

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1931.

A BILL

To regulate the apportionment for the purposes of income tax of income derived partly within and partly outside the State; and for this and other purposes to amend the Income Tax (Management) Act, 1928, as amended by subsequent Acts; and for purposes connected therewith.

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:—

1. (1) This Act may be cited as the "Income Tax Short title. (Management) Amendment Act, 1931."

(2) This Act shall be read and construed with the Income Tax (Management) Act, 1928, as amended by subsequent Acts.

*Income Tax (Management) Amendment.*

(3) The Income Tax (Management) Act, 1928, as so amended, is in this Act referred to as the Principal Act.

(4) The Principal Act, as amended by this Act, may be cited as the Income Tax (Management) Act, 1928-1931.

2. (1) The Principal Act is amended—

Amendment of Act No. 35, 1928, s. 28.

(a) (i) by inserting in subsection one of section twenty-eight after the words "source outside the State" the words "in accordance with the rules set out in subsection three of this section, where such rules are applicable to the circumstances of the case, and in any case in which such rules are not so applicable, the apportionment shall be made in accordance with regulations made in that behalf, and if there is no such regulation or if in any case no regulation is applicable to the circumstances of the case then";

(Apportionment of income derived within and outside State from manufacturing, &c.)

(ii) by inserting next after subsection two of the same section the following new subsection:—

(3) The rules referred to in subsection one of this section shall be as follows:—

Rule 1.—In the case of income arising from the sale or disposal outside the State but within the Commonwealth of goods by a taxpayer who is a resident of the Commonwealth or is a company incorporated within the Commonwealth, and the goods so sold or disposed of have been manufactured by the taxpayer within the State—the amount of income to be deemed to have arisen from sources in the State shall be an amount equal to two-thirds of the total profits arising from such sale or disposal.

Rule

Rule 2.—In the case of income arising from the sale or disposal within the State of goods by a taxpayer who is a resident of the Commonwealth or is a company incorporated within the Commonwealth, and the goods so sold or disposed of have been manufactured outside the State but within the Commonwealth—the amount of income to be deemed to have arisen from sources in the State shall be an amount equal to one-third of the total profits arising from such sale or disposal.

Rule 3.—In the case of income arising from the sale or disposal outside the State but within the Commonwealth of goods by a taxpayer who is a resident of the Commonwealth, or is a company incorporated within the Commonwealth, and the goods so sold or disposed of have been purchased by the taxpayer within the State—the amount of income to be deemed to have arisen from sources in the State shall be an amount equal to one-half of the total profits arising from such sale or disposal.

Rule 4.—In the case of income arising from the sale or disposal within the State of goods by a taxpayer who is a resident of the Commonwealth or is a company incorporated within the Commonwealth, and the goods so sold or disposed of have been purchased outside the State but within the Commonwealth—the amount of income to be deemed to have arisen from sources in the State shall be an amount equal to one-half of the total profits arising from such sale or disposal. This

This rule shall not apply to the case of a retail business carried on in the State or to any case in which the essence of the business is the sale of goods in the State or where the sale is made by a branch of a business carried on in more than one State and the branch in the State is in the opinion of the Commissioner self-contained.

Rule 5.—In the foregoing rules—

- (a) the expression "sale or disposal" or "sold" extends to a case where a branch of a business carried on by the taxpayer or an agent of the taxpayer sells or disposes of or is instrumental in selling or disposing of any goods whether such goods are in the place of sale or by the contract are to be brought into the place of sale or disposal and whether the contract is made by the branch or agent in the State in which the sale or disposal is made or by or on behalf of the taxpayer in the State and whether the moneys arising from the sale or disposal are paid to or received by the taxpayer directly or otherwise;
- (b) the expression "total profits" shall mean that part of the total taxable income which would have been determined under this Act as the taxable income of the taxpayer if all his income had been derived from sources in the State and ascertained by taking an amount which bears the same proportion to such taxable income as the total sale price of the goods sold or disposed of either outside or inside the  
the

the State, as the case may be, bears to the total sales or disposals of all goods sold by the taxpayer unless the Commissioner is satisfied that the actual taxable income arising in respect of the particular goods sold can be more accurately determined in some other prescribed manner;

(c) "manufactured" includes extracted, won, or produced.

(b) by inserting at the end of subsection one of section twenty-five the following proviso:—

Sec. 25.  
(Agents selling goods in the State for non-resident.)

Provided that where the principal referred to is a resident of the Commonwealth or the foreign company is a company incorporated in the Commonwealth the taxable income shall in lieu of the amount determined under the preceding paragraph of this subsection be the amount ascertained under the provisions of section twenty-eight as the proportion of the total profits derived from the sale of the goods and deemed to have arisen from a source in the State.

