

PROOF

No. , 1931.

A BILL

To provide for the assessment and collection of an unearned increment tax upon the net profits and gains arising from the sale of real property and marketable securities, and upon the consideration for the grant of certain options of purchase; to amend the Income Tax (Management) Act, 1928, and certain other Acts; and for purposes connected therewith.

[MR. LANG ;— *March, 1931.*]

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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:—

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PART I.

PRELIMINARY.

Short title and construction.

1. This Act may be cited as the "Unearned Increment Tax (Management) Act, 1931," and shall be read with the Income Tax (Management) Act, 1928, as amended by subsequent Acts. 10

Commencement.

2. The Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

3. This Act is divided into Parts as follows:— 15

PART I.—PRELIMINARY—*ss.* 1-6.

PART II.—ADMINISTRATION—*s.* 7

PART III.—LIABILITY TO TAXATION—*ss.* 8-24.

PART IV.—RETURNS, ASSESSMENTS, AND RECOVERY OF TAX—*ss.* 25-34. 20

Definitions.

4. In this Act, unless the context or subject-matter otherwise indicates or requires,—

"Marketable security" includes any stock, funds, shares, bonds, or debentures of any Government, municipal, or other corporation, company, or society, but does not include any security of the Commonwealth of Australia. 25

"Prescribed" means prescribed by this Act or by regulations made under the Income Tax (Management) Act, 1928. 30

"Previous Acts" means the Land and Income Tax Assessment Act of 1895, as amended by subsequent Acts, and the Income Tax (Management) Act, 1912, as amended by subsequent Acts. 35

"Property"

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- “Property” means real property and marketable securities ;
- 5 “Real property” means any estate or interest in land within the State, including a lease of such land, and including the goodwill of any business carried on on the land.
- “Sale” includes an exchange of property and the resumption of property under any Act.
- “Tax” means unearned increment tax.
- 10 “Taxpayer” means the person declared by this Act to be liable to pay the tax.
- “The court” means the Court of Review.
- 15 “Vendor” includes a person who derives any money or valuable consideration for the grant of an option of purchase of any property.

5. Where unearned increment tax becomes payable by any person in respect of any sale of property or the grant of an option of purchase of any property the net profit or gain arising from the sale, or the money or consideration derived from the grant of the option, shall not be included in the assessable income of such person for the purposes of the Income Tax (Management) Act, 1928, as amended by subsequent Acts.

No double taxation.

6. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any enactment herein would but for this subsection have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Act to be read subject to Commonwealth Constitution.

(2) This Act shall not bind the Crown or any statutory body representing the Crown.

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PART II.

ADMINISTRATION.

Commissioner of Taxation.

7. (1) The Commissioner of Taxation shall have the general administration of this Act, and may sue and be sued by the name of the Commissioner of Taxation. 5

Officers.

(2) The Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint such persons as may be deemed necessary for the carrying out of this Act.

Application of Act No. 35, 1928, ss. 5, 6.

(3) The provisions of subsections four, five, six, and seven of section five, and the provisions of section six of the Income Tax (Management) Act, 1928, shall, mutatis mutandis, extend to the administration of this Act, and subsection six of section six shall be deemed also to refer to unearned increment tax. 15

PART III.

LIABILITY TO TAXATION.

Unearned increment.

8. (1) Subject to the provisions of this Act, unearned increment tax at such rates as may be fixed by any Act shall be paid to the commissioner in respect of— 20

- (a) the net profit or gain arising from the sale of any real property situated in the State;
- (b) the net profit or gain arising from the sale within the State of any marketable security which can be effectively dealt with by delivery within the State or by transfer registered in a register kept within the State; 25
- (c) the money or valuable consideration derived from the grant of an option of purchase of any property situated within the State. 30

(2) The tax shall, except where otherwise expressly prescribed by this Act, be payable by the vendor.

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9. The amount of the net profit or gain referred Assessment of profits to in paragraphs (a) and (b) of section eight shall be arrived at in the following manner, namely, by deducting from the amount realised by the sale—

- 5 (a) the expenses of sale ; and
- (b) the cost of the property to the taxpayer ;
- (c) any other expenses, proved to the satisfaction of the commissioner to have been incurred in connection with the acquisition, improving, and holding of the property of the nature set out in the Schedule to this Act, and subject to the provisions of such Schedule.

