

COMMONWEALTH OF AUSTRALIA.

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# INCOME TAX.

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Explanatory Memorandum showing Alterations  
contained in the

BILL

FOR

AN ACT

TO CONSOLIDATE AND AMEND THE

## Income Tax Assessment Act 1922-1934.

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*(Issued under Authority of the Commonwealth Treasurer,  
Hon. R. G. Casey, M.P.)*

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## PREFACE.

**T**HIS memorandum has been compiled to explain the alterations that are being made by the *Income Tax Assessment Bill* 1935 to consolidate and amend the *Income Tax Assessment Act* 1922-1934.

The clauses of the Bill are printed in their sequence on the left-hand pages of the memorandum, and, on the right, are set out the corresponding sections of the present Commonwealth law. Brief footnotes are given explanatory of such of the proposed provisions as differ in any substantial way from the terms of the present Act.

The sequence of the clauses in the Bill follows the arrangement in the model Bill of the Royal Commission in order to achieve uniformity with the States. This arrangement itself is a matter of considerable importance, as it is designed to help the taxpaying public, as well as officials of the various Departments, as often as they may be called upon to refer to Commonwealth and State Acts, by automatically providing a ready reference to comparable sections.

An effort has been made by the Royal Commission in the drafting to make each section clear and concise, and to avoid, so far as the technicalities of an Income Tax Act will permit, sections or sentences of undue length, which present difficulties of interpretation. Although there are 267 clauses in the Bill, as contrasted with 100 sections in the present Act, both the Act and the Bill contain approximately the same number of pages of printed matter. The larger number of clauses in the Bill is due to the breaking down of some of the longer and more involved sections of the present Act into shorter self-contained clauses for greater facility in reference and interpretation.

The explanatory notes are printed in reduced type.

ANALYSIS OF CONTENTS  
OF THE  
**INCOME TAX ASSESSMENT BILL 1935**

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Explanatory Memorandum showing Alterations  
contained in the

**BILL**

FOR

**AN ACT**

TO CONSOLIDATE AND AMEND THE

**Income Tax Assessment Act 1922-1934.**

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## A BILL

FOR

## AN ACT

To consolidate and amend the Law relating to the  
Imposition Assessment and Collection of a  
Tax upon Incomes.

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

## PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Income Tax Assessment Act* 1935.

Repeal.

2. The Acts specified in the first column of the Schedule to this Act are repealed to the extent respectively specified in the second column of that Schedule:

Provided that the Acts and parts of Acts repealed by this Act and any regulations made under the Acts or parts so repealed and in force immediately prior to the commencement of this Act, and any Act relating to income tax which was in force prior to the commencement of the Acts so repealed, shall, subject to this Act, continue, and be deemed to have at all times continued, in force for all purposes in connexion with income tax payable for any financial year prior to that commencing on the first day of July, One thousand nine hundred and thirty-six:

Provided further that no alteration or addition in or to any assessment made under any Act relating to income tax which was in force prior to the commencement of the Acts so repealed shall be made after the expiration of three years from the date when the tax payable on the assessment was originally due and payable, unless the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance was due to fraud or evasion.

Saving.

3. Nothing in this Act shall affect the operation of the *Commonwealth Debt Conversion Act* 1931 or of sub-section (2) of section fifty-two b of the *Commonwealth Inscribed Stock Act* 1911-1932. (a)

(a) This clause preserves the existing concessions in the Acts mentioned relating

# THE INCOME TAX ASSESSMENT ACT 1922-1934.

## An Act to consolidate and amend the Law relating to the Imposition Assessment and Collection of a Tax upon Incomes.

[Assented to 18th October, 1922.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

### PART I.—PRELIMINARY.

1. This Act may be cited as the *Income Tax Assessment Act* short title. 1922-1934.
2. The Acts set forth in the First Schedule to this Act are repealed.

Provided that the Acts repealed by this Act shall, subject to this Act, continue, and be deemed to have at all times continued, in force for all purposes in connexion with income tax payable for any financial year prior to the first day of July, One thousand nine hundred and twenty-two:

Provided further that no alteration or addition shall be made in or to any assessment made under any such Act after the expiration of three years from the date when the tax payable on the assessment was originally due and payable, unless the Commissioner has reason to believe that there has been an avoidance of tax owing to fraud or attempted evasion.

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to the liability to taxation of interest on Government securities.

Tax payable  
on interest  
on certain  
Treasury Bills.

4. The application of section twenty of the *Commonwealth Debt Conversion Act* 1931 shall extend to such Commonwealth Treasury Bills issued to banks in Australia, on or after the thirty-first day of July, One thousand nine hundred and thirty-one, as the Australian Loan Council, constituted in pursuance of the Schedule to the *Financial Agreement Validation Act* 1929, determines. (a)

Parts.

5. This Act is divided into Parts and Divisions, as follows:—

PART I.—PRELIMINARY.

PART II.—ADMINISTRATION.

PART III.—LIABILITY TO TAXATION.

Division 1.—General.

Division 2.—Income—

Subdivision A—Assessable income generally.

Subdivision B—Trading Stock.

Subdivision C—Business carried on partly in and partly out of Australia.

Subdivision D—Dividends.

Division 3.—Deductions.

Division 4.—Leases.

Division 5.—Partnerships.

Division 6.—Trustees.

Division 7.—Private Companies.

Division 8.—Life Assurance Companies.

Division 9.—Co-operative and Mutual Companies.

Division 10.—Mining.

Division 11.—Interest paid by Companies.

Division 12.—Oversea Ships.

Division 13.—Australian Business controlled abroad.

Division 14.—Film Business controlled abroad.

Division 15.—Insurance with Non-residents.

Division 16.—Averaging of Incomes.

Division 17.—Rebates on Income taxed abroad and on business income.

PART IV.—RETURNS AND ASSESSMENTS.

PART V.—OBJECTIONS AND APPEALS.

Division 1.—Constitution of Boards of Review.

Division 2.—Reviews and Appeals.

PART VI.—COLLECTION AND RECOVERY OF TAX.

PART VII.—PENAL PROVISIONS AND PROSECUTIONS.

PART VIII.—MISCELLANEOUS.

(a) This clause repeats section 11 of the Income Tax Assessment Act No. 23 of 1931.

3. This Act shall be divided into Parts, as follows:—

Parts.

Part I.—Preliminary.

Part II.—Administration.

Part III.—Liability to Taxation:

Division 1.—General.

Division 2.—Private Companies.

Part IV.—Returns and Assessments.

Part V.—Objections and Appeals.

Part VI.—Collection and Recovery of Tax.

Part VII.—Penal Provisions.

Part VIII.—Taxation Prosecutions.

Part IX.—Miscellaneous.

**Definitions.**

**6.** In this Act, unless the contrary intention appears—  
 “agent” includes—

- (a) every person who in Australia, for or on behalf of any person out of Australia holds or has the control, receipt or disposal of any money belonging to that person; and
- (b) every person declared by the Commissioner to be an agent or the sole agent of any person for any of the purposes of this Act;

“allowable deduction” means a deduction allowable under this Act;

“assessable income” means all the amounts which under the provisions of this Act are included in the assessable income;

“assessment” means the ascertainment of the amount of taxable income and of the tax payable thereon;

“Australia” includes the Territory of Papua;

“business” includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee;

“Commissioner” means the Commissioner of Taxation;

“company” includes all bodies or associations corporate or unincorporate, but does not include partnerships;

“dividend” (b) includes any distribution made by a company to its shareholders, whether in money or other property, and any amount credited to them as shareholders, and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents a capitalization of profits; but does not include a return of paid-up capital or a reversionary bonus on a policy of life-assurance;

“exempt income” means income which is exempt from income tax and includes income which is not assessable income;

“friendly society” means a society duly registered as a friendly society under any Act or State Act or under any law in force in a Territory being part of the Commonwealth;

(a) This provision is now transferred to clause 25 of the Bill.

(b) The words “out of its profits” have been deleted from the revised definition, as

they more properly appear in clause 44 dealing with the taxation of dividends. It was necessary, however, to provide that a dividend should not include a return of

4. In this Act, unless the contrary intention appears: Definitions.

“Agent” includes every person who in Australia, for or on behalf of any person out of Australia (in this section called “the principal”), holds or has the control receipt or disposal of any money belonging to the principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act;

“Assessable income”, means—  
 (a) in the case of a resident—the gross income derived from all sources, whether in Australia or elsewhere; and  
 (b) in the case of an absentee—the gross income derived from sources in Australia, which is not exempt from income tax under the provisions of this Act; (a)

“Assistant Commissioner” means the Assistant Commissioner of Taxation;

“Australia” includes the Territory of Papua; “Business” includes any profession, trade, employment, vocation or calling;

“Commissioner” means the Commissioner administering this Act;

“Company” includes all bodies or associations corporate or unincorporate, but does not include partnerships;

“Dividend” means any distribution made by a company to its shareholders, whether in money or other property, out of its profits, and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents the capitalization of the whole or any part of the profits of the company, but does not include a reversionary bonus on a policy of life assurance;

paid-up capital. The words “and any amount credited to them as shareholders” were inserted to make it clear that a

“distribution” refers to amounts credited as well as amounts paid.

"income from personal exertion" or "income derived from personal exertion" means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities<sup>(a)</sup>, allowances and gratuities received in the capacity of employee or in relation to any services rendered<sup>(b)</sup>, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business<sup>(c)</sup>, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include—

(a) interest, unless the taxpayers' principal business consists of the lending of money, or unless the interest is received in respect of a debt due to the taxpayer for goods supplied or services rendered by him in the course of his business;<sup>(d)</sup> or

(b) rents or dividends;

"income from property" or "income derived from property" means all income not being income from personal exertion;

"income tax" means the income tax imposed as such by any Act as assessed under this Act;

"liquidator" means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

"live stock" does not include animals used as beasts of burden or working beasts in a business other than a business of primary production;<sup>(e)</sup>

"mortgage" includes any charge, lien or encumbrance to secure the repayment of money;<sup>(f)</sup>

(a) The definition as re-drafted makes it clear that "retiring" qualifies both allowances and gratuities. The reference in the present Act to amounts "not paid in a lump sum" has been deleted, as it is considered that retiring allowances and retiring gratuities should be treated as income from personal exertion, whether or not they are paid in a lump sum. Five per centum of allowances and gratuities received in a lump sum still remains assessable income, *vide* clause 26 (d).

(b) These words are designed to include secret commissions. It has been held that allowances in the nature of secret commissions are not subject to taxation under the present Act, as they are not made to a person *in the capacity of an employee*. The person receiving them is seldom an employee of the donor. There is no good reason why such amounts should not be treated as assessable income.

"Income from personal exertion" or "income derived by any person from personal exertion" means income consisting of earnings, salary, wages, commission, fees, bonuses, pensions, superannuation allowances, retiring allowances and gratuities not paid in a lump sum, allowances received in the capacity of employee, and the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, and any income from any property where the income forms part of the emoluments of any office or employment of profit held by the individual and any profit specified in paragraph (ba) of the definition of "Income", but does not include interest, unless the taxpayer's principal business consists of the lending of money, and does not include rents and dividends;

"Income from property" or "income derived from property" means all income not derived from personal exertion;

"Income tax" means the income tax imposed as such by any Act as assessed under this Act;

"Liquidator" means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company;

"Mortgage" includes any charge, lien, or encumbrance to secure the repayment of money upon which interest is payable, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied

(c) These words make the intention of the law clear that such receipts are to be treated as personal exertion income.

(d) Under this definition, interest received in respect of trading debts will be treated as income from personal exertion, and not as income from property as under the present Act.

(e) This definition continues the existing Commonwealth practice except in regard to live stock used as working beasts and beasts of burden by primary producers. In

their case, the difficulty of identifying these animals and also the necessity of accounting for any sale of the possible natural increase, make it desirable in the interests of simplicity to bring working beasts and beasts of burden into the live stock schedule.

(f) The second portion of the definition of "mortgage", as set out in the present Act, has, in the Bill, been transferred as sub-clause (5) of clause 262, to which it relates.

"non-resident" means a person who is not a resident of Australia; <sup>(a)</sup>

"paid" in relation to dividends includes credited or distributed;

"partnership" means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company; <sup>(b)</sup>

"person" includes a company;

"previous Act" means the *Income Tax Assessment Act* 1922, and when considered in relation to any time means that Act, or, if it has been amended, that Act as amended as in force at that time;

"primary production" means production resulting directly from the cultivation of land or the maintenance of animals or poultry for the purpose of selling them or their bodily produce including natural increase, and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture; <sup>(c)</sup>

"relative" means a husband or wife or a relation by blood, marriage or adoption; <sup>(d)</sup>

"resident" or "resident of Australia" means—

(a) a person, other than a company, who resides in Australia and includes a person—

(i) whose domicile is in Australia, unless the Commissioner is satisfied that his permanent place of abode is outside Australia; or

(ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that

(a) The term "non-resident" has been substituted throughout the Bill for the term "absentee" as used in the present Act.

(b) Following the recommendation of the Royal Commission on Taxation that the

purpose for which a partnership is formed should not be the deciding factor in determining its bona fides, but that the test should be whether, in fact, the partnership is bona fide or fictitious, that part of the

or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted;

“Absentee” means a person who is not a resident of “Absentee” Australia;

“Paid” in relation to dividends includes credited and distributed;

“Partner” includes a beneficiary in a trust which is a partnership for the purposes of this Act;

“Partnership” means an association of persons carrying on business as partners or in receipt of income jointly, and includes a trust created by any person in respect of any income or income producing assets under which relatives by blood, marriage or adoption of that person are entitled to the whole or any part of that income or of the income derived from those assets, and which in the opinion of the Commissioner was created for the purpose of relieving that person from any liability which would have arisen under this Act if the trust had not been created, but does not include a company;

“Person” includes a company;

“Previous Act” means the *Income Tax Assessment Act* 1915 and when used in relation to any time means that Act as in force at that time;

“Resident” or “Resident of Australia” means—

(a) a person, other than a company who resides in Australia and includes a person—

(i) whose domicile is in Australia unless the Commissioner is satisfied that his permanent place of abode is outside Australia; or

(ii) who has actually been in Australia, continuously or intermittently, during more than one-half of the financial year in which the income the subject of assess-

definition in the present Act which relates to the creation of partnerships for the purpose of relieving a person from liability to taxation has been deleted from the definition of “partnership”.

(c) The substance of this definition appears in sections 5A and 23(1)(q) of the present Act.

(d) This definition appears in the present Act in sections 29(2) and 31A(1).

his usual place of abode is outside Australia and that he does not intend to take up residence in Australia; and

(b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia, and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia;

“shareholder” includes member or stockholder;

“special property tax” means the further income tax, if any, imposed as a percentage of that part of the taxable income of any person which is attributable to income derived by him—

(a) from property;

(b) by way of interest, dividends, rents or royalties, whether derived from personal exertion or from property; and

(c) in the course of carrying on a business, if the income is of such a class that, when it is derived otherwise than in the course of carrying on a business, it is income from property; (a)

“taxable income” means the amount remaining after deducting from the assessable income all allowable deductions;

“taxpayer” means a person deriving income; (b)

“trading stock” includes anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange, and also includes live stock; (c)

“trustee” in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a court, or by operation of law, includes—

(a) an executor or administrator, guardian, committee, receiver, or liquidator; and

(b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability;

(a) This definition has been clarified in the light of the criticism of the High Court in the case of the *Victoria Park Racing and Recreation Grounds Co. Ltd. v. Federal*

Commissioner of Taxation.

(b) This definition has been amended to facilitate drafting so as to permit the word to be used in referring to persons in receipt

ment was derived unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia; and

(b) a company which is incorporated in Australia, or which, not being incorporated in Australia, carries on business in Australia and has either its central management and control in Australia, or its voting power controlled by shareholders who are residents of Australia;

"Shareholder" includes member and stockholder;

"Special Property Tax" means the further income tax, if any, imposed as a percentage of the taxable income derived by any person—

(a) from property;

(b) by way of interest, dividends, rents or royalties, whether derived from personal exertion or from property; and

(c) in the course of carrying on a business, where the income is of such a class that, if derived otherwise than in the course of carrying on a business, it would be income from property;

"Taxable income" means the amount of income remaining after all deductions allowed by this Act have been made;

"Taxpayer" means any person chargeable with income tax;

"Trading Stock" means anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange;

"Trustee" in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a court, or by operation of law, includes—

(a) an executor or administrator, guardian, committee, receiver or liquidator, and

(b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability;

of income who may not be chargeable with income tax.

(c) By reason of the proposal to tax all sales of live stock, including the sale of

breeding stock whether or not sold in a walk-in walk-out sale, it is necessary to extend the definition of trading stock to include live stock (see note to clause 36(1)).

"year of income" means—

- (a) the financial year next preceding the year of tax;  
or
- (b) the accounting period, if any, adopted under this Act in lieu of that financial year;

"year of tax" means the financial year for which income tax is levied.

Taxpayer  
resident in  
Territories.

7.—(1.) This Act shall extend to the Territories of Papua, Norfolk Island and New Guinea, but shall not apply to any income derived by a resident of those Territories from sources within those Territories.

(2.) Any taxpayer who is a resident in a Territory specified in this section shall, for the purposes of assessment and payment of income tax on income derived from sources in Australia, be deemed to be a resident of Australia.

Commissioner.

8.—(1.) For the purposes of this Act, there shall be a Commissioner of Taxation who shall have the general administration of this Act.

(2.) The person for the time being holding office as Commissioner of Taxation under the *Estate Duty Assessment Act 1914-1928* shall be the Commissioner of Taxation under this Act.

(3.) The Commissioner shall be paid such remuneration as the Parliament provides.

Second  
Commissioner.

9.—(1.) For the purposes of this Act, there shall be a Second Commissioner of Taxation (in this Act referred to as "the Second Commissioner").

(2.) Any person for the time being holding office as Second Commissioner of Taxation under the *Estate Duty Assessment Act 1914-1928* shall be the Second Commissioner under this Act.

Powers of  
Second  
Commissioner.

10.—(1.) Subject to this section, the Second Commissioner<sup>(a)</sup> shall have and may exercise all the powers and functions of the Commissioner under this Act.

(2.) Where in this Act the exercise of any power or function by the Commissioner or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Second Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of the Second Commissioner in relation to that matter.

(a) In 1927 the title of "Assistant Commissioner" was changed to "Second Commissioner", and a corresponding alteration was subsequently made in the *Estate*

“Year of income” means—  
(a) the financial year next preceding the year of tax;  
or  
(b) the accounting period, if any, adopted under this Act in lieu of that financial year;  
“Year of tax” means the financial year for which tax is levied.

5.—(1.) This Act shall extend to the Territories of Papua, <sup>Taxpayer</sup> Norfolk Island and New Guinea, but shall not apply to any income <sup>Resident in</sup> Territories derived by a resident of those Territories from sources within those Territories.

(2.) Any taxpayer who is resident in a territory specified in this section shall, for the purposes of assessment and payment of income tax on income derived from sources in Australia, be deemed to be a resident of Australia.

#### PART II.—ADMINISTRATION.

6.—(1.) The Commissioner of Taxation shall have the general <sup>Commissioner</sup> administration of this Act.

(2.) The Commissioner shall be paid such remuneration as the Parliament provides.

7A.—(1.) There may be a Second Commissioner of Taxation.

(2.) The person for the time being holding the office of Assistant Commissioner of Taxation shall be the Second Commissioner of Taxation, and any reference in this Act to the Assistant Commissioner shall be deemed to include a reference to the Second Commissioner of Taxation.

7.—(1.) Subject to this section the Assistant Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act.

(2.) Where in this Act the exercise of any power or function by the Commissioner or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Assistant Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of the Assistant Commissioner in relation to that matter.

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Duty Assessment Act. The title of wherever appearing in the various sections  
“Assistant Commissioner” has therefore of the present Act.  
been superseded by “Second Commissioner”

(3.) Nothing in this section shall be deemed to confer upon the Second Commissioner any power or function of the Commissioner under sub-section (1.) of section eight, or under section twelve or fourteen of this Act or to prevent the exercise of any power or function by the Commissioner under this Act, and the Commissioner shall have, in relation to any act of the Second Commissioner, the same power as if that act were done by himself.

**Deputy Commissioners.**

11. For the purposes of this Act, there may be such Deputy Commissioners of Taxation as are required, who shall, subject to the control of the Commissioner, have such powers and functions as are prescribed, or as the Commissioner directs.

**Delegation by the Commissioner.**

12. (1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Commissioner.

(3.) Any delegation under this section may be made subject to a power of review and alteration, within the period specified in the instrument of delegation, by the Commissioner of any act done in pursuance of the delegation and the decision given upon any such review or alteration shall be deemed to be that of the Commissioner.

**References to Commissioner.**

13. Any reference in this Act to the Commissioner shall be deemed to include—

(a) in respect of matters as to which the Second Commissioner has exercised any power or function conferred upon him by this Act—a reference to the Second Commissioner; and

(b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation under this Act—a reference to that Deputy Commissioner.

**Report by the Commissioner.**

14. (1.) The Commissioner shall furnish to the Treasurer annually for presentation to the Parliament, a report on the working of this Act.

(2.) In the report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice.

(3) Nothing in this section shall be deemed to confer upon the Assistant Commissioner any power or function of the Commissioner under sub-section (1) of section six, or under section nine or ten of this Act or to prevent the exercise of any power or function by the Commissioner under this Act, and the Commissioner shall have, in relation to any act of the Assistant Commissioner, the same power as if that act were done by himself.

8. The Deputy Commissioners of Taxation shall, subject to the control of the Commissioner, have such powers and functions as are prescribed, or as the Commissioner directs.

Deputy Commissioners.

9.—(1) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

Delegation by the Commissioner.

(2) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Commissioner.

(3) Any delegation under this section may be made subject to a power of review and alteration, within the period specified in the instrument of delegation, by the Commissioner of any act done in pursuance of the delegation and the decision given upon any such review or alteration shall be deemed to be that of the Commissioner.

9A. Any reference in this Act to the Commissioner shall be deemed to include—

References to Commissioner.

(a) in respect of matters as to which the Assistant Commissioner has exercised any power or function conferred upon him by this Act—a reference to the Assistant Commissioner; and

(b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation under this Act—a reference to that Deputy Commissioner.

10.—(1) The Commissioner shall furnish to the Treasurer annually for presentation to the Parliament, a report on the working of this Act.

Report by the Commissioner.

(2) In the report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice.

**Governor-General may make arrangements with Governor of State.**

**15.**—(1.) The Governor-General may make arrangements with the Governor in Council of a State for the collection by the Commonwealth on behalf of the State of income tax at rates to be fixed by the Parliament of the State on a taxable income ascertained in accordance with this Act or an Act of that State.

(2.) The Governor-General may make regulations for carrying into effect any arrangement made under the provisions of this section.

(3.) Any arrangement made under the previous Act by the Governor-General with the Governor in Council of a State for the collection by the Commonwealth, on behalf of the State, of income tax at rates fixed by the Parliament of the State on a taxable income ascertained in accordance with the previous Act or with any Act of that State shall, until terminated in the manner provided by that arrangement, continue in force as if it were an arrangement made under this section for the purposes of the collection of income tax on behalf of that State.

**Officers to observe secrecy.**

**16.**—(1.) For the purposes of this section, "officer" means a person who is or has been appointed or employed by the Commonwealth or by a State, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under the provisions of this Act or of any previous law of the Commonwealth relating to Income Tax. (a)

(2.) Subject to this section, an officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while he is, or after he ceases to be an officer, make a record of, or divulge or communicate to any person any such information so acquired by him.

(3.) An officer shall not be required to produce in Court any return, assessment or notice of assessment, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or of any previous law of the Commonwealth relating to Income Tax.

(4.) Nothing in this section shall be deemed to prohibit the Commissioner, Second Commissioner, or a Deputy Commissioner, or any person thereto authorized by him, from communicating any information to—

(a) any person performing, in pursuance of any appointment or employment by the Commonwealth or by a State, any duty arising under any act administered by the Com-

(a) In the interests of uniformity the secrecy provisions have been drawn to make any infringement a direct contravention of the Act, so that any prosecution that may be instigated can be made to depend upon the prohibition contained in the Act itself.

At the present time a prosecution must be based upon the declaration of secrecy prescribed by the Regulations which an officer gives at the time of commencing duty, but the actual declaration for various reasons may be incapable of location at a time

**11.—(1.)** The Governor-General may make arrangements with the Governor in Council of a State for the collection by the Commonwealth on behalf of the State of income tax at rates to be fixed by the Parliament of the State on a taxable income ascertained in accordance with this Act or an Act of that State.

**(2.)** The Governor-General may make regulations for carrying into effect any arrangement made under the provisions of this section.

**12.—(3.)** Any person who has been an officer or has performed any duty under this Act or under any Act repealed by this Act, and who communicates any information acquired by him in the performance of any duty under this Act or the Regulations or under any Act repealed by this Act or under any Regulations made under any such repealed Act to any person other than a person to whom he is authorized by the Commissioner, Assistant Commissioner or a Deputy Commissioner to communicate it shall be guilty of an offence.

**Penalty:** Two hundred and fifty pounds.

**12.—(5.)** An officer shall not be required to produce in any Court any return, assessment, or notice of assessment, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties under this Act or any Act repealed by this Act, except as may be necessary for the purpose of carrying into effect the provisions of this Act.

**12.—(4.)** Notwithstanding anything contained in this section, the Commissioner, the Assistant Commissioner or a Deputy Commissioner may communicate any matter which comes to his knowledge in the performance of his official duties, to a Board of Review appointed under this Act or to the Commissioner of Income Tax for any State, or the officer or authority administering any Act of a State relating to Stamp Duties or Succession Duties (who is authorized by law to

when required, perhaps 50 years after an officer commenced duty. Moreover, the present Act is defective inasmuch as the secrecy obligations, though imposed upon a Taxation Officer, are not imposed upon

those officers of other Departments or their subordinates to whom information is given for administrative purposes of their particular Acts. This anomaly has been corrected in the new provisions.

missioner of Taxation or the Commissioner of Land Tax, for the purpose of enabling that person to carry out any such duty;

- (b) a Board of Review appointed under this Act;
- (c) the Commissioner of Income Tax for any State, or the authority administering any Act of a State relating to Stamp Duties or Succession Duties if that authority is authorized by law to afford similar information to the Commissioner, the Second Commissioner or a Deputy Commissioner;
- (d) the Commissioner of Pensions or the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions;
- (e) the Commissioner for Maternity Allowances for the purpose of any law relating to maternity allowances; or<sup>(a)</sup>
- (f) the Director-General of Health for the purpose of the administration of any law of the Territory for the Seat of Government which is administered by the Minister of State for Health.

(5.) Any person to whom information is communicated under the last preceding sub-section, and any person or employee under his control shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under sub-sections (2.) and (3.) of this section, as if he were an officer.

(6.) Any officer shall, if and when required by the Commissioner, Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

Penalty: Two hundred and fifty pounds or imprisonment for twelve months.<sup>(b)</sup>

### PART III.—LIABILITY TO TAXATION.

#### Division 1.—General.

income tax.

17. Subject to this Act, income tax at the rates declared by the Parliament, shall be levied and paid for the financial year commencing on the first day of July, One thousand nine hundred and thirty-six and for each financial year thereafter, upon the taxable income derived during the year of income by any person, whether a resident or a non-resident.

(a) In sub-clause (e) permission is to be given for taxation information to be supplied to the Commissioner of Maternity Allowances in the interests of the administration of that Act. This did not pre-

viously exist, though necessity has been found for it and though the same officer, as Commissioner of Pensions, is entitled to information for the purposes of administration of the Pension Law.

afford similar information to the Commissioner, the Assistant Commissioner or a Deputy Commissioner) or to the Commissioner of Pensions or the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions, or to the Director-General of Health for the purpose of the administration of any law of the Territory for the Seat of Government which is administered by the Minister of State for Health:

Provided that where any matter is communicated to a Board of Review in pursuance of this section and that matter consists of returns, or information derived from returns, of a taxpayer other than the taxpayer whose assessment is under review in the review in the course of which the communication is made, the members of the Board shall be subject to the same obligation as is imposed by subsection (3) of this section upon a person who has been an officer under this Act.

**12.**—(1.) Every person executing any power or duty conferred or imposed on an officer under this Act or the Regulations shall, before entering upon his duties or exercising any power under this Act, make before a Justice of the Peace or a Commissioner for taking Affidavits or a Commissioner for Declarations, a declaration in the form prescribed.

(2.) Any person who acts in the execution of any duty under this Act or the Regulations before he has made the prescribed declaration or who after making the declaration makes a record of or divulges any information relating to the affairs of a person except in the performance of any duty under this Act shall be guilty of an offence.

Penalty: Two hundred and fifty pounds.

#### PART III.—LIABILITY TO TAXATION.

##### *Division 1.—General.*

**13.**—(1.) Subject to the provisions of this Act, income tax shall <sup>Income tax.</sup> be levied and paid for each financial year upon the taxable income derived directly or indirectly—

(a) by every resident—from all sources whether in Australia or elsewhere; and

(b) by every absentee—from sources in Australia, during the period of twelve months ending on the thirtieth day of June preceding the financial year for which the tax is payable:

(1A.) The income tax payable by a company shall be at such rate as is declared by the Parliament.

(b) In the interests of uniformity, and as a further deterrent to divulging confidential information, the penalty provides an alternative of twelve months' imprison-

ment to a fine of £250. The Commonwealth Act is the only one at the present time that does not provide for imprisonment for this offence.

