

SPECIAL INCOME AND WAGES TAX (MANAGEMENT) AMEND- MENT ACT.

Act No. 17, 1934.

George V.
No. 17, 1934. An Act to amend the Special Income and Wages Tax (Management) Act, 1933, in certain respects; and for purposes connected therewith. [Assented to, 1st November, 1934.]

BE it 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.

1. (1) This Act may be cited as the "Special Income and Wages Tax (Management) Amendment Act, 1934."

(2) The Special Income and Wages Tax (Management) Act, 1933, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Special Income and Wages Tax (Management) Act, 1933-1934.

2. The Principal Act is amended—

Amendment of
Act No. 13,
1933.

Sec. 8.
(Exem-
p-
tions.)

(a) (i) by omitting from paragraph (h) of section eight the words "resident in Australia" and by inserting in lieu thereof the words "domiciled in the State";

(ii) by inserting at the end of the same section the following new paragraph:—

(m) income derived from property by a person (other than a company) ordinarily resident in a reciprocating State:

Provided

No. 17, 1934.

Provided that the exemption under this paragraph shall not apply to any part of the income derived from property which is not subject, in the reciprocating State, to any tax which, in the opinion of the Governor, is substantially similar to the Special Income Tax for the time being in force in New South Wales.

(b) by inserting next after section eight the following new section:—

8A. (1) Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any State of the Commonwealth for the exemption, in that State, of income derived from property by a person (other than a company) ordinarily resident in New South Wales, from any tax which, in the opinion of the Governor, is substantially similar to the Special Income Tax for the time being in force in New South Wales, the Governor may, by proclamation published in the Gazette, declare such State to be a reciprocating State for the purposes of this Act, and shall in such case also declare the income year as from the commencement of which such State shall become a reciprocating State for the purposes of this Act, and as from the commencement of such income year such State shall be a reciprocating State for the purposes of this Act.

(2) Any proclamation under subsection one of this section may be revoked or varied by the Governor by a subsequent proclamation published in the Gazette.

(c) by inserting in subsection four of section nine after the words "outside the State" the following proviso:—

Provided that where a company derives income from a source in the State and from a source outside the State, the amount to be deducted under this subsection shall be an amount which bears the same proportion to the total amount

Sec. 9.
(Deductions
in case of
companies.)

No. 17, 1934.

Further amendment of Act No. 13, 1933.

**Sec. 10.
(Deductions from dividends, interest, etc.)**

amount so distributed as the profits which form part of the assessable income of the company derived from a source in the State bear to the total profits of the company.

3. The Principal Act is further amended—

- (a) by inserting in subsection one of section ten after the word "shall" the words "unless it has deducted and retained from such dividend, in pursuance of subsection three of this section, an amount sufficient to pay the tax";
- (b) by inserting in subsection two of the same section after the word "shall" the words "unless he has deducted and retained from such interest, in pursuance of subsection three of this section, an amount sufficient to pay the tax";
- (c) by omitting subsection three of the same section and by inserting in lieu thereof the following new subsections:—

(3) Where after the commencement of the Special Income and Wages Tax (Management) Amendment Act, 1934—

- (a) a dividend becomes payable by a company to a shareholder not domiciled in the State in respect of its shares registered upon a register situate in the State, or
- (b) interest becomes payable by a person (in this section referred to as the interest payor) to a person not domiciled in the State (in this section referred to as the interest recipient) on money lent in the State,

the company or interest payor, as the case may be, shall deduct and retain from such dividend or such interest when paid an amount sufficient to pay the tax in respect of such dividend or such interest at such rate as may be fixed by any Act and shall forward such amount to the Commissioner with the prescribed return within such time as may be prescribed.

(3A)

(3A) (a) The place of residence of a shareholder or interest recipient last known to the company or interest payor at the date of payment of a dividend or interest, as the case may be, shall, for the purposes of this section, but subject to paragraph (b) of this subsection, be conclusive evidence as between the shareholder and the company or as between the interest recipient and the interest payor, as the case may be, and as between the company or interest payor, as the case may be, and the Commissioner and be prima facie evidence as between the shareholder or interest recipient and the Commissioner that at such date the shareholder or interest recipient was domiciled in the State or country in which such residence is situated.