10 **10.** (1) Expenditure and labour of any person Expenses. beneficially interested in the property since the last previous acquisition of the property for a valuable consideration shall be deemed to be an expense within the meaning of paragraph (c) of section nine to the extent to which it is represented in permanent improvements on the property at the time of the sale.

20 (2) Expenditure for rates or taxes or for repairs or maintenance of a property incurred while the property is used solely by a vendor or a person beneficially entitled to the property as a place of abode shall not be regarded as expenses within the meaning of paragraph 25 (c) of section nine.

(3) Where the property sold was not acquired by the person selling the same by purchase for valuable consideration any estate duty imposed by any Act of the Parliament of the Commonwealth, and any probate, 30 death, or succession duty imposed by any Act of the State and paid in respect of the property subsequent to its acquisition by the last holder who was a purchaser for a valuable consideration shall be deemed to be expenses within the meaning of paragraph (c) of section 35 nine.

11. (1) Where the consideration for the sale of a marketable security bearing interest or carrying a dividend at a fixed rate shall include payment for the right to receive any interest or dividend accrued from 40 the security at the time of the sale, though such interest

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or dividend may not then be due, the amount of the accrued interest or dividend shall for the purpose of ascertaining the amount realised by the sale be deducted from the consideration.

Premiums for lease to be deemed money paid for option.

(2) Any fine or premium paid for a lease of property containing an option of purchase shall, for the purposes of this Act, be deemed to be the money consideration or part of the money consideration paid for the option of purchase of the property.

Sale by instalments.

12. Where in the case of any sale of property the payment of the purchase price is to be made by instalments, so much of the consideration as would be net profit or gain if the sale were for cash shall be treated as apportioned among the instalments, and the amount of the net profit or gain assessable in respect of each instalment shall be the amount which bears the same proportion to the net profit or gain to be apportioned as the amount of the instalment bears to the purchase price.

The unearned increment tax in respect of any such instalment shall not be payable until the amount of the instalment has actually been received.

Sale by mortgagee.

13. Where property is sold under a power of sale in a mortgage the mortgagor shall be liable to pay the tax, and the net profit or gain to the mortgagor arising from the sale shall, subject to this section, be calculated in accordance with section nine of this Act.

In such calculation any expenses referred to in paragraph (a) or paragraph (c) of that section shall be deemed to include any such expenses incurred by any subsisting mortgagee of the property.

Sale under power or trust.

14. Where property is sold under any other power contained in any instrument or under any implied power or in exercise of any statutory trust for or power of sale the person entitled to give a receipt for the purchase money shall be liable to pay the tax.

In the calculation of the amount of net profit or gain in accordance with section nine of this Act, the cost of the property to the last holder who was a purchaser for a valuable consideration shall be deemed to be the cost of the

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the property to the taxpayer, and the expenses referred to in paragraph (c) of that section shall include any such expenses incurred by such holder or by any subsequent holder.

5 **15.** Where property sold is owned beneficially by the person selling the same but was not acquired by him by purchase for a valuable consideration, then, in the calculation of the amount of net profit or gain in accordance with section nine, the cost of the property
10 to the last holder who was a purchaser for a valuable consideration shall be deemed to be the cost of the property to the taxpayer, and the expenses referred to in paragraph (c) of that section shall include any such expenses incurred by such holder or by any subsequent
15 holder.

Sale by donee or devisee.

16. Where property is sold by any court the person who has the conduct of the sale shall be liable to pay the tax out of such fund as the court directs.

Sale by court.

In the calculation of the net profit or gain in accordance with section nine of this Act, the cost of the property to the last holder of the property who was a purchaser for a valuable consideration shall be deemed to be the cost of the property to the taxpayer, and the expenses referred to in paragraph (c) of that section
20 shall include any such expenses incurred by such holder or by any subsequent holder.

17. (1) Where property is sold by the liquidator of a company he shall be liable to pay the tax out of the assets of the company, and the cost of the property to the company shall be deemed to be the cost of the property to the taxpayer.

Liquidator.

(2) Where property is sold by the officer of a court in pursuance of a writ of execution, the officer shall give the prescribed notice to the commissioner,
35 and the judgment debtor shall be liable to pay the tax and to make the prescribed return.

Sale under writ of execution.