Accounting period.

**18.**—(1.) Any person may, with the leave of the Commissioner, adopt an accounting period being the twelve months ending on some date other than the thirtieth day of June. His accounting period in each succeeding year shall end on the corresponding date of that year, unless with the leave of the Commissioner some other date is adopted.

(2.) Where the Commissioner has accepted returns from any person based on an accounting period as defined in the previous Act for the purposes of assessment for the last financial year to which that Act applied, that person shall be deemed to have adopted a corresponding accounting period under this section.

Money credited, reinvested, &c., to be income.

**19.** Income shall be deemed to have been derived by a person although it is not actually paid over to him but is reinvested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on his behalf or as he directs.

Income to be expressed in Australian currency.

**20.** For all the purposes of this Act, income wherever derived, any expense wherever incurred, the value of any asset wherever situate and any amount involved in any calculation, shall be expressed in terms of Australian currency and, for this purpose, the rates of exchange to be used shall be respectively the rates at which exchange could have been effected by telegraphic transfer at the dates when the income was derived or the expense was incurred or at which the asset is to be valued or at which the amount is to be ascertained.(a)

Where consideration not in cash.

**21.** Where, upon any transaction, any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of this Act, be deemed to have been paid or given.(b)

(a) Where income is derived in dollars or other foreign currency, it has necessarily to be expressed in terms of Australian currency. However, in regard to sterling, where the pound is also the unit of account, some taxpayers have claimed the right to express their income

in that currency. The matter is important because of the present difference in value between the British and Australian pounds.

The Full High Court, by the prevailing judgment of the Chief Justice, has held that the Commissioner of Taxation was right in converting to Australian currency the

13.—(1) Provided that in the case of a person whose income cannot be conveniently returned as for the year fixed by this Act and from whom the Commissioner has, under section thirty-two of this Act, accepted returns made up for an accounting period substituted for that year, income tax shall be levied and paid for the financial year upon the taxable income derived by that person during that accounting period.

32.—(3) When the income of any person cannot be conveniently returned as for the year fixed by this Act, the Commissioner may accept returns made up for a period of twelve months ending on the date of the annual balance of the accounts of that person (in this Act referred to as "the accounting period"), and in such case the person shall not be entitled, without the consent of the Commissioner, to alter the period for which his returns are made.

32.—(4) Where the Commissioner has under the last preceding sub-section accepted from any person returns made up in respect of the accounting period any references in this Act to the year in which income is derived shall in relation to that person be deemed to be a reference to that period.

19. Income shall be deemed to have been derived by a person within the meaning of this Act although it is not actually paid over to him, but is re-invested, accumulated, capitalized, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on his behalf or as he directs.

25. A deduction shall not, in any case, be made in respect of any of the following matters:—

(d) income carried to any reserve fund or capitalized in any way;

Money credited,  
re-invested,  
&c., to be  
accumulated,  
capitalized,  
carried to any  
income.

Deductions not  
to be allowed  
in certain  
cases.

income of a taxpayer received in England in sterling. The taxpayer has now appealed to the Privy Council.

Whatever be the final decision of the Courts as to the legal interpretation under the present Act, it is considered that income and deductions should be expressed in Aus-

tralian currency, and a specific provision to this effect has been inserted in the Bill.

(b) This is a general provision dealing with several clauses of the Bill, e.g., consideration given in the form of shares in connexion with a lease premium.

Income arising  
from past  
transactions.

**22.** Where any income is received in the year of income as a result of a transaction entered into prior to the commencement of this Act, and that income would have been assessable income under the previous Act if that Act had continued in force and had applied to the assessment of the income derived in the year of income, that income shall be assessable under this Act notwithstanding that the transaction was entered into prior to that commencement. (a)

Exemptions.

**23.** The following income shall be exempt from income tax:—

- (a) the official salary of, and the income derived from sources out of Australia by, any person being—(b)
  - (i) the Governor-General or the Governor of a State;
  - (ii) the representative in Australia of the government of another country;
  - (iii) a foreign consul;
  - (iv) a trade commissioner of any part of the British Empire other than Australia;
  - (v) a member of the staff of any such representative, foreign consul or trade commissioner if the member is domiciled in the country represented by the representative, foreign consul or commissioner, and is temporarily resident in Australia by direction of the government of the country so represented for the purpose of performing his official duties, and if the official salary of officials (if any) of the government of the Commonwealth temporarily resident for similar purposes in the country so represented is exempted from income tax by that country; or
  - (vi) an officer of the government of any country outside Australia which is part of the British Empire, who is temporarily in Australia to render service on behalf of that country or the Commonwealth or a State in accordance with any arrangement between the governments of that country and of the Commonwealth or of a State, if the salaries of officers of the government of the Commonwealth temporarily in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country;

(a) This provision is necessary to cover the taxation of income in respect of transactions entered into before the commence-

ment of the proposed Act, such as land sales, where the transaction is spread over a number of years. In such cases, the

14.—(1.) The following incomes, revenues and funds shall be ~~exemptions~~ exempt from income tax:—

- (g) the salary of the Governor-General and the salaries of the Governors of the States;
- (h) the official salary of—
  - (i) the representative in Australia of the government of another country;
  - (ii) a foreign consul;
  - (iii) a trade commissioner of any part of the British Dominions outside Australia; and
  - (iv) any member of the staff of any such representative, foreign consul or trade commissioner if the member is domiciled in the country represented by the representative, foreign consul or commissioner and is temporarily resident in Australia by direction of the government of the country so represented for the purpose of performing his official duties, and if the official salary of officials (if any) of the government of the Commonwealth temporarily resident for similar purposes in the country so represented is exempted from income tax by that country;
- (p) the salaries of officers of the government of any country outside Australia, which is part of the British Empire, who are temporarily in Australia to render service on behalf of that country or the Commonwealth or a State in accordance with any arrangement between the governments of that country and of the Commonwealth or of a State, if the salaries of officers of the government of the Commonwealth temporarily in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country;

sales may have been made in previous years, but, under arrangements with the Department, the income may be returned on a cash basis in the years in which the instalments of purchase money are received.

(b) The provision in the present Act for the exemption of the income derived from sources out of Australia by persons mentioned in sub-clause (a) is contained in section 14(1)(g)(ii).

- (b) the remuneration or wealth or to that Commonwealth Commission;
- (c) income derived
  - (i) in the course of a tour of the Commonwealth or of a Commonwealth territory, if the person is a member of a Royal or other representative of an association or body in that country for the control of a sport or game in that country;
  - (ii) by representation in any other part of the Commonwealth or its share of the proceeds of similar matches played in Australia from that part of the Commonwealth, and recognized by the fact that class of match is representative of that part of the Commonwealth;
  - (iii) by any government, visiting or representing that government, or by the entourage of that representative in any other capacity as such representative;
  - (iv) in the course of a tour of the Commonwealth or of a Commonwealth territory, if the person is a representative of any society or body established for educational, or philanthropic purposes, visiting Australia in that Commonwealth for the purpose of attending international conferences or for the purpose of investigation or research on behalf of such society or association;
  - (v) in the course of a tour of the Commonwealth or of a Commonwealth territory, if the person is a representative of the press, or any person visiting Australia for the purpose of obtaining news or information relating to any matter mentioned in the preceding subparagraph; and
  - (vi) by a person from Australia, from an occupation while in Australia, if, in the opinion of the Treasurer, that person is primarily and principally engaged in the service of the Commonwealth or State Government in the course of the person's employment of Australia;

(7) the remuneration paid by the Government of the Commonwealth or of a State to a person domiciled outside Australia for expert advice to that Government or as a member of a Royal Commission;

(r) income derived—

- (i) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting Australia in that capacity for the purpose of engaging in contests in Australia in that sport or game;
- (ii) by any club or association in any other part of the British Empire as its share of the proceeds of cricket, football or similar matches played in Australia by a team controlled by that club or association visiting Australia from that part of the British Empire and recognized by the authority controlling that class of match in Australia as being representative of that part of the British Empire;
- (iii) by the representative of any government, visiting Australia on behalf of that government, or by any member of the entourage of that representative, in his official capacity as such representative or member;
- (iv) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes, by any person visiting Australia in that capacity for the purpose of attending international or Empire conferences or for the purpose of carrying on investigation or research for such society or association;
- (v) in the capacity of representative of the press outside Australia, by any person visiting Australia in that capacity for the purpose of reporting the proceedings relating to any matters referred to in the preceding subparagraphs of this paragraph; and
- (vi) by any person visiting Australia from an occupation carried on by him while in Australia, if, in the opinion of the Treasurer, that visit and occupation are primarily and principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia;

- (d) the revenue governing under any in a Territ
- (e) the income of educationa
- (f) the income o tion of ex Act or S Territory, the settler
- (g) the income the purpos thereof, a association encourage
- (h) the income the purpos thereof, e developm horticultu resources
- (i) the income benefit o
- (j) the income particula which it
  - (i) a
  - (ii) a
  - (iii) a

orporation or other local lic authority constituted r under any law in force e Commonwealth; ific, charitable or public

the income of an associa es registered under any any law in force in a Commonwealth relating to disputes;

iation not carried on for to the individual members r society, or a society or isical purposes, or for the science or literature;

ociation not carried on for to the individual members purpose of promoting the the agricultural, pastoral, anufacturing or industrial

nducted exclusively for the funds, provided that the plied for the purpose for or superannuation fund benefit of employees; will or instrument of trust le purposes; and or the purpose of enabling to be conducted by or in public university or public

(a) "Stock-raising" has been d from the paragraph, as it might be h give exemption to such bodies as

astoral interests are adequately the clause as it stands. reference to the carrying on of a

- (a) the revenue of a municipal corporation or other local governing body or of a public authority;
- (d) the income of a religious, scientific, charitable or public educational institution;
- (c) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or a State relating to the settlement of industrial disputes;
- (b) the income of a society registered under a Friendly Societies Act of the Commonwealth or a State and not carried on for the purposes of profit or gain to the individual members thereof;
- (k) the income of any society or association established for musical purposes, or for the encouragement of music, art, science or literature, and not carried on for the purposes of profit or gain to the individual members thereof;
- (j) the income of any society or association not carried on for the purposes of profit or gain to the individual members thereof, established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing or industrial resources of Australia to the extent to which the income is not derived from a trade or business carried on by the society or association, or from services rendered by the society or association to any person for reward;
- (u) the income of a savings bank conducted exclusively for the benefit of depositors.
- (f) the income of a provident, benefit or superannuation fund established for the benefit of the employees in any business or class of business and the income of a fund established by any will or instrument of trust for public charitable purposes if the Commissioner is satisfied that the particular fund is being applied to the purposes for which it was established;
- (t) the income of any fund established for the purpose of enabling scientific research to be conducted either by or in conjunction with a public university or public hospital to the extent to which the Commissioner is satisfied that the income of the fund is being applied for scientific research so conducted; and

business by the association has been deleted, as it might be held that societies, such as agricultural societies, were taxable

on the income derived from their agricultural shows. This was never the intention of the law.

- (k) interest on bonds, debentures, stock or other securities of the Commonwealth issued for the purpose of Commonwealth Loans where that interest has been declared by the prospectus to be free from Commonwealth income tax;
- (l) pensions paid under the *Australian Soldiers' Repatriation Act* 1920-1934, and wounds and disability pensions of the kinds specified in sub-section (2.) of section sixteen of the *Finance Act* 1919 of the United Kingdom;
- (m) the income received by way of periodical payments in the nature of alimony or maintenance, by a woman from her husband or former husband: Provided that for the purpose of making such payments the husband, or former husband, has not divested himself of any income producing assets, or diverted from himself income upon which he would otherwise have been liable to tax; <sup>(a)</sup>
- (n) income derived prior to the first day of July, One thousand nine hundred and thirty-seven, directly and in the first place from primary production, mining or fisheries in the Northern Territory of Australia by a resident of that territory; <sup>(b)</sup>
- (o) the income derived by a resident of any Territory or Island in the Pacific Ocean, other than New Zealand, <sup>(c)</sup> which is governed, controlled, or held under mandate by the Government of any part of the British Empire, or by a condominium in which any part of the British Empire is concerned, from the sale in Australia, by or on behalf of that person, of produce of the Territory or Island of which he is a resident;

(a) This provision prevents double taxation, and places payments in the nature of alimony and separation allowance on the same footing. The amount paid will not be allowed as a deduction to the payor, neither will the recipient be taxable on it. The proviso excludes cases where a

husband or former husband creates a trust to secure payments to be made to the wife or former wife, and thus indirectly obtains relief from taxation on that part of his income payable to his wife or former wife. In such circumstances, the recipient will be the person taxed in respect of the

(e) the income derived from the bonds, debentures, stock or other securities of the Commonwealth issued for the purpose of Commonwealth War Loans the interest on which is declared by the prospectus to be free from Commonwealth income tax;

(i) pensions paid under the *Australian Soldiers' Repatriation Act* 1920-1921 and wounds and disability pensions of the kinds specified in sub-section (2.) of section sixteen of the Finance Act, 1919, of the United Kingdom;

**14.**—(3.) A wife living apart from her husband pursuant to a decree, judgment, order or deed of separation which provides that the husband shall periodically pay specified moneys to the wife shall not be liable to be assessed in respect of those moneys.

**5A.**—(1.) This Act shall not apply to any income derived from primary production in the Northern Territory of Australia by a resident of that Territory prior to the first day of July, One thousand nine hundred and thirty-seven.

(2.) In this section—

(a) “Primary production” means the production resulting directly from—

- (i) cultivation of land;
- (ii) maintenance of animals or poultry;
- (iii) mining; or
- (iv) fisheries,

and includes dairy produce manufactured by the person who produced the raw material used in the manufacture of that produce; and

(b) “income derived from primary production” means income which is derived directly and in the first place from primary production.

**14.**—(1.) *The following incomes, revenues and funds shall be exempt from income tax:*

(n) the income derived by a resident of any Territory or Island in the Pacific Ocean which is governed, controlled, or held under mandate by the Government of any part of the British Empire or by a condominium in which any part of the British Empire is concerned, from the sale in Australia by or on behalf of that person of produce of the Territory or Island of which he is a resident;

income from the trust.

(b) The definition of “primary production” contained in section 5A(2) of the present Act is set out in clause 6 of the Bill dealing with definitions.

(c) The words “other than New

Zealand” have been inserted to make the intention of the law clear that New Zealand is not to be regarded as an island in the Pacific Ocean for the purpose of the exemption.

- (p) the income derived by a person from the working of a mining property in Australia or in the Territory of New Guinea principally for the purpose of obtaining gold, or gold and copper, provided that in this case the value of the output of gold is not less than forty per centum of the total value of the output of the mine;<sup>(a)</sup>
- (q) income derived by a *bona fide* prospector from the sale, transfer or assignment by him of his rights to mine for gold in a particular area in Australia or in the Territory of New Guinea. For the purpose of this paragraph, "*bona fide* prospector" means a person, other than a company, who has personally carried out the whole or major part of the field work of prospecting for gold in the particular area, or who has contributed to the expenditure incurred in the work of prospecting and development in that area, and includes a company which has itself carried out the whole or major part of such work;<sup>(b)</sup>
- (r) the proceeds arising from the sale for use outside Australia of iron ore, quarried or mined by the vendor in Australia;
- (s) income derived by a resident from sources out of Australia, where that income is not exempt from income tax in the country where it is derived, or where the taxpayer is liable to pay royalty or export duty in any country, in respect of goods from the sale of which the income is derived;
- (t) income derived by a non-resident from sources wholly out of Australia.

Limitation of exemption.

24.—(1.) Where any income is exempt from income tax, the exemption shall be limited to the specified or original recipient of the income, and shall not extend to persons receiving payments from that recipient, although the payments may be made wholly or in part out of that income.

(a) The exemption in regard to dividends contained in section 14(1)(*la*) has been transferred to the subdivision dealing with dividends (clause 44(2)(c)).

- (l<sub>a</sub>) the income derived by a person from the working of a mining property in Australia or in the Territory of New Guinea principally for the purpose of obtaining gold, or gold and copper provided that in this case the output of gold shall not be less than forty per centum of the total value of the output of the mine—this exemption shall extend to dividends paid by a company out of such income;
- (o) Income derived by a *bona fide* prospector from the sale, transfer or assignment by him of his rights to mine for gold in a particular area.

For the purpose of this paragraph "*bona fide* prospector" means a person who has personally carried out the whole or major part of the field work of prospecting for gold in the particular area and includes any person, other than a company, who has contributed to the expenditure incurred in the work of prospecting and development in that area;

- (s) the proceeds arising from the sale for use outside Australia of iron ore quarried or mined by the vendor in Australia;
- (q) income derived from sources outside Australia—
  - (i) by a resident of Australia to the extent to which that income is, in the opinion of the Commissioner—
    - (1) not exempt from income tax in the country in which the income was derived; or
    - (2) derived from the sale of any produce which is chargeable in the hands of the person deriving that income with royalty or export duty by the Government of any country outside Australia; and
  - (ii) by a person who derives income from sources in Australia which is subject to exemption under paragraphs (g), (h), (l) or (p) of this subsection; <sup>(c)</sup>

15. With respect to income which, under the last preceding section, is exempt from income tax, the exemption shall be limited to the persons specified in that section and shall not extend to the salaries and wages of persons employed by such persons, although such salaries and wages may be paid wholly or in part out of the income, revenues or funds so exempt.

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(b) The definition of "prospector" has been extended to cover a company which

has carried out the prospecting.  
(c) See note (b) on clause 23 (a).

2. The exemption of any income from income tax shall not exempt any person from furnishing any return or information which is required by the Commissioner, or from including in his return such information as is prescribed, or as is required by the Commissioner.

#### Division 2.—Income.

##### *Subdivision A.—Assessable Income Generally.*

**25.**—(1.) The assessable income of a taxpayer shall include—

- (a) where the taxpayer is a resident—  
the gross income derived directly or indirectly from all sources whether in or out of Australia; and
- (b) where the taxpayer is a non-resident—  
the gross income derived directly or indirectly from all sources in Australia,  
which is not exempt income.<sup>(a)</sup>

(2.) Interest upon money secured by mortgage of any property in Australia shall be deemed to be derived from a source in Australia.

Certain items of assessable income.

**26.** The assessable income of a taxpayer shall include—

- (a) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme;
- (b) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust;
- (c) the amount of any annuity, excluding, in the case of an annuity which has been purchased, that part of the annuity which represents the purchase price to the extent to which that price has not been allowed or is not allowable as a deduction in assessments for income tax under this Act or any previous law of the Commonwealth;
- (d) five per centum of the capital amount of any allowance, gratuity or compensation where that amount is paid in a lump sum in consequence of retirement from, or the termination of, any office or employment, and whether so paid voluntarily, by agreement or by compulsion of law: Provided that this paragraph shall not apply in respect of any amount paid or credited by a private company which under any provision of this Act is deemed to be a dividend paid to the recipient.<sup>(b)</sup>

(a) This provision appears in the definition of assessable income in section 4 of the present act.

(b) The provisions of this paragraph

have been extended to include the taxation of amounts received as compensation for the termination of employment, as it is

4. "Income" includes—
  - (a) interest upon money secured by mortgage of any property in Australia; and
4. "Income" includes—
  - (ba) any profit arising from the sale by any person of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme.
16. The assessable income of any person shall include—
  - (b) interest paid or credited to him as a depositor or debenture holder of a company;
  - (c) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust;
4. "Income" does not include—
  - (d) in the case of an annuity which has been purchased— that part of the annuity which represents the purchase price to the extent to which that price has not been allowed or is not allowable as a deduction under the provisions of this Act or of any Act repealed by this Act;
16. The assessable income of any person shall include—
  - (f) five per centum of the capital amount of a retiring allowance or gratuity which is paid in a lump sum;

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considered that the consideration received in such circumstances should be treated in the same manner as retiring allowances and

gratuities. The proviso relates to amounts received under the conditions set out in clause 110.

- (e) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by him, whether so allowed, given or granted in money, goods, land, meals<sup>(a)</sup>, sustenance, the use of premises or quarters<sup>(b)</sup> or otherwise: Provided that this paragraph shall not apply to any allowance, gratuity or compensation which is included in the last preceding paragraph or which under any provision of this Act is deemed to be a dividend paid to the recipient;
- (f) any amount received as or by way of royalty;
- (g) any bounty or subsidy received in or in relation to the carrying on of a business, and such bounty or subsidy shall be deemed to be part of the proceeds of that business;<sup>(c)</sup>
- (h) the amount of any fee or commission received for procuring a loan of money;<sup>(d)</sup>
- (i) any amount received as or by way of bonus other than a reversionary bonus on a policy of life assurance; and
- (j) any amount received by way of insurance or indemnity for or in respect of any loss—
  - (i) of trading stock which would have been taken into account in computing taxable income; or
  - (ii) of profit or income which would have been assessable income,
if the loss had not occurred, and any amount so received for or in respect of any loss or outgoing which is an allowable deduction.<sup>(e)</sup>

Interest on loans  
raised in  
Australia by  
governments  
outside  
Australia.

27.—(1.) The interest on loans raised in Australia, after the thirty-first day of December, One thousand nine hundred and twenty-three, by the government of any country or dominion out of Australia, or by any authority constituted by or under any law of any such country or dominion, and received directly or indirectly by a resident, shall be deemed to be derived by him from a source in Australia, and shall be included in his assessable income.<sup>(f)</sup>

(a) The word "meals" has been included to cover allowances received in the nature of board. It had been thought that allowances in "sustenance" as set out in the present Act covered meals supplied, but the High Court has determined otherwise. It is to be remembered that the cost of such meals is an allowable deduction to the employer.

(b) The clause has been amended to assess an employee in respect of the rental value of a residence provided by an employer for the use of the employee. Under the present Act, an employee is not liable in respect of such an allowance for residence or quarters unless a specific deduction on that account is made from his salary or wages or unless the employee has the right to let the premises and thus convert the advantage into money. It is

considered that income tax should be based upon the true remuneration of employment, including subsidiary benefits arising out of such employment.

It is to be noted that the value to be assessed is the value to the taxpayer. In the case of a residence this would normally be the annual rental value. In the absence of evidence of rental value a reasonable percentage of the capital value would be adopted. If a residence in excess of the requirements of the employee were provided, the full rental value would not be assessed, but only the amount which represented the value to the employee.

In regard to quarters the value fixed under arbitration awards will, generally speaking, be adopted.

The proviso refers to amounts received under the conditions set out in clause 110.

(g) all allowances, gratuities (except retiring allowances and gratuities paid in lump sums), bonuses and premiums whether in money or goods or sustenance or land allowed, given or granted to a person in respect of or for or in relation, directly or indirectly, to any employment or service of such person to the amount of the value of such allowances, gratuities, bonuses and premiums respectively; and

(d) money derived by way of royalty . . .

(d) money derived by way of . . . bonus . . .

25. *A deduction shall not, in any case, be made in respect of any of the following matters:—*

(c) any loss or expense which is recoverable under any contract of insurance or indemnity;

(c) In the definition clause, bounties have been included as income from personal exertion. The inclusion of bounties in paragraph (g) is intended to make it clear that such bounties are assessable income, and further, that they are to be deemed to be part of the proceeds of the business and subject to the same apportionment (if any) between Australia and ex-Australia as the proceeds of the business are subject to.

(d) This paragraph provides for the inclusion of procuration fees as assessable income. A provision is also included in clause 67 to allow a deduction of expenditure incurred in borrowing money used for the production of assessable income. Procuration fees have been held to be

capital expenditure, but there is no good reason why they should not be treated for taxation in the same manner as interest paid or received, as the case may be, in connexion with the borrowing of money.

(e) The provision in the present Act in Section 25(c) is in the negative form, a deduction not being allowed of a loss covered by insurance. It is considered preferable to allow a deduction in the ordinary course of a loss which is otherwise allowable, whether or not covered by insurance, and to bring to account as income any amount received by way of insurance in respect of that loss.

(f) This clause repeats the substance of section 5 of the *Taxation of Loans Act* 1923.

(2.) For the purposes of this section, a loan shall be deemed to have been raised in Australia if subscriptions to the loan were invited in Australia by public advertisement, by the issue of a prospectus, or otherwise.

*Subdivision B.—Trading Stock.*

Trading stock  
to be taken  
into account.

28.—(1.) Where a taxpayer carries on any business, the value, ascertained under this sub-division, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income.<sup>(a)</sup>

(2.) Where the value of all trading stock on hand at the end of the year of income exceeds the value of all trading stock on hand at the beginning of that year, the assessable income of the taxpayer shall include the amount of the excess.

(3.) Where the value of all trading stock on hand at the beginning of the year of income exceeds the value of all trading stock on hand at the end of that year, the amount of the excess shall be an allowable deduction.

Value at  
beginning of  
year of income.

29. The value of live stock and of each article of other trading stock to be taken into account at the beginning of the year of income shall be its value as ascertained under this or the previous Act at the end of the year immediately preceding the year of income.<sup>(a)</sup>

Where  
Commonwealth  
and State  
values differ.

30.—(1.) Where the value of live stock at the beginning of the year of income, as ascertained for the purpose of assessment to income tax under the law of a State, differs from its corresponding value as ascertained under the last preceding section, and it appears to the Commissioner that, if those values were equal, the corresponding values would remain equal in subsequent years, the taxpayer may,

(a) Clauses 28 and 29 effect an alteration in the assessment of Primary Producers, in that they make it compulsory for all live stock on hand at the beginning and at the end of a year to be brought to account. The present Act in section 16 (aa) permits of a Primary Producer electing to

omit from his stock on hand all natural increase bred by him until any of such natural increase is sold. There is a very limited number of taxpayers who have so elected to omit the natural increase, and the recommendation of the Royal Commission is that the provision be deleted from the Common-

**16. The assessable income of any person shall include—**

(a) profits derived from any trade or business and converted into stock-in-trade or added to the capital of or in any way invested in the trade or business:

Provided that for the purpose of computing such profits the value of all live stock (not being live stock used as beasts of burden or as working beasts), and trading stock (not being live stock), not disposed of at the beginning and end of the period in which the income was derived shall be taken into account except where the person otherwise elects, as provided in paragraph (aa) of this section:

- (i) Provided that the value adopted in relation to any article of trading stock as the value of that article as at the end of the period in which the income was derived, shall, for the purposes of the assessment of the person's income derived in the next succeeding period, be deemed to be the value of that article as at the commencement of that next succeeding period; and
- (ii) Provided that the value adopted in relation to any live stock, as the value of that live stock, as at the end of the period in which the income was derived, shall, for the purposes of the assessment of the person's income derived in the next succeeding period, be deemed to be the value of that live stock as at the commencement of the next succeeding period:

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wealth Act in the interests of simplicity and uniformity. The change over will not involve the Primary Producers concerned in any increase of income, as any amount included in an assessment in respect of such live stock on hand at the end of the year will be offset by a corresponding num-

ber of similar live stock on hand at the beginning of the year. Provision is made in clause 35 for this class of Primary Producer to select a value for such natural increase within the limits from which he could have previously made a selection.

subject to this section, take his live stock into account at the beginning of the year of income at a value equal to its corresponding value under the law of the State. (a)

(2.) Where the value at which that live stock is taken into account at the beginning of the year of income exceeds the value as ascertained under the last preceding section, amounts in the aggregate equal to the excess shall be included in the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.

(3.) Where the value of live stock as ascertained under the last preceding section exceeds its value as taken into account at the beginning of the year of income, amounts in the aggregate equal to the excess shall be deducted from the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.

(4.) The amounts referred to in sub-sections (2.) and (3.) of this section and the years in respect of which they are to be taken into account, shall be such amounts and years as are agreed upon by the taxpayer and the Commissioner, and unless and until those amounts and years are so agreed upon, this section shall not apply to the assessment of that taxpayer.

*Value at end of year of income.* 31. The value of each article of trading stock (not being live stock) to be taken into account at the end of the year of income shall be, at the option of the taxpayer, its cost price or market selling value or the price at which it can be replaced.

*Value of live stock at end of year of income.* 32. The value of live stock to be taken into account at the end of the year of income shall be, at the option of the taxpayer, its cost price or market selling value, and where a taxpayer does not exercise his option within the time and in the manner prescribed, the value so to be taken into account shall be the cost price. (b)

(a) Owing to the varying provisions of Commonwealth and State Laws regarding the method of treating live stock for assessment purposes it will be obvious that the values of the live stock on hand at the time the new Act comes into force must in most cases be different for Commonwealth and State returns. In order to get the values into line without prejudicing the taxpayer or one of the Departments concerned, it is necessary to formulate some arbitrary provision to effect the desired result. This has been done by allowing the taxpayer himself to decide which of the two values, the Commonwealth or the State, he desires to retain. If the decision means that in one of the returns the taxpayer writes up the value of his live stock on hand at the beginning of the year and thereby reduces his income, the provision is that there shall

be added to his income in the assessment of the one Department affected, an amount equivalent to the increase in such live stock value. This amount can be spread over one to five years in such instalments as he and the Commissioner may agree upon. If the difference is small, the taxpayer will probably desire the adjustment completely made in one year. Similarly if the decision means that the taxpayer writes down the value of his live stock and thereby increases his income, a corresponding deduction is to be conceded over the same period of years.

