments of any laws of the Commonwealth as may be necessary or advisable to enable this Agreement to be fully and effectively performed on its part;

(b) The State will by its Government take any action within its power to obtain such amendments of any of the laws of the State as may be necessary or advisable to enable this Agreement to be fully and effectively performed on its part.

20. Any notice to be given by either party to the other under this Agreement shall be deemed to have been duly given if signed by the Prime Minister or the Premier as the case may be, on behalf of the party giving it, and sent by prepaid post addressed to the Premier or Prime Minister as the case may be, on behalf of the other party.

George V, 21. This Agreement shall come into operation on the first day of
No. 16. July, one thousand nine hundred and twenty-three, and shall continue
in force for a period of five years, and thereafter until the expiration
of not less than six calendar months' notice in writing by either party
of intention to terminate it.

As witness the hand of the Prime Minister of the Commonwealth of
Australia for and on behalf of the said Commonwealth, and the hand
of the Premier of the State of New South Wales for and on behalf of
the said State, the day and year first above-written.

Signed by the Prime Minister of the
Commonwealth of Australia for
and on behalf of the said Com-
monwealth in the presence of—
EARLE PAGE.

Signed by the Premier of the State
of New South Wales for and on
behalf of the said State in the
presence of—
F. C. G. TREMLETT, J.P.

S. M. BRUCE.

GEORGE W. FULLER.