18. (1) Where property is sold by joint tenants or joint owners beneficially entitled thereto they shall be jointly liable to pay the tax, and in the calculation of
40 the net profit or gain in accordance with section nine the

Joint owners and co-owners.

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the cost of the property to all of them shall be deemed to be the cost of the property to the taxpayer, and the expenses referred to in paragraph (c) of that section shall include such expenses incurred by any of the joint tenants or joint owners. 5

(2) Where property is sold by the survivor of joint tenants or joint owners who held the property beneficially, then, in the calculation of the net profit or gain in accordance with section nine, the cost of the property to all the joint tenants or joint owners shall 10 be deemed to be the cost of the property to the taxpayer, and the expenses referred to in paragraph (c) of that section shall include such expenses incurred by any of the joint tenants or joint owners.

(3) Where property is sold by tenants in 15 common and some or all of them are beneficially entitled to their shares in the property, the whole of the co-owners shall be jointly liable to pay the tax, and in the calculation of the net profit or gain in accordance with section nine the cost of the property to 20 all of the co-owners shall be deemed the cost to the taxpayer, and the expenses referred to in paragraph (c) of that section shall include such expenses incurred by any of the co-owners.

Sales by a
builder of
residential
premises.

19. (1) Where in the opinion of the commissioner a 25 business consists of purchasing land and erecting thereon premises for residential purposes with a view to resale, the profit or gain arising from any sale in the course of such business upon which unearned increment tax is to be paid, shall be the net profit or gain arising 30 from the sale of the land.

(2) The sale price of the land shall be ascertained as follows, that is to say: such sale price shall bear the same proportion to the total amount realised by the sale of the land and premises as the cost of the land bears to 35 the total cost of the land and the premises erected thereon, and in the ascertainment of the net profit or gain upon the sale of the land the expenses of sale shall be apportioned in the same manner, and only such other expenses as relate solely to the land shall be deducted 40 from the sale price of the land.

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20. The commissioner may allow to any person whose business is that of a dealer in property a refund of the whole or part of the unearned increment tax paid by him in respect of the sale of property during any income year where the commissioner is satisfied that other sales of property by the dealer during such year have resulted in a loss to him.

Provisions relating to refunds on account of losses.

Such loss shall be ascertained having regard to the same factors as are to be regarded in the ascertainment of a profit or gain.

21. Where any property is sold with other assets and the consideration for the sale of such property is not specified in the contract, or if so specified or otherwise agreed on between the parties is in the opinion of the commissioner less than the market value of such property at the date of sale, the commissioner shall determine an amount which for the purposes of this Act shall be deemed to be the amount realised by the sale of the property.

Property sold with other assets—determination of sale price.

22. (1) If in respect of any transaction to which this Act applies the whole or part of any valuable consideration is paid or given otherwise than by cash the money value of such consideration shall be stated in the return to be furnished under this Act to the commissioner, and if the value so stated is not accepted by the commissioner he shall assess the same.

Consideration to be valued.

(2) Where in any case the facts necessary to establish the cost of any property or the amount of expenses referred to in paragraph (c) of section nine are unavailable to any taxpayer, the commissioner shall if possible obtain such facts from any source available to him, and if he finds it impossible to obtain the facts, he may for the purposes of assessment adopt as the cost the fair market value of the property as determined by him as at the date or approximate date at which according to the best information the commissioner is able to obtain the property was acquired by the owner the cost to whom is material to be ascertained.

23. In ascertaining in accordance with section nine of this Act the net profit or gain arising from the sale of any leasehold property, there shall be deducted from the

Leasehold.

the cost of the property any amount for depreciation in respect of the property allowable as a deduction from an assessable income under the provisions of the Income Tax (Management) Act, 1928, as amended by subsequent Acts, or under the provisions of the previous Acts. 5

Exemption.

24. Unearned increment tax shall not be charged upon—

- (a) the net profit or gain arising from the sale—
 - (i) by a lessee of any interest in a lease 10 where the commissioner is satisfied that the lease was acquired for any purpose other than re-sale;
 - (ii) by any ecclesiastical, charitable, or educational institution or trust, municipal corporation, local or public authority, or society registered under the Friendly Societies Act, 1912; 15
 - (iii) by an official receiver or the trustee of a deed of arrangement registered under the provisions of the Commonwealth Bankruptcy Act, 1924–1929, or by an official assignee of the estate of a bankrupt or insolvent under any Act relating to insolvency or bankruptcy; 20 25
 - (iv) of any property made before the commencement of this Act, or made after such commencement in pursuance of an option of purchase granted before such commencement; 30
- (b) any money or valuable consideration for the grant of an option of purchase of any property where the grant is made before the commencement of this Act.

