



NEW ZEALAND

ANALYSIS

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1950, No. 87

AN ACT to Amend the Land and Income Tax Act, 1923. Title.
[1st December, 1950]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Land and Income Tax Amendment Act (No. 2), 1950, and shall be read together with and deemed part of the Land and Income Tax Act, 1923 (hereinafter referred to as the principal Act). Short Title.

See Reprint
of Statutes,
Vol. VII, p. 271

Application
of Act.

2. Except as otherwise provided herein, this Act shall apply with respect to the tax for the year of assessment that commenced on the first day of April, nineteen hundred and fifty, and for every subsequent year.

Christmas
Island
Phosphate
Commission
deemed a
public
authority.

3. Section two of the principal Act is hereby amended by adding to the definition of the term "public authority" the words "and includes the Christmas Island Phosphate Commission, incorporated in Australia by the Christmas Island Agreement Act, 1949, of the Parliament of Australia".

Special rebate
to persons who
have attained
sixty-five years.

4. (1) Notwithstanding anything in section seventy-three of the principal Act, in the assessment for income tax for any year of every taxpayer who (not being an absentee) has attained the age of sixty-five years before the commencement of the year of assessment, there shall be allowed from the tax payable a special rebate of the sum of fifteen pounds:

Provided that where the tax payable by the taxpayer before allowing that rebate is less than fifteen pounds there shall be allowed a special rebate of the amount of the tax:

Provided also that where the taxpayer is a married man upon whom an aggregate assessment is made under section thirteen of the Land and Income Tax Amendment Act, 1939, there shall be allowed in the aggregate assessment a special rebate equal to the sum of the special rebates which would be allowable to him and his wife under this section if separate assessments were made under the said section thirteen.

(2) The rebate to which any taxpayer is entitled under this section shall be in addition to any rebate to which he may be entitled under any annual taxing Act.

1939, No. 34

Income of
societies for
development of
districts, &c.,
exempt from
taxation.

1948, No. 78

5. Section seventy-eight of the principal Act is hereby amended by inserting, after paragraph (*kk*) (as enacted by section nine of the Finance Act (No. 2), 1948), the following paragraph:—

“(*kkk*) Income derived by any society or association, whether incorporated or not, which is, in the opinion of the Commissioner, established substantially or primarily for the purpose of advertising, beautifying, or developing any city, borough, or other district so as to attract trade, tourists,

visitors, or population, or to create, increase, expand, or develop amenities for the general public, if no part of the income or other funds of the society or association is used or is or may become available to be used for any other purpose, not being a charitable purpose: ”.

6. Section eleven of the Land and Income Tax Amendment Act, 1939, is hereby amended by adding to subsection two the following proviso:—

Exemption
in respect of
separated
wife.
1939, No. 34

“ Provided that—

“(a) Where the wife of the taxpayer is not living with him she shall be deemed to be a relative of the taxpayer for the purposes of this section:

“(b) A special exemption under this section in respect of the wife of the taxpayer shall be allowable only where the amount thereof exceeds the amount of the special exemption to which the taxpayer is entitled in respect of his wife under section four of the Land and Income Tax Amendment Act, 1932–33, and shall be allowable in substitution for the last mentioned exemption:

1932–33, No. 40

“(c) For the purposes of this section the wife of a taxpayer shall be deemed to be living with him unless the Commissioner is satisfied that she is in fact separated and living separate and apart from him, whether pursuant to a decree, order, or judgment of any Court, or pursuant to an agreement for separation, or by reason of the desertion of one of the parties by the other of them, or otherwise.”

7. (1) Section fifteen of the Land and Income Tax Amendment Act, 1945 (as amended by section five of the Land and Income Tax Amendment Act, 1949), is hereby further amended by omitting from subsection one the words “ nineteen hundred and fifty-one ”, and substituting the words “ nineteen hundred and fifty-two ”.

Extending
period for
allowance
of special
depreciation
on buildings
and plant.
1945, No. 37
1949, No. 29

(2) Section five of the Land and Income Tax Amendment Act, 1949, is hereby consequentially repealed.

Repeal.

Initial
depreciation
allowance
on farm
equipment and
accommodation
for farm
workers.

