

## LAND AND INCOME TAX AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Land and Income Tax Act 1923 and the amendments of that Act.

*Clause 3:* This clause imposes a time limit of six months within which objecting taxpayers whose objections are disallowed may require the objection to be heard by a Magistrate. There is no time limit at present.

*Clause 4:* This clause reduces from £15 to £10 the rebate allowable to taxpayers who have attained sixty-five years of age.

*Clause 5:* This clause provides that a taxpayer who is assessable as a trustee is not entitled to the rebate allowable to taxpayers who have attained sixty-five years of age. Where the trustee is assessable as the agent of a beneficiary who has attained that age, the trustee is to be entitled to the same rebate as would have been allowable to the beneficiary.

*Clause 6* provides that the profits derived by the New Zealand Forest Service from its commercial enterprises are to be liable for income tax.

*Clause 7:* This clause exempts from income tax the pay and allowances of members of New Zealand and other Commonwealth Forces while they are in an operational area. Where a member suffers sickness, injury, or disablement in an operational area, except through his own negligence or misconduct, the exemption continues until he is pronounced fit or is discharged. The exemption from income tax automatically operates as an exemption from social security charge also.

*Clause 8:* This clause extends for a further year the operation of section 15 of the Land and Income Tax Amendment Act 1945 (relating to the special depreciation allowance in respect of premises, plant, machinery, &c.). This extension will enable the depreciation allowance to be granted in the case of premises, plant, machinery, &c., acquired up to 31 March 1953.

*Clause 9:* The purpose of this clause is to make universal superannuation received in respect of any period from 1 October 1951 (the date on which the amount of the benefit was increased from £37 10s. a year to £75 a year) assessable for income tax.

*Clause 10:* Section 79 (1) (c) of the principal Act provides that the assessable income of any person includes any profits from the sale of land where the taxpayer's business includes dealing in land or the land was acquired for resale. The purpose of this clause is to extend this provision to all classes of real or personal property.

*Clause 11:* Section 5 of the Land and Income Tax Amendment Act 1926 contains provisions for computing income derived from the sale or disposal of trading stock. *Subclause (1)* of this clause defines the term "trading stock" for the purposes of that section. Section 9 of the Land and Income Tax Amendment Act 1949 (relating to the sale of trading stock for inadequate consideration) contains a definition of the expression "trading stock" in which land is excluded. *Subclause (2)* of this clause amends that definition so as to include land and other property as part of the trading stock where the taxpayer's business includes dealing in that class of property or the property has been acquired for the purposes of resale.

*Clause 12:* Section 16 of the Land and Income Tax Amendment Act 1939 provides that where the whole or any part of the assets of a business carried on by a taxpayer is sold and the assets include trading stock the consideration received for the trading stock is to be taken into account in computing the taxpayer's income. This section has been held not to apply in cases where a business has been acquired by a taxpayer and resold without the taxpayer ever carrying it on, and the purpose of this clause is to apply the provisions of section 16 whether or not the taxpayer actually carries on the business.

*Clause 13:* Section 8 of the Land and Income Tax Amendment Act 1949 provides for the spreading of excess income derived from the sale of livestock where unduly low standard values have been adopted. The excess income may be spread back over the three years preceding the income year in which the stock is sold or disposed of provided application is made within twelve months after the sale or disposition. This clause authorizes the Commissioner in suitable cases to extend the time for making applications under that section.

*Clause 14:* Section seventeen of the Land and Income Tax Amendment Act 1939 provides that where the amount of any expenditure has been taken into account in calculating a taxpayer's assessable income and subsequently the taxpayer's liability in respect of that expenditure is remitted in whole or in part, his assessable income is deemed to be increased by the amount remitted. The purpose of this clause is to provide that any assessment may at any time be altered to give effect to this provision, irrespective of the provisions of section 16 of the principal Act, which limits the time within which assessments may be reopened.

*Clause 15:* Section 11 of the Land and Income Tax Amendment Act (No. 2) 1950 provides that testamentary annuities charged on property and paid out of income are to be allowed as a deduction in calculating the income derived from that property. The section applies only where the property has been devised or bequeathed by will. This clause re-enacts this provision, but applies it also in cases where the beneficiary is entitled to the property by virtue of a Court order under Part II of the Family Protection Act 1908 or of a deed of family arrangement entered into between the beneficiaries in the estate.

*Clause 16:* The purpose of this clause is to prevent evasions of tax by a taxpayer who employs a relative in his business and pays him a salary that is excessive having regard to the services rendered by that relative or who enters into a partnership with a relative under which the relative is entitled to a share of the profits that is excessive having regard to the contributions by that relative to the partnership by way of services, capital, or otherwise. The clause also applies where the taxpayer is a company and the employee is a relative of a director or shareholder, and, in the case of a partnership, where one of the partners is a company and another partner is a relative of a director or shareholder in the company. In cases where the clause applies the Commissioner may allocate the income between the taxpayer and employee or between the partners, having regard to the services or contributions of the respective parties. There is a right of objection against any decision of the Commissioner under this clause.

*Clause 17* provides that where property is leased at an inadequate rent or for no rent by any person to a relative or related company (as defined in *subclause (3)*) or by a company to any person the lessor is to be deemed for income tax purposes to have derived an adequate rent during the term of the lease. This provision is to apply only if and to the extent that the lessee derives income from the property. There is a right of objection against any decision of the Commissioner under this clause.