In this way the difference in the values of live stock on hand at the inception of the Commonwealth and State uniform Acts can be brought into line without doing violence to the revenue or the taxpayer.

thereby reducing the cost of administration and saving the time of the Commissioner in settling the accounts. It is only natural that the Commissioner should be given the right to make the necessary investigations, and to require all and every person to give him such information and documents as may be necessary for the proper discharge of his functions.

It is also proposed that the Commissioner should be given the power to require any person to furnish him with any information or documents which he may consider necessary for the proper discharge of his functions. This power is intended to apply to every one to whom the Commissioner has a right to make inquiry, and to every document or information which the Commissioner may consider necessary for the proper discharge of his functions. This power is intended to apply to every one to whom the Commissioner has a right to make inquiry, and to every document or information which the Commissioner may consider necessary for the proper discharge of his functions.

For the purposes of this paragraph "Value" means—

16. (a) (i) in the case of trading stock (not being live stock)—the actual cost price or market settling value of each article of trading stock, or the price at which each article of trading stock can be replaced, at the option of the person in respect of each article:

16. (a) (ii) in the case of live stock (not being live stock used as beasts of burden or as working beasts)—the cost price or market selling price at the option of the person which shall be exercised by notice in writing signed by him and delivered by him

It is to be noted that this provision is not a compulsory one, but is left optional to the taxpayer. If he prefers to continue with the present arrangement whereby both he and the Department are bound to keep two sets of live stock accounts for Commonwealth and State purposes he is at liberty to do so. He may, of course, prefer to maintain two differing sets of values temporarily, till such time as the varying number of his live stock makes the transition an easier one. The onus is placed entirely upon the taxpayer to decide whether he wants the simplification and uniformity in his return by adopting one set of figures.

(b) The only variation from the present practice made in this clause is a provision that if the taxpayer fails to exercise his

option, the Department adopts the cost price. This is the option that most taxpayers elect. In the administration of such sections as these a great deal of time and postal expense has been wasted because of the indifference of taxpayers to Departmental communications. The provision inserted will automatically bring any delay to a definite conclusion by imposing this time limit.

In the case of taxpayers who have made an election under the previous Act as to the basis of valuation of their live stock, the clause does not give them any automatic right to a new election, as, under clause 33, where live stock has been previously taken into account the basis then adopted must be continued, unless altered with the leave of the Commissioner.

Provided that, where a taxpayer satisfies the Commissioner that there are circumstances which justify the adoption by him of some value other than cost price or market selling value for the whole or part of his live stock, he may, with the leave of the Commissioner, adopt that other value. (a)

Changes in  
basis of  
valuation of  
live stock.

33. A taxpayer shall not, except with the leave of the Commissioner, adopt a basis of valuation of his live stock taken into account at the end of the year of income different from the basis on which the valuation of his live stock was made when it was last taken into account at the end of a previous year, whether under this or the previous Act. (b)

Cost price of  
natural increase.

34.—(1.) The cost price per head of natural increase of any class of live stock of a taxpayer shall be—

- (a) where the cost price of natural increase of that class has been previously taken into account under this Act by the taxpayer—the cost price per head at which natural increase of that class was last taken into account unless, with the leave of the Commissioner, the taxpayer selects another cost price; (c) and
- (b) where the cost price of natural increase of that class has not been previously taken into account under this Act by the taxpayer—the cost price selected by him within the limits prescribed in respect of live stock of that class. (d)

(2.) Where a taxpayer does not so select within the time and in the manner prescribed he shall be deemed to have selected, as the cost price, the lower of the prescribed limits. (e)

(a) This is a new provision which makes it possible for a taxpayer with the Commissioner's consent to adopt a value other than cost or market. The occasion for this only arises in particular circumstances; e.g. a trust estate where, for trust accountancy purposes, probate values have to be retained; or a company, adopting a uniform standard value.

(b) This is a new provision to give greater elasticity than now exists for a taxpayer to change his basis of values. An occasion for such a change might arise when a partnership is created and the various members desire to change from market to cost, or vice versa. Provided the Commissioner is satisfied that the reason is a genuine one and that the revenue will

not be prejudiced by the change, the necessary leave would be readily given.

(c) This clause also gives greater elasticity than does the present Act by making it possible in the future for a taxpayer to change his selected value for natural increase with the Commissioner's consent. The consent would not be withheld unless revenue would be prejudiced by the change.

(d) The effect of this clause is to give every live stock owner who has adopted cost price as the basis of valuation, the right of a new selection for the cost price of any future natural increase. A new range of values has been agreed upon by the Commonwealth and State representatives of the Taxation Conferences with a view to obtaining uniformity between the

at the office of the Commissioner on or before the prescribed date.

Provided also that any option exercised in pursuance of this sub-paragraph for the purposes of an assessment for the financial year beginning on the first day of July One thousand nine hundred and twenty-four or any subsequent year, shall be irrevocable and shall, if the person, in the notice of his option, so requires, apply to the assessment of his income tax for the financial year beginning on the first day of July One thousand nine hundred and twenty-three and shall apply to the assessment of the person's income derived in the period in respect of which the option is exercised and to assessments in respect of all subsequent periods.

**16. (a) (ii)** The cost price in relation to natural increase of live stock shall be the value per head of the live stock selected by the person within the limits prescribed and the value so selected shall be used for the purposes of the assessment of the financial year beginning on the first day of July One thousand nine hundred and twenty-three and of all subsequent years.

Commonwealth and States. The present and proposed ranges as affecting the Commonwealth taxpayers are:—

**THE LIMITS WITHIN WHICH A TAXPAYER MAY SELECT THE COST PRICE IN RELATION TO NATURAL INCREASE.**

ANNUAL INCREASE	THESE LIMITS			
	Sheep.	Cattle.	Horses.	Pigs.
£ s. d.				
PRESENT LIMITS.				
Minimum value	0 2 0	6 0 0	0 10 0	0 15 0
Maximum value	0 10 0	5 0 0	3 0 0	0 5 0
PROPOSED LIMITS.				
Minimum value	0 4 0	0 1 0	0 1 0	0 0 5 0
Maximum value	1 0 0	10 0 0	10 0 0	1 0 0

The proposed ranges will be subsequently prescribed by regulations. The provisions

in clauses 32, 33 and 34 are elastic enough to permit of any primary producer using a value for his natural increase even lower or higher than the limits to be prescribed, when the facts are such that a lower or higher price can be established. In the case of stud live stock it has always been the practice of the Department to concede a higher value where such is asked for.

Nothing in this clause is to be taken to override clause 29, which provides for the value at the beginning of the year of income to be the closing value of the immediately preceding year. The new election of a cost price applies only to natural increase born during and after the first year of income to which the new Act will apply.

(e) The need for the insertion of this time limit is the same as explained in the notes to clause 32.

Omission of natural increase under previous Act.

35.—(1.) Where under the previous Act, a taxpayer elected to omit from the account of his stock-in-trade the value of natural increase of his live stock, the value of the natural increase omitted in pursuance of that election and on hand at the beginning of the first year to the income of which this Act applies, shall be taken into account as trading stock on hand at the beginning of that year.(a)

(2.) The value at which natural increase shall be so taken into account shall be—

(a) where the taxpayer had exercised under the previous Act an option to value live stock at market selling price—the market selling price as at the beginning of the year;

(b) where the taxpayer had exercised under the previous Act an option to value live stock at cost price—a value per head selected by the taxpayer, within the limits prescribed, as cost price for natural increase under the previous Act, by regulations in force immediately preceding the commencement of this Act, or where he does not so select within the time and in the manner prescribed—the lower of those prescribed limits.

(3.) The value per head ascertained as the cost price of natural increase under paragraph (b) of sub-section (2.) of this section shall, unless altered with the leave of the Commissioner, apply also to natural increase of the first year of income to which this Act applies and of all subsequent years.

Disposal of assets of a business.

36.—(1.) Subject to this section, where the whole or any part of the assets of a business carried on by a taxpayer is disposed of by sale or otherwise howsoever, whether for the purpose of putting an end to the business or any part thereof or not, and the assets disposed of include any property being trading stock, standing or

(a) The reason for the insertion of this clause is explained in the notes to clauses 28 and 29. It is intended to place the primary producer, who previously did not take the natural increase into account, on the same footing for future years with the primary producer who did. Since he has now to bring his livestock to account, provision has been made to give him a deduction for live stock brought forward at the

time of changing over, since to include in the assessment live stock on hand at the end of the year without at the same time giving a deduction for the live stock on hand at the beginning of the year, would result in assessing such a primary producer on more than a normal year's income. As far as possible, however, he is to be put in no better position than the primary producer who formerly did bring his live

**16. (aa)** Notwithstanding anything contained in paragraph (a) of this section, an owner of live stock may elect to omit from the account required by that paragraph the value of all natural increase of live stock owned by him, and born during the year in which the income is derived, and shall not be assessed for income tax in respect of that natural increase except to the extent to which he has disposed of it. The owner of the live stock shall give notice of his election, in writing, in the prescribed form signed by him, and deliver it at the office of the Commissioner on or before the prescribed date. The election specified in any notice given in pursuance of this paragraph for the purposes of an assessment for the financial year beginning on the first day of July One thousand nine hundred and twenty-four or any subsequent year shall be irrevocable, and shall, if the owner in the notice of his election so requires, apply to the assessment of his income tax for the financial year beginning on the first day of July One thousand nine hundred and twenty-three and shall apply to the assessment of income derived in the period in respect of which the election is made and to assessments for all subsequent periods. Any live stock acquired by any person by the natural increase of his stock, which natural increase the person has elected to omit from the account required by paragraph (a) of this section, shall not be brought to account until the year in which that natural increase of the live stock so acquired is sold or otherwise disposed of by the person;

**16. (h)** in the case of any person who sells or otherwise disposes of to another person (otherwise than by way of testamentary disposition)—

(a) either as a whole or in separate parts, the whole of the assets of a business carried on

stock to account. If, under the present Act, his election has been, for his other live stock, to use the cost price, the range of values from which his selection is to be made for natural increase, is limited to the same range that exists under the present Act. He is not to be given the option of any further selection from the proposed new range of cost prices for natural increase as is the case of other live stock owners. Moreover,

if his election under the present Act has been to use market values and not the cost price, he is to continue with market values for all his live stock. It will still, however, be permissible for him to alter his selected value for the cost price of natural increase, or to alter the basis generally of the value for all his live stock, for any good and sufficient reasons, if the Commissioner approves of the change, as explained in the notes to the preceding clauses.

growing crops or crop-stools, the value of that property shall be included in his assessable income, and any person acquiring that property shall be deemed to have purchased it at the amount of that value.<sup>(a)</sup>

(2.) Where a taxpayer, after the beginning of the first year to the assessment of the income of which this Act applies, sells the whole of a business carried on by him—

- (a) for the purpose of putting an end to that business; or
- (b) in consequence of the acquisition or resumption of land, used by him for that business, under the provisions of any Act or State Act which contains provisions for the compulsory acquisition or resumption of land,

the value of any live stock included in the sale, being natural increase bred by him which was on hand at the beginning of that first year, and which was, in the opinion of the Commissioner, ordinarily used by him in that business for breeding purposes, shall not be included in his assessable income, and no deduction shall be allowed to him in respect of any such live stock, and no such live stock shall be taken into account in computing his taxable income.<sup>(b)</sup>

(3.) For the purposes of this section, the value of any property or live stock shall be—

- (a) the price specified in any contract of sale or arrangement as the price at which it was disposed of; or
- (b) if a price is not so specified in any such contract or arrangement—
  - (i) the market value of the property or live stock on the day of the disposal; or
  - (ii) if in the opinion of the Commissioner there is insufficient evidence of the market value on that day—the value which in his opinion is fair and reasonable.

(a) The variations from the present Act covered by this clause are:—

- (i) Growing crops and crop-stools are brought into the category of trading stock in the case of sale or disposal. This results in the purchaser obtaining a deduction for the purchase price as well as the vendor being taxed upon it.
- (ii) Assets in the nature of trading stock disposed of by testamentary disposition are specifically dealt with in clause 37.
- (iii) In a business of primary production working beasts and beasts of burden are treated as trading stock—see definition of "live stock" in clause 6.
- (iv) The exemption relating to profits made on the sale of live stock used for breeding purposes is withdrawn.

The removal of the exemption under (iv) above is in accordance with the recommendation of the Royal Commission, which gave very serious consideration to this item of the exemption in the interests of Commonwealth and State uniformity. The Royal Commission pointed out that when breeding stock is sold in the ordinary course of business, the proceeds of the sale are included in the taxpayer's assessable income in the usual manner. The exemption of profit on the sale of breeding stock sold for the purpose of putting an end to a business, or a part of a business, rests on the argument that the breeding stock is equivalent to plant, and that when the breeding stock is sold, the proceeds represent the realization of a capital asset. To this the Royal Commission replies that when the breeding stock is purchased, the purchase cost is allowed as a deduction; similarly in the case of breeding stock which is bred by the taxpayer, he receives

by him, for the purposes of putting an end to the business; or

(b) part of the assets of a business carried on by him, for the purpose of putting an end to a part of the business; or

(c) any assets of a business, carried on by him, for any purpose not mentioned in the last two preceding sub-paragraphs,

and the assets so sold or disposed of included any trading stock or live stock (not being live stock which, in the opinion of the Commissioner or a Deputy Commissioner, were ordinarily used by that person as beasts of burden or as working beasts)—

(1) if an amount has been specified in any contract of sale or in any other arrangement as the price at which such trading stock or live stock was sold or otherwise disposed of—

the amount so specified;

(2) if an amount has not been specified in any contract of sale or in any other arrangement as the price at which such trading stock or live stock was sold or otherwise disposed of—

the market value of the trading stock or live stock ruling on the day on which the sale or other disposal was made; or

(3) if the provisions of item (1) of this paragraph are not applicable, and the Commissioner is of the opinion that there is no evidence or that there is insufficient evidence of the

a deduction of the working expenses of the station property incurred in rearing live stock. The view of the Royal Commission is that live stock possesses the characteristics of a fixed asset and a trading asset, and though an animal may be acquired primarily for breeding or wool-growing purposes, its ultimate sale is by no means a minor consideration. No justification therefore exists for a continuance of the concession, as in all cases the full cost of every head of stock purchased or reared has been allowed as a deduction, and the recommendation of the Royal Commission is that the proceeds of breeding stock sold upon the realization or discontinuance of a business, from any cause whatsoever, should be included in the assessable income of the taxpayer. The profit on the trading stock realized by a merchant in similar circumstances is not exempted from taxation. The State Ministers in conference all supported the recommendation of the Royal Commission.

The elasticity provided by the revised live-stock clauses has been made possible only on the assumption that the ultimate

profit or loss on the sale of live-stock would be brought to account.

(b) This clause is a limited continuation of the present concession of exempting the profits on the sale of breeding stock disposed of for the purpose of putting an end to a business. The concession is limited in its application to live stock used for breeding purposes, which are the natural increase bred by the taxpayer and on hand at the beginning of the first year to which this Bill applies. The insertion of this clause is to remove any hardship which might be caused to a grazier who, by reason of the selection of a low value for natural increase in the light of the past exemption, might be assessed on an excessive income in one year, as the result of a clearing-out sale. The clause will cease to have any effect so soon as the natural increase on hand at the beginning of the first year are no longer in existence, or have been sold by the taxpayer. Clauses 34 and 35 give a taxpayer the right of selecting a higher value for future natural increase if he desires it.

(a) The provision for separating the value of the wool from the sheep is no longer necessary in view of the withdrawal

of the exemption in respect of the sheep themselves.

(b) The number of occasions in which

actual market value of the trading stock or live stock—  
the amount which, in the opinion of the Commissioner, fairly represents the market value ruling on the day on which the sale or other disposal was made:

Provided that the assessable income of the person who has so sold or disposed of assets for the purpose of putting an end to the whole of a business carried on by him, or in consequence of the acquisition or resumption of land, used by him for a business carried on by him under the provisions of any law of the Commonwealth or a State which contains provision for the compulsory acquisition or resumption of land, shall not include any amount in respect of any live stock, included in the assets so sold or disposed of which, in the opinion of the Commissioner or a Deputy Commissioner, were ordinarily used by that person for breeding purposes except that, when such live stock includes sheep in the wool, there shall be included in the assessable income of that person the amount which, if the provisions of sub-sections (2.) and (3.) of section seventeen of this Act were applied, would be or would be deemed to be the price or value of the wool as distinct from the sheep, (a) but not exceeding the excess, if any, of the sale price of the sheep in the wool over the value at which those sheep were brought to account at the end of the year immediately preceding that in which the sale took place or, if they were purchased after the end of that year, over the purchase price of those sheep.

Provided further that, notwithstanding anything contained in this section or in section twenty-three of this Act, no deduction shall be allowed to any person on account of live stock sold or disposed of by him in respect of which, by virtue of the last preceding proviso, any amount has been excluded from his assessable income.

**17.—(1.)** Where sheep in the wool are sold or otherwise disposed of by one person to another person, the sale or disposal may, at the option of the purchaser to be declared upon making his return, for all purposes in connexion with the assessment of the income derived by the purchaser, be deemed to be a sale of sheep and wool as distinct from each other. (b) to be declared only when both are had in view

**(2.)** The sale price of the sheep as distinct from the wool shall be or shall be deemed to be such amount, if any, as is specified

this section has been taken advantage of by purchasers is so small that the Royal Commission recommended its excision in

Sale of sheep in the wool.

the interests of simplicity and uniformity. The section is virtually inoperative for practical purposes.

Devolution on  
death.

**37.**—(1.) Where the assets of a business carried on by a taxpayer devolve by reason of his death, and those assets include any property being trading stock, standing or growing crops, or crop-stools, the value of that property shall, subject to this Act, be included in the assessable income derived by the deceased up to the date of his death, and the person upon whom the property devolves shall be deemed to have purchased it at that value.<sup>(a)</sup>

(2.) For the purpose of the last preceding sub-section, the value of the property so to be included shall be the amount which would have been included in respect of that property in the assessable income of the deceased person, under the last preceding section, if he had not died but had disposed of the property on the day of his death for the purpose of putting an end to the whole of a business

(a) This clause sets out more specifically than does the present Act the provisions for the value of trading stock to be taken into account on the death of a taxpayer. The market, i.e., the probate

values, are to be applied to the closing values of trading stock in the return of the deceased taxpayer, and the probate values are also to be used as the opening values for the trustees and beneficiaries.

in the contract of sale in the case of a sale or as specified in any other manner in the case of a disposal otherwise than by sale as the price or value at which the sheep have been sold or disposed of as distinct from the wool, but if no such amount has been so specified, the sale price shall be deemed to be the market value of similar sheep off shears ruling on the day on which the sale or disposal was made, or, if the Commissioner is of the opinion that there is no evidence, or that there is insufficient evidence, of such market value, the sale price shall be deemed to be the amount which, in the opinion of the Commissioner, fairly represents that market value.

(3.) The sale price of the wool as distinct from the sheep shall be or shall be deemed to be the difference between the sale price of the sheep as distinct from the wool as ascertained in accordance with the provisions of sub-section (2.) of this section and—

(a) in the case of a sale—the sale price of the sheep in the wool, or

(b) in the case of a disposal otherwise than by sale—the market value of the sheep in the wool ruling on the day on which the disposal was made as ascertained by the Commissioner, or, if the Commissioner is of the opinion that there is no evidence, or that there is insufficient evidence, of such market value, the amount which, in the opinion of the Commissioner, fairly represents that market value.

**161.** Where any person acquires any trading stock or live stock otherwise than by purchase, in any manner specified in paragraph (h) of section sixteen of this Act he shall be deemed to have purchased that stock and the purchase price shall be deemed to be the amount which under that paragraph is found or determined as the price or value at which that stock was disposed of.

Purchase price  
of trading stock.

If, however, the deceased taxpayer in his return was utilising cost prices for his trading stock, the cost prices can be retained by the trustees and beneficiaries

as the opening and closing values in the respective assessments. In effect, notwithstanding the death of a taxpayer, the business can be treated as a continuing one.

carried on by him and without any price being specified in any contract or arrangement:

Provided that, if the trustee of the estate of the deceased and the beneficiaries (if any) who are liable to be assessed in respect of the income of the business, or of a share in that income, unanimously so agree and give notice of their agreement to the Commissioner at the time and in the manner prescribed, that value shall be the value, if any, at which that property would have been taken into account at the date of the death of the deceased person if he had not died but an assessment had been made in respect of the income derived by him up to that date.

*Subdivision C.—Business Carried on Partly in and Partly Out of Australia.*

Sales by manufacturers.

38. Where goods manufactured out of Australia are imported into and sold in Australia by the manufacturer of the goods, the profit deemed to be derived in Australia from the sale shall be ascertained by deducting from the sale price of the goods the amount for which, at the date the goods were shipped to Australia, goods of the same nature and quality could be purchased by a wholesale buyer in the country of manufacture, and the expenses incurred in transporting them to and selling them in Australia. (a)

Sales by merchants.

39. Where goods are imported into and sold in Australia by a person not being the manufacturer of the goods, the profit deemed to be derived in Australia from the sale shall be ascertained by deducting from the sale price of the goods their purchase price and the expenses incurred in transporting them to and selling them in Australia.

Determination by Commissioner.

40. Where the profit cannot be ascertained under either of the last two preceding sections to the satisfaction of the Commissioner, it shall be deemed to be such amount as the Commissioner determines.

Goods deemed to be sold in Australia.

41. Where a person sells goods by means of anything done by himself when in Australia, or by means of an agent or representative in Australia, and those goods are in Australia or are to be brought into Australia for the purpose, or in pursuance or in consequence, of such sale, he shall be deemed to have sold them in Australia. A sale is deemed to be made by means of a person or of something done when such person or thing done is instrumental in bringing about the sale. (b)

(a) Clauses 38 to 40 are inserted in the Bill for the purpose of standardization with the States, and to make explicit what is already implicit in the Commonwealth law. The insertion of these clauses brings into existence no new principle or practice, since the present Commonwealth principles applied for determining the quantum of taxable profit are governed by the various Court decisions in leading cases, to which these sections have been made to conform.

(b) This clause follows the recommendations of the Royal Commission for the purpose of determining when a non-resident trader, operating through an agent, should be regarded as carrying on business in Australia. Under the various State Taxation Laws the non-resident trader is held liable for tax in this manner on all the sales made through the instrumentality of his agent. It is considered equitable that the non-resident trader, operating through a branch

established in Australia, should be in no more disadvantageous position as regards taxation, than the non-resident trader operating through an agent whether resident or transient. The present Commonwealth practice, though not expressly set out in the law, depends upon two out of the following three transactions occurring in Australia:—

- (a) Place of contract,
- (b) Place of delivery,
- (c) Place of payment.

The Commonwealth test was laid down during the war to meet the difficulties of Australian representatives of Empire businesses trading with Australia in competition with foreign countries. It was based upon decisions of the English Courts. It is quite obvious that by arranging for two out of three transactions to take place outside Australia, taxation can be avoided, and for this reason the test of "instrumentality" adopted by the States is considered preferable.

Ex-Australian profits.

**42.** In any case, not specified in the preceding sections of this subdivision, where—

- (a) by reason of the manufacture, production, or purchase of goods in one country and their sale in another;
- (b) by reason of successive steps of production or manufacture in different countries; or
- (c) by reason of the making of contracts in one country and their performance in another,

or for any other reason whatever, a question arises whether any, and if so what part, of any profit is derived by a person from sources in Australia, the question shall be determined in accordance with the regulations, or if there is no regulation applying to the case, shall be determined by the Commissioner.

Assessable income to include certain profits.

**43.**—(1.) The assessable income of a taxpayer shall include any profit derived by him in the year of income which, under the provisions of this subdivision, is derived or deemed to be derived in Australia and the proceeds of any sale to which this subdivision applies shall not otherwise be included in his assessable income. (a)

(2.) No amount taken into account in ascertaining any such profit, and no expenditure incurred directly or indirectly in or in relation to any such sale, shall be an allowable deduction.

#### *Subdivision D.—Dividends.*

Dividends.

**44.**—(1.) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) shall, subject to this section—

- (a) if he is a resident—include dividends paid to him by the company out of profits derived by it from any source; and
- (b) if he is non-resident—include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

(2.) The assessable income of a shareholder shall not include dividends—

- (a) received from a company that does not carry on business in, or derive income from sources in, Australia;
- (b) paid wholly and exclusively out of one or more of the following:—(b)

  - (i) income derived from sources outside Australia, not being income which under this or the previous Act is or has been assessable income of the company;
  - (ii) profits arising from the sale or compulsory resumption for public purposes of assets not acquired for the purpose of resale at a profit;

(a) The insertion of this clause is purely a drafting provision to bring the profits (as ascertained in accordance with the pre-

ceding clauses) within the term "assessable income" as defined in the opening clauses of the Bill.

16c. Where a taxpayer claims that—

Claims for  
appointment  
of income.

- (a) by reason of the manufacture, production or purchase of goods in one country and their sale in another;
- (b) by reason of successive steps of production or manufacture in different countries; or
- (c) by reason of the making of contracts in one country and their performance in another,

or for any other reason whatever, income is derived partly from sources outside Australia, the question whether any, and if so what part, of the income is derived from sources outside Australia shall be determined in accordance with the regulations, or, if there is no regulation applying to the case, shall be determined by the Commissioner.

16AA.—(1.) The assessable income of a shareholder in a company dividends. (whether the company is a resident or an absentee) shall, subject to this section—

- (a) if he is a resident, include dividends paid to him by the company out of profits derived by it from any source; and
- (b) if he is an absentee, include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

16AA.—(2.) The assessable income of a shareholder shall not include dividends—

- (a) received from a company that does not carry on business in or derive income from sources in, Australia;
- (b) paid after the commencement of this section wholly and exclusively out of—
  - (i) income derived from sources outside Australia, not being income which under this Act is or has been assessable income of the company;
  - (ii) profits arising from the sale or compulsory resumption for public purposes of assets not acquired for the purpose of resale at a profit;

(b) In the revision of the sections relating to dividends, it has been possible to delete those provisions which, whilst neces-

sary in the amending legislation passed in 1934, are inoperative, so far as future years are concerned, through effluxion of time.

- (iii) profits arising from the re-valuation of assets not acquired for the purpose of re-sale at a profit or from the issue of shares at a premium, if the dividends paid from such profits are satisfied by the issue of shares of the company declaring the dividend; or<sup>(a)</sup>
- (iv) undistributed income accumulated before the first day of July, One thousand nine hundred and fourteen, not being income carried forward by the company in its profit and loss account, appropriation account, revenue and expenses account, or any account similar to any of the foregoing accounts, where the dividends are paid before the first day of July, One thousand nine hundred and thirty-six;

- (c) paid out of exempt income derived by a company from the working of a mining property in Australia or in the Territory of New Guinea, to the extent to which the dividends are paid out of such income; or<sup>(b)</sup>
- (d) paid out of income derived by a company from interest specified in paragraph (k) of section twenty-three of this Act, to the extent to which the dividends are paid out of such income.

Extent of liability to tax of certain dividends.

45. Where a company has derived income from interest to which section twenty of the *Commonwealth Debt Conversion Act 1931* applies, or from interest to which sub-section (2.) of section fifty-two of the *Commonwealth Inscribed Stock Act 1911-1932* applies, and has paid in the year of income any portion of that income in dividends to its shareholders, the proportion of each dividend for that year which has been so paid out of such income shall be free from income tax to the same extent as interest to which section twenty of the *Commonwealth Debt Conversion Act 1931* applies.

(a) This paragraph has been revised to make it clear that the shares so issued are

shares in the company declaring the dividend.

- (iii) profits arising from the re-valuation of assets not acquired for the purpose of resale at a profit or from the issue of shares at a premium, if the dividends are paid in the form of shares; or
- (iv) undistributed income accumulated before the first day of July, One thousand nine hundred and fourteen, not being income carried forward by the company in its profit and loss account, appropriation account, revenue and expenses account, or any account similar to any of the foregoing accounts, where the dividends are paid before the first day of July, One thousand nine hundred and thirty-six;
- (c) paid before the commencement of this section, except to the extent to which the dividends would have been included in the assessable income of the shareholder if the assessment had been made under the law in force at the time when they were paid; or
- (d) paid before the thirty-first day of December, One thousand nine hundred and thirty-four, in the form of shares, except to the extent that the paid-up value of those shares would have been included in the assessable income of the shareholder if the assessment of his income had been made under the law in force immediately prior to the commencement of this section.

**14.—(2.)** If a company, which has derived income from the bonds, debentures, stock or securities specified in paragraph (e) of sub-section (1.) of this section, pays in any year any portion of that income in dividends to its shareholders, the exemption under that paragraph shall extend to the proportion of the dividend for that year which has been paid out of such income.

**14.—(4.)** Where a company has derived income from interest to which section twenty of the *Commonwealth Debt Conversion Act* 1931 applies or from discount<sup>(c)</sup> allowed under section seventeen of that Act, or from interest to which sub-section (2.) of section fifty-two B of the *Commonwealth Inscribed Stock Act* 1911-1932 applies, and has credited, paid or distributed in any year any portion of that income in dividends to its shareholders, the proportion of each dividend for that year which has been so credited, paid or distributed out of such income shall be free from income tax to the same extent as interest to which section twenty of the *Commonwealth Debt Conversion Act* 1931 applies.

(b) This paragraph repeats the exemption of dividends, set out in section 14 (1) (la) of the present Act.

(c) The reference to discount in section

14 (4) of the Act has been omitted, as the securities to which the discount related have long since been retired.