8. (1) Where the Commissioner is satisfied that a taxpayer engaged in any farming or agricultural business on any land in New Zealand has, during any income year within the period specified in subsection five of this section,—

- (a) Acquired or installed any plant, machinery, or equipment to be used wholly for the purpose of that business; or
- (b) Acquired or erected any building in order to provide accommodation for any person employed on the land by the taxpayer in connection with that business,—

the Commissioner may in his discretion, subject to the provisions of this section, allow as a deduction in calculating the assessable income derived by that taxpayer from the business in the year in which the asset is acquired, installed, erected, or first used for the purposes of that business an initial depreciation allowance of thirty per cent of the cost price of that plant, machinery, equipment, or building.

(2) The initial depreciation allowance authorized by subsection one of this section shall be in addition to any deduction which may be allowed under paragraph (a) of subsection one of section eighty of the principal Act.

(3) Where the taxpayer elects to receive an initial depreciation allowance under this section in respect of any plant, machinery, equipment, or building, he shall not be entitled to any special depreciation allowance in respect of that plant, machinery, equipment, or building under section fifteen of the Land and Income Tax Amendment Act, 1945.

(4) Without limiting the discretion of the Commissioner under this section, it is hereby declared that the Commissioner may refuse in whole or in part to allow any deduction under this section—

- (a) In any case where he is of the opinion that the cost of any item of plant, machinery, or equipment acquired or installed is not of sufficient magnitude to warrant a depreciation allowance under this section:
- (b) In any case where he is not satisfied that such records as may be required by him have been kept by or on behalf of the taxpayer:

- (c) In any case where he is satisfied that any such building has been acquired or erected for the accommodation of the taxpayer or the wife or a child of the taxpayer.

(5) This section shall apply only where the plant, machinery, equipment, or building was acquired, installed, erected, or first used by the taxpayer after the thirty-first day of March, nineteen hundred and fifty, and before the first day of April, nineteen hundred and fifty-three, but shall not apply with respect to tax for any year of assessment commencing before the first day of April, nineteen hundred and fifty-one, or later than the first day of April, nineteen hundred and fifty-three.

9. (1) Notwithstanding anything to the contrary in section eighty of the principal Act, any taxpayer engaged in any farming or agricultural business on any land in New Zealand shall, in calculating the assessable income derived by him from that business in any income year, be entitled to deduct—

Deduction of certain expenditure on land used for farming or agricultural purposes.

- (a) Any expenditure incurred in that business during the income year, and not deductible otherwise than under this section, in—

(i) The eradication or extermination of animal or vegetable pests on the land:

(ii) The felling, clearing, destruction, and removal of timber, stumps, scrub, or undergrowth on the land:

(iii) The destruction of weeds or plants detrimental to the land:

(iv) The preparation of the land for farming or agriculture, including the cultivation and grassing thereof, but excluding expenditure incurred in respect of any of the items specified in paragraph (b) of this subsection:

- (b) Any expenditure incurred in that business during the income year, and not deductible otherwise than under this section, in—

(i) The draining of swamp or low lying lands:

(ii) The construction of access roads or tracks to or on the land:

(iii) The construction of dams, stopbanks, irrigation or stream diversion channels, or other improvements for the purpose of conserving or conveying water for use on the land or for preventing or combating soil erosion:

(iv) The repair of flood or erosion damage:

(v) The sinking of bores or wells for the purpose of supplying water for use on the land:

(vi) The construction of aeroplane landing strips to facilitate aerial topdressing of the land:

(vii) The construction on the land of fences, including the purchase of wire or wire netting for the purpose of making new or existing fences rabbit proof:

Provided that the maximum amount of expenditure allowable as a deduction for the income year under this paragraph shall not exceed in the aggregate the sum of two hundred pounds.

(2) Where any land together with the improvements thereon is sold by the taxpayer within five years from the date of his acquisition of that land and the taxpayer has been allowed as a deduction in calculating his assessable income expenditure in respect of that land which but for this section would not have been allowable as a deduction, the amount by which the selling price of the land and improvements exceeds the aggregate amount consisting of the original purchase price and any expenditure on improvements for which no deduction has been allowed in calculating his assessable income shall be deemed to be assessable income derived by the taxpayer in the year in which the property is sold, to the extent of the total deductions allowed under this section since the acquisition of the land:

Provided that, if the taxpayer so elects, the Commissioner may, notwithstanding anything to the contrary in section sixteen of the principal Act, make a revised assessment or assessments in respect of any year in which a deduction has been allowed under this section without allowing that deduction or without allowing such portion thereof as he thinks fit, and may recover the additional amount of tax accordingly.

