

Supplementary Order Paper

HOUSE OF REPRESENTATIVES

Friday, the 9th Day of August 1968

LAND AND INCOME TAX AMENDMENT BILL

Proposed Amendments

Hon. Mr MULDOON, in Committee, to move the following amendments:

Clause 5, subclause (4): To omit the words "and in every subsequent year" in line 20 on page 4, and substitute the words "whether before or after the passing of this Act".

Clause 5, subclause (5): To omit the words "and in every subsequent year" in lines 23 and 24 on page 4, and substitute the words "whether before or after the passing of this Act".

Clause 5, subclause (6): To add the words "whether before or after the passing of this Act".

Clause 9: To insert in subparagraph (ii) of paragraph (b) of subsection (1) of the proposed new section 88B, after the words "amount by which" in line 8 on page 6, the words "the amount of".

To insert in subsection (3) of the proposed new section 88B, after the definition of the term "appropriate retiring age", the following definition:

"'Employment or service', includes any employment or service of the taxpayer which—

"(a) Was with any company which consisted wholly or substantially of the same shareholders or was under the control of the same persons as the company from whose employment or service the taxpayer retired; or

"(b) Was with the same employer, whether or not the business of the employer was the same; or

"(c) Was with the same business, whether or not a change of ownership of the business had occurred; or

"(d) Was, in the opinion of the Commissioner, substantially the same employment or service as that from which the taxpayer retired:

To omit subsection (5) of the proposed new section 88B, and substitute the following subsection:

“(5) This section shall not apply to any payment by way of a bonus, gratuity, or retiring allowance (being a payment to which, but for this subsection, this section would have applied) which—

“(a) Is made by a company pursuant to its articles of association to any of its directors; or

“(b) Is made to the spouse of the employer; or

“(c) Is made to any relative (other than the spouse) of the employer, or where the employer is a proprietary company, to any of its shareholders or to any relative of any of its shareholders:

“Provided that where the Commissioner is satisfied that the relative or shareholder, as the case may be, was a bona fide full-time employee of the employer, this section shall apply to so much of the payment as the Commissioner determines would be reasonable if the employee were not a relative or a shareholder, as the case may be, and the amount so determined shall be deemed to be the amount of that payment for the purposes of paragraphs (a) and (b) of subsection (1) of this section:

“Provided also that the provisions of subsection (4) of section 128B of this Act shall apply with respect to so much of the amount of that payment as exceeds the amount determined by the Commissioner pursuant to the first proviso to this paragraph.

To add the following subclause:

(5) This section shall apply with respect to any bonus, gratuity, or retiring allowance paid on or after the nineteenth day of July, nineteen hundred and sixty-eight, to a taxpayer who retired (or, pursuant to paragraph (b) of subsection (4) of section 88B of the principal Act (as inserted by subsection (1) of this section) is deemed to have retired) on or after that date.

Clause 10: To omit from the proposed subsection (8B) of section 98 of the principal Act the word “standard” in line 34 on page 9.

Clause 15, subclause (1): To insert in the proposed subsection (1BB) of section 114A of the principal Act, after the word “wholly” in line 22, the words “or principally”.

Clause 22: To omit subsection (3) of the proposed new section 128B, and substitute the following subsections:

“(3) Notwithstanding the provisions of subsection (1) of this section or of the proviso to paragraph (d) of section 112 of this Act or of any other section of this Act, no deduction shall be allowed in respect of any payment by way of a bonus,

gratuity, or retiring allowance (being a payment which, but for this subsection, would have been allowable as a deduction under this section) which—

“(a) Is made to the spouse of the taxpayer; or

“(b) Is made to any relative (other than the spouse) of the taxpayer, or, where the taxpayer is a proprietary company, to any of its shareholders or to any relative of any of its shareholders:

“Provided that where the Commissioner is satisfied that the relative or shareholder, as the case may be, was a bona fide full-time employee of the taxpayer, the Commissioner may allow as a deduction under this section so much of the amount of the bonus, gratuity, or retiring allowance as the Commissioner determines would be reasonable if that employee were not a relative or shareholder, as the case may be.