*Clause 18:* Section 13 of the Land and Income Tax Amendment Act (No. 2) 1950 contains provisions whereby certain transfers and settlements of income are disregarded for income tax purposes, and the transferor or settlor is to remain liable for income tax as if the transfer or settlement had not been made. The section does not apply to marriage settlements or to transfers or settlements made for adequate consideration. The purpose of this clause is to omit this limitation. Transfers and settlements for consideration and marriage settlements that do not dispose of the capital or that do not dispose of the income for the period prescribed by section 13 will therefore come within the scope of that section.

*Clause 19:* The effect of this clause is that the penalty for late payment of tax does not accrue until after one month from the due date, instead of after twenty-one days as at present.

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*Clause 17* provides that where property is leased at an inadequate rent or for no rent by any person to a relative or related company (as defined in *subclause (3)*) or by a company to any person the lessor is to be deemed for income tax purposes to have derived an adequate rent during the term of the lease. This provision is to apply only if and to the extent that the lessee derives income from the property. There is a right of objection against any decision of the Commissioner under this clause.

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(3) For the purposes of this section the term "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; and includes a trustee for a relative.

(4) Notwithstanding anything to the contrary in section thirty-eight of the principal Act, it shall be grounds for objection under Part III of that Act to an assessment of income tax that any determination of the Commissioner made for the purposes of this section is erroneous, and the Court hearing the objection shall have power to review the determination of the Commissioner, and shall for that purpose have all the powers and functions of the Commissioner in making that determination, and the decision of the Court shall, except for the purposes of objection thereto, take effect as if it were the determination of the Commissioner; but nothing in this subsection shall restrict the right of the Commissioner or the objector to appeal against the decision of the Court in accordance with Part III of the principal Act.

(5) This section shall apply with respect to income derived during the income year that ended on the thirty-first day of March, nineteen hundred and fifty-one, and during any subsequent income year, and shall apply whether the contract of service or employment or the partnership was entered into before or after the commencement of that income year.

17. (1) Where any property owned by any person or by two or more persons (whether jointly or in common) or by any partnership is leased to a relative of any of those persons or of any member of the partnership or to a related company or by a company to any person and the rent is less than an adequate rent for that property or the lease makes no provision for the payment of rent,—

Leases for inadequate rent.

(a) There shall be deemed to be payable under the lease a rent that is equal to an adequate rent for the property, and that rent shall be deemed to be payable by the lessee to the lessor on the days provided in the lease for payment thereof,

or, if no rent is payable under the lease, on such days as the Commissioner determines, and shall be deemed to be income derived by the lessor on the days on which the rent is payable as aforesaid; and

(b) The rent deemed to be payable under paragraph (a) of this subsection shall be deemed to accrue from day to day during the period in respect of which it is payable, and shall be apportionable accordingly.

(2) The provisions of this section shall apply with respect to any leased property only if and to the extent that it is used by the lessee in the production of income.

(3) In this section—

“ Adequate rent ”, in relation to any property, means the amount of rent that the Commissioner determines to be adequate for that property during the period in respect of which the determination is made:

“ Lease ” means a tenancy of any duration, whether in writing or otherwise; and includes a sublease; and also includes a bailment; and “ lessor ” and “ lessee ” have corresponding meanings:

“ Related company ” means a company that is under the control of the lessor or any relative or relatives of the lessor or any one or more of them, or, where there are several lessors or the lessor is a partnership, under the control of any of the lessors or partners or any relative or relatives of any of the lessors or partners:

“ 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:

“ Rent ” includes any premium or other consideration for the lease.

(4) Notwithstanding anything to the contrary in section thirty-eight of the principal Act, it shall be grounds for objection under Part III of the principal Act to an assessment of income tax that any determination of the Commissioner for the purposes of this section is erroneous, and the Court hearing the objection shall

have power to review the determination of the Commissioner, and shall for that purpose have all the powers and functions of the Commissioner in making that determination, and the decision of the Court shall, except for 5 the purposes of objection thereto, take effect as if it were the determination of the Commissioner; but nothing in this subsection shall restrict the right of the Commissioner or the objector to appeal against the decision of the Court in accordance with Part III of the 10 principal Act.

(5) This section shall apply with respect to income derived during the income year that ended on the thirty-first day of March, nineteen hundred and fifty-one, and during any subsequent income year, and shall apply 15 whether the lease was granted before or after the commencement of that income year.

18. Section thirteen of the Land and Income Tax Amendment Act (No. 2) 1950 is hereby amended as from the passing of that Act by omitting from subsection seven 20 the words " nor to any marriage settlement, nor to any transfer or settlement made for fully adequate consideration in money or money's worth ".

Amending provisions as to assignments or settlements of income. 1950, No. 87

19. (1) Section one hundred and thirty-five of the principal Act is hereby amended by omitting from subsection one the words " twenty-one days ", and 25 substituting the words " one month ".

Extending time for payment of tax before penalty accrues.

(2) This section shall apply with respect to tax that becomes due and payable on or after the eighth day of February, nineteen hundred and fifty-two.