(2) The assessment of income derived during the income year ended on the thirtieth day of June, one thousand nine hundred and thirty-one, or other period accepted by the Commissioner in lieu thereof, as well as any assessment of income derived during any subsequent income year or period so accepted in lieu thereof shall be made in accordance with the provisions of the Principal Act as amended by this Act.

3. The Principal Act is further amended—

Further amendment of Act No. 85, 1928, s. 4. (Definitions.)

(a) (i) by inserting in section four next after the definition of "Commissioner" the following new definition:—

"Commonwealth" means the Commonwealth of Australia, and includes any territory thereof, or any territory administered under any mandate;

(ii)

- (ii) by omitting from the definition of "Non-resident person" in the same section the word "State" and by inserting in lieu thereof the word "Commonwealth";
- (iii) by omitting from the definition of "Resident person" in the same section the word "State" where firstly occurring and by inserting in lieu thereof the word "Commonwealth";
- (b) by omitting from subsection one of section twenty-four the words "non-resident person" and by inserting in lieu thereof the words "person resident out of the State"; Sec. 24 (1). (Carriers by ships.)
- (c) by omitting from section eighty the words "non-resident person" wherever occurring and by inserting in lieu thereof the words "person resident out of the State." Sec. 80. (Persons in receipt or control of money for non-resident.)

**4. The Principal Act is further amended—**

Further amendment of Act No. 85, 1923, s. 4.

- (a) by omitting from section four the definition of "New South Wales company" and substituting in lieu thereof the following definition:—

"New South Wales company" in the case of an unincorporated company means a company of which the head office or principal place of business is in New South Wales; or in the case of an incorporated company, a company incorporated under the Companies Act, 1899, or any other Act of the Parliament of New South Wales wherever its head office or principal place of business may be.

- (b) by omitting from paragraph (m) of subsection one of section ten the words "other company, society, or association" and by inserting in lieu thereof the words "company, society, or association (other than a company, society, or

Sec. 10. (Exemptions.)

or

or association referred to in the preceding paragraphs of this subsection or elsewhere specially provided for in this Act) ”;

- (c) by inserting at the end of the first proviso to paragraph (k) of section eleven the following paragraph :—

Sec. 11.  
(What assessable income includes.)

This proviso shall not, however, be applied in any case in which its application results in a greater taxable income being shown than the amount of taxable income which would be arrived at if the proviso were not applicable.

- (d) (i) by omitting from subsection two of section twelve the words “ situated in the State ” ;
- (ii) by inserting at the end of subsection five of section twelve the following paragraph :—

Sec. 12.  
(Net profits on sale of certain properties are income.)

Where subsection four of this section is applied, the net profit or gain to be taken into account for the purpose of fixing the rate of tax under this subsection shall be the net profit or gain on the transaction and not the part of the net profit or gain included in the assessment in pursuance of the said subsection four.

- (e) (i) by inserting in subparagraph (b) of paragraph one of section nineteen after the words “ any such Act ” the following words : “ Sales tax levied under any Act of the Parliament of the Commonwealth ” ;

Sec. 19.  
(General deductions.)

- (ii) by inserting in subparagraph (e) of paragraph one of the same section after the words “ former employees ” the words “ or their dependants ” ;

- (iii) by omitting from paragraph (iii) of the proviso to subparagraph (m) of paragraph one of section nineteen the words “ has not been returned as income by ” and inserting in lieu thereof the words “ was or is not liable to be returned under the provisions of this or the previous Act or any Act repealed by the previous Act as assessable income by ” ;

(iv)

- (iv) by omitting from subdivision (ii) of subparagraph (c) of paragraph two of the same section the words "is wholly maintained by him" and by inserting in lieu thereof the words "is supported by him to the extent of at least fifty pounds during the income year";
- (f) by inserting at the end of subsection one of section thirty the words "A separate notice of assessment shall, however, be issued to each company in respect of the proportion of the tax payable by it, each assessment bearing the same proportion to the joint tax as the share of the taxable income of each company bears to the total taxable amount"; Sec. 30 (1). (Companies consisting of substantially the same share-holders.)
- (g) by omitting from subparagraph (i) of the proviso to section thirty-three the words "who is under the age of twenty-one years"; Sec. 33. (Partners.)
- (h) by omitting from the second proviso to subsection one of section forty-four the words "three years" and inserting in lieu thereof the words "six years"; Sec. 44. (Alterations and additions to and reinstatement of assessment.)
- (i) (i) by inserting in subsection three of section eighty-nine after the words "this section" the words "or of section eighty-eight"; Sec. 89 (3). (Writing off tax.)
- (ii) by inserting at the end of the same section the following new subsection:—
  - (5) The Commissioner may for the purposes of this section and of section eighty-eight exercise all the powers of the Board constituted under section eighty-eight where the income tax in respect of any assessment does not exceed the sum of ten pounds.