(3) This section shall apply with respect to the tax for the year of assessment commencing on the first day of April, nineteen hundred and fifty-one, and for every subsequent year.

10. (1) Where an association enters into transactions with its members, or with its members and others, any profit or surplus arising from those transactions which would be included in the profits or gains of the association if the transactions were not of a mutual character shall be deemed to be profits or gains arising from those transactions and to be assessable income of the association, except that, in computing the assessable income of the association, the Commissioner shall allow as expenses any sums which—

Profits
of mutual
associations
in respect of
transactions
with members.

- (a) Represent a discount, rebate, dividend, or bonus granted or paid by the association to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the association, being transactions which are taken into account in computing the assessable income; and
- (b) Are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to any share or interest in the capital of the association.

(2) Nothing in this section shall affect the extent of the exemption from income tax of any co-operative company to which the provisions of paragraph (ee) of section seventy-eight of the principal Act (as enacted by section six of the Land and Income Tax Amendment Act, 1935) are applicable. 1935, No. 32

(3) Where any discount, rebate, dividend, or bonus is granted or paid to any person by an association, it shall form part of the assessable income of that person if the transaction from which it arises is of such a nature that any payment in respect thereof by that person to the association would be allowed as a deduction in computing the assessable income of that person.

(4) For the purposes of this section, a discount, rebate, dividend, or bonus shall be deemed to have been granted to or paid to a person when it has been credited in account or otherwise dealt with in his interest or on his behalf.

(5) In this section the term “ association ” includes any body or association of persons, whether incorporated or not.

Repeal.

1935, No. 32

Deduction of testamentary annuities charged on property.

(6) Section seven of the Land and Income Tax Amendment Act, 1935, is hereby repealed.

11. (1) Notwithstanding anything to the contrary in the principal Act, where any property devised or bequeathed by will subject to the payment of an annuity has been transferred to a beneficiary, and that property or any property substituted therefor is charged with payment of the annuity or any part thereof, any amount paid in any income year on account of that annuity by the owner of that property or substituted property shall be allowed as a deduction in calculating the income derived by the owner from that property or substituted property in that income year, so far as that income extends:

Provided that no deduction shall be allowed under this section where the owner for the time being of the property or substituted property (not being a beneficiary) is a person who has acquired the same by purchase subject to the condition that he assumes the liability for payment of the whole or any part of the annuity charged thereon.

(2) In this section the term “ beneficiary ”, in relation to any property, means a person to whom that property has been devised or bequeathed by will or a person who is entitled, pursuant to a provision in a will, to purchase, subject to payment of an annuity, that property, being property which forms part of the estate of the testator, and which also forms part of the succession of that person in that estate for the purposes of the Death Duties Act, 1921.

See Reprint of Statutes, Vol. VII, p. 354

Exemption of income chargeable with tax in Western Samoa.

12. Section eighty-nine of the principal Act is hereby amended by adding the following subsection:—

“(4) This section shall have the same operation in relation to income derived from Western Samoa as it would have had if Western Samoa were part of the British dominions.”

Assignments or settlements of income.

13. (1) Where any person transfers (otherwise than by will) the right to any income to any relative or to any related company for a period that is less than

the prescribed period, without transferring the ownership of the property (if any) producing the income, that income shall be deemed to be income derived by the transferor and by no other person as if the transfer had not been made.

(2) Where by the terms of any settlement made by any person (in this section referred to as the settlor) the income of the settled property or of any property substituted therefor is payable to or to be applied or accumulated for the benefit of a relative of the settlor or any related company for a period that is less than the prescribed period and the settlor remains the beneficial owner of the corpus of that property or the settlement provides that that corpus shall revert to the settlor or to the wife or husband of the settlor or that the right to dispose of that corpus shall be reserved to the settlor or to the wife or husband of the settlor, the income from the settled property or from any property substituted therefor shall, so long as the income is derived by a beneficiary who is not entitled to the corpus, be deemed to be income derived by the settlor and by no other person as if the settlement had not been made.

(3) Where any company transfers to any other person for a period that is less than the prescribed period the right to any income derived by the company, without transferring the ownership of the property (if any) producing the income, the income shall be deemed to be income derived by the company and by no other person as if the transfer had not been made.