(b) The Commissioner may from time to time by notice in writing (a copy of which shall be forwarded to the shareholder or interest recipient at the last address known to the Commissioner) notify the company or interest payor where the shareholder or interest recipient, as the case may be, is domiciled, and for the purposes of subsections one, two and three of this section such notice shall—

- (i) as between the Commissioner and the company or interest payor as the case may be, and
- (ii) as between the company and shareholder or interest payor and interest recipient, as the case may be,

notwithstanding anything in paragraph (a) of this subsection be conclusive evidence of the domicile of the shareholder or interest recipient from the receipt of such notice by the company or interest payor, as the case may be, and until the same is withdrawn.

(c) The Commissioner may from time to time withdraw such notice by a like notice in writing, a copy of which shall be forwarded to the shareholder or interest recipient as aforesaid.

(d)

(d) A shareholder or interest recipient may in writing request the Commissioner to notify the company or interest payor, as the case may be, that he is domiciled in the State, and, when any notice relating to the domicile of such shareholder or interest recipient has previously been given, to withdraw such notice.

Any such request shall be accompanied by a statement setting out fully the facts upon which the request is based.

If the Commissioner refuses any such request he shall give notice of such refusal to the shareholder or interest recipient.

(e) A shareholder or interest recipient shall have a right of objection and appeal to the Court of Review against any notice relating to the domicile of such shareholder or interest recipient or against any notice of refusal of a request made under paragraph (d) of this subsection by such shareholder or interest recipient.

The provisions of section fifty-two of the Principal Act shall mutatis mutandis apply to any objection or appeal under this paragraph; and for the purpose of such application the copy of the notice relating to domicile and the notice of refusal of the request shall be deemed to be a notice of assessment.

The period within which an objection or appeal under this paragraph may be lodged shall commence to run from the date on which, in the ordinary course of post, the copy of the notice relating to domicile or the notice of refusal of the request, would be received.

(3B) A shareholder or interest recipient shall not be entitled to make any claim against a company or interest payor in respect of tax retained and paid to the Commissioner in accordance with the provisions of this section and the receipt of the Commissioner therefor shall, to the extent of the amount thereby acknowledged, be a complete acquittance and discharge to the company or the interest

interest payor, as the case may be, of and from all liability in respect of such dividend or interest.

(3c) A person domiciled outside the State shall have the same right of objection and appeal in respect of tax deducted under this section as if an assessment had issued to him.

For the purposes of this subsection the period within which an objection may be lodged shall commence to run from the date on which, in the ordinary course of post, an assessment would be received if issued on the date on which the tax is paid by the company or interest payor to the Commissioner.

(3d) A company shall not be required to deduct tax under this section in respect of such part of any dividend as is distributed out of income upon which it has paid Unemployment Relief Tax under the provisions of the Unemployment Relief Acts or Special Income Tax.

(3e) Tax shall not be retained or deducted and retained under this section from dividends or interest exempt from tax by the operation of paragraph (m) of section eight of this Act:

Provided that, where tax has been so retained or deducted and retained before the publication in the Gazette of a proclamation declaring the State in which the shareholder or interest recipient is ordinarily resident to be a reciprocating State, such tax shall, as between the company and the shareholder or as between the interest payor and the interest recipient, as the case may be, be deemed to have been lawfully retained or deducted and retained, and any claim for refund of tax by the shareholder or interest recipient shall be made to the Commissioner.

(3f) In this section and section nineteen of the Unemployment Relief Acts the phrases "moneys in its hands belonging to a shareholder" and "moneys coming to his hand belonging to the person" shall include and be

deemed

Special Income and Wages Tax (Management) Amendment Act.

deemed at all times to have included money due or payable to such shareholder or person.

(d) by inserting at the end of subsection four of the same section the words "unless the Commissioner by notice in writing to the company or interest payor, as the case may be, directs that tax shall be retained or deducted and retained under this section.

Any such notice shall take effect from the date of receipt thereof by the company or interest payor, and shall remain in force until withdrawn."