## Rebate on dividends.

46.—(1.) Subject to this section, a shareholder shall be entitled to a rebate in his assessment of the amount obtained by applying to that part of the dividends which is included in his taxable income a rate equivalent to—

- (a) the rate of tax payable by him on income from property;  
or
- (b) the rate of tax payable by companies for the year of tax, whichever is the less.

(2.) In determining the rate of rebate any special property tax shall not be taken into account.

(3.) The part of the dividends so included in the taxable income of the shareholder shall be the amount remaining after deducting from the amount of dividends included in his assessable income deductions allowable to him under this Act from income from dividends.

(4.) A shareholder in a company which is a co-operative company within the meaning of Division 9 of this Part shall not be entitled to a rebate in his assessment in respect of dividends paid to him by that company. (a)

## Distributions by liquidators.

47.—(1.) Distributions to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid-up capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

(2.) Those distributions shall, to the extent to which they are made out of any profits or income, be deemed to have been paid wholly and exclusively out of those profits or that income.

## DIVISION 3.—Deductions.

## Allowable deductions.

48. In calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis, and from it there shall be deducted all allowable deductions.

## Successive Deductions.

49. Where by this Act it is provided that any deduction shall be made successively from two or more classes of income, the deduction shall be set off against the income of the first of those classes, and if it exceeds the income of that class the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.

(a) Unlike other companies, co-operative companies are allowed a deduction in respect of profits distributed as dividends

to shareholders (see clause 121(b)). To prevent a double deduction, it is therefore

**16AB.**—(1.) A shareholder shall be entitled to a rebate in his <sup>Rebates on</sup> assessment of the amount obtained by applying to that part of the <sup>dividends.</sup> dividends which is included in his taxable income a rate equivalent to—

- (a) the rate of tax payable by him on income from property;  
or
- (b) the rate of tax payable by companies for the year of tax, whichever is the less.

(2.) In determining the rate of rebate any special property tax shall not be taken into account.

(3.) The part of the dividends so included in the taxable income of the shareholder shall be the amount remaining after deducting from the amount of dividends included in his assessable income the deductions allowable to him under this Act from income from dividends.

**16B.**—(1.) Amounts distributed to shareholders of a company <sup>Distributions by liquidators.</sup> by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid-up capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company.

(2.) Any amount deemed, under the last preceding sub-section, to be a dividend, shall, to the extent to which it represents any income or profits specified, in paragraph (b) of sub-section (2.) of section sixteen AA of this Act be deemed, for the purposes of that sub-section to be a dividend paid wholly and exclusively out of that income or those profits.

**23.**—(1.) In calculating the taxable income of a taxpayer the <sup>Deductions.</sup> total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—

**23A.** Where by this Act it is provided that any deduction shall <sup>Successive</sup> <sup>deductions.</sup> be made successively from two or more classes of income, the deduction shall be set off against the income of the first of those classes, and, if it exceeds the income of that class, the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.

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necessary to provide that shareholders of co-operative companies should not receive a rebate in respect of dividends received by them from such companies.

Deductions in  
case of  
composite  
incomes.

**50.** Where the assessable income is derived from more than one of the following classes of income, that is to say, income from personal exertion, income from property other than dividends, and income from dividends, the following provisions shall apply to all allowable deductions except the statutory exemption:—

- (a) where a deduction relates directly to the income from dividends, it shall be made successively from that income, from the other income from property, and from the income from personal exertion;
- (b) where a deduction relates directly to the income from property other than dividends, it shall be made successively from that income, from the income from dividends, and from the income from personal exertion;
- (c) in all other cases, the deduction shall be made successively from the income from personal exertion, from the income from property other than dividends, and from the income from dividends.

Losses and  
outgoings.

**51.**—(1.) All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income. (a)

(2.) Expenditure incurred or deemed to have been incurred in the purchase of stock used by the taxpayer as trading stock shall be deemed not to be an outgoing of capital or of a capital nature.

(a) The present Commonwealth law permits the deduction of all losses and outgoings, other than those of a capital nature, actually incurred in gaining or producing the assessable income, and prohibits the allowance of money not wholly and exclusively expended for that purpose.

In the course of carrying on a business, there is a class of deduction which, although

properly deductible in arriving at the profit from the standpoint of accountancy, does not survive the test set out above. The disallowance of these deductions has been a source of irritation to taxpayers generally. Under the proposed clause the taxpayer will be allowed a deduction of all losses and outgoings, incurred in gaining or producing the assessable income, or necessarily in-

**23B.** Where the assessable income is derived from more than one of the following classes of income, that is to say, income from personal exertion, income from property other than dividends, and income from dividends, the following provisions shall apply to all deductions allowable under this Act except the statutory exemption:—

- (a) where a deduction relates directly to the income from dividends, it shall be made successively from that income, from the other income from property, and from the income from personal exertion;
- (b) where a deduction relates directly to income from property other than dividends, it shall be made successively from that income, from the income from dividends, and from the income from personal exertion;
- (c) in all other cases, the deduction shall be made successively from the income from personal exertion, from the income from property other than dividends, and from the income from dividends.

**23.—(1.)** In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—

- (a) all losses and outgoings (including commission, discount, travelling expenses, interest and expenses, and not being in the nature of losses and outgoings of capital) actually incurred in gaining or producing the assessable income:

**25.** A deduction shall not, in any case, be made in respect of any of the following matters:—

- (b) domestic or private expenses;
- (e) money not wholly and exclusively laid out or expended for the production of assessable income;
- (h) any loss not connected with or arising out of the production of assessable income, or any capital withdrawn from any business producing income, or any sum used or intended to be used as capital in any business, or any capital used in the improvement of premises occupied for the purpose of any business;
- (j) interest which might have been earned on any capital employed in the production of income, if lent out at interest;

*curried in carrying on a business for the purpose of producing such income, with a provision excluding the right to deduct losses or out-goings of capital, or losses or outgoings incurred in relation to the production of exempt income.*

The object of the amendment is to give legislative effect to a principle which has recently been laid down by the High Court in appeal cases.

There will be some reduction in the field of taxable income from some businesses through allowances, in future, of deductions of such expenditure as Arbitration Court expenses and certain types of legal expenses which have not previously been allowed as deductions.

The Bill also combines in the one clause both the general allowance and the general disallowance sections of the present Act.

Loss on  
property  
acquired for  
profit-making.

**52.** Any loss incurred by the taxpayer in the year of income upon the sale of any property or from the carrying on or carrying out of any undertaking or scheme, the profit (if any) from which sale, undertaking or scheme would have been included in his assessable income, shall be an allowable deduction.

Repairs.

**53.**—(1.) Expenditure incurred by the taxpayer in the year of income for repairs, not being expenditure of a capital nature, (a) to any premises, or part of premises, plant, machinery, implements, utensils, rolling stock, or articles held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose, shall be an allowable deduction.

(2.) Expenditure incurred upon repairs to any premises or part of premises not so held occupied or used shall not be an allowable deduction.

Depreciation.

**54.**—(1.) Depreciation during the year of income of any property, being plant, or articles owned by a taxpayer and used by him during that year for the purpose of producing assessable income, and of any property being plant or articles owned by the taxpayer which has been installed ready for use (c) for that purpose and is during that year held in reserve by him shall, subject to this Act, be an allowable deduction.

(2.) In this section, "plant" includes—

- (a) animals used as beasts of burden or working beasts in a business other than a business of primary production, and machinery, implements, utensils and rolling stock; and
- (b) in a case of a taxpayer who carries on agricultural or pastoral pursuits—also includes fences, dams and other structural improvements on the land which is owned and used by him for the purposes of those pursuits, but does not include improvements used for domestic or residential purposes.

(a) Under the present law, a taxpayer may purchase a property in a state of disrepair, and spend considerable sums in repairs in order to restore it to a habitable condition. It is considered that this expenditure is of a capital nature, and if it

had been incurred before purchase, would have been reflected in the purchase price. The clause will exclude as a deduction repairs of a capital nature, and will thus bring the provision into conformity with the general scheme of the Act.

26.—(1.) Where a loss is made in any year by any person—  
(c) upon the sale of any property the profits (if any) from the sale of which would have been assessable as income of that person, that person shall be entitled to a deduction of that loss from the net assessable income (if any) derived by him in that year.

Deductions of business losses.

23.—(1.) In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—

(d) sums expended by the taxpayer during the year in which the income was derived for repairs to or on that part of any property occupied for the purpose of producing income or from which income is derived or is deemed to have been derived, and for the repair of machinery, implements, utensils, rolling-stock and articles employed by the taxpayer for the purpose of producing income;

25. A deduction shall not, in any case, be made in respect of any of the following matters:—

(f) rent, or value of or cost of repairs to any premises or part of premises not occupied for the purpose of producing income;

23.—(1.) In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—

(e) (i) such sum as the Commissioner thinks just and reasonable as representing the diminution in value per centum by wear and tear<sup>(b)</sup> (not being wear and tear of a kind which may be made good by repairs) during the year in which the income was derived, of any property being plant, machinery, implements, utensils, rolling-stock, beasts of burden, working beasts and articles owned and used by the taxpayer for the purpose of producing income and, in the case of a person carrying on agricultural or pastoral pursuits, fences, dams, and other structural improvements on the land which is owned and used by him for the purposes of those pursuits, but not including improvements used for domestic or residential purposes,

or, at the option of the taxpayer,

(b) Under the present law, depreciation is limited to "Wear and tear" under section 23 (1) (e) (i), but not under the alternative allowance provided by section 23 (1) (e) (ii). Obsolescence under the first-mentioned provision is indirectly allowed, however, when the plant is disposed of.

As revised, the reference to "wear and tear" has been deleted.

(c) Depreciation is at present allowed on plant owned and "used" for the production of assessable income. The Bill extends the allowance to plant installed ready for use for that purpose, and held in reserve.

*Basis of depreciation.*

**55.** In the first calculation of the depreciation to be allowed in respect of any unit of property, an estimate shall be made by the Commissioner of the effective life of the unit assuming that it is maintained in reasonably good order and condition, and the annual depreciation per centum shall be fixed accordingly.

*Calculation of depreciation.*

**56.**—(1.) Subject to this section, the depreciation allowable under this Act in respect of any unit of property shall be—

- (a) the percentage fixed under the last preceding section, or under the previous Act, of the depreciated value of that unit at the beginning of the year of income; or
- (b) at the option of the taxpayer (to be exercised within the time, in the manner, and subject to the conditions prescribed), the percentage so fixed of the cost of that unit.

(2.) The deduction allowable in respect of any unit of property shall not exceed the depreciated value of that unit.

(3.) Where any property has been bought by the taxpayer, no amount paid by him, which has been allowed or is allowable under this or the previous Act as a deduction to him from the assessable income of any year otherwise than on account of depreciation, shall be deemed to be part of the cost of the property.

*Alteration of method of calculation.*

**57.** Where depreciation has been allowed to a taxpayer, whether under this or the previous Act, in respect of any year prior to the year of income, the method of calculating the depreciation to be allowed to him in respect of the year of income shall, unless altered with the leave of the Commissioner, or in the exercise of the option referred to in the last preceding section, be the same as that applied in the last preceding calculation.

(ii) such sum as the Commissioner thinks just and reasonable as representing the diminution in value per centum, during the year in which the income was derived, of any property being plant, machinery, implements, utensils, rolling stock, beasts of burden, working beasts and articles owned and used by the taxpayer for the purposes of producing income, and, in the case of a person carrying on agricultural or pastoral pursuits, fences, dams and other structural improvements on the land which is owned and used by him for the purposes of those pursuits but not including improvements used for domestic or residential purposes.

Provided that the following conditions shall apply in relation to the deduction of sums under sub-paragraph (i) or (ii) of this paragraph:—

(1) Where a deduction has been allowed under paragraph (d) of this sub-section, the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;

(2) In calculating the deduction to be allowed under this paragraph the estimated life of the unit of property in respect of which the deduction is allowable shall be ascertained for the purpose of fixing the diminution in value per centum of that property. The estimated life of the unit of property shall be determined by the Commissioner and shall be his estimate of its reasonably effective life, assuming it is maintained in good order and condition;

Provided further that in ascertaining the sum to be allowed under sub-paragraph (ii) of this paragraph the Commissioner shall determine the estimated remaining life of the particular property under consideration and shall, subject to the last preceding proviso, allow as a deduction in each year of the estimated remaining life the sum obtained by dividing the cost of the property by the number of years of its estimated total life;

**23. (1) (e) (ii) (6)** In calculating the deduction under this paragraph in respect of fences the amount of the value of the fences by reference to which the deduction should be calculated shall not include the amount or the sum of the amounts allowable or allowed as deductions under sub-section (1A.) of this section in the assessments of the taxpayer;

Depreciation  
under  
Commonwealth  
and State Acts.

58.—(1.) Where the depreciated value under this Act of any property at the beginning of the year of income is higher than its depreciated value at that time under a State Act relating to Income Tax, and the Commissioner is satisfied that if those values were equal the corresponding values in each subsequent year would remain equal, the Commissioner may allow, in lieu of the depreciation otherwise allowable, an amount of depreciation calculated as if the depreciated value at the beginning of the year of income under the State Act had been substituted for the depreciated value at that time under this Act. (a)

(2.) Where the last preceding sub-section is applied in any assessment, a further amount of depreciation shall also be an allowable deduction in that assessment, being an amount determined by the Commissioner, which shall not be less than one-tenth part of the difference between those depreciated values at the beginning of the year to the assessment of the income of which this section is first applied, provided that the further amount shall not in any case exceed the amount required to make the depreciated values of the property under this and the State Act equal.

(3.) Where depreciation has been allowed under this section in respect of any property in any assessment of a taxpayer, depreciation shall be allowed under this section in all future assessments of that taxpayer in which depreciation in respect of that property is allowable, until the depreciated value under this Act and the State Act are equal.

Disposal, loss or  
destruction of  
depreciated  
property.

59.—(1.) Where any property of a taxpayer, in respect of which depreciation has been allowed or is allowable under this or the previous Act, is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction, shall be an allowable deduction.

(2.) If that consideration exceeds that depreciated value, the excess, to the extent of the sum of the amounts allowed and allowable in assessments for income tax under this Act and any previous law

(a) This clause has been inserted with a view to the adoption for both Commonwealth and State taxation purposes of uniform allowances for depreciation. This entails the adoption, not only of uniform rates of depreciation, but also of uniform values for plant.

Rates of depreciation are fixed by the Commissioner, and not by the legislature

itself, and action with a view to the arriving at uniform rates for Commonwealth and State purposes is at present being taken.

In order to bring into uniformity existing differences of value used in some States compared with values used for Commonwealth purposes in respect of depreciation allowances, the Bill makes provision for the

(7) Where a taxpayer has, in respect of his assessment for any financial year, exercised his option under this paragraph, he shall not, except with the consent of the Commissioner, have the right to make a further option in respect of that assessment or in respect of his assessment for any subsequent financial year:

23. (1) (e) (ii) (6) Where a person, from whose assessable income a deduction has been made under this paragraph, sells any property in respect of the depreciation of which the deduction was made, there shall be deducted from his assessable income of the year in which the sale was effected the amount (if any) by which the sale price is less than the depreciated value of the property, as at the time of sale, as determined in

adoption as the depreciated value for both Commonwealth and State purposes of the lower of the two values. The difference between that value and the higher value previously adopted by the Commonwealth or the State, as the case may be, will be allowed by the Department concerned as a deduction by way of a further allowance for depreciation, the deduction being spread

over a period not exceeding ten years.

The adoption of uniform allowances for depreciation for Commonwealth and State purposes will considerably simplify the preparation by taxpayers of the depreciation schedules furnished with their returns, and will also facilitate the preparation and check of assessments.

of the Commonwealth in respect of depreciation, shall be included in his assessable income of that year.

(3.) The consideration receivable in respect of the disposal, loss or destruction means—

- (a) in the case of a sale of the property—the sale price less the expenses of the sale of the property;
- (b) in the case of loss or destruction of the property—the amount received or receivable under a policy of insurance or otherwise in respect of the loss or destruction;
- (c) in the case where the property is sold with other assets and no separate value is allocated to the property—the amount determined by the Commissioner;
- (d) in the case where property is disposed of otherwise than by sale—the value, if any, of the property at the date of disposal.

Acquisition of depreciated property.

60.—(1.) Where, either before or after the commencement of this Act, a person has acquired any property in respect of which depreciation has been allowed or is allowable under this or the previous Act, he shall not be entitled to any greater deduction for depreciation than that which would have been allowed to the person from whom the property was acquired if that person had retained it:

Provided that, where under the last preceding section an amount is included in the assessable income of the person selling the property, the person acquiring the property shall be allowed depreciation calculated on the sum of that amount and the depreciated value of the property under this Act at the time of the sale.

(2.) This section shall not apply where the Commissioner is of the opinion that the circumstances are such that depreciation based on the actual consideration given should be allowed.

Property used partly for producing assessable income.

61. Where the use of any property by the taxpayer has been only partly for the purpose of producing assessable income, only such part of the deduction otherwise allowable under section fifty-four or section fifty-nine of this Act in respect of that property as in the opinion of the Commissioner is proper shall be an allowable deduction.(a)

Definition of depreciated value.

62. In this Division “depreciated value” of any unit of property at any time means—

- (a) where depreciation has been allowed or is allowable, under this Act or any previous law of the Commonwealth, in respect of that unit in assessments for any period prior to that time—the cost of the property less the amount of all depreciation so allowed or allowable; and
- (b) where depreciation has not been allowed or is not so allowable—the cost of the property.

(a) In conformity with the general scheme of the Act, depreciation is allowed on property used for the pro-

duction of assessable income. Where property, on which depreciation is allow-

accordance with this paragraph. If the sale price exceeds that depreciated value, the amount of the excess, to the extent of the total sum of the amounts allowed by the Commissioner in any previous assessments, and the amount, if any, allowable in any subsequent assessments, of the income of that person in respect of the depreciation of the property, shall be brought to account as income of that year;

(5) If no separate value is allocated to any property to which this paragraph applies when sold with other assets, or if such property is disposed of otherwise than by sale, the Commissioner shall determine the amount which shall, for the purposes of condition (4) of this paragraph be deemed to be the selling price of that property;

**23. (1)(e)(ii)(3)** Where any property in respect of which a reduction is allowable under this paragraph is acquired from one person by another person the person acquiring that property shall not be entitled to any greater deduction under this paragraph than that which would have been allowed to the person from whom it was acquired if he had retained it. Where, however, the person acquiring the property is not a company in which the transferor is substantially interested as a shareholder, or is not a company, the shareholding interests of which are in substantially the same hands as those of the company from which it was acquired, and the Commissioner is satisfied that the circumstances are such that a deduction under this paragraph based upon the actual amount of the consideration given should be allowed, the deduction calculated on that basis may be allowed;

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able, is used in part only for the production of assessable income, it is necessary to

provide that a proportionate part only of the deduction should be allowed.

## Bad debts.

**63.**—(1.) Debts which are bad debts and are written off as such during the year of income, and—

- (a) have been brought to account by the taxpayer as assessable income of any year; or
- (b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business,

and no other bad debts, shall be allowable deductions.

(2.) If a debtor, after incurring a debt so brought to account, or in respect of money so lent, is adjudicated bankrupt, or executes a deed of assignment or arrangement for the benefit of his creditors, the debt (where, in the opinion of the Commissioner, no amount will be paid on account of the debt) or the amount by which, in his opinion, the amount which will be received on account of the debt will be less than the debt, shall be deemed to be a bad debt.<sup>(a)</sup>

(3.) Where in the year of income a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this or the previous Act, his assessable income shall include that amount.

## Commission.

**64.** Expenditure incurred by the taxpayer in the year of income by way of commission for collecting his assessable income shall be an allowable deduction.

## Payments to relatives.

**65.**—(1.) Subject to this section, payments becoming due in the year of income by a taxpayer to a relative shall be allowable deductions only to the extent to which, in the opinion of the Commissioner, they are reasonable in amount and *bona fide* made in the production of assessable income.<sup>(b)</sup>

(2.) Expenditure incurred, and payments becoming due, by the taxpayer in the year of income in or for the maintenance of his wife or of any member of his family under the age of sixteen years, shall not, whether or not the expenditure was incurred in the production of assessable income, be an allowable deduction.<sup>(c)</sup>

(a) Sub-clause (2) has been inserted to cover the case of bankruptcies and the like, and conforms to the existing practice of the Commissioner.

(b) Sub-clause (1) states in a positive form the prohibition expressed in section

25(h) of the present Act, and makes the provision applicable to relatives (as defined in clause 6).

(c) Sub-clause (2) amalgamates the provisions relating to the cost of maintenance of a taxpayer's family set out in

**23.**—(1.) *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

- (r) debts actually written off as bad debts during the year in which the income was derived to the extent that it is proved to the satisfaction of the Commissioner that such debts are bad debts and are in respect of—
  - (i) amounts which have been brought to account as assessable income by the taxpayer in his return for any year; or
  - (ii) money lent in the ordinary course of the business of the lending of money by a person who carries on that business:

Provided that any amount received at any time in respect of any such bad debts shall be brought into account as income in the year in which that amount is received.

**25.** *A deduction shall not, in any case, be made in respect of any of the following matters:—*

- (g) any bad debts, except those specified in paragraph (r) of sub-section (1.) of section twenty-three of this Act;

**23.**—(1.) *In calculating the taxable income of a taxpayer the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

- (l) sums paid by way of commission for collecting the assessable income;

**23.**—(1.) *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

- (f) the sum actually expended by the taxpayer during the year in which the income was derived for food and for rent of quarters provided for an employee (other than a member of the taxpayer's own family under the age of sixteen years) who is employed exclusively in a business yielding an income to the taxpayer;

**25.** *A deduction shall not, in any case, be made in respect of any of the following matters:—*

- (a) the cost incurred in the maintenance of any taxpayer, his family, or establishment other than as specified in section twenty-three of this Act;

- (k) payments made by husband to wife or by wife to husband unless the Commissioner is satisfied that the payments have been made *bona fide* in the course of business and

sections 23 (1) (f) and 25 (a) of the present Act. No allowance is permitted in respect of the maintenance of a taxpayer's wife (or children under 16 years), notwithstanding the fact that the wife may devote the whole of her time to rendering services in her

husband's business. The husband is required under the common law to provide maintenance for his family, and the family concessional deductions allowed by the Act are in recognition of the domestic responsibilities of the taxpayer.

Contributions  
to pension  
funds.

66. So much of any sum set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions or retiring allowances for his employees as is proportionate, to the extent to which those employees are engaged in producing assessable income of the taxpayer, shall be an allowable deduction where—

(a) the taxpayer is under a legal obligation to set apart or pay that sum; and (b) the rights of the employees to receive the benefits, pensions or retiring allowances are fully secured. (a)

Expenses of  
borrowing.

67. So much of the expenditure incurred by the taxpayer in borrowing money used by him for the purpose of producing assessable income as bears, to the whole of that expenditure, the same proportion as that part of the period for which the money was borrowed which is in the year of income, bears to the whole of that period, shall be an allowable deduction. (b)

Provided that, if the period for which the money was borrowed is not fixed, or exceeds five years, the period of five years from the date on which the money was borrowed shall be deemed to be the period for which the money was borrowed. (c)

Expenses of  
preparing lease.

68. Expenditure incurred by the taxpayer in the year of income for the preparation, registration and stamping of a lease of property to be held by him for the purpose of producing assessable income shall be an allowable deduction. (c)

Timber felled  
upon acquired  
land.

69. Where the taxpayer has acquired land carrying standing timber for the purpose of felling that timber for sale and part of the price paid for the land is attributable to that timber, so much of that part as is attributable to the timber felled in the year of income shall be an allowable deduction. (d)

Timber felled  
under right.

70. So much of the amount paid for a right to fell timber for sale as is attributable to the timber felled during the year of income shall be an allowable deduction.

(a) Contributions to pension funds have been divided in the Bill into two classes, viz., payments made under a legal obligation, and voluntary payments.

The former class would include the contributions made by an employer to a pension fund created by him for the benefit of his employees, where the terms of the trust instrument provide for specific contributions by him to the fund. Under

clause 66, such contributions will be treated as a business deduction, the allowance not to be dependent upon whether the contribution is made out of assessable income or for the benefit of employees who are residents as required under the present Act, but upon the extent to which the contribution is for the benefit of employees engaged in the production of the taxpayer's assessable income.

for services rendered and not in pursuance of an arrangement entered into for the purpose of relieving the husband or wife or both from any liability which would have occurred under this Act if the payments had not been made.

**23.—(1.)** *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

(j) so much of the assessable income which is set aside or paid by an employer of labour as or to a fund to provide individual personal benefits, pensions or retiring allowances for employees as is sufficient under the terms of the constitution of the fund to provide those benefits, pensions or allowances for employees who are residents:

Provided that a deduction shall not be allowed unless the Commissioner is satisfied that the fund has been established or the payment made in such a manner that the rights of the employees to receive the benefits, pensions or retiring allowances have been fully secured:

**23.—(1B.)** Notwithstanding anything contained in this section where any person has acquired land, or any estate or interest in land, carrying standing timber, for the purpose of the felling, removal and sale of that timber, there shall be deducted from the proceeds of the sale in any year of timber removed from the land such proportion of the part of the price paid for the land, estate or interest which represents the value of the timber standing on the land at the date of acquisition of the land, estate or interest, as in the opinion of the Commissioner, is attributable to the timber sold in that year.

Voluntary contributions to pension funds are provided for in clause 78(b), and are treated in the same manner as charitable gifts. A deduction will be allowed, up to the extent of the net income of the year, in respect of voluntary contributions to a pension fund established for the benefit of employees who are residents, or for the benefit of dependants of such employees.

(b) See note (d) referring to clause 26(h).

(c) This clause extends the allowance of business deductions, and will permit of the deduction of expenses, including registration fees and stamp duty, incurred in the preparation of a lease of property held for the production of assessable income.

(d) Section 23 (1B) of the present Act is re-stated in two clauses in order to meet the requirements of the States, which, as a rule, do not allow the deduction set out in clause 69.

Losses by  
embezzlement.  
&c.

71. Where, in the year of income, a loss is incurred by the taxpayer through the embezzlement or larceny by a person employed in the taxpayer's business, of money which is or has been included in the assessable income of the taxpayer, that loss shall be an allowable deduction. (a)

## Rates and taxes.

72.—(1.) Sums paid in Australia by the taxpayer in the year of income for rates which are annually assessed or for State or Federal land tax or for State income tax (other than taxes which are deductible under section seventeen of the *Estate Duty Assessment Act 1914-1928*) for which the taxpayer is personally liable shall be allowable deductions.

(2.) Where a taxpayer in the year of income receives a refund of any amount paid for rates or taxes which has been allowed or is allowable as a deduction to him in any assessment for income tax under this Act or any previous law of the Commonwealth, his assessable income shall include that amount.

Subscriptions  
to associations.

73.—(1.) Where the carrying on of a business from which assessable income is derived by the taxpayer is conditional upon membership of any association, any periodical subscription paid by him in the year of income in respect of that membership shall be an allowable deduction. (b)

(2.) Where an association carries out, on behalf of its members, in the year of income, any activity of such a nature that, if carried out by the taxpayer on his own behalf, its expense would be an allowable deduction to him, any subscriptions, levies or contributions, not exceeding in the aggregate ten pounds ten shillings, paid by him in that year in respect of membership of that association, shall be an allowable deduction, and any such subscriptions, levies or contributions exceeding in the aggregate that amount, shall be an allowable deduction to the extent only of the greater of the two following amounts:

(a) ten pounds ten shillings;

(a) Loss by defalcation is, generally speaking, not deductible under the present Act, since the stolen money is usually income not actually realized though not properly accounted for. The loss, therefore, cannot be regarded as an outgoing incurred in earning it. Under the Bill, it is proposed that a deduction should be allowed of a loss incurred by the taxpayer through the embezzlement or larceny by a person employed in the taxpayer's business of money which forms part of the assessable income of the taxpayer.

(b) Where the carrying on of the taxpayer's business is conditional upon membership of an association, the present Act allows a deduction in full of the subscription paid by the taxpayer. This allowance is continued in clause 73(1) of the Bill.

In other cases, the present Act allows a deduction of that portion of the taxpayer's subscription to a trade business or professional association which is represented by the cost of activities carried out by the association, which, if carried out by the taxpayer himself, would be an allowable

**23.** (1) In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted

(b) all rates which are annually assessed, State and Federal land taxes and State income tax (other than taxes which are deductible under section seventeen of the *Estate Duty Assessment Act, 1914-1928*), for which the taxpayer is personally liable and which are paid in Australia by the taxpayer in the year in which the income was derived. *Provided that, when a taxpayer receives a refund of* *any part of the rates or taxes mentioned in this paragraph, the amount of the refund shall be brought into account as income in the year in which the refund is received;* **25. A deduction shall not, in any case, be made in respect of any of the following matters:**—

(ea) any periodical subscription by a person in respect of his

(iii) any personal subscription by a person in respect of his membership of an association (whether corporate or unincorporate) unless—

- (i) that subscription is expressly allowable as a deduction under any of the provisions of this Act;
- (ii) the carrying on of a business, or the exercise of a vocation or calling, from which assessable income is derived by him is conditional upon such membership; or
- (iii) the association carries out, on behalf of its members, during the year in which the assessable income of the person was derived, any activity of such a nature that, if carried out by that

deduction. In order to obviate the necessity for investigating the extent of the activities of the association in the case of small subscriptions, clause 73(2) provides that subscriptions to such associations up to £10 10s. shall be allowed in full without dissection. Only in respect of subscriptions in excess of such minimum will dissection be necessary.