PART IV.

RETURNS, ASSESSMENTS, AND RECOVERY OF TAX.

- 25.** (1) For the purpose of the assessment and levy Returns. of unearned increment tax, a return shall be furnished 5 to the commissioner in respect of every sale of property and in respect of every grant for money or valuable consideration of an option of purchase.
- (2) The return shall be in or to the effect of the prescribed form, shall contain the prescribed particulars, 10 and shall, except where otherwise expressly prescribed, be furnished by the taxpayer.
- (3) The return shall be furnished—
- (a) in the case of a sale of property within four- 15 teen days after the date upon which the contract of sale is made;
- (b) in the case of the grant of an option of purchase within fourteen days after the date upon which the grant is made.
- (4) If a person who is required by this Act to 20 furnish a return is absent from the State, or is unable through other causes to furnish the return, the return may be furnished by some person authorised by him.
- (5) Any return purporting to be made or signed cf. Act No. 35, 1928, s. 40. by or on behalf of any person shall be deemed to have 25 been duly made and signed by him until the contrary is proved.
- 26.** In addition to the returns referred to in section Further and fuller returns. cf. Ibid. s. 39 (3). twenty-five of this Act every person, whether otherwise required under this Act to furnish a return or not, 30 shall as and when required by the commissioner by notice in writing furnish within a time specified in the notice such further or other returns as the commissioner requires for the purposes of this Act.
- 27.** The commissioner shall assess the tax payable Assessment. 35 by every person under the provisions of this Act and may amend or rescind any assessment so made.
- 28.** Notwithstanding that the prescribed return has Assessment where return not furnished. not been furnished the commissioner may assess the tax payable by any person and may amend or rescind any 40 assessment so made.

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Notice of assessment.

29. The commissioner shall send through the post to the taxpayer a notice in writing of any assessment of tax payable by such taxpayer or of any increase or reduction of such assessment.

Validity of assessment, cf. Act No. 85, 1928, s. 45.

30. The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with. 5

Evidence, cf. Act No. 35, 1928, s. 46.

31. The production, by the commissioner or on his behalf of a certificate purporting to be signed by him certifying that tax has been duly assessed at a certain sum and has become due and payable on a certain day, shall be conclusive evidence of the fact so certified, except in proceedings on appeal against the assessment, when it shall be prima facie evidence only. 10

Refund of tax.

32. If any taxpayer shall have paid to the commissioner more than is due from such taxpayer the amount of tax overpaid shall be refunded to such taxpayer by the Colonial Treasurer, provided that the claim for the refund was made within three years after the date when such tax became due and payable by the taxpayer. 15 20

Machinery provisions of Act No. 35, 1928, to apply.

33. The provisions of Part V (Objections and Appeals), Part VI (Collection and Recovery of Tax), Part VII (Penal Provisions), and Part VIII (Miscellaneous), comprising sections forty-eight to ninety-two, both inclusive, of the Income Tax (Management) Act, 1928, as amended by subsequent Acts, and any regulations made to give effect to such sections, shall apply, mutatis mutandis, to the unearned increment tax as if such tax were the income tax under the Income Tax (Management) Act, 1928, as amended by subsequent Acts. 25 30

Regulations.

34. The provisions of the Income Tax (Management) Act, 1928, authorising the making of regulations, shall be deemed to extend to authorise the Governor to make regulations not inconsistent with this Act prescribing any matter which by this Act is required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act. 35

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SCHEDULE.

Sec. 9 (c).

EXPENSES of acquisition, improvement, or holding property referred to in paragraph (c) of section nine.