4. The Principal Act is further amended—

(a) (i) by omitting from paragraph (a) of section eleven the words "section nine or";
(ii) by omitting from paragraph (b) of the same section the words "section eighteen or";
(iii) by inserting at the end of the same section the following new subsection:—

(2) Where there is included in the net assessable income of any person (and such person is liable to tax in respect thereof) any dividend upon which tax has been paid under the provisions of section nine of this Act or under the provisions of section eighteen of the Unemployment Relief Acts there shall be deducted from the tax otherwise payable by such person the amount of additional tax resulting from the inclusion of such dividend in the net assessable income.

(b) by inserting in section twelve after the word "income" the words "or owing to the failure of an employer to collect the correct amount of tax from an employee";
(c) by inserting next after section fourteen the following new section:—

14A. (1) Notwithstanding anything contained in this Act, or in the Principal Act, the Commissioner may furnish to the Government Statistician for New South Wales any information disclosed by the returns under subsection two of section fourteen of this Act. (2)

Further amendment of Act
No. 13, 1933.

Sec. 11.
(Rebate of
tax.)

Sec. 12.
(Assess-
ments in
special
cases.)

New s. 14A.

Authority to
disclose infor-
mation in
returns to the
Government
Statistician.
cf. Act No. 34,
1930, s. 28c.

(2) Before any such information is so furnished, the Government Statistician and every officer or employee of the Bureau of Statistics and Economics shall take and subscribe before a justice of the peace such oath of fidelity and secrecy as may be prescribed.

(3) If the Government Statistician or any such officer or employee acts in the execution of his office in relation to any such return before he has taken the prescribed oath he shall be liable to a penalty of not less than ten and not more than one hundred pounds.

(4) The Government Statistician and every such officer or employee who without lawful excuse makes a record of or reveals the name of any employer who has furnished a return pursuant to subsection two of section fourteen of this Act, or the particulars contained in any such return, shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

(5) Any person who has held the office of Government Statistician, or who has been an officer or employee of the Bureau of Statistics and Economics, or who has performed any duty under this Act in the said Bureau and who reveals any information as to any employer who has furnished a return pursuant to subsection two of section fourteen of this Act, or as to any of the particulars contained in any such return, to any person other than a person to whom he has been authorised by the Commissioner to communicate it, shall be guilty of a misdemeanour and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

(6) The Government Statistician shall not, nor shall the Commissioner or any officer or employee of the Bureau of Statistics and Economics, or any officer appointed to act in the administration of the Principal Act, be required to

No. 17, 1934.

to produce in any Court any return made pursuant to subsection two of section fourteen of this Act, or to divulge or communicate to any Court the name of any employer who has made any such return, or any of the particulars contained in any such return, except as may be necessary for the purpose of carrying into effect the provisions of this Act.

(7) Nothing in this section shall prevent the Government Statistician from compiling from such returns, and publishing statistics based on the particulars contained in such returns; but such statistics shall not disclose the name of any employer who has made any such return nor the particulars contained in any particular return.

Sec. 16.
(Tax on
income from
wages.)

(d) (i) by inserting next after subsection one of section sixteen the following new subsection:—

(1A) If any employer fails to keep wages records or the Commissioner is not satisfied that the records kept are correct, the Commissioner may by notice in writing fix the amount of wages upon which, in his judgment, tax ought to be paid, and the employer shall be liable to pay tax accordingly excepting so far as he establishes on objection that the amount is excessive.

Any such notice in writing shall be subject to the same right of objection and appeal as if it were a notice of assessment.

(ii) by omitting from subsection ten of the same section the word "six" and by inserting in lieu thereof the word "twelve."

5. The Principal Act is further amended—

Further amend-
ment of Act
No. 13, 1933.

Sec. 17.
(Arrange-
ments with
Common-
wealth.)

(a) (i) by omitting subsection three of section seventeen;
(ii) by omitting from subsection four of the same section the words "be deemed to be" where firstly occurring and by inserting in lieu

No. 17, 1934.

lieu thereof the words " as from the date or dates fixed by the arrangement be deemed to be or to have been, as the case may be ";

(iii) by omitting from the same subsection the words " be deemed to be bound to collect tax from those persons " and by inserting in lieu thereof the words " and as from the date or dates fixed by the arrangement be deemed to be or to have been, as the case may be, an employer."

(b) by omitting section eighteen.

Sec. 18.
(Operation of
sec. 17.)