(4) Where by the terms of any settlement made by any company the income of the settled property or of any property substituted therefor is payable to or to be applied or accumulated for the benefit of any other person for a period that is less than the prescribed period and the company remains the beneficial owner of the corpus of that property or the settlement provides that that corpus shall revert to the company or to any shareholder in the company or to the wife or husband of any shareholder in the company or that the right to dispose of that corpus shall be reserved to the company or to any shareholder in the company or to the wife or husband of any shareholder in the company, the income from the settled property or from any property substituted therefor shall, so long as the income is derived by

a beneficiary who is not entitled to the corpus, be deemed to be income derived by the company and by no other person as if the settlement had not been made.

(5) Where under any transfer or settlement income is payable to or to be applied or accumulated for the benefit of two or more persons in succession, the transfer or settlement shall be deemed for the purposes of this section to be a separate transfer or settlement in respect of each such person.

(6) In this section—

“ Income ” includes any amount that would, if the right thereto had not been transferred or a settlement in respect thereof had not been made, have been treated as income of the person making the transfer or settlement, as the case may be:

“ The prescribed period ” means—

(a) In the case of a transfer to or a settlement in favour of a child of the transferor or settlor (whether or not it is also to or in favour of some other person), either a period which cannot be less than seven years calculated from the date from which income is payable to or to be applied or accumulated for the benefit of the child under the transfer or settlement, or the period calculated from that date which must elapse before the child will attain the age of twenty-one years, whichever period is the longer:

(b) In the case of a transfer to or a settlement in favour of a related company or a relative other than a child of the transferor or settlor (whether or not it is also to or in favour of some other person), a period which cannot be less than seven years from the date from which income is payable to or to be applied or accumulated for the benefit of the company or relative under the transfer or settlement:

(c) In the case of a transfer or settlement by a company, a period which cannot be less than seven years from the date from

which income is payable to or to be applied or accumulated for the benefit of the transferee or beneficiary, as the case may be, or, where the transferee or beneficiary is a person under the age of twenty-one years at the date of the transfer or settlement, either a period which cannot be less than seven years from the date from which income is payable to him or to be applied or accumulated for his benefit or the period calculated from the last mentioned date which must elapse before the transferee or beneficiary will attain the age of twenty-one years, whichever is the longer:

“ Related company ” means a company which is under the control of the transferor or settlor or any relative or relatives of the transferor or settlor or any one or more of them:

“ Relative ” means a husband or wife, or a relative by blood within the fourth degree of relationship (whether legitimate or illegitimate), or a relative by marriage or adoption:

“ Settlement ” includes any disposition, trust, covenant, agreement, arrangement, or transfer of assets.

(7) This section shall not apply with respect to any transfer or settlement made before the twenty-fourth day of November, nineteen hundred and fifty, nor to any marriage settlement, nor to any transfer or settlement made for fully adequate consideration in money or money's worth, nor to any transfer or settlement under which the income is payable to or to be applied for the benefit of any person during the whole of his life.

14. (1) Where any person belonging to the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force is a member of an emergency force, the pay earned by him as a member of that force shall be assessable for income tax, and income tax and social security charge shall be payable thereon in accordance with the provisions of this section.

Income tax
and social
security charge
payable by
members of
emergency
force.

(2) There shall be payable in respect of the daily pay earned by and accruing each day to a member of an emergency force, and shall be deducted from that daily pay by the paying authority, a composite daily amount comprising—

(a) A daily amount of income tax calculated in accordance with the provisions of this section and on the basis that the income tax payable each day is an amount equal to a three hundred and sixty-fifth part of the income tax which would have been payable if the same rate of pay as the member earned during that day had continued for a period of three hundred and sixty-five days and if the income tax had been calculated on that amount separately from and irrespective of any other income derived by the member; and

(b) A daily amount of social security charge calculated at the rate prescribed for the time being by the Social Security Act, 1938, in respect of salary or wages.

(3) In calculating the daily amount of income tax payable in respect of pay earned by a member of an emergency force—

(a) The income tax shall be calculated as if the member had derived no income other than his pay:

(b) Notwithstanding anything to the contrary in any subsequent annual taxing Act, the rate of income tax applicable shall be the rate fixed by the annual taxing Act last passed before the day in respect of which the daily pay was earned:

(c) The following special exemptions, and no others, shall be allowed as a deduction, namely:—

(i) A special exemption under section seventy-four of the principal Act:

(ii) Where the member is a married man, a special exemption under section four of the Land and Income Tax Amendment Act, 1932-33, computed as if the wife of the member derived no income:

(iii) Where the member is a married woman, a special exemption under section two of the Land and Income Tax Amendment Act, 1933, computed as if the husband of the member derived no income: 1933, No. 43

(iv) Where the member has any dependent relative, a special exemption under section eleven of the Land and Income Tax Amendment Act, 1939: 1939, No. 34

(v) Where the member is a widow or widower or divorced person and has dependent children and employs a housekeeper, a special exemption under section three of the Land and Income Tax Amendment Act, 1933:

(d) The provisions of the principal Act limiting to a specified amount the reduction of tax by reason of any special exemption and section thirteen of the Land and Income Tax Amendment Act, 1939 (which relates to the aggregation of the incomes of husbands and wives), shall not apply with respect to the pay of any member of an emergency force assessed under this section.

(4) Any income derived by a member of an emergency force from any source or sources other than pay received by him as a member of that force shall be separately assessable in the same manner as if he had not derived any pay as a member of an emergency force and had not been allowed any special exemption in calculating the tax payable in respect of that pay.

(5) Any member of an emergency force who satisfies the Commissioner that the deduction of income tax from his pay in any income year in accordance with this section has resulted in a greater amount of income tax being paid than would have been payable if he had not been a member of an emergency force and had been in receipt of salary or wages equal to the amount of his pay may, within two years after the end of that income year, or within such further time as the Commissioner may allow, elect to have income tax on his pay assessed in the same manner as if this section had not been passed, and, in that event, the member so electing shall furnish a return of the income derived by him during the income year in which he received that

pay and shall include in that return together with all other income derived by him the pay received by him in that year, and the member shall be assessable and liable for income tax in respect of the total income derived by him in that income year in the same manner and to the same extent as if the foregoing provisions of this section had not been enacted, but shall be entitled to credit against the tax so assessed for any income tax which has been deducted or paid in respect of that income:

Provided that where in any year income tax is deducted under this section in respect of pay derived during any period of less than three hundred and sixty-five days, any adjustment or refund of tax under this subsection shall not reduce the income tax on that amount of pay below the amount that would be payable under subsections two and three of this section if there were allowed, in addition to the special exemptions under subsection three of this section, such other special exemptions not specified therein as the member is entitled to under the principal Act and any deduction to which the member would otherwise be entitled under subsection two of section eighty of the principal Act.

(6) Where any income tax or social security charge that should have been deducted from the pay of a member of an emergency force has not been so deducted, the amount thereof may be deducted from any subsequent pay of the member, or may be recovered from the member as a debt due to the Crown.

(7) In this section—

“Member of an emergency force” means any person who, whether in New Zealand or outside New Zealand, belongs to any unit of the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force which is declared by Order in Council to be an emergency force for the purposes of this section:

“Pay” means any salary or wages payable to any member of an emergency force; and includes the amount of any allowances payable in conjunction therewith, except subsistence allowance, uniform allowance, mess allowance, travelling allowance, or the value of rations and quarters:

“ Paying authority ”, in relation to an emergency force, means the branch of the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, as the case may be, responsible for accounting for the pay of that emergency force. Every paying authority shall, in respect of the income tax and social security charge deducted in accordance with this section, be deemed to be the agent of the Commissioner.

(8) This section shall apply with respect to pay earned by a member of an emergency force during the income year that commenced on the first day of April, nineteen hundred and fifty, and during every subsequent income year.

(9) Section three of the Land and Income Tax Amendment Act, 1939, and section nine of the Finance Act, 1947, are hereby repealed.

Repeals.
1939, No. 34
1947, No. 6

15. For the purposes of the principal Act, a mortgagee in possession of any land or other property shall be deemed to be the agent of the mortgagor in respect of any income derived by that mortgagee from that land or other property on behalf of or for the benefit of the mortgagor, and the mortgagee shall make returns and be assessable and liable for tax on that income accordingly, and all the provisions of the principal Act as to agents shall, as far as they are applicable, apply accordingly.

Liability of mortgagees in possession.

16. (1) Section six of the Finance Act (No. 2), 1937, is hereby amended by omitting from subsection two the words “ twenty-five pounds ”, and substituting the words “ one hundred pounds ”.

Amending provisions as to remission or refund of tax.
1937, No. 36

(2) Section seven of the Finance Act (No. 2), 1937, is hereby amended by omitting from subsection two the words “ twenty-five pounds ”, and substituting the words “ one hundred pounds ”.

(3) This section shall apply with respect to tax for any year of assessment, whether before or after the passing of this Act.