ALL such expenses which, in the opinion of the Commissioner subject to appeal as in the case of an assessment, are reasonably to be classified as expenses of the acquisition, improving, or holding of the property in question are to be taken into account in the assessment of the tax and in particular and without limiting the generality of the foregoing the following expenses of improving or holding the property incurred since the acquisition of the property by the taxpayer shall be so taken into account—

A. In the case of vacant land—

- 1. Rates and taxes.
- 2. Land tax, if any.
- 15 3. Cost, where incurred, of—
 - (a) fencing ;
 - (b) Local Government or municipal charges for kerbing and guttering, footpaths ;
 - (c) clearing land and burning off ;
 - 20 (d) water, sewerage, and drainage connections ;
 - (e) insurance of employees engaged upon any improvements ;
 - (f) interest on money borrowed to purchase the land or to effect improvements ;
 - 25 (g) procuracy fees or bonus in respect of money borrowed for the above purpose.
- 4. Value of labour in carrying out any of the above work in accordance with section ten.
- 5. The cost of any subdivision, including costs of survey, road formation, drainage, legal expenses, &c.
- 30 If any of the expenses above specified or any other expense which relates solely to the holding of the property and which is allowable as a deduction from an assessable income under the provisions of any Act relating to income tax, it shall not be taken into account in the assessment under this Act.
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B. In the case of a private residence—

- 1. The cost of—
 - (a) fencing ;
 - 40 (b) Local Government or municipal charges as to kerbing and guttering or footpaths ;
 - (c) water, sewerage, and drainage connections ;
 - (d) formation of lawns, gardens, tennis court ;
 - (e) erection of premises, sheds, garages, outhouses, or ornamental structures ;
 - 45 (f) additions and alterations to residence (not in the nature of repairs or maintenance) ;

(g)

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- (g) demolitions and rebuilding;
 - (h) insurance of employees engaged upon any improvement, demolition, or rebuilding;
 - (i) interest on money borrowed to purchase the land and premises or to effect improvements, demolition, or rebuilding on the land; 5
 - (j) procuration fees or bonus in respect of money borrowed for the above purposes.
2. (a) Rates and taxes;
 - (b) Federal and New South Wales land taxes; 10
 - (c) Cost of fire insurance

relating to any period during which the premises were not used as taxpayers place of abode (e.g., vacant prior to sale) or were used as an income producing asset (e.g., let to a tenant).

3. The value in accordance with section ten of labour in 15 carrying out the above work.

Rates and taxes, land tax, cost of fire insurance, repairs and painting, and maintenance expenses incurred during the occupancy of the premises by the taxpayer and any other expense of holding the property allowable as a deduction 20 forms an assessable income under Acts relating to income tax shall not be taken into account.

C. In the case of business premises—

1. All expenditure relating to additions, alterations, extensions, and improvements of any kind, demolition, rebuilding, procuration fees or bonus for procuring money borrowed for the purpose of purchasing or improving, or of demolition or rebuilding of the property except to the extent of any deduction allowable from an assessable income under any Act relating to income tax. 30
2. Any other expense of holding the property which is not an expense allowable as a deduction from an assessable income under any Act relating to income tax.

D. In the case of property used for agricultural or pastoral purposes— 35

1. The cost of rendering the property suitable for the agricultural, dairying, or pastoral purposes for which it is used, and structural improvements, residences, vermin proof fences, machinery sheds, woolsheds, dams, earth excavations, tanks, bores, farm buildings, silos, men's quarters, drainage of low-lying lands, destruction of noxious weeds, prickly-pear or noxious animals so far as the expense is not a deduction allowable from an assessable income under any Act relating to income tax. 40
2. Any other expense of holding the property which is not an expense allowable as a deduction from an assessable income under any Act relating to income tax. 45

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- E. In the case of real property held as an investment—
1. The cost of—
 - (a) fencing ;
 - 5 (b) Local Government or municipal charges as to kerbing and guttering or footpaths ;
 - (c) water, sewerage, and drainage connections ;
 - (d) formation of lawns, garden, tennis court ;
 - (e) erection of premises, sheds, garages, outhouses, or ornamental structures ;
 - 10 (f) additions and alterations to premises (not in the nature of repairs or maintenance) ;
 - (g) demolition and rebuilding ;
 - (h) insurance of employees engaged upon any improvement, demolition, or rebuilding effected by such employees.
 - 15 2. A just proportion of rates and taxes, land tax, cost of fire insurance, interest in respect of any period during which the premises were not income producing and which is not allowable as a deduction from an assessable income under any Act relating to income tax.
 - 20 3. Caretaker's or gardener's wages in respect of any period during which the property is not producing income and not allowable as a deduction from an assessable income under any Act relating to income tax.
 - 25 4. Any other expense of holding the property which is not allowable as a deduction from an assessable income under any Act relating to income tax.
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