It is considered that in the case of the small annual subscriptions, the tax involved does not warrant investigation into the activities carried on by the association.

and the disallowance of the subscription causes irritation to taxpayers out of all proportion to the revenue involved.

Sub-clause (3) permits a deduction up to £10 10s. of subscriptions not otherwise provided for, which are paid to trade, business or professional associations. This provision will permit of a deduction, up to the amount specified, of periodical subscriptions paid by taxpayers, including employees, to professional associations and trade unions.

(b) so much of the subscriptions, levies or contributions as bears to the whole, the same proportion as the losses and outgoings incurred by the association in that year in carrying out that activity bear to its total losses and outgoings in that year, not being losses or outgoings of capital or of a capital nature.

(3.) Any periodical subscription, to which the foregoing provisions of this section do not apply, paid by the taxpayer in the year of income in respect of his membership of any trade, business or professional association, shall be an allowable deduction:

Provided that the total deduction allowable under this sub-section in respect of subscriptions to any one association in that year shall not exceed ten pounds ten shillings.

Election expenses of members of Parliament.

74.—(1.) Expenditure incurred in the year of income by the taxpayer in being elected as a member of the Parliament or of the Parliament of a State or, if the taxpayer was a retiring member at the time of the election, the expenditure incurred in the year of income by him in seeking to be re-elected, shall be an allowable deduction. (a)

(2.) When a deduction has been allowed or is allowable under the last preceding sub-section in respect of any expenditure and that expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organization the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount.

Expenses of eradication of pests, &c.

75.—(1.) Expenditure incurred in the year of income by a taxpayer engaged in primary production on any land in Australia in—

- (a) the eradication or extermination of animal or vegetable pests from the land;
- (b) the destruction and removal of timber, scrub or under-growth indigenous to the land;
- (c) the destruction of weed or plant growth detrimental to the land;
- (d) the preparation of the land for agriculture;
- (e) ploughing and grassing the land for grazing purposes; and
- (f) the draining of swamp or low-lying lands where that operation improves the agricultural or grazing value of the land;

shall be an allowable deduction. (b)

(a) Although there is no specific provision in the Commonwealth Act dealing with election expenses, in practice a deduction is allowed in the year of election of election expenses, not in excess of amounts prescribed by the electoral

law, incurred by successful but not unsuccessful candidates for Parliament. The proposed clause, which is in conformity with that recommended by the Royal Commission on Taxation and the Commissioners of Taxation for adoption in

person on his own behalf, its expense would be an allowable deduction to that person under this Act:

Provided that in a case to which this subparagraph applies the person shall be entitled to a deduction of only so much of his subscription as bears to the whole of the subscription the same proportion as the losses or outgoings so incurred by the association in carrying out that activity bear to the total losses and outgoings (not being in the nature of losses and outgoings of capital) of the association for that year;

**23.—(1.)** *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

(q) in the case of a person carrying on primary production on any land in Australia—expenditure incurred by him in any of the following operations:—

- (i) Eradication or extermination of animal or vegetable pests from the land;
- (ii) The destruction and removal of timber, scrub or undergrowth indigenous to the land; the destruction of weed or plant growth detrimental to the land; the preparation of the land for agriculture; ploughing and grassing the land for grazing purposes; and the draining of swamp or low-lying lands, where that operation improves the agricultural or grazing value of land so drained.

both Commonwealth and State Acts, provides that election expenses should be allowed as a deduction to successful candidates, and also to the unsuccessful candidate who was a member at the time of election, and was seeking re-election.

(b) This re-states in slightly different form section 23(1)(q) of the present Act. The definition of "primary production" is set out in clause 6.

Wire and  
wire netting.

76. Where any taxpayer proves to the satisfaction of the Commissioner that—

- (a) he is carrying on agricultural or pastoral pursuits in a district which is subject to the ravages of animal pests; and
- (b) he has expended for, or entered into a contract or undertaking with the government or an authority of a State for the purchase of wire or wire netting for use in the construction or alteration of a fence to prevent animal pests entering upon the land used by him in the production of assessable income,

the following amount shall be an allowable deduction:—

- (c) such amount as the Commissioner is satisfied has been expended by that taxpayer in the purchase of the wire or wire netting placed by him in position on the fence in the year of income; or
- (d) where the taxpayer purchased the wire or wire netting under a contract or undertaking with the Government, or an authority, of a State—the amount paid by him in respect of that wire or wire netting, in the year of income, as purchase money or interest thereon, and the amount, if any, expended by him in that year in placing the wire or wire netting in position on the fence.

Loss in deriving  
exempt income.

77. (1) Where a loss is incurred in the year of income by a taxpayer in carrying on in Australia a business the income from which, if any, would be exempt income (which business is, in this section, called "the exempt business") that loss shall be an allowable deduction. (a)

(a) Section 26(1) of the present Act permits the deduction of a loss incurred in carrying on *any business in Australia*, including a business the income from which is exempt—such as a business of primary production in the Northern Territory or of gold-mining in any part of Australia. In the Bill losses in deriving exempt income

are provided for in clause 77(1).

It is considered that the rule under section 26 of the existing law of offsetting losses against income derived from the exempt business, is the proper rule. This phase of the law was carefully examined by the Royal Commission on Taxation, and in reporting upon it, the Royal Commission

For the purposes of this paragraph "primary production" means the production resulting directly from—

- (1) the cultivation of land; or
- (2) the maintenance of animals or poultry for the purpose of selling them or of selling their bodily produce including natural increase of the animals or poultry;

(1A.) Notwithstanding anything contained in paragraph (a) of the last preceding sub-section, any person who is liable to render a return of income for the purposes of this Act, and who proves to the satisfaction of the Commissioner that—

- (a) he is carrying on agricultural or pastoral pursuits in a district which is subject to the ravages of animal pests; and
- (b) that he has expended money for, or entered into a contract or undertaking with the Government, or an authority, of a State for, the purchase of wire or wire netting for use in the construction or alteration of a fence to prevent animal pests entering upon the land used by him in the production of assessable income,

shall be entitled to a deduction—

- (c) in the assessment of the income derived by him in the year in which he places the wire or wire netting in position on the fence, of such sum as the Commissioner is satisfied has been expended by the person in the purchase of the wire or wire netting so placed and in placing it in position on the fence; or
- (d) in the case of a person who purchased the wire or wire netting under a contract or undertaking with the Government, or an authority, of a State—of the amount paid by him, in respect of that wire or wire netting, in the year in which the income is derived, as purchase money or interest thereon and the amount (if any) expended by him in that year in placing the wire or wire netting in position on the fence.

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pointed out that persons in receipt of exempt income have already had the benefit of not being taxed on it, so that it is not unreasonable to stipulate that they should not receive a further concession at the expense of the general taxpayer by ignoring this exempt income when considering the deduction to be allowed for

losses they have sustained. Sub-clause (3) therefore provides that where losses have been allowed under the clause, any profits derived in the three next succeeding years from the exempt business should be included in the assessable income to the extent of the losses previously allowed against assessable income.

(2.) In calculating the amount of that loss, no deduction may be made which would not have been an allowable deduction if the income (if any) had been assessable income.

(3.) Notwithstanding any other provision of this Act, where a deduction allowable under this section has been made from the income of any of the three years next preceding the year of income, profits derived by the taxpayer from the exempt business in the year of income shall be included in his assessable income, provided that the amount so included shall not exceed the amount, if any, by which the deductions so made from the income of those three years exceed the profits included under this sub-section in the assessable income of those years in respect of those deductions.

Gifts and contributions,

78.—(1.) The following shall, to an extent in the aggregate not exceeding the amount of income remaining after deducting from the assessable income all other allowable deductions except the deduction of losses of previous years and of the statutory exemption, be allowable deductions:—(a)

(a) Gifts of the value of one pound and upwards made by the taxpayer in the year of income to any of the following funds, authorities or institutions in Australia:—

- (i) a public hospital;
- (ii) a public benevolent institution;
- (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions in Australia, or for the establishment of such hospitals or institutions (b), or for the relief of persons in Australia (c) who are in necessitous circumstances;
- (iv) a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants, where the gift is for such research;
- (v) a public university;
- (vi) a residential educational institution affiliated under statutory provisions with a public university, or established by the Commonwealth; and
- (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the

(a) The present test that payment must be made out of the assessable income of the year is removed in the Bill, in view of the comment of the Royal Commission on Taxation that a gift to a charity is not usually decided upon with any immediate reference to the question whether assessable

income, exempt income or capital funds are to be used for that purpose. Under the proposed clause, the deduction will be allowed from whatever source, up to the amount of the net income of the year.

(b) The words "or for the establishment of such hospitals or institutions"

**23.—(1.)** *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

(h) (ii) gifts of One pound and upwards made out of the assessable income derived during the year in which the gifts are made to public charitable institutions in Australia, to public universities in Australia or to colleges affiliated therewith or established by the Commonwealth, or to a public fund established and maintained for providing money for the construction or maintenance by or on behalf of the Commonwealth, a State or a Territory of the Commonwealth, of a public memorial relating to the war which commenced on the fourth day of August One thousand nine hundred and fourteen, if the gifts are verified to the satisfaction of the Commissioner.

For the purposes of this sub-paragraph—

“Affiliated college” means a residential educational institution affiliated under statutory provisions with a public university;

“Public charitable institution” means a public hospital, a public benevolent institution and includes a public fund established and maintained for the purpose of providing money for such institutions or for the relief of persons in necessitous circumstances:

(h) (i) contributions made to the Department of Repatriation or to any public authority for the purpose of being handed over to the Department of Repatriation: (d)

have been added to cover gifts in cases where the hospital or institution is not at the time of the gift established.

(c) The words “in Australia” have been added in the last two lines of the paragraph in order to make the intention of the law clear.

(d) As contributions to the Repatriation Authorities have now practically ceased, it is considered that there is no useful purpose served by retaining the provision set out in section 23(1)(h)(i) of the present Act.

war which commenced on the fourth day of August, One thousand nine hundred and fourteen.

- (b) Sums which are not otherwise allowable deductions and which are set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions or retiring allowances for employees who are residents and are engaged in his or any business or class of business, or dependants of such employees, if the rights of the employees or dependants to receive the benefits, pensions or retiring allowances are fully secured.(a)
- (c) Sums which are not otherwise allowable deductions, and which are paid by the taxpayer during the year of income as retiring allowances or pensions to persons who are or have been employees or dependants of employees, where such persons are residents, shall, to the extent to which in the opinion of the Commissioner those sums are paid *bona fide* in consideration of the past services of the employees in any business of the taxpayer, be allowable deductions.(b)
- (d) Calls on shares in a mining company or syndicate carrying on mining operations in Australia for gold, silver, base metals, rare minerals or oil, or in any company carrying on afforestation in Australia as its principal business.(c)

(a) See note referring to clause 66.  
 (b) Under the present law, there is no specific provision for the deduction of pensions paid to individual employees, and not to a pension fund. It is the practice of the Commissioner to allow a deduction of pensions and retiring allowances paid to

employees where it is an established practice in the business for such payments to be made, but not otherwise. It is now proposed to make specific provision for the deduction of pensions and retiring allowances paid to employees or dependants of employees, where the Commissioner is of

Provided that the value of the contribution if in kind shall be verified to the satisfaction of the Commissioner;

(p) so much of the assessable income as the Commissioner is satisfied has been donated by the taxpayer for research into the causes, prevention or cure of disease in human beings, animals or plants, to any authority in Australia which the Commissioner is satisfied is a public authority engaged in such research;

23. (1) (j) Provided also that if the Commissioner is satisfied that any part of the assessable income of a person has been so set aside or paid by that person to provide individual personal benefits, pensions or retiring allowances to employees (who are residents) in any business or class of business, the person setting aside or paying the sum shall be entitled to deduct it;

23.—(1.) *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

(i) so much of the assessable income as is paid in calls on shares in a mining company or syndicate carrying on mining operations in Australia for gold, silver, base metals, rare minerals or oil, or in any company carrying on afforestation in Australia as its principal business:

Provided that, when any such shares are acquired and sold in circumstances which cause the proceeds of sale to be assessable income, the amount allowable as a deduction in respect of the cost of acquisition of those shares or in respect of their value at the commencement of the period in which the sale was made shall not be greater than the excess (if any) of that amount over the amount or the total of the amounts

opinion that the payments are made bona fide in consideration of the past services of the employees in the taxpayer's business.

(c) As in the case of charitable gifts, the reference in section 23(1)(i) of the present Act to payments out of the

assessable income has been deleted, and the test of payments up to the amount of the net income of the year has been substituted. The proviso to the present section is embodied in a general provision dealing with double deductions, set out in clause 82.

## Concessional deductions.

(2.) For the purposes of this section "gift" shall not include a gift in kind—(a)

(a) unless it was purchased by the taxpayer within twelve months immediately preceding the making of the gift; or

(b) to an extent greater than the sum paid by him for the gift.

79. The following amounts (in this Act called "the concessional deductions") shall be allowable deductions where the taxpayer is a resident—(b)

(a) The sum of fifty pounds in respect of the spouse of the taxpayer, or where the taxpayer is a widower, in respect of a female relative having the care of any of his children who are under sixteen years of age, if the spouse or relative is a resident and is wholly maintained by the taxpayer. For the purpose of this paragraph, the spouse or relative shall be deemed to be wholly maintained by the taxpayer if the separate net income derived from all sources by the spouse or relative in the year of income does not exceed fifty pounds and the taxpayer contributes to the maintenance of the spouse or relative, and not otherwise. (c)

Provided that, if that spouse or relative is wholly maintained by the taxpayer during part only of the year of income, the deduction allowable shall be such part of the sum of fifty pounds as, in the opinion of the Commissioner, is reasonable in the circumstances;

(b) The sum of fifty pounds in respect of each child who is a resident and is under the age of sixteen years at the beginning of the year of income and is wholly maintained by the taxpayer; (d)

Provided that, where a child is born during the year of income, or attains the age of sixteen years during the year, or is wholly maintained by the taxpayer during part only of the year, or is only partially maintained by

(a) The allowance as a deduction of gifts in kind is at present limited to gifts acquired out of the assessable income of the year. With the removal of that test, provision is now made under the Bill for the allowance of gifts in kind purchased within twelve months preceding the making of such gifts.

(b) The Royal Commission on Taxation expressed the view that the concessional deductions granted in recognition of

domestic responsibilities affect the great majority of taxpayers, and absence of uniformity between Commonwealth and State practice in regard to them accounts for many of the complexities which confuse taxpayers. In preparing this Bill, an endeavour has been made to arrive at an agreement with the States in regard to the nature, conditions and amounts of the concessional deductions, so far as the revenue requirements of the various Governments permit.

allowed or allowable as deductions under this paragraph in respect of calls paid by the taxpayer upon those shares;

23. (1) (h) (ii) "Gift" means a gift in the form of money or a gift in kind when the Commissioner is satisfied that the donor has used part of his assessable income of the year for the acquisition of the gift;

23.—(1.) *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

(k) the sum of Fifty pounds in respect of each child who is under the age of sixteen years at the beginning of the financial year in which the income was received, wholly maintained by any taxpayer who is not an absentee;

(c) In the interests of uniformity, the Bill provides for a deduction by the Commonwealth of £50 in the case of a wife wholly maintained by her husband (or vice versa). The spouse shall be deemed to be wholly maintained if the separate net income of the spouse does not exceed £50 per annum, and the taxpayer contributes to the maintenance of the spouse. The deduction is also extended to a widower who wholly maintains a female relative for the purpose of caring for his children

under sixteen years of age.

(d) The present allowance in respect of children is continued. Where a child has been wholly maintained for portion of the year only, a deduction is at present allowed by the Commissioner of a proportionate amount of the deduction. It is proposed to provide in the law for the continuance of a proportionate deduction in such circumstances; and also where the child is only partially maintained during the whole or part of the year.

him during the whole or part of the year, the deduction allowable shall be such part of that sum as, in the opinion of the Commissioner, is reasonable in the circumstances;

- (c) Payments not exceeding fifty pounds in the aggregate made by the taxpayer in the year of income to any legally qualified medical practitioner, nurse or chemist, or public or private hospital, in respect of any illness of or operation upon the taxpayer or his spouse or any of his children under the age of twenty-one years, if the spouse or child is a resident; <sup>(a)</sup>
- (d) Payments not exceeding twenty pounds in the aggregate made by the taxpayer in the year of income for funeral and burial or cremation expenses arising out of the death of his spouse, or of any of his children under the age of twenty-one years, if the spouse or child was, at the time of death, a resident, to the extent to which those expenses are not recouped to him by any society or association; <sup>(b)</sup> and
- (e) Payments made by the taxpayer in the year of income, not exceeding in the aggregate one hundred pounds, and being—<sup>(c)</sup>
  - (i) premiums or sums for insurance on the life of the taxpayer or of his spouse or children, or for a deferred annuity or other like provision for his spouse or children; or

(a) Under the present law the deduction of medical expenses is limited to taxpayers whose net income does not exceed £900. In accordance with the recommendation of the Royal Commission, it is proposed to remove the income limitation and allow a deduction for medical expenses incurred by the taxpayer up to a maximum of £50.

(b) As in the case of medical expenses, it is proposed to remove the income limita-

tion, the maximum allowance for funeral expenses incurred by the taxpayer not to exceed £20 as at present. The deduction has also been extended to include cremation expenses.

(c) Under the present Commonwealth law the deduction for life assurance premiums is limited to a maximum amount of £50, and insurance must have been effected in Australia. The deduction for payments to a Superannuation Fund is

## 23. (1)—

(o) such part of the assessable income of a taxpayer who is a resident and whose net income does not exceed Nine hundred pounds—

- (i) as is paid by him to any legally qualified medical practitioner, public or private hospital, nurse or chemist in respect of any illness of, or operation upon the taxpayer or his wife or any of his children under the age of twenty-one years;
- (ii) not exceeding in the aggregate the sum of Twenty pounds as is paid by him to any undertaker for funeral and burial expenses arising out of the death of the wife of the taxpayer or of any of his children under the age of twenty-one years.

For the purposes of this paragraph "net income" means the residue of the assessable income of the taxpayer after allowing all other deductions allowed by this Act except the deductions under section twenty-four and paragraph (g) of sub-section (1.) of this section;

## 23. (1)—

(c) every premium or sum paid by the taxpayer during the year in which the income was derived on the insurance on his own life or that of his wife or children or for a deferred annuity or other like provision for his wife or children or in respect of any fidelity guarantee or bond which the taxpayer is required to provide in the exercise of his business:

Provided that in no case shall any deduction be allowed under this paragraph beyond the sum of Fifty pounds in the aggregate or for any premium or sum paid in respect of any insurance, annuity or other provision effected outside Australia;

limited to a maximum amount of £100 and the fund must be established in Australia. There is also, in the case of payments to superannuation Funds, an income limitation of £800.

Based on the recommendation of the Royal Commission it is proposed that these payments should be aggregated and treated as one allowance with a fixed maximum, the maximum being fixed at £100. The income limitation in respect of payments to

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Superannuation Funds has also been removed.

The territorial limitation previously placed on these payments imposed a hardship on those taxpayers who had effected the insurance outside Australia when their occupations were outside Australia, or where contribution to the Superannuation Fund was made outside Australia. As the deduction is limited to residents of Australia the territorial limitation has been removed.

(ii) payments to superannuation, sustentation, widows' or orphans' funds, or to any friendly society, for the personal benefit of the taxpayer or of his spouse or children.

**Losses of previous years.**

**80.**—(1) For the purposes of this section, a loss shall be deemed to be incurred in any year when the allowable deductions (other than the concessional deductions and the deduction allowable under this section) from the assessable income of that year exceed the sum of that income and the net exempt income of that year, and the amount of the loss shall be deemed to be the amount of such excess. (a)

(2) So much of the losses incurred by a taxpayer in any of the four years next preceding the year of income as has not been allowed as a deduction from his income of any of those years shall be allowable as a deduction in accordance with the following provisions:—

(a) where he has not in the year of income derived exempt income, the deduction shall be made from the assessable income; and to the extent of his share;

(b) where he has in that year derived exempt income, the deduction shall be made successively from the net exempt income and from the assessable income;

(c) where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred;

(a) Under the Commonwealth law a taxpayer who in any year suffers a business loss is permitted to carry that loss forward for a period not exceeding four years, subject to its being set off firstly against any exempt income derived during those years.

The net assessable income of any of the four years subsequent to the loss is then reduced by the loss thus ascertained. A person who is in receipt of rents, interest, dividends or other income of an investment character, is not regarded as carrying on

## 23. (1)—

(g) payments not exceeding One hundred pounds in the aggregate made for the personal benefit of the taxpayer or his wife or children during the year in which the income was derived by the taxpayer, if he is a resident and is in receipt of salary, wages, allowances, stipends or annuity, or if his net income does not exceed Eight hundred pounds, to superannuation, sustentation, widows, or orphan's funds established in Australia or any society duly registered under any Friendly Societies Act of the Commonwealth or a State;

For the purpose of this paragraph "net income" means the residue of the assessable income of the taxpayer after allowing all other deductions allowed by this Act except the deduction under section twenty-four;

23.—(1c.) Where the taxpayer is a married woman or a widow, she shall be entitled to the deductions specified in paragraphs (c), (g) and (o) of sub-section (1.) of this section, and any reference in those paragraphs to the wife of the taxpayer shall be read as a reference to the husband of the taxpayer.

## 26.—(1.) Where a loss is made in any year by any person—

(a) in carrying on a business in Australia;

Deductions of  
business losses.

(b) if he is a resident, in carrying on a business the proceeds of which (if any) derived from sources outside Australia would not be wholly exempt from income tax under the provisions of sub-paragraph (i) of paragraph (g) of sub-section (1.) of section fourteen of this Act: or

(c) upon the sale of any property the profits (if any) from the sale of which would have been assessable as income of that person,

that person shall be entitled to a deduction of that loss from the net assessable income (if any) derived by him in that year.

(2.) In addition to any deduction which may be made under the last preceding sub-section in respect of any loss, a taxpayer shall be entitled to a deduction of any similar loss, or of part of any similar loss, incurred by him in any of the four years next preceding the year in which the income was derived, if, on account of the insufficiency of net assessable income in those years, no deduction of that loss, or

a business, and in such a case the excess deductions over the income of any year could not be carried forward.

It is considered that provision should be made to cover all classes of taxpayers who

may suffer losses which would otherwise be allowable deductions from assessable income, and in the Bill the limitation to persons carrying on a business has been removed.

Provided that, if the Governor-General by proclamation so directs, the period of three years shall, as on and after such date as is specified in the proclamation, be substituted for the period of four years specified in this sub-section.<sup>(a)</sup>

(3.) In this section "net exempt income" means—

- (a) where the taxpayer is a resident—the amount by which his exempt income derived from all sources exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income, and any taxes payable in respect of that income in any country outside Australia; and
- (b) where he is a non-resident—the amount by which his exempt income derived from sources in Australia exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income.

(4.) Notwithstanding any other provision of this section, where a taxpayer has prior to the year of income been adjudicated bankrupt, or, not having been adjudicated bankrupt, has been released from any debts by the operation of the *Bankruptcy Act* 1924-1933, no loss incurred by him prior to that adjudication or release shall be an allowable deduction.<sup>(b)</sup>

*Carrying forward of losses*

(a) The carrying forward of losses is not at present the law in all States. In the interests of uniformity, State Ministers in conference have agreed as to the equity of the provision and have undertaken to recommend to their respective Governments its adoption. The view was taken,

however, that it would be a sufficient allowance if the losses were carried forward for a period of three years. It was also considered that from the point of view of the primary producer the acceptance of an unqualified three year period by all Governments (or by a majority of the

(as the case may be) of that part of that loss, is allowable, under this section, in assessments for financial years preceding that for which the assessment is made:

Provided that—

- (a) if a deduction is allowable in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred; and
- (b) no deduction shall be allowed of any amount of loss which would have been allowable as a deduction in an assessment for any financial year preceding the financial year commencing on the first day of July One thousand nine hundred and twenty-seven if the provisions of this section had been in force for the purpose of assessments for all financial years subsequent to the financial year commencing on the first day of July One thousand nine hundred and twenty-two and had applied only to losses incurred and income derived on or after that date, or on or after the commencement of the accounting period substituted for the financial year commencing on that date under sub-section (3.) of section thirty-two of this Act, and no amount of loss, incurred prior to the first day of July One thousand nine hundred and twenty-six or prior to the commencement of any accounting period substituted under sub-section (3.) of section thirty-two of this Act for the financial year commencing on that date, shall be taken into account under sub-section (8.) of section thirteen of this Act in ascertaining the excess of allowable deductions for the year in which the loss was incurred, which would not have been allowable as a deduction in the assessment of income derived (prior to that date or that commencement) in any financial year or accounting period subsequent to the year or period in which the loss was incurred, if the provisions of this section had been so in force and had so applied.

(2A.) Where in any year a person who has made a loss to which this section applies derives income which for any reason is not liable to be assessed, the amount deductible under this section, from the net assessable income of the year in which that income was derived, shall be—

- (a) if the person is not an absentee—the amount by which the total sum which would otherwise be deductible under this section exceeds the income which is not so liable,

Governments) would on balance be a decided advantage to them. The proviso to sub-clause 2, therefore, provides for the issue of a proclamation reducing the period of four years to three years, the understanding being that such a proclamation will not be issued unless all States

agree to the provision for the carrying forward of losses, and until such State legislation has been implemented.

(b) Sub-clause (4) makes it clear that the deduction does not extend to losses from which the taxpayer has been released.

(a) The provision in sub-section (4) of the present section 26 is in the Bill covered

after deducting from that income, in any case in which there is a business loss which is attributable to sources outside Australia (not being a loss which is allowable as a deduction under this section) the amount of that loss; and

(b) if the person is an absentee—the amount by which the loss exceeds the income derived from sources in Australia which is not so liable.

(3.) If any loss, or a part of any loss, or the aggregate of any losses, in respect of which a deduction is allowable under this section, exceeds the net assessable income from which the deduction is to be made, the deduction shall be allowed to the extent of that income.

(4.) Any deduction under this section shall be made in the first instance from the net assessable income from personal exertion.<sup>(a)</sup>

(5.) Where, in calculating the deduction under sub-section (1.) of this section for the purpose of ascertaining, in accordance with paragraph (a) of sub-section (1.) of section twenty-nine of this Act, the income of a partnership, any amount of loss made by the partnership in any year is not deducted by reason of the insufficiency of net assessable income, the share of each partner in that amount shall, for all purposes of this section, be deemed to be a loss made by him in that year.

(6.) For the purposes of this section, unless the contrary intention appears—

(a) "net assessable income" means the income by reference to which the deduction under section twenty-four of this Act would, but for the deduction allowable under this section, be calculated;

(b) "loss" means—

(i) in the case of a business the income (if any) of which would, in the opinion of the Commissioner, be apportionable between sources within and sources outside Australia and the proceeds (if any) of which would be assessable only to the extent that they were derived from sources within Australia—so much of the loss sustained as, in the opinion of the Commissioner, is attributable to sources within Australia; or

(ii) in the case of a business carried on wholly or partly outside Australia the income (if any) of which derived from sources outside Australia would be taxable in part only under this Act—so much of the loss which is attributable to sources outside Australia as, in the opinion of the Commissioner, is proportionate to the part of the income which would be so taxable, and shall be calculated without taking into account any Federal income tax paid or payable by the taxpayer.

Statutory  
exemption.

**81.**—(1.) The following amount (in this Act called "the statutory exemption") shall be an allowable deduction to any person other than a company or a non-resident:—

- (a) the sum of Two hundred and fifty pounds, less One pound for every Two pounds by which the income exceeds Two hundred and fifty pounds, or
- (b) where the income does not exceed Two hundred and fifty pounds, the amount of the income.

In this sub-section "income" means the residue after deducting from the assessable income all other allowable deductions.

(2.) The deduction of the statutory exemption shall be made successively from the income from property other than dividends, from the income from dividends and from the income from personal exertion.

(3.) The preceding provisions of this section shall not be applied in calculating the amount of the taxable income subject to special property tax, but, for the purpose of making that calculation, there shall be deducted (where the taxpayer is not a company or non-resident) from that part of the assessable income derived from those sources which remains after all other deductions allowable under this Act have been made, the amount of that part or the sum of Two hundred and fifty pounds whichever is the less.

Double  
deductions.

**82.**—(1.) Where in respect of any amount, a deduction would but for this section be allowable under more than one provision of this Act, and whether it would be so allowable from the assessable income of the same or different years, the deduction shall be allowable only under that provision which in the opinion of the Commissioner is most appropriate.

(2.) Where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, and any expenditure incurred by him in connexion with that property is an allowable deduction under this Act or has been allowed or is allowable as a deduction in assessments under the previous Act, that expenditure shall not be deducted in ascertaining the amount of the profit or loss.

## Division 4.—Leases.

## Definitions.

**83.** In this Division<sup>(a)</sup>

"lease" when used in relation to a premium means the lease granted, assigned or surrendered, or where the premium is for or in connexion with any goodwill or licence means the lease of the land to which such goodwill or licence is attached or connected;

(a) The definitions are inserted as a drafting medium to simplify and to help

**24.**—(1.) The following amount (in this Act called “the statutory exemption”) shall be a deduction allowable under this Act to any person other than a company or an absentee:—

- (a) the sum of Two hundred and fifty pounds, less One pound for every Two pounds by which the income exceeds Two hundred and fifty pounds; or
- (b) where the income does not exceed Two hundred and fifty pounds, the amount of the income.