“(4) To the extent that any payment made by way of a bonus, gratuity, or retiring allowance is, in accordance with subsection (3) of this section, not allowed as a deduction in calculating the assessable income of any taxpayer,—

“(a) Where the taxpayer is a proprietary company, the amount not allowed shall, for the purposes of this Act, be deemed to be a dividend paid by that company to the recipient and received by him as a shareholder of the company:

“(b) Where the taxpayer is not a proprietary company, the amount not allowed shall, notwithstanding the provisions of paragraph (b) of section 88 or of section 88B of this Act, not be deemed to be assessable income of the relative to whom the payment was made.

“(5) Paragraph (b) of section 88 of this Act shall not apply to any amount which is deemed to be a dividend under paragraph (a) of subsection (4) of this section.”

To add the following subclause:

(3) This section shall apply with respect to any bonus, gratuity, or retiring allowance paid on or after the nineteenth day of July, nineteen hundred and sixty-eight, to an employee who retired (or who, pursuant to paragraph (b) of subsection (2) of section 128B of the principal Act (as inserted by subsection (1) of this section) is deemed to have retired) on or after that date.

Clause 23 Subclause (3): To insert, after the word “Act”; in line 39, the words “(No. 2)”.

Clause 25 subclause (3): To insert, before paragraph (a), the following paragraph:

(aa) Subsection (4) of section 9 of the principal Act:

EXPLANATORY NOTE

Clause 5: These amendments are intended to remove any possibility that the amendments made by this clause could be construed as applying only to assessments made before the passing of the Act.

Clause 9: These amendments make the following changes:

- (a) The amendment to subsection (1) (b) (ii) of section 88B is a minor drafting amendment only.
- (b) The definition of "employment or service" proposed to be inserted is intended to meet the situation where, during the relevant period, the taxpayer's employment or service was with the same business though during that period the business was owned or controlled by different persons, or where the taxpayer's employment or service was with the same employer though in different businesses of that employer.
- (c) Where a bonus, gratuity, or retiring allowance is paid to a retiring employee who is a relative (other than the spouse) of the employer or, where the employer is a proprietary company, to any of its shareholders or to any relative of any of its shareholders, and the employee was a full-time employee of the employer, the new section 88B will apply to so much of the bonus, gratuity, or retiring allowance as would be reasonable if the employee were not a relative, or as the case may be, a shareholder or a relative of a shareholder.

Under the provisions of the Bill as introduced, the whole of the bonus, gratuity, or retiring allowance would be excluded from the operation of section 88B in such a case.

- (d) The new section 88B will apply only to payments made on or after 19 July 1968 to a taxpayer who retired on or after that date.

Clause 10: This is a minor drafting amendment only.

Clause 15, subclause (1): This amendment will enable a special depreciation allowance to be claimed in respect of the cost of erecting a new building or extensions to an existing building principally to provide storage for meat or meat products in a frozen state. The existing provisions in the Bill apply only where the building is intended to be used wholly for that purpose.

Clause 22: These amendments make the following changes:

- (a) Where a bonus, gratuity, or retiring allowance is paid to a retiring employee who is a relative (other than the spouse) of the taxpayer or, where the taxpayer is a proprietary company, to any of its shareholders, and the employee was a bona fide full-time employee of the taxpayer, the taxpayer will be entitled to a deduction of so much of the bonus, gratuity, or retiring allowance as would be reasonable if the employee were not a relative or, as the case may be, a shareholder or a relative of a shareholder.

Under the provisions of the Bill as introduced, the taxpayer would not be entitled to any deduction in respect of the bonus, gratuity, or retiring allowance.

- (b) To the extent that any such bonus, gratuity, or retiring allowance is not allowed as a deduction to the taxpayer, the amount disallowed will—
 - (i) Where the taxpayer is a proprietary company, be treated as a dividend paid by the company and the former employee will be deemed to have received it as a shareholder of the company.
 - (ii) Where the taxpayer is not a proprietary company, not be deemed to be assessable income of the former employee.
- (c) The new section 128B will apply only to payments made on or after 19 July 1968 to an employee who retired on or after that date.

Clause 23: This is a drafting amendment only, correcting an incorrect reference.

Clause 25: This is a consequential repeal.