In this sub-section “income” means the residue after deducting from the assessable income all other deductions allowable under this Act.

(2.) The deduction of the statutory exemption shall be made successively from the income from property other than dividends, from the income from dividends and from the income from personal exertion.

(3.) Where special property tax is imposed upon the taxable income derived from any sources by any person (other than a company or absentee) the preceding provisions of this section shall not be applied in calculating the amount of the taxable income subject to that tax but, for the purpose of making that calculation, there shall be deducted, from that part of the assessable income derived from those sources which remains after all other deductions allowable under this Act have been made, the amount of that part or the sum of Two hundred and fifty pounds whichever is the less.

**25A.** Where, in respect of property of any person from the use or ownership of which assessable income may be derived, any expenditure is incurred by that person in connexion with the acquisition or use of that property and a deduction in respect of that expenditure has been allowed or is allowable under any other provision of this Act, and the whole or any part of the proceeds of the sale of that property is assessable as income of that person, no deduction shall be allowed from the proceeds so assessable in respect of the expenditure so allowed or allowable.

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to abbreviate the actual clauses that follow.

"lessor", when used in relation to any time, means the person at that time entitled to the reversion;

"net premium" means the amount ascertained by deducting from a premium the allowable deductions directly relating thereto;

"premium" means any consideration in the nature of a premium fine or foregift payable to any person for or in connexion with the grant or assignment by him of a lease, or any consideration for or in connexion with the surrender of a lease, or for or in connexion with any goodwill or licence attached to or connected with land a lease of which is granted, assigned or surrendered; and where any of the foregoing considerations is payable in more than one amount, each such amount shall be deemed to be a premium;<sup>(a)</sup>

"term of the lease" means the length of time which the lease has to run from the date when the premium is received, and in the case where the premium is received for or in connexion with the surrender of a lease, the length of time which the lease would have had to run at a date of such receipt if it had not been surrendered;

Provided that, in the case of a perpetual lease to which this Division applies, that length of time shall be deemed to be One hundred years.

Premiums included in assessable income.

84. The assessable income of a taxpayer shall include, in addition to rent, any premium received by him in the year of income, and any consideration so received for or in connexion with his assent to any grant or assignment of a lease.<sup>(b)</sup>

(a) *Premium.*—This definition includes "any consideration in the nature of a premium" as well as money. The present Commonwealth law in section 16(d) contains similar words, but in addition makes special provision to limit the taxation of any premium in the form of shares to a

person who has a controlling interest in the company, and where those shares are sold or transferred within two years. The absence of these latter provisions in the Bill makes the taxation of "shares" dependable upon whether they are or are

**16. The assessable income of any person shall include—**

(d) and any amount received by way of premium, fine or foregift or consideration in the nature of a premium, fine or foregift demanded and given in connexion with a lease, or by way of consideration for the assignment or transfer of a lease, or for goodwill or a licence in respect of a business carried on on the leased property, or for surrendering a lease, goodwill or licence, and shall also include, where that amount or any part of that amount is paid by a company in the form of shares in that company to a person who has a controlling interest in that company and where those shares are sold or transferred by that person during the unexpired period of the lease calculated from the date when those shares were received or taken, or within a period of two years after that date, whichever period is the lesser—the amount for which the shares were so sold or transferred:

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not "consideration in the nature of a premium", irrespective of the former limitations. The taxation of any shares as a "premium" in the recipient's assessment, however, correspondingly entitles the payor to a deduction in his assessment.

(b) This clause brings premiums within the term "assessable income" as defined in the opening clauses of the Bill. The wording in section 16(d) of the present Act is substantially contained in the definition of "premium".

**Deductions.**

**85.**—(1.) Where any premium is included in the assessable income of a taxpayer of the year of income, and—

(a) the premium is received for or in connexion with the assignment or surrender of a lease, or for or in connexion with the goodwill or a licence attached to or connected with land the subject of a lease assigned or surrendered, and the taxpayer has paid any amount—

(i) to acquire that lease or the goodwill or licence attached to or connected with that land; or

(ii) where the lease assigned or surrendered is a lease of land—in effecting improvements on that land; or

(b) the taxpayer has paid any amount for the surrender to him of a lease, goodwill or licence for the purpose of granting or assigning the lease, goodwill or licence for or in connexion with which the premium was derived, and the whole or any portion of that amount has not been allowed or is not allowable as a deduction in assessments for income tax under any other provisions of this Act or under any previous law of the Commonwealth, the amount which bears the same proportion to the amount which has not been so allowed as the premium included in his assessable income bears to the total of the premiums received or to be received by him for the grant, assignment, surrender, goodwill or licence in respect of which the premium was so included, shall be an allowable deduction.<sup>(a)</sup>

(2.) Where any premium is included in the assessable income of a taxpayer in respect of property to which he has succeeded upon the death of another person, the taxpayer shall be entitled to the deduction to which that other person would have been entitled, under this section, if he had lived and the premium had been included in his assessable income and there had been allowed or were allowable as deductions in assessments for income tax, under any other provisions of this Act or under any previous law of the Commonwealth the same deductions as have been so allowed or are so allowable to the taxpayer in addition to any deductions that in fact have been or are so allowed or allowable to that other person.<sup>(e)</sup>

(3.) Where any premium is paid to a taxpayer for or in connexion with the grant by him of a sub-lease, or for or in connexion with the goodwill or licence attached to or connected with land the subject of a sub-lease so granted, and is included in the assessable income of the taxpayer of the year of income, and he has paid any amount

(a) This clause re-enacts, but in different arrangement of phraseology, the present provisions of the Commonwealth law for determining the deductions to be set off against the premium income.

(a) The omission of this proviso in the Bill is explained by the notes to the definition of "premium" (clause 83).

(c) The repetition of this proviso in the Bill is not deemed necessary. Clause 23(q) of the Bill specifically exempts from taxation the income derived by a bona fide prospector from the sale, transfer, or assignment of his rights to mine for gold.

(d) The wording of this proviso is necessarily repeated in the present Act in

Provided that if that person has paid any amount to acquire that lease, goodwill or licence or, if that lease is a lease of land, in effecting any improvements on the leased land or for the surrender to him of a lease, goodwill or licence for the purpose of granting, assigning or transferring that lease, goodwill or licence and the whole or any portion of that amount has not, in the assessments of the income of that person, been allowed as a deduction, under the provisions of this Act or of any Act repealed by this Act, he shall be entitled to a deduction in his assessment of an amount which bears the same proportion to the amount which has not been so allowed as the amount included in his assessable income, under the provisions of this paragraph in respect of that lease, goodwill or licence, bears to the total amount of the consideration for the grant assignment or transfer of that lease, goodwill or licence:

Provided further that this paragraph shall not apply to—

- (i) an amount paid by a company in the form of shares in that company except to the extent provided in this paragraph; (b)
- (ii) any amount of income specified in paragraph (o) of sub-section (1) of section fourteen of this Act; or (c)
- (iii) any lease from the Commonwealth or a State being a perpetual lease without revaluation or a lease with a right of purchase; (d)

Section 25(i)(a). Both of these sections in the present Act are now covered by the wording in clause 89 of the Bill by reason of the altered arrangement in the drafting.

(e) This is a new provision in the Commonwealth law in the interests of uniformity. It is considered equitable that a beneficiary, who succeeds to the ownership of a lease through the death of a parent,

as is generally the case, should be entitled to the same deductions in respect of the lease as the parent would have been had he remained alive. A corresponding provision already exists in the present Act as regards other items of possible deductions for a lease to which a beneficiary succeeds—*vide* clause 88(4) of the Bill and section 25(i) of the present Act (second proviso).

to acquire the lease of the premises the subject of the sub-lease or the goodwill or licence, so much of the total deductions to which he would but for this sub-section be entitled in respect of that amount during the period for which that sub-lease is granted as bears to those deductions the same proportion as the premium included in his assessable income bears to the total of the premiums received or to be received by him for the grant of that sub-lease or for the goodwill or licence shall be an allowable deduction, and he shall not during that period be entitled to any further deduction in respect of that amount otherwise than under this sub-section. (a)

**Notional income  
of a taxpayer  
deriving a  
premium.**

86.—(1.) Where a premium which exceeds the sum of the allowable deductions directly relating thereto, and in respect of which the term of the lease is not less than twenty-five complete months, is included in the assessable income of a taxpayer, the following provisions shall apply for the determination of a notional income, for the purpose of any Act whereby a rate of tax upon the taxable income of a taxpayer is fixed by reference to a notional income:—(b)

(a) Where the taxable income exceeds the net premium, or the sum of the net premiums, if there are more than one of the premiums so included, the notional income of the

(a) The present provisions of section 16(d) of the Act do not technically permit of a corresponding deduction to clause 85(1) to the lessor, to be set against a premium received by him for a sub-lease, even though the lessor may have paid a substantial premium for the mesne lease out of which the sub-lease is granted.

Briefly put, clause 85(1) provides for a deduction in the case of an assignment or transfer of a lease. Clause 85(3) provides for a deduction in the case of a grant of a sub-lease.

(b) The somewhat complicated provisions of this clause are designed to conform substantially to the recommendations of the Royal Commission relating to the premium on a lease. It was recommended in effect that the premium should be treated as commuted rent, and that while it should be taxed as income of the year in which it is received, the rate of tax should be the same as if it had been received in yearly instalments as rent. A clause was drafted to this effect, but its provisions were exceedingly complicated, owing to the number of variable factors to be taken into consideration—the amount of the taxpayer's other income, his business losses, concessional and other deductions, the diminishing statutory exemption, the progressive rates of tax, and the discrimination between the rates on property income and income from personal exertion, with a further complexity in the case of the Commonwealth due to the constitutional objection to including a rating provision in the Assessment Act. The

clause so drafted was exhaustively considered at conferences of the Taxation Commissioners with a view to its simplification, and it was found that a reasonably close approximation to the same result was reached by the process—simpler if still not quite simple—embodied in the clause as now drafted.

The clause is designed to apply an average rate of tax to the premium income. The general averaging provisions of the present Commonwealth Act give the benefit of an average rate to premium income based upon the average income of the taxpayer over five years. With the removal of the general averaging provisions from all except Primary Producers, there is need to devise an alternative average rate unless the taxpayer (as in the present provisions of the State Acts) is to be left to pay on his premium income, together with his ordinary income, at the current rate applicable to the total income of the particular year. Provision is therefore made (by means of a monthly calculation) to divide the number of years in the term of the lease by 2, in order to get what is described as a "notional income" for rating purposes. The effect of this is that the taxpayer pays tax on the premium income in respect of the year in which it is received, but at an average rate which gives substantially the same amount of tax (assuming other income is also derived by the taxpayer) as if the premium were spread equally over the term of the lease and the appropriate rate to such equal

annual amounts were applied. The principle is that the premium is dealt with once and for all. It goes into the assessable income of the year of receipt only and subsequent assessments are not affected. Examples showing the working of this principle are given hereunder.

No provision is made in the clause for ascertaining a notional or average income when the period of the lease does not exceed two years, as in such cases it is not thought that there is any particular hardship in applying the actual rate of tax appropriate to the premium for such a limited period. There are very few leases under two years, for which premiums are payable, but should such a case occur, it would always be possible for a lessor to spread his premiums by receiving instalments over two years.

#### EXAMPLE A.

	£
Assume the premium for a ten years' lease was	2,000
Deductions directly relating thereto	400
Net premium	1,600
Other income—Interest	200
Net income	1,800
Statutory exemption	—
Taxable income	1,800

For the purpose of ascertaining the rate, the net premium would be deducted from the taxable income, and one-fifth of the net premium added in lieu. The position would then be:

	£
Taxable income	1,800
less Net premium	1,600
	200
add One-fifth of £1,600	320
Notional income for rate purposes only	520

#### EXAMPLE B.

Shows the application of the rule to more complex facts:—

(A) Assume premium £10,000 received for four years unexpired period of a lease.

(B) Assume £6,000 was paid two years earlier when the original lease for six years was acquired.

(C) Then £4,000 represents the proportion of the original £6,000 paid which is attributable to the four years unexpired term of the lease. This £4,000 is a deduction allowable under clause 85 of the Bill, as directly relating to the premium of £10,000 received.

(D) Assume other deductions directly relating to the sale of the lease are:—

	£
Legal expenses and stamp duty	50
Commission	250

(E) The "net premium" then would be:—

	£
(A)	10,000
less (C) £4,000	6,000
(D) £300 ..	5,700
	<u>£5,700</u>

Assume the taxpayer has other income of £2,000, and that there are other deductions allowable under the Act of £2,200. The taxable income would then be—

	£	£
Net premium ..	5,700	
Other income ..	2,000	
Deductions applicable to other income ..	2,200	
Excess deductions ..	200	
Taxable Income ..	5,500	

(F) It is necessary here to take the number of months in the unexpired period of the lease (four years) as per (A), viz., 48 months, and divide this by 24 (vide sub-clause 86 (1) (b) (i)). The quotient is 2.

(G) The "National Income" would then be ascertained under sub-clause 86 (1) (b) by dividing £5,500 by the quotient as per (F)—

$$\text{i.e. } £5,500 \div 2 = £2,750$$

The taxpayer would therefore be assessed on £5,500 at the rate applicable to an income of £2,750.

taxpayer shall be the amount obtained by deducting the net premium or the sum of the net premiums, as the case may be, from the taxable income, and adding to the result the amount or amounts ascertained by dividing each of the net premiums by one twenty-fourth of the number of complete months in the term of the lease.

(b) Where the taxable income is less than the net premium, or the sum of the net premiums if there are more than one of the premiums so included, the notional income shall be—

- (i) where there is only one of those premiums—the amount ascertained by dividing the taxable income by one twenty-fourth of the number of complete months in the term of the lease; and
- (ii) where there are more than one of those premiums—the sum of the amounts ascertained by apportioning the taxable income among the net premiums in proportion to their amounts, and dividing the amount so apportioned to each net premium by one twenty-fourth of the number of complete months in the term of the lease.

(2.) This section shall not apply in any case—

- (a) where the taxpayer is a company, except where, in respect of the premium, it is assessable as a trustee; or
- (b) where the provisions of Division 16 of this part are applied in the assessment of the taxpayer.

Value of improvements included in assessable income.

87.—(1.) Where improvements not subject to tenant rights have been made on leased land by a lessee which he is required to make under the terms of the lease, or which are made with the written consent of the lessor, the following provisions shall apply:—(c)

(a) There shall be included in the lessor's assessable income of the year in which the improvements have been made, and of each year thereafter until and including the year in which the lease expires, an instalment of the estimated value to the lessor of such improvements as at the expiration of the lease. The instalments shall be equal in amount and shall be such that, if received at the commencement of each of those years they would, with interest at the rate prescribed, accumulate to a sum equal to the estimated value:

(a) This clause is inserted because it is not necessary to provide for any average rate of tax for companies, since a flat rate is applicable to them.

(b) Neither will primary producers, in whose interests the present averaging provisions based on a 5-years' income are being

retained, in clauses 150 to 159 of the Bill, require any other average rate.

(c) This is a new provision in the Commonwealth Act based on the recommendation of the Royal Commission. A deduction is given in clause 88(2) in the circumstances specified, for money expended

which is caused by the use of the land, and the lessor  
will not be entitled to any part of the rent or other value  
derived out of the land and such improvement, but the  
lessor will be entitled to the value of the improvement.

It is also agreed that where any land, the value of which is less than  
the amount of the rent, is let for a term of years, the lessor  
will be entitled to a sum equal to the difference  
between the amount of the rent and the value of the land.

It is also agreed that where any land, the value of which is less than  
the amount of the rent, is let for a term of years, the lessor  
will be entitled to a sum equal to the difference  
between the amount of the rent and the value of the land.

It is also agreed that where any land, the value of which is less than  
the amount of the rent, is let for a term of years, the lessor  
will be entitled to a sum equal to the difference  
between the amount of the rent and the value of the land.

It is also agreed that where any land, the value of which is less than  
the amount of the rent, is let for a term of years, the lessor  
will be entitled to a sum equal to the difference  
between the amount of the rent and the value of the land.

It is also agreed that where any land, the value of which is less than  
the amount of the rent, is let for a term of years, the lessor  
will be entitled to a sum equal to the difference  
between the amount of the rent and the value of the land.

It is also agreed that where any land, the value of which is less than  
the amount of the rent, is let for a term of years, the lessor  
will be entitled to a sum equal to the difference  
between the amount of the rent and the value of the land.

by a lessee in effecting improvements on  
leased land, and as such improvements are  
regarded as inuring for the benefit of the  
lessor, it is considered only equitable that  
where a special deduction is allowed to the  
lessee, the lessor should be assessed on the

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value to him of the improvements as at the  
expiration of the lease. The clause, how-  
ever, will not apply retrospectively to  
improvements effected under leases entered  
into prior to the commencement of this  
Act.

Provided that, where in the year of income, a person is the lessor for part only of a year, a proportionate part of the instalment shall be included in his assessable income.

(b) Where, in the opinion of the Commissioner, the instalment cannot be satisfactorily determined, the value of the improvements at the expiration of the lease shall be included in the lessor's assessable income of the year in which the lease expires.

(2.) This section shall not apply where the lessee is required to make the improvements under the terms of a lease entered into before the commencement of this Act, or where the improvements are made in pursuance of a consent given before such commencement or in any of the cases specified in sub-section (3.) of the next succeeding section.

Deductions to lessee.

88.—(1.) Where a taxpayer has paid any premium, and the lease is a lease of premises or machinery used for the purpose of producing assessable income—

(a) if he was entitled to the lease during the whole of the year of income, or in the case of a premium paid for the surrender of a lease, if he would have been so entitled had the lease been transferred to him and he had not been entitled to the reversion—the amount ascertained by dividing the amount of the premium by the number of years of the period of the lease unexpired when such payment was made; and

(b) if he was entitled to the lease during part only of the year of income, or in the case of a premium paid for the surrender of a lease, if he would have been so entitled had the lease been transferred to him and he had not been entitled to the reversion—a proportionate part of the amount so ascertained, (a)

shall be an allowable deduction.

(a) Apart from the altered arrangement in the drafting phraseology, the only alteration made in the actual provisions of the clause is the inclusion of a deduction in the case of a premium paid for the surren-

der of a lease. There is already a corresponding deduction for this in the proviso to section 16(4) of the present Act, which is repeated in clause 85(1) of the Bill, but that deduction is only given in respect of

**25. A deduction shall not, in any case, be made in respect of any of the following matters:—**

(i) any wastage or depreciation of lease or in respect of any loss occasioned by the expiration of any lease:

Provided that where it is proved to the satisfaction of the Commissioner that any taxpayer (being the lessee under a lease, or the transferee or assignee of a lease) has paid any amount by way of royalty, bonus, fine, premium or foregift or consideration in the nature of a fine, premium or foregift for a lease, or a renewal of a lease, or by way of consideration for the assignment or transfer of a lease, of premises or machinery used by the taxpayer for the production of income, including, in either class of case, a sum which is attributable to the assignment or transfer of goodwill or of a licence, the taxpayer shall be entitled to a deduction from his assessable income of the sum obtained by dividing the amount so paid by the number of years of the unexpired period of the lease at the date the amount was so paid or if, after the date of such payment, the lease was owned by the taxpayer during part only of the year in which the income was derived, that part of the sum so obtained which bears the same proportion to that sum as that part of the year bears to a year, but so that the aggregate of the deductions so allowed shall not exceed the sum so paid if paid after the thirtieth day of June, One thousand nine hundred and fourteen, or the part of the sum so paid which is proportionate to the

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a premium paid for the surrender of a lease for the purpose of granting or assigning another lease. The deduction in this clause is to amortize over the unexpired

period of the lease the premium paid for the surrender of the lease, if the property is retained for the purpose of producing assessable income.

(2.) Where a taxpayer has expended money in making on leased land used for the purpose of producing assessable income improvements which are not subject to tenant rights, and which he was required to make under the terms of the lease, or which he has made with the written consent of the lessor given after the commencement of this Act—(a)

(a) if he was entitled to the lease during the whole of the year of income—the amount ascertained by dividing the amount of such expenditure, not exceeding the amount which under the terms of the lease he was required to expend, or which he expended with that consent, by the number of years of the period of the lease unexpired when the money was expended; and

(b) if he was entitled to the lease during part only of the year of income—a proportionate part of the amount so ascertained,

shall be an allowable deduction.

(3.) The provisions of the last preceding sub-section shall not apply in any case—

- (a) where the lease is a lease of land to a company from an individual or from a company to an individual, and the individual directly or indirectly controls the voting power of the company;
- (b) where the lessor is a trustee of the land for the lessee, or the lessee is a trustee of the land for the lessor; or
- (c) where the Commissioner is of the opinion that, in consequence of the terms and conditions of the lease or of any other circumstances, the lessor is in substantial control of the operations of the lessee.

(4.) Where any taxpayer succeeds to any lease or share therein upon the death of any person who has paid such premium or expended such money, he shall be entitled to the same deduction, or part thereof proportionate to his share in the lease, as that person would have been entitled to under this section had he lived.

Not to apply  
to certain  
leases.

89.—This Division shall not apply to any lease from the Commonwealth or a State, being a perpetual lease without revaluation, or a lease with a right of purchase.

(a) In addition to improvements which the lessee is required to make under the terms of the lease, a deduction is now pro-

vided under the clause for improvements made with the written consent of the lessor.

As under clause 87 the lessor will be assessable on the value to him of the improve-

unexpired period of the lease from the thirtieth day of June, One thousand nine hundred and fourteen if the sum were paid on or prior to that date:

23. (1) *In calculating the taxable income of a taxpayer, the total assessable income derived by the taxpayer shall be taken as a basis, and from it there shall be deducted—*

(n) the annual sum necessary to recoup the expenditure covenanted to be made on improvements on land by a lessee who has no tenant rights in the improvements. The deduction under this paragraph shall be ascertained by dividing the amount (not exceeding the sum specified in the covenant) expended on the improvements by the lessee by the number of years in the unexpired period of the lease at the date the improvements were effected.

This paragraph shall not apply in any case where there is a lease of land to a company from any individual, or from a company to any individual, who directly or indirectly controls the voting power of the company, or in any other case in which the Commissioner is of the opinion that, in consequence of the terms and conditions of the lease or of any circumstances associated with the lease, the lessor is in substantial control of the operations of the lessee;

25. (i)—

Provided further that where any taxpayer succeeds to any lease or share therein as a beneficiary upon the death of any person, or in the course of the administration of the estate of any person, who, in the opinion of the Commissioner, has paid for that lease any amount of the nature specified in the first proviso to this paragraph, the taxpayer shall be entitled to the same deduction or part thereof (proportionate to his share in the lease), as that person would have been entitled to under that proviso had he lived:

25. (i) The provisos of this paragraph shall not apply—

- (a) to any lease from the Commonwealth or a State being a perpetual lease without revaluation or a lease with a right of purchase; or
- (b) to entitle a company to a deduction in respect of any amount paid by the company to any person in the form of shares in that company, except where the shares have been sold by that person, and the sale price is, by virtue of paragraph (d) of section sixteen of this

ments as at the expiration of the lease, the provision in respect of improvements effected with the written consent of the

lessor will not apply retrospectively but only where the consent of the lessor is given after the commencement of the new Act.

## Division 5.—Partnerships.

## Definitions.

90. In this Division—<sup>(b)</sup>

“net income” in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership were a taxpayer, less all allowable deductions except the concessional deductions, the statutory exemption, and losses of previous years;

“partnership loss” means the excess, if any, of the allowable deductions, except the concessional deductions, the statutory exemption and losses of previous years, over the assessable income of a partnership, calculated as if the partnership were a taxpayer.

## Partnerships.

91. A partnership shall furnish a return of the income of the partnership, but shall not, except as provided in this Division, be liable to pay tax thereon.

## Income of partner.

92.—(1.) The assessable income of a partner shall include his individual interest in the net income of the partnership of the year of income, and his individual interest in a partnership loss incurred in the year of income shall be an allowable deduction.

(2.) The exempt income of a partner shall include his individual interest in the exempt income of the partnership of the year of income.

## Options of partners in respect of live stock.

93.—(1.) In calculating the net income of a partnership or a partnership loss for the purpose of assessing any partner's share, the partnership shall be deemed to have exercised or failed to exercise all options and rights to select a value for live stock under this Act in the same manner as the partner has in fact exercised or failed to exercise those options and rights, and the partnership shall not, as a partnership, be entitled to exercise any such option or right.<sup>(c)</sup>

(a) The omission of this sub-section in the Bill is explained by the notes to the definitions of “premium” (clause 83).

(b) These definitions are inserted for the simplification of the drafting. They bring into existence no new principle or practice.

(c) These sub-clauses specifically provide for the options and elections under the various clauses to be made by the individual partner and not by the partnership. It is, of course, practicable for each

Act, assessable to that person, in which case the company shall be entitled to a deduction under the first proviso to this paragraph in respect of the amount paid by the purchaser of those shares as if it were an amount paid by the company as specified in that proviso; <sup>(a)</sup>

**29.**—(1.) A partnership shall be liable to furnish a return in respect of the income of the partnership but shall not, except as provided in this section, be liable to pay tax, but each partner shall be assessed in his individual capacity in respect of—

- (a) his individual interest in the income of the partnership which, if the partnership were liable to pay tax, would have been the income of the partnership remaining after allowing all the deductions under this Act, except the deductions under section twenty-four and under sub-section (2.) of section twenty-six, together with
- (b) any other income derived by him separately, and
- (c) his individual interests in the income derived by any other partnership:

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partner to exercise the same option and thus obtain one and the same option for the partnership, but the elasticity of this clause takes away any possible complaint by one partner that he is prejudiced by

the exercise of another person's decision. Under the present Act, there has not been uniformity in this matter, and in some cases the partnership and in others the partners have exercised the options.

(2.) The fact that a taxpayer has entered into a partnership, or that any variation has taken place in the membership of any partnership of which the taxpayer is a member shall not—

- (a) affect any option or any right to select a value for live stock previously exercised by him under this Act; or
- (b) confer upon him any right to alter any such option or value without the leave of the Commissioner.

(3.) Where, in respect of a partnership formed before the commencement of this Act, a basis of valuation of live stock of the partnership had, before that commencement, been accepted by the Commissioner for the purposes of the previous Act, nothing in this section shall be deemed to vary, or require the variation of, that basis of valuation unless or until there is an alteration in the membership of that partnership.<sup>(a)</sup>

*Partner not  
in receipt and  
control of share.*

94.—(1.) Where a partnership is so constituted or controlled, or its operations are so conducted, that any partner has not the real and effective control and disposal of his share of the net income of the partnership, the Commissioner may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one, had been received by the other partner, if only one, or divided between the other partners, if more than one, in proportion to their respective interests in the partnership, and had been added to and included in his or their assessable income, and the partnership shall be liable to pay the tax so assessed.<sup>(b)</sup>

(2.) Where the provisions of this section are applied to a share of the net income of a partnership, that share shall not be included in the assessable income of any partner.

(3.) For the purpose of this section, but without limiting its application, a partner shall be deemed not to have the real or effective control and disposal of any money received by him which is applied to meet the private or domestic obligations of any other partner.

(a) This sub-clause, in effect, provides that the basis of valuation adopted by a partnership under the present Act is not in any way to be affected by the provisions in sub-clauses (1) and (2). Clause 33 provides for the continuation of whatever basis of valuation has been adopted under the present Act (e.g. market

or cost), unless a change is made with the Commissioner's consent. Where the partnership has elected the basis of cost price, the new range of cost prices for future natural increase will of course be open for the election of the individual partner under 34(1)(b).

Provided that where in a partnership formed after the thirteenth day of September One thousand nine hundred and fifteen any partner is not a taxpayer and the Commissioner is not satisfied that that partner is in receipt and control of his share of the income, the partnership shall be assessed and liable, on behalf of that partner, for income tax on his individual interest in the income of the partnership under paragraph (a) of this section, at the rate which would be applicable to a taxable income equal to the income of the partnership remaining after allowing the deductions allowed under this Act.

(2.) Where the Commissioner is of opinion that a partnership between husband and wife or between two or more husbands and any or all of their wives, or between relatives by blood, marriage or adoption, was formed or has been varied for the purpose of relieving any member thereof specified by the Commissioner from any liability to which he would have been subject under this Act if the partnership had not been formed, and that that purpose is effective in the year in which the income was derived or where there is a trust which is a partnership as defined in section four of this Act, the partnership shall be assessed as if it were a single person without regard to the interests therein of any of the partners or to any deductions to which any of them should be entitled under this Act, and shall—

- (a) if there is only one such member or if it is such a trust—be deemed to be an individually owned partnership; or
- (b) if there are two or more such members—be deemed to be a severally owned partnership.

(b) As stated in the note referring to the definition of "partnership" in clause 6, it has been decided that the purpose for which a partnership is formed should not be the deciding factor in determining its bona fides, but that the test should be whether, in fact, the partnership is bona

fide or fictitious. Section 29(2) of the present Act has therefore been deleted from the Bill and the proviso to section 29(1) revised. The income of a family partnership, which is not a bona fide one, will be assessed to the partnership as is the case under the present Act.

## Division 6.—Trustees.

Net income  
of trust  
estate.

**95.** In this Division, "the net income of a trust estate" means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of that income, less all allowable deductions—

- (a) except the concessional deductions and the statutory exemption; and
- (b) except also in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate, or in respect of any life tenant, the deduction of such of the losses of previous years as are required to be met out of corpus.

Trustees.

**96.** Except as provided in this Act, a trustee shall not be liable as trustee to pay income tax upon the income of the trust estate.

Beneficiary  
not under any  
disability.

**97.** (1.) Where any beneficiary is presently entitled to a share of the income of a trust estate and is not under any legal disability, his assessable income shall include that share of the net income of the trust estate.

(2.) The exempt income of any such beneficiary shall include his individual interest in the exempt income of the trust estate, except to the extent to which that exempt income is taken into account in calculating the net income of the trust estate.

Beneficiary  
under  
disability.

**98.** Where any beneficiary is presently entitled to a share of the income of a trust estate but is under a legal disability, the trustee shall be assessed and liable to pay tax in respect of that share of the net income of the trust estate as if it were the income of an individual, and were not subject to any deduction other than the concessional deductions which would have been allowable to the beneficiary if he had been assessed in respect of that share, and the statutory exemption.(a)

Where no  
person  
presently  
entitled.

**99.** Where there is no beneficiary presently entitled to any part of the income of a trust estate, or where there is a part of that income to which no beneficiary is so entitled, the trustee shall be

(a) Where a beneficiary is presently entitled but subject to a legal disability, his share of the income is taxed in the hands of the trustee. As the amount of

his share is definitely ascertainable, he should be taxed at the rate appropriate to the share, but the expressions in the judgment of two judges of the High

(3.) The income tax payable by partnerships to which the last preceding sub-section applies shall be at such rates as are declared by the Parliament.

(4.) Any member of a partnership to which sub-section (2.) of this section applies shall not be assessed, under the provisions of sub-section (1.) of this section, in his individual capacity in respect of his individual interest in the income of that partnership.

**31.—(1.)** A trustee, other than a trustee of a trust which is a *Trustees* partnership as defined by section four of this Act, shall not be liable to pay tax as trustee, except as provided by this Act, but each beneficiary who is not under a legal disability and who is presently entitled to a share of the income of the trust estate shall be assessed in his individual capacity in respect of—

- (a) his individual interest in the income of the trust estate, which if the trustee were liable to pay the tax in respect of the income of the trust estate, would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deduction under section twenty-four and, where the beneficiary has no beneficial interest in the corpus of the estate, except the deduction under section twenty-six in respect of any loss which is required to be met out of the corpus; together with
- (b) any other income derived by him separately; and
- (c) his individual interests in the income derived from any other source.

**31.—(2.)** A trustee shall be separately assessed and liable to pay tax in respect of that part of the income of the trust estate which if the trustee were liable to pay tax in respect of the income of the trust estate, would have been the income of the trust estate, remaining after allowing all the deductions under this Act, except the deduction under section twenty-four, and

- (a) which is proportionate to the interest in the trust estate of any beneficiary who is under a legal disability; or
- (b) to which no other person is presently entitled and in actual receipt thereof and liable as a taxpayer in respect thereof.

Court in the case of *Howey v. Federal Commissioner of Taxation* would indicate that the separation of such a share for the purposes of assessment is not justified

under section 31 as at present framed. The position has been rectified in the re-draft of the provision in clause 98 of the Bill.

assessed and liable to pay tax on the net income of the trust estate, or on that part of that net income as the case may be, as if it were the income of an individual, and were not subject to any deduction other than the statutory exemption.

**Beneficiary under disability deriving income from other sources.**

**100.**—(1.) The assessable income of any beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall include his individual interest in the net income of the trust estate or estates.

(2.) There shall be deducted from the income tax assessed against such beneficiary the tax paid or payable by any trustee in respect of that beneficiary's interest in the net income of the trust estate.

**Discretionary trusts.**

**101.** For the purposes of this Division, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.<sup>(a)</sup>

**Income of deceased received after death.**

**102.** Where in the year of income, the trustee of the estate of a deceased person receives any amount which is in the nature of corpus in the hands of the trustee, but which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that amount shall be included in the assessable income of that year of the trust estate.<sup>(b)</sup>

**Revocable trusts.**

**103.**—(1.) Where a person has created a trust in respect of any income or income-producing assets, and he has a power, whenever exercisable, to revoke or alter the trusts so as to acquire a beneficial interest in the income derived during the year of income, or the assets producing that income or any part of that income or of those assets, the Commissioner may assess the trustee to pay income tax, under this section, and the trustee shall be liable to pay the tax so assessed.<sup>(c)</sup>

(a) In many cases where no person is presently entitled to the income of a trust estate, the beneficiaries contingently entitled are children, and the trustees have, either under the trust instrument, or the general law, power to expend or advance money, for the maintenance, education and advancement in life of the infants. Where this power is exercised, it is considered that so much of the income as is applied for the purposes mentioned in respect of each child should be treated as income to which that child is presently entitled, and taxed to the trustee accordingly. This is

provided for in clause 101, which is an extension of the provisions set out in section 31(4) of the present Act.

(b) This clause is inserted to cover the case of a taxpayer whose income is being treated as derived on a cash basis, e.g. taxpayer selling land on the instalment principle. Instead of the whole income being taxed in the year of sale, arrangements are usually made by the taxpayer with the Department for the income to be taxed in the years in which the instalments of purchase money are received. In order, however, that revenue might not be prejudiced

31.—(3.) A beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall be assessed in his individual capacity in respect of—

- (a) his individual interest, upon which the trustee is liable to be assessed under sub-section (2.) of this section, in the income of each trust estate;
- (b) any other income derived by him separately; and
- (c) his individual interests in the income derived from any other source:

Provided that there shall be deducted from the tax assessed against the beneficiary the tax paid by any trustee in respect of the beneficiary's interest in the income of a trust estate.

(4.) For the purposes of this section, where by any deed, will or settlement a trustee is required to hold the income of a trust fund in trust for the beneficiaries specified therein in such manner as he in his absolute discretion thinks fit, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount of the income of the year paid to him by the trustee in the exercise of his discretion under the deed, will or settlement.

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in such cases by this arrangement, it has been provided that, in the event of the death of such a taxpayer, the trustee is to be assessed as and when the instalments are received.

(c) This clause is being inserted on the advice of the Royal Commission. Section 93 of the present Act goes a certain distance to prevent evasion of tax by contracts, agreements or arrangements, which are not bona fide. But the Royal Commission considers that no person, by the creation of a trust, should be able to avoid

taxation just as and when it suits him, by retaining a power of revocation over the property claimed to have been transferred. It is an inalienable right of every person to transfer his property at will and thereby reduce his taxation, but where the settlor has the power of revocation which he can exercise in respect of the income of any year, evasion of tax is to be frustrated by making the trustee liable for the additional tax the settlor would be liable to pay if the property had not been so transferred.

(2.) The amount of such tax shall be the amount by which the tax actually payable on his own taxable income by the person who created the trust is less than the tax which would have been payable by him if he had received so much of the net income of the trust estate as is attributable to the beneficial interest which he had power so to acquire, in addition to any other income derived by him.

(3.) Where this section is applied to the assessment of the income of a trust estate or part thereof derived in the year of income, no beneficiary shall be assessed in his individual capacity in respect of his individual interest in the income or part to which this section has been so applied, and the trustee shall not be assessed in respect of that income or part otherwise than under this section.

#### Division 7.—Private Companies.

##### Definitions.

**104.**—(1.) In this Act, unless the contrary intention appears—

“distributable income” means the amount obtained by deducting from the taxable income of a company all taxes, which, in the year of income, are paid under this or the previous Act, or paid in any country out of Australia in respect of income of the company which is taxable income under this or the previous Act;

“investment company” means a company the income of which, other than dividends from private companies, is ordinarily derived solely or principally from such sources that income derived from those sources by an individual would be income from property;

“nominee” of any person means one who may be required to exercise his voting power at the direction of, or holds shares directly or indirectly on behalf of, that person and includes a relative of that person;

“private company” means a company which is under the control of not more than seven persons, and which is not a

(a) The definition of “relative” has been transferred to Clause 6 of the Bill.

*Division 2.—Private Companies.*

**31A.**—(1.) In this Division, unless the contrary intention appears—

“distributable income” means the amount obtained by deducting from the taxable income of a company all taxes, which, in the year of income, are paid under this or the previous Act, or paid in any country outside Australia, in respect of taxable income of the company under this or the previous Act;

“investment company” means a company the income of which, other than dividends from private companies, is ordinarily derived solely or principally from such sources that income derived from those sources by an individual would be income from property;

“relative” means a husband or wife or a relative by blood, marriage or adoption; and<sup>(a)</sup>

“nominee” of any person means one who may be required to exercise his voting power at the direction of, or holds shares directly or indirectly on behalf of, that person and includes a relative of that person;

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company in which the public are substantially interested or a subsidiary of a public company;

“undistributed amount” means—

- (a) the amount by which the dividends paid by a private company out of its taxable income of the year of income fall short of a sufficient distribution; or
- (b) where no dividends have been so paid, the amount which would have been a sufficient distribution.

(2.) For the purposes of this Division—

- (a) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power, have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year of income beneficially held by, the public (not including a private company) and any such shares have in the course of that year been quoted in the official list of a stock exchange;
- (b) a company shall be deemed to be a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company is in the hands of one or more companies none of which is a private company;
- (c) a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons;
- (d) persons in partnership and persons interested in the estate of a deceased person or in property held in trust shall respectively be deemed to be a single person;
- (e) a private company shall be deemed to have made a sufficient distribution of its income of the year of income if, before the expiration of nine months after the close of the year, it has paid in dividends out of the taxable income of that year—
  - (a) where it is an investment company—the whole of its distributable income; or
  - (b) where it is not an investment company—
    - (i) if the whole or part of its distributable income consists of dividends received from other private companies—that

"private company" means a company which is under the control of not more than seven persons, and which is not a company in which the public are substantially interested or a subsidiary of a public company;

"undistributed amount" means—

- (a) the amount by which the dividends paid by a private company out of its taxable income of the year of income fall short of a sufficient distribution; or
- (b) where no dividends have been so paid, the amount which would have been a sufficient distribution.

31A.—(2.) For the purposes of this Division—

- (a) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power, have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year of income beneficially held by, the public (not including a private company) and any such shares have in the course of that year been quoted in the official list of a stock exchange;
- (b) a company shall be deemed to be a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company is in the hands of one or more companies none of which is a private company;
- (c) a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons;
- (d) persons in partnership and persons interested in the estate of a deceased person or in property held in trust shall respectively be deemed to be a single person;
- (e) a private company shall be deemed to have made a sufficient distribution of its income of the year of income if, before the expiration of nine months after the close of the year, it has paid in dividends out of the taxable income of that year—
  - (a) where it is an investment company—the whole of its distributable income;
  - (b) where it is not an investment company—
    - (i) if the whole or part of its distributable income consists of dividends received from other private companies—that

whole or part, together with two-thirds of the remainder, if any, of the distributable income; and

(ii) in any other case—two-thirds of its distributable income.

**Assessment of additional tax.**

**105.**—(1.) Where a private company has not, before the expiration of nine months after the close of the year of income, made a sufficient distribution of its income of the year, the Commissioner may assess the aggregate additional amount of tax which would have been payable by its shareholders if the company had, on the last day of the year of income, paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive it, and the company shall be liable to pay the tax so assessed.

(2.) Where there is more than one class of shareholders of the company, then for the purpose only of determining which shareholders would have been so entitled, dividends paid within nine months after the close of the year of income out of the taxable income of that year shall be deemed to have been paid in the order in which they were actually paid, but before the last day of that year.

**Interposition of companies trustees and partnerships.**

**106.**—(1.) Where, in relation to any private company, there is an undistributed amount, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of that amount if there had been successive distributions of the relative parts of that amount to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may also, in addition to any other tax assessable under this Division, assess the additional amount of tax, if any, which would in that event have been payable by that person, and the private company shall be liable to pay the tax so assessed.

(2.) If any company so interposed between the private company and that person is not incorporated in Australia, and the Commissioner is unable to ascertain the identity of that person, or the part of the amount which he would have received, the Commissioner may assess the additional amount of tax, if any, which would have been payable if the company so interposed had only one shareholder, and the private company shall be liable to pay the tax so assessed.

**Excess distribution of previous years.**

**107.**—(1.) Where the total amount of dividends paid by a private company out of its taxable income of the period of four years next preceding the year of income exceeds the aggregate of the smallest amounts that would have been a sufficient distribu-

(a) This section has not been included in the Bill as it will not have any

whole or part, together with two-thirds of the remainder, if any, of the distributable income; and

(ii) in any other case—two-thirds of its distributable income.

**31B.**—(1.) Where a private company has not before the expiration of nine months after the close of the year of income made a sufficient distribution of its income of the year, the Commissioner may assess the tax and additional tax which would have been payable by its shareholders if the company had on the last day of the year of income paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive it, and the company shall be liable to pay the tax and additional tax so assessed. Assessment of additional tax.

(2.) Where there is more than one class of shareholders of the company, then for the purpose only of determining which shareholders would have been so entitled, dividends paid within nine months after the close of the year of income out of the taxable income of that year shall be deemed to have been paid in the order in which they were actually paid, but before the last day of that year.

**31C.** Any dividend paid by a company on or before the thirty-first day of March, One thousand nine hundred and thirty-five out of the taxable income of the last preceding year of income shall be deemed to have been paid within nine months after the close of that year. Dividends paid before 31st March, 1935.

**31D.**—(1.) Where in relation to any private company there is an undistributed amount, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of that amount if there had been successive distributions of the relative parts of that amount to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may, in addition to any tax assessed under section thirty-one B of this Act assess the tax and additional tax, if any, which would in that event have been payable by that person, and the private company shall be liable to pay the tax and additional tax so assessed. Interposition of companies, trustees and partnerships.

(2.) If any company so interposed between the private company and that person is not incorporated in Australia, and the Commissioner is unable to ascertain the identity of that person, or the part of the amount which he would have received, the Commissioner may assess the tax or additional tax, if any, which would have been payable if the company so interposed had only one shareholder, and the private company shall be liable to pay the tax or additional tax so assessed.

**31E.**—(1.) Where the total amount of dividends paid by a private company out of its taxable income of the period of four years next preceding the year of income exceeds the aggregate of the smallest amounts that would have been a sufficient distribution in each of application in respect of future years. Excess distribution of previous years.

tion in each of those years, the excess shall, for the purpose of calculating the undistributed amount, be deemed to be a dividend paid out of the taxable income of the year of income.

(2.) For the purpose of calculating the excess—

(a) any part of the company's taxable income of that period upon which it has paid or is liable to pay tax under this Division, or under section twenty-one of the previous Act, or under Division 2 of Part III of that Act, shall be deemed to be a dividend paid by the company out of that period; and

(b) any dividend or part of a dividend paid out of that part of the company's taxable income shall be deemed not to be a dividend.

**Rebates.**

**108.** A person shall be entitled to a rebate of the amount by which his income tax is increased by the inclusion in his assessable income of

(a) dividends paid to him by a company, or

(b) amounts in respect of dividends paid by a company to any company, trustee or partnership interposed between that person and the company paying the dividends, where the dividends are paid wholly and exclusively out of any amount or amounts in respect of which, under this Division, under section twenty-one of the previous Act or under Division 2 of Part III of that Act, the company paying the dividends has paid or is liable to pay tax.

**Loans to shareholders.**

**109.** (1.) If any amounts are advanced or any assets distributed by a private company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of, or for the individual benefit of, any of its shareholders, so much, if any, of those advances, loans or payment, as in the opinion of the Commissioner, represents distributions of income shall, for all purposes of this Act, be deemed to be dividends paid by the company to those shareholders out of profits derived by it.

(2.) Where the amount of any advance, loan or payment is deemed, under the last preceding sub-section, to be a dividend paid by a company to its shareholders, and in any year subsequent to that in which the dividend is so deemed to be paid, the company sets off any dividend distributed by it in that subsequent year, in satisfaction in whole or in part of the amount of that advance, loan or payment, that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for any purpose of this Act.

(a) Section 31F adequately provides for the proper rebate where the distribution is made direct to the shareholder by a company paying tax under Section 31B. It does not provide, however, for any rebate where there have been successive distributions through companies, trustees or partnerships interposed between the company making the distribution and the ultimate individual

recipient, where the provisions of Section 31B have been applied.

This anomaly has been rectified in Clause 108 of the Bill. If there is any company, trustee or partnership interposed between the company paying tax under Clause 106 and the individual shareholder, then paragraph (b) of Clause 108 applies to grant the rebate. It is immaterial whether there

those years, the excess shall, for the purpose of calculating the undistributed amount, be deemed to be a dividend paid out of the taxable income of the year of income.

(2.) For the purpose of calculating the excess—

- (a) any part of the company's taxable income of that period upon which it has paid or is liable to pay tax under this Division or under section twenty-one of the *Income Tax Assessment Act* 1922 as in force at any time at which, prior to the commencement of this section, the company so paid or so became liable to pay tax shall be deemed to be a dividend paid by the company during that period; and
- (b) any dividend or part of a dividend paid out of that part of the company's taxable income shall be deemed not to be a dividend.

**31F.** A shareholder of any company shall be entitled to a rebate ~~rebates~~ of the amount by which his income tax is increased by the inclusion in his assessable income of—

- (a) so much of the dividends paid to him by the company before the commencement of this section as is paid out of any amount or amounts in respect of which the company has paid or is liable to pay tax under this Division or under section twenty-one of the *Income Tax Assessment Act* 1922 as in force at any time at which, prior to the commencement of this section, the company so paid or so became liable to pay tax; and (a)
- (b) dividends paid to him by the company after the commencement of this section wholly and exclusively out of any such amount or amounts.

**31G.**—(1.) If any amounts are advanced or any assets distributed by a private company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of, or for the individual benefit of, any of its shareholders so much, if any of those advances, loans or payment as, in the opinion of the Commissioner, represents distributions of income shall, for all purposes of this Act, be deemed to be dividends paid by the company to those shareholders. Loans to shareholders.

(2.) Where the amount of any advance, loan or payment is deemed, under the last preceding sub-section, to be a dividend paid by a company to its shareholders, and in any year subsequent to that in which the dividend is so deemed to be paid, the company sets off any dividend, distributed by it in that subsequent year, in satisfaction in whole or in part of the amount of that advance, loan or payment, that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for any purpose of this Act.

are successive distributions through several companies, trustees or partnerships so interposed. It is also immaterial, so far as any interposed companies are concerned, whether or not the dividends paid by them are declared wholly and exclusively out of the dividends which have been received by them, and which have been declared by the

primary company wholly and exclusively out of the profits previously taxed under Clause 106.

In the review of Section 31F, it has been possible to omit the provision relating to dividends paid before the commencement of that section.

Payments to  
shareholders  
and directors.

**110.** So much of any sum paid or credited by a private company and being, or purporting to be—

- (a) remuneration for services rendered by any person being a shareholder or director of the company or being a relative of any such shareholder or director; or
- (b) an allowance, gratuity or compensation in consequence of the retirement of any such person from any office or employment held by him in that company, or upon the termination of any such office or employment, (a)

as exceeds an amount which, in the opinion of the Commissioner, is reasonable, shall not be an allowable deduction and the excess shall, for all purposes of this Act, be deemed to be a dividend paid out of profits derived by it to the recipient and received by him as a shareholder of the company.

Division 8.—Life Assurance Companies.

Definitions.

**111.** In this Division—(b)

“future premiums” means such premiums as, according to the rate of interest and the rate of mortality assumed in the company’s actuarial valuation, are sufficient to provide for the risk incurred by the company in issuing the policies in force on the date in respect of which the valuation is made, exclusive of any addition thereto for office expenses and other charges;

“life assurance company” means a company the sole or principal business of which is life assurance;

“valuation of liabilities” means a valuation of the amount which, together with the future premiums payable, if accumulated at the rate of interest stated as assumed in the company’s actuarial valuation, would provide the amount required to pay in full on the respective dates of their maturity, according to the rates of mortality assumed in such valuation, the liabilities under policies in force on the date in respect of which the valuation is made.

Premiums, &c.,  
not assessable  
income.

**112.** The assessable income of a life assurance company shall not include premiums received in respect of policies of life assurance, or considerations received in respect of annuities granted. The total income shall include such premiums and considerations.

Deductions  
not allowed.

**113.** Expenditure incurred by a life assurance company exclusively in gaining such premiums or considerations shall not be an allowable deduction.

(a) Specific provision has been made for retiring allowances, &c., in conformity with

the specific inclusion of retiring allowances as a deduction in clause 78(1)(c).

**31H.** So much of any sum paid or credited by a private company in any manner to any shareholder or to a director, or to a relative of a shareholder or a director, of the company, and being, or purporting to be, remuneration for services, as exceeds an amount which the Commissioner considers reasonable, shall not be an allowable deduction and the excess shall, for all purposes of this Act, be deemed to be dividends paid to the recipient and received by him as a shareholder of the company. Payments to shareholders and directors.

**20A.—(2.)** For the purposes of this section—

(b) "future premiums" means such premiums as, according to the rate of interest and the rate of mortality assumed in the company's actuarial valuation, are sufficient to provide for the risk incurred by the company in issuing the policies in force on the date in respect of which the valuation is made, exclusive of any addition thereto for office expenses and other charges:

(a) "valuation of liabilities" means the amount which, together with the future premiums payable, if accumulated at the rate of interest stated as assumed in the company's actuarial valuation, would provide the amount required to pay in full on the respective dates of their maturity, according to the rates of mortality assumed in such valuation, the liabilities under policies in force on the date in respect of which the valuation is made;

**20A.—(1.)** For the purpose of ascertaining the taxable income of a company the principal business of which is life insurance there shall be excluded from the assessment the following amounts:—

(a) all premiums received in respect of policies of life insurance and all considerations received in respect of annuities granted and all income derived from any source whether in or outside Australia which, apart from the provisions of this sub-section, would not be included in the assessment, and all expenditure exclusively incurred in gaining those premiums or considerations or that income;

(b) Division 8 of the Bill is a revision and re-arrangement of Section 20A of the present Act, without involving any altera-

tion in the incidence of the tax in respect of Life Assurance Companies.

Expenses of  
general  
management.

**114.**—(1.) So much only of the expenditure incurred in the year of income in the general management of the business of a life assurance company, as bears to that expenditure the same proportion as its assessable income bears to its total income, shall be an allowable deduction.

(2.) For the purposes of this section, the expenditure exclusively incurred in gaining or producing assessable income, or exclusively incurred in gaining or producing income which is not assessable, shall be deemed not to be expenditure incurred in such general management.

Meaning of  
calculated  
liabilities.

**115.**—(1.) Where an actuarial valuation of liabilities is made as at the end of the year of income, the "calculated liabilities" at that date shall be—

- (a) where the basis of the valuation is compound interest at the rate of four per centum per annum or over—the amount of that valuation;
- (b) where such basis is compound interest at a rate less than four and not less than three and one-half per centum per annum—ninety-five per centum of that valuation;
- (c) where such basis is compound interest at a rate less than three and one-half and not less than three per centum per annum—ninety per centum of that valuation;
- (d) where such basis is compound interest at a rate less than three per centum per annum—eighty-five per centum of that valuation.

(2.) Where an actuarial valuation of liabilities is not made as at the end of the year of income, a calculation shall be made of the proportion which the last preceding actuarial valuation of liabilities, as at some other date, bears to the value of all the assets of the company at that date. The amount which bears that proportion to the value of all the assets of the company at the end of the year of income shall be deemed to be an actuarial valuation of liabilities made as at the end of that year on the same basis as that last preceding valuation.

**20A.—(1.) (b)** the part of the expenditure incurred in the general management of the business of the company (but not including any expenditure exclusively incurred in gaining or producing the income included in the assessment) which bears to that expenditure the proportion which the sum of the premiums, considerations and income mentioned in paragraph (a) of this sub-section bears to the total income of the company derived from any source whether in or outside Australia; and

**20A.—(2.)—Provided that—**

(a) where an actuarial valuation of liabilities is made as at the end of the year in which the assessable income of the company was derived, the valuation of liabilities for the purposes of this section shall be—

- (i) where the basis of the valuation is compound interest at the rate of four per centum per annum or over—the amount of that valuation;
- (ii) where the basis of the valuation is compound interest at a rate less than four per centum per annum and not less than three and one-half per centum per annum—ninety-five per centum of that valuation;
- (iii) where the basis of the valuation is compound interest at a rate less than three and one-half per centum per annum and not less than three per centum per annum—ninety per centum of that valuation; and
- (iv) where the basis of the valuation is compound interest at a rate less than three per centum per annum—eighty-five per centum of that valuation; and

(b) where an actuarial valuation of liabilities is not made as at the end of the year in which the assessable income of the company was derived, the Commissioner shall ascertain the amount which bears to the value at the end of that year of all the assets of the company the same proportion as the amount of the last preceding actuarial valuation of liabilities bears to the value at the date in respect of which that valuation was made, of all the assets of the company, and for the purposes of this section the valuation of liabilities shall, if the basis of valuation is compound interest at the rate of four per centum, be the amount so ascertained, and shall, if the basis of valuation is compound interest at a rate less than four per centum, be the same percentage of the

Deduction of  
four per centum  
of calculated  
liabilities.

**116.** An amount equal to four per centum of that part of the calculated liabilities of a life assurance company at the end of the year of income, which bears to such calculated liabilities the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company, shall be an allowable deduction.

When  
calculated  
liabilities  
exceed assets.

**117.** When the calculated liabilities at the end of the year of income exceed the value at that date of all the assets of the company, the company shall not be liable to pay income tax in respect of the income derived in that year from the business of life assurance.

Division 9.—Co-operative and Mutual Companies.

Co-operative  
companies.

**118.** In this Division, "co-operative company" means a company the rules of which limit the number of shares which may be held by, or by and on behalf of, any one shareholder, and prohibit the quotation of the shares for sale or purchase at any stock exchange or in any other public manner whatever, and includes a company which has no share capital<sup>(a)</sup>, and which in either case is established for the purpose of carrying on any business having as its primary object or objects one or more of the following:—

- (a) the acquisition of commodities or animals for disposal or distribution among its shareholders;
- (b) the acquisition of commodities or animals from its shareholders for disposal or distribution;
- (c) the storage, marketing, packing or processing of commodities of its shareholders;
- (d) the rendering of services to its shareholders;<sup>(b)</sup>
- (e) the obtaining of funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.

Company not  
co-operative  
if less than  
ninety per cent.  
of business  
with members.

**119.** If, in the ordinary course of business of a company in the year of income, the value of commodities and animals disposed of to, or acquired from, its shareholders by the company, or the amount of

(a) This proposed amendment is designed to meet the requirements of a certain type of co-operative company under the Primary

Producers' Co-operative Association Act of Queensland.

amount so ascertained as would be the case under paragraph (a) of this proviso if a valuation upon the same basis were made as at the end of the year in which the assessable income of the company was derived.

**20A.—(1.) (c)** an amount equal to four per centum of that part of the valuation of liabilities at the end of the year in which the assessable income of the company was derived which bears to that valuation the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company.

**20A.—(3.)** When the valuation of liabilities to policy holders at the end of the year in which the assessable income of the company was derived exceeds the value at that date of all the assets of the company no income tax shall be assessed to the company in respect of the income derived by it during that year.

**20.—(1A.)** For the purposes of the last preceding sub-section "co-operative company" means a company, the rules of which limit the number of shares which may be held by, or by and on behalf of, any one member, and prohibit the quotation of the shares for sale or purchase at any Stock Exchange or in any other public manner whatever, and which is established for the purpose of carrying on any industry, trade or business having as its primary object or objects one or more of the following:—

- (a) The acquisition of commodities or animals in the ordinary course of the industry, trade or business for disposal or distribution among its members;
- (b) The acquisition of commodities or animals from its members for disposal or distribution in the ordinary course of the industry, trade or business;
- (c) The storage of commodities of its members;
- (d) The obtaining of funds from its members for the purpose of making loans to its members to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business:

Provided that a company which, before the thirty-first day of December One thousand nine hundred and thirty, has altered its rules to meet the requirements of this section relating to the prohibition of the quotation of the shares for sale or purchase at any Stock Exchange or in any other public manner whatsoever, shall be regarded as a co-operative company as from the date of the commencement of this section:

Provided further that if, in any financial year, the amount represented by the value upon the disposal among, or acquisition from, the members of a company of commodities and animals acquired

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(b) The definition of a co-operative company has been extended to include one which provides "services" to its members as, for example, shearing or any similar activity.

its receipts from the storage, marketing, packing and processing of commodities of its shareholders, or from the rendering of services to them, or the amount lent by it to them, is less respectively than ninety per centum of the total value of commodities and animals disposed of or acquired by the company, or of its receipts from the storage, marketing, packing and processing of commodities, or from the rendering of services, or of the total amount lent by it, that company shall in respect of that year be deemed not to be a co-operative company.

Sums received  
to be taxed.

**120.** The assessable income of a co-operative company shall include all sums received by it, whether from shareholders or from other persons, for the storage, marketing, packing or processing of commodities, or for the rendering of services, or in payment for commodities or animals or land sold, whether on account of the company or on account of its shareholders.

Deductions  
allowable to  
co-operative  
company.

**121.—(1.)** So much of the assessable income of a co-operative company as—

- (a) is distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company;
- (b) is distributed among its shareholders as interest or dividends on shares; or
- (c) in the case of a company having as its primary object that specified in paragraph (b) of section One hundred and nineteen of this Division—is applied by the company for or towards the repayment of any moneys loaned to the company by a government of the Commonwealth or a State to enable the company to acquire assets which are required for the purpose of carrying on the business of the company or to pay that government for assets so required which the company has taken over from that government,

shall be an allowable deduction:

Provided that the deduction under paragraph (c) of this subsection shall not be allowed unless shares representing not less than ninety per centum of the paid up capital of the company are held by persons who supply the company with the commodities or animals which the company requires for the purposes of its business.

(2.) No such rebate or bonus based on purchases made by a shareholder from the company shall be included in his assessable income except where the price of such purchases is allowable as a deduction in ascertaining his taxable income of any year.

or disposed of by that company in the ordinary course of the industry, trade or business, or the amount represented by the receipts from the storage or packing of the commodities of the members of a company or the amount loaned to members, is less than ninety per centum of the amount represented by the total value of such commodities and animals disposed of or acquired, respectively, by the company, or (as the case may be) of the amount represented by the total receipts of the company from the storage or packing of commodities or by the total loans made by the company, that company shall not, in respect of that year, be deemed to be a co-operative company.

**4. "Income" includes—**

- (b) in the case of a co-operative company or society—all sums received from members in payment for commodities supplied or animals or land sold to them or received in respect of commodities animals or land sold by the company or society whether on its own account or on account of its members;

**20.—(1.)** In calculating the taxable income of a co-operative company there shall be deducted, in addition to any other deductions allowed under this Act, so much of the assessable income of the company as—

- (a) is distributed among its shareholders as interest or dividends on shares; or
- (b) is distributed among its members as rebates on purchases by the members from the company; or
- (c) in the case of a company having as its primary object that specified in paragraph (b) of sub-section (1A.) of this section—is applied by the company for or towards the repayment of any moneys loaned to the company by a government of the Commonwealth or a State to enable the company to acquire assets which are required for the purpose of carrying on the business of the company or to pay that government for assets so required which the company has taken over from that government:

Provided that the deduction under this paragraph shall not be allowed unless shares representing not less than ninety per centum of the paid up capital of the company are held by persons who supply the company with the commodities or animals which the company requires for the purposes of its business.

**4. "Income" does not include—**

- (c) any rebate received by a member of a co-operative company based on his purchases (other than purchases for the purposes of a business) from that company where the Commissioner is satisfied that ninety per centum of its sales is made to its own members; and

Mutual  
insurance  
associations.

**122.** Every association of persons formed for the purpose of insuring those persons against loss, damage or risk of any kind in respect of property shall, for the purposes of this Act, be deemed to be a company carrying on the business of insurance, and the assessable income of any such company shall include all premiums derived by the company, whether from its shareholders or not, other than premiums received in respect of policies of life assurance or considerations received in respect of annuities granted. (a)

Deduction of  
expenditure.

**123.** Where a taxpayer derives income from carrying on mining operations in Australia (other than coal mining) the capital expended by him in necessary plant and development of the mining property from which such income is derived (less the profits derived by him prior to the year of tax) shall be divided by the estimated number of years during which payable mining operations may be expected to continue under normal conditions, and the quotient thus obtained shall be an allowable deduction.

Alternative  
deduction.

**124.**—(1.) As an alternative to the deduction allowable by the last preceding section, so much of the assessable income of the year of income as is expended in that year or appropriated for development (the cost of which is not otherwise an allowable deduction) of such mining property and for new plant shall, at the option of the taxpayer, be an allowable deduction.

(2.) So much of any money so appropriated as has not been expended for that purpose at the end of the year in which it was appropriated shall be included in the assessable income of the taxpayer of that year.

Deductions  
not allowable.

**125.** No deduction for depreciation shall be allowed on new plant to which this Division applies.

(a) This clause is intended to tax Mutual Insurance Associations formed to conduct on behalf of their members the business of insurance other than life assurance.

The decisions of the Courts applicable to mutual associations are to the effect that

the contributions of members of the association are not income of the association in the absence of a specific provision to the contrary. As these associations are in active competition with other companies transacting this class of business, it is considered that they should be liable to taxation on the net income derived by them

**22.** In connexion with income derived from mining operations <sup>Taxation of a</sup> (other than coal mining) carried on in Australia, the following <sup>mining</sup> company. provisions shall apply:—

- (a) the return required by this Act to be made by the person deriving the income in the first place shall show the total income so derived during the accounting period in respect of which the return is compiled;
- (b) the capital expended by the person carrying on the mining operations in necessary plant and development of a mining property from which income has been received (less the distributed and undistributed income derived by that person prior to the financial year for which income tax is being levied) shall be divided by the estimated number of years during which payable mining operations may be expected to continue under normal conditions, and the quotient thus obtained shall, in addition to any other deductions allowed by this Act, be deducted from the income;
- (c) as an alternative to the deduction allowable by the last preceding paragraph, there shall, at the option of the taxpayer, be deducted so much of the income of the accounting period as is expended in that year for development or is appropriated for development (the cost of which is not deductible under section twenty-three of this Act) and for new plant:

Provided that any of the money so appropriated which has not been expended for that purpose at the end of the year in which it was appropriated shall be liable to tax as income of that year:

Provided further that no deduction under paragraph (e) of sub-section (1) of section twenty-three of this Act shall be allowed on any new plant to which this paragraph applies.

by way of subscriptions from members in payment of premiums of insurance.

(b) The general provisions of the present Act regarding the special deductions allowed to Mining Companies for plant and development have not been changed. As these provisions give a special deduction to cover the cost of all

new plant and machinery, it is not considered necessary to allow in addition a further deduction for depreciation. The present Act contains a drafting defect in excising the depreciation allowance only from plant coming under the second of the alternative clauses. This is corrected in clause 125 of the Bill.

## Division 11.—Interest Paid by Companies.

Interest paid by a company to a non-resident.

**126.**—(1.) Where interest is paid or credited by a company to any person who is a non-resident—

- (a) on money secured by debentures of the company and used in Australia, or used in acquiring assets for use or disposal in Australia;<sup>(a)</sup> or
- (b) on money lodged at interest in Australia with the company,

the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax upon that interest at the rate declared by the Parliament.

(2.) The company may deduct and retain for its own use so much of the amount payable to that person as is necessary to pay the tax.

(3.) Where a company establishes, to the satisfaction of the Commissioner, that a person can enforce payment, without any deduction under this section, of interest on any such money secured by debentures, or on money lodged at interest with it, this section shall not apply in respect of the interest paid or credited to that person.

(4.) This section shall not apply to interest paid or credited to a company which is carrying on business in Australia, and which has a public officer duly appointed under this Act, unless the Commissioner, by notice in writing to the company paying or crediting the interest, directs that the section shall so apply.<sup>(b)</sup>

Interest paid by a company on bearer debentures.

**127.**—(1.) Where interest is paid or credited by a company in respect of debentures payable to bearer the names and addresses of the holders of which are not supplied to the Commissioner by the company, the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax upon the total amount so paid or credited in respect of those debentures at the rate of tax which would be applicable if that amount were the taxable income of one individual.

(2.) The company may deduct and retain for its own use from the amount payable to any person who is a holder of any of those debentures an amount bearing the same proportion to the amount of tax payable by the company under this section as the interest payable to that person bears to the total interest payable in respect of those debentures.

(a) There is only one minor correction made in drafting by this clause. Section 20(2)(b)(ii) of the present Act provides for the taxation of interest on money raised by debentures and used in Australia. If the money is used in acquiring assets for use in Australia, e.g. the purchase of

plant or trading stock, it is obvious the section should have equal application. Clause 126(1)(a) of the Bill, therefore includes specific wording for this purpose.

(b) This clause modifies the provisions of the present Act by regarding a Company which is carrying on business in

**20.—(2.)** In addition to any other income tax payable by it, a company shall also pay income tax on—

- (b) the amount of interest calculated in accordance with the contract under which the interest is payable by the company to any person who is an absentee—
  - (i) on money lodged at interest in Australia with the company; or
  - (ii) on money raised by debentures of the company and used in Australia unless the contract under which the money is raised by debentures is one the interpretation of which is not governed by the laws of the Commonwealth or of a State.

Provided that a company shall be entitled to deduct and retain for the use of the company from the amount payable to any of the persons referred to in paragraph (b) of this sub-section such amount as is necessary to pay the tax which becomes due in respect of that amount:

**20.—(2.) (c)** interest paid or credited in respect of debentures payable to bearer the names and addresses of the holders of which are not supplied to the Commissioner by the company as if the total amount so paid or credited were the income of an individual:

**20.—(2.)** Provided also that a company shall be entitled to deduct and retain for the use of the company from the interest payable to any person who is a holder of debentures payable to bearer an amount which bears the same proportion to the amount paid by the company under paragraph (c) of this sub-section as the interest payable to that person bears to the total interest payable in respect of those debentures:

Australia with a duly appointed public officer as a resident for the purposes of this Division, even though the Head Office and control may be out of Australia. Such a company brings all interest receivable to account in its taxation return;

but without the modification inserted by this clause, the company would still be liable for taxation on this interest, even though it suffered a loss in a particular year in its ordinary trading transactions.

(3.) Where the Commissioner is satisfied that that person is not liable to furnish a return, he shall refund to him the amount of tax paid by the company in respect of his debentures.

Rebate of tax paid by company.

**128.** Where the company pays tax under this Division on any interest, and that interest is included in the assessment of the person to whom it was paid or credited, the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person.

Tax on interest.

**129.** Where in any financial year interest is paid by a company in respect of which it is liable under this Division to pay income tax, the company shall be liable for income tax on that interest to the extent to which it would have been so liable if an assessment had been made in respect of that interest at the date when it was paid. (a)

#### Division 12.—Oversea Ships.

Taxable income of ship-owner or charterer.

**130.** Where a ship belonging to or chartered by a person whose principal place of business is out of Australia carries passengers, live stock, mails or goods shipped in Australia, five per centum of the amount paid or payable to him in respect of such carriage, whether that amount is payable in or out of Australia, shall be deemed to be taxable income derived by him in Australia.

Master or agent to make return.

**131.** The master of the ship, or the agent or other representative in Australia of the owner or charter, shall, when called upon by the Commissioner by notice in the *Gazette* or by any other notice to him, make a return of the amount so paid or payable.

Determination by Commissioner.

**132.** If such return is not made, or if the Commissioner is not satisfied with the return, he may determine the amount so paid or payable.

(a) This clause removes some of the difficulties experienced by a taxpayer (usually a Bank) in paying taxation at the source on the class of interest described. To save vexatious adjustments with

clients, irrespective of whether an alteration in the rate of tax is an increase or a decrease, it is considered more satisfactory to provide for this deduction at the source to be made at the rate of tax

**20.—(2.)** Provided further that, where the Commissioner is satisfied that the holder of debentures payable to bearer is a person who is not liable to furnish a return, the Commissioner may refund to that person the amount of the tax paid by the company in respect of the debentures of that person:

Provided further that where a company pays tax under this subsection on any interest and that interest is also included in the assessment of the person to whom it was paid or credited the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person:

**20.—(2.)** Provided further that, where in any financial year any debentures are redeemed, or any money lodged at interest is withdrawn, the rate of tax payable by the company in respect of the interest paid thereon during that financial year shall be the rate which would have been payable by the company in respect of that interest if an assessment had been made in respect thereof at the date upon which the debentures were redeemed, or the deposit withdrawn, as the case may be.

**20.—(3.)** A company, notwithstanding any contract, agreement, or arrangement entered into by it, may, with the approval of the Commissioner, charge *pro rata* the amount of the tax actually paid by it against those beneficially interested in the income of the company.

**27.—(1.)** Where a ship belongs to or is chartered by a person <sup>Oversea ships.</sup> whose principal place of business is out of Australia and carries passengers, live stock, mails or goods shipped in Australia, the master of that ship or the agent or other representative in Australia of that person shall, when called upon by the Commissioner by notice published in the *Gazette* or by any other notice to him, make a return of the full amount payable to the owner or charterer (whether such amount be payable in or beyond Australia) in respect of the carriage of the passengers, live stock, mails and goods.

(2.) The master, agent or other representative shall be assessed thereon as agent for the owner or charterer and shall be liable to pay tax on five pounds per centum of the amount so payable.

**27.—(3.)** Where no return is made under this section by the master of the ship or by the agent or other representative of the owner or charterer of the ship, the Commissioner may determine the amount payable to the owner or charterer in respect of the carriage of the passengers, live stock, mails and goods and may assess the tax payable on five pounds per centum of that amount and the master shall be assessed thereon as agent for the owner or charterer and shall be liable to pay the tax assessed.

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operating at the time when all such interest is paid. The limitation of the present section to cases where debentures are redeemed or money withdrawn is

removed, and the Bank and its clients are made subject to a known unalterable liability.

Assessment of tax.

**133.** The master, agent or representative, as agent for the owner or charterer, may be assessed upon the taxable income and shall be liable to pay the tax assessed.

Master liable to pay.

**134.** (1.) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master shall be liable to pay the tax.

(2.) This section shall not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

Notice of assessment.

**135.** Where any person is liable to pay tax under this Division, the Commissioner shall give notice to him of the assessment, and he shall forthwith pay the tax.

Clearance of ship.

**136.** A collector or officer of customs for any State or Territory of the Commonwealth shall not grant a clearance to the ship until he is satisfied that any tax which has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

Australian business controlled abroad.

#### Division 13.—Australian Business Controlled Abroad.

**137.** Where any business carried on in Australia—

- (a) is controlled principally by non-residents;
- (b) is carried on by a company a majority of the shares in which is held by or on behalf of non-residents; or
- (c) is carried on by a company which holds or on behalf of which other persons hold a majority of the shares in a non-resident company,

and it appears to the Commissioner that the taxable income disclosed in respect of the business is less than the amount of taxable income which might be expected to arise from that business, the person carrying on the business in Australia shall, notwithstanding any other provision of this Act, be liable to pay income tax on a taxable income of such amount of the total receipts (whether cash or credit) of the business as the Commissioner determines. (a)

#### Division 14.—Film Business Controlled Abroad. (c)

Film business controlled abroad.

**138.** Where any non-resident derives income under any contract or agreement with any person in relation to the carrying on in Australia by that person of a business of distributing, exhibiting or exploiting motion picture films, or of leasing such films to other persons, or of licensing other persons to exhibit or display such films,

(a) The amplification in the drafting phraseology of this clause makes explicit what is implied in the words "Business controlled abroad". The amplification does not extend or limit the application of sec-

tion 28 of the present Act, but the wording has been made to harmonize with the drafting in clause 138 which deals with film businesses controlled abroad.

(b) This sub-section is now obsolete, and

(4.) Where a return is made as required by this section and an assessment in respect of that return is made on the agent or other representative and the tax is not paid as required by or under this section the master of the ship shall be liable to pay the tax so assessed.

(4A.) Where any person is made liable to pay tax under this section the Commissioner shall give notice of assessment to that person, and that person shall forthwith pay the tax assessed.

(5.) Any Collector or officer of Customs for a State or Territory of the Commonwealth—

(a) shall not grant a clearance to a ship in respect of the earnings of which an assessment is made under this section, and

(b) may detain the ship, until he is satisfied that the tax has been paid, or that arrangements, to the satisfaction of the Commissioner or Deputy Commissioner, for the payment of the tax has been made.

28.—(1.) When any business which is carried on in Australia is controlled principally by persons resident outside Australia, and it appears to the Commissioner that the business produces either no taxable income or less than the ordinary taxable income which might be expected to arise from that business, the person carrying on the business in Australia shall be assessable and chargeable with income tax on such percentage of the total receipts (whether cash or credit) of the business, as the Commissioner in his judgment thinks proper.

(2.) The provisions of section twenty of this Act shall not apply in any case in which the person assessed under this section is a company. (b)

28A.—(1) Notwithstanding anything contained in this Act, where any person residing outside Australia, or any foreign company, derives income under any contract or agreement with any person in relation to the carrying on in Australia by that person of a business of distributing, exhibiting or exploiting motion picture films or of

its retention serves no purpose. It was inserted in the original *Income Tax Assessment Act* of 1922 because of the distinction drawn in section 20 of that Act between

distributed and non-distributed income of a company.

(c) No change has been made in the incidence of the tax.

or in relation to the acquisition of any advertising matter for use in connexion with such films, and that business—

- (a) is controlled principally by non-residents;
- (b) is carried on by a company a majority of the shares in which is held by or on behalf of non-residents; or
- (c) is carried on by a company which holds, or on behalf of which other persons hold, a majority of the shares in a non-resident company,

the non-resident deriving that income shall be liable to pay income tax thereon.

Taxable income.

**139.** Where any non-resident has derived such income, an amount equal to thirty per centum of the gross income so derived shall be included in his taxable income:

Provided that, where it is proved to the satisfaction of the Commissioner that that amount should be varied, he may assess the amount to be so included at such other amount as he determines.

Liability of agent.

**140.** Any person carrying on business in Australia, who has entered into any such contract or agreement with any non-resident, shall, for all purposes of this Act, be the agent of that non-resident, and shall not make any payment of any income assessable under this Division to such non-resident, or transfer out of Australia any such income for the purpose of making such payment, unless and until arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed to be paid by that non-resident.

Penalty.

**141.** Any person who makes any payment or transfers any income in contravention of the last preceding section shall be guilty of an offence.

Penalty: The amount of tax which is, or becomes, payable in respect of that income by the non-resident for whom the person paying or transferring the income is the agent, and in addition a fine not exceeding one hundred pounds.

leasing such films to other persons; or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connexion with such films, and, in the opinion of the Commissioner, that business—

- (a) is controlled principally by persons resident outside Australia or by a foreign company; or
- (b) is carried on by a company, a majority of the shares in which are held by or on behalf of—
  - (i) a foreign company; or
  - (ii) persons who hold a majority of the shares in a foreign company; or
- (c) is carried on by a company (other than a foreign company) which holds, or on behalf of which other persons hold, a majority of the shares in a foreign company,

the person residing outside Australia, or the foreign company, deriving that income shall be assessable and chargeable with income tax thereon.

(2.) Where any person or foreign company has derived income which is assessable under the last preceding sub-section, the taxable income of that person or company shall be deemed to be equivalent to thirty per centum of the amount of the gross income so derived:

Provided that, where it is proved to the satisfaction of the Commissioner that the percentage specified in this sub-section should be varied, that person or foreign company shall be assessable and chargeable with income tax on such other percentage of that gross income as the Commissioner in his judgment thinks proper.

(3.) For the purposes of this section "foreign company" means a company incorporated outside Australia.

(4.) Any person carrying on business in Australia who has entered into, with any person residing outside Australia or with a foreign company, a contract or agreement of the nature specified in sub-section (1.) of this section, shall, for all purposes of this Act, be the agent for the person residing outside Australia or the foreign company and shall not make any payment of any income assessable under this section to or on account of that person or company and shall not transfer out of Australia any such income for the purpose of making any such payment unless and until arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed to be paid by that person or company.

(5.) Any person who makes any payment or transfers any income in contravention of the last preceding sub-section shall be guilty of an offence.

Penalty: The amount of tax which is, or may become payable by the person or company for whom or for which the person paying or transferring the income is the agent and, in addition, a fine not exceeding One hundred pounds.

## Division 15.—Insurance with Non-Residents.

## Definitions.

## 142. In this Division—

- “insurance contract” means a contract or guarantee whereby liability is undertaken, contingent upon the happening of any specified event, to pay any money or make good any loss or damage, but does not include a contract of life assurance;
- “insured event” means an event upon the happening of which the liability under an insurance contract arises;
- “insured person” means a person with whom any insurance contract is entered into by an insurer;
- “insured property” means the property the subject of an insurance contract made or given by an insurer;
- “insurer” means any non-resident who undertakes liability under an insurance contract.

## Income derived by non-resident insurer.

143.—(1.) Where an insured person, whether a resident or non-resident, has entered into an insurance contract with an insurer, and the insured property at the time of the making of the contract is situate in Australia, or the insured event is one which can happen only in Australia, the premium paid or payable under the contract shall be included in the assessable income of the insurer, and shall be deemed to be derived by him from sources in Australia, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.(a)

(2.) Where an insured person who is a resident has entered into an insurance contract with an insurer, and an agent or representative in Australia of the insurer was in any way instrumental in inducing the entry of the insured person into that contract, any premium paid or payable under the contract shall, wherever the insured property is situate, or the insured event may happen, be included in the assessable income of the insurer and shall be deemed to be derived by him from sources in Australia, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

## Taxable income of non-resident insurer.

144. The insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under such

(a) Under section 28B of the present Act, any premium payable by a person in Australia under a contract of insurance with an absentee who is not carrying on in Australia an insurance business, either in a principal office, or by means of a branch, is deemed to be assessable income derived from sources in Australia by the absentee.

There is a weakness in the section, however, in that, provided the absentee company is carrying on in Australia an insurance business in a branch office, premiums

received from persons in Australia in respect of insurance effected abroad with the head office of the Company, and not through the local branch, are not assessable in Australia.

By effecting insurances directly with a person in Australia, an absentee company should not be relieved of liability for taxation which would follow if the business were transacted through its local branch.

Another matter which requires adjustment is the reference in the section to

**28B.**—(1.) Notwithstanding anything contained in this Act, income where any person in Australia (referred to in this section as "the insured") enters into a contract of insurance or guarantee against loss, damage or risk of any kind whatever (not being a contract of life insurance)—

- (a) with an absentee (referred to in this section as "the insurer") who is not carrying on in Australia an insurance business either in a principal office or by means of a branch; or
- (b) with a person in Australia acting on behalf of the insurer, any premium paid or payable under that contract shall be deemed to be assessable income derived from sources in Australia by the insurer.

(2.) The insurer shall be deemed, in respect of the premiums, to have derived in any year a taxable income equal to ten per

insurances effected "with any person in Australia". The section was originally introduced to tax ex-Australian underwriters in respect of *Australian business* undertaken by them in competition with companies established in Australia. The present section would apply, however, to insurances entered into by a person in Australia direct with an absentee company in respect of property which is not in Australia, and which it is not intended to bring to Australia. The provisions as now revised

apply to—

- (i) property, &c., in Australia, and
- (ii) property, &c., wherever situate, where the insurance is entered into by a resident with a non-resident insurance company through the instrumentality of an agent or representative in Australia of the insurance company.

These provisions are set out in clause 143 (1) and (2). The remaining clauses re-state the existing law.

contracts, a taxable income equal to ten per centum of the total amount of such premiums:

Provided that, where the actual profit or loss derived or made by the insurer in respect of such premiums is established to the satisfaction of the Commissioner, the taxable income of the insurer in respect thereof, or the amount of the loss so made by him shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

**Liability of agents of insurer.**

**145.** The insured person and any person in Australia acting on behalf of the insurer shall be the agents of the insurer, and shall be jointly and severally liable as such for all purposes of this Act. If either of those persons pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed under this Division in respect to that amount, that person shall be personally liable to pay that tax.

**Deduction of premiums.**

**146.** Notwithstanding any other provision of this Act, no such premium shall be an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed in respect of that premium.

**Exporter to furnish information.**

**147.** Every person who exports any goods from Australia shall furnish to the Collector of Customs for transmission to the Commissioner a copy of the customs entry of such goods, and shall show thereon such information as is prescribed regarding the insurance of such goods.

**Rate in special circumstances.**

**148.** Where the insurer satisfies the Commissioner that, on account of special circumstances, it is necessary that the rate of tax payable by him under this Division should be ascertained at the time when premiums are paid to him, the Commissioner may direct that the tax so payable in respect of premiums paid during any

centum of the total amount of premiums paid or payable during that year to the insurer or to the person in Australia acting on behalf of the insurer:

Provided that, where the actual profit or loss derived or made by the insurer in respect of those premiums is established to the satisfaction of the Commissioner, the taxable income of the insurer or the amount of the loss so made by him shall, subject to the other provisions of this Act, be calculated by reference to receipts and expenditure which were taken into account in calculating that profit or loss.

(3.) The insured and any person in Australia acting on behalf of the insurer shall be the agents, and shall be jointly and severally liable as such, for all purposes of this Act of the insurer, and if either of those persons pays or credits any amount in respect of that contract to the insurer before arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed under this section in respect of that amount, the person paying or crediting that amount shall be personally liable for payment of so much of the income tax, if any, as is or may become payable by the insurer on ten per centum of that amount.

**23.—(1) (a) (ii).** Provided further that, where any person would, but for this proviso, be entitled to a deduction in respect of any premium paid under a contract of insurance or guarantee against loss, damage or risk of any kind whatever (not being a contract of life insurance) with an absentee (herein referred to as "the insurer") who is not carrying on in Australia an insurance business either in a principal office or by means of a branch or through any other representative empowered to receive and deal with premiums under such contracts on behalf of the insurer, that person shall not be entitled to any deduction in his assessment in respect of that premium unless arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed under section twenty-eight of this Act in respect of that premium;

**28B.—(4.)** Every person who exports any goods from Australia shall furnish to the Collector of Customs for transmission to the Commissioner a copy of the Customs entry for such goods and shall show thereon such information regarding the insurance of those goods as is prescribed.

**28B.—(5.)** Where an insurer specified in paragraph (a) of subsection (1.) of this section satisfies the Commissioner that, on account of special circumstances, it is necessary that the rate of tax payable by him under this section should be ascertained at the time when premiums are paid to him, the Commissioner may direct that the tax

financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

Re-insurance  
with  
non-resident.

**149.** Where a person carrying on the business of insurance (other than life assurance) in Australia reinsurance risks with another person carrying on a similar business, but not in Australia—

- (a) so much of the premiums received on those risks as is credited or paid to such other person; and
- (b) only so much of the losses on those risks as relates to the risks or part of the risks which have not been so reinsurance,

shall, subject to this Division, be allowable deductions to the person carrying on business in Australia.

**Division 16.—Averaging of Incomes.**

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(a) The provisions of this sub-section have not been repeated in the Bill, but the

payable under this section by the insurer in respect of premiums paid to him during any financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

**23.—(1) (a) (ii).** Provided that where a company carries on the business of insurance (other than life insurance) in Australia and re-insures risks with a person or company carrying on a similar business but not in Australia, the company carrying on business in Australia shall be entitled to deduct—

- (i) so much of the premiums received on those risks as is credited or paid to that person or company; and
- (ii) only so much of the losses on those risks as relates to the risks or part of the risks which have not been so re-insured:

**13.—(2).** In assessments of tax for the financial year beginning on the first day of July, One thousand nine hundred and twenty-two and subsequent years, the rate to be applied to the taxable income of a taxpayer shall be ascertained by calculating the amount of tax that would, under the Act by which the rates of income tax are declared, be payable:—(a)

- (i) where the taxable income consists wholly of income from personal exertion—upon a taxable income from personal exertion equal to the average income, and dividing that amount of tax by the average income;
- (ii) where the taxable income consists wholly of income from property—upon a taxable income from property equal to the average income, and dividing that amount of tax by the average income;
- (iii) where the taxable income consists partly of income from personal exertion and partly of income from property—upon a taxable income from personal exertion equal to the average income, and also upon a taxable income from property equal to the average income, and dividing these respective amounts of tax by the average income. The amounts so obtained shall be the rates of tax on income from personal exertion and income from property respectively which shall be charged on the amount of income from personal exertion and the amount of income from property respectively contained in the taxable income of the taxpayer:

Provided that this sub-section shall not apply to the taxable income of a company except income in respect of which it is assessable as a Trustee.

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intention is to incorporate them in future in the Income Tax Act imposing the rates.

Average income.

**150.** In this Division(a), "average income" of a taxpayer means the average of his taxable incomes of the years (in this Division called "average years") beginning with the first average year and ending with the year of income.

First average year.

**151.** Subject to this Division, the first average year shall be the fourth year before the year of income. A year the income of which was subject to assessment under the previous Act shall be capable of being a first or subsequent average year.

First calculation.

**152.—(1.)** For the purpose of making the first calculation of the rate of tax under this Division, the first average year shall be the first year which is otherwise capable of being an average year, and in which the taxable income is not greater than that of the next succeeding year. No year prior to that first average year shall, on any calculation of the rate of tax, be capable of being an average year.

(2.) Any year in which the taxpayer was not carrying on business and was not in receipt of a taxable income shall not be counted as a first average year in making the first calculation of the rate of tax under this Division.

(3.) This section shall not apply to a taxpayer whose income has been or is liable to be assessed at an average rate of tax determined under the provisions of the previous Act.

Taxpayer not in receipt of assessable income.

**153.** Any year in which the taxpayer was not carrying on business and was not in receipt of assessable income shall not be counted as an average year, and the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.

Taxpayer with no taxable income.

**154.** Any year in which the taxpayer was carrying on business but had no taxable income shall be capable of being an average year.

Excess of allowable deductions.

**155.** Any excess of allowable deductions over the assessable income of the taxpayer in any average year shall not be taken into account in calculating the average income.

(a) This Division temporarily re-enacts *in toto* the present provisions as regards the averaging of 5 years' incomes for the purpose of ascertaining the appropriate rate of tax to be applied to the taxable income. By clause 168, however, the averaging provisions are to terminate in

3 years' time as regards all classes of taxpayers other than primary producers. This is in accord with the recommendation of the Royal Commission. While the evidence submitted to the Commission was generally in favour of the retention of the averaging provisions for the primary pro-

13.—(2A.) For the purposes of this section “average income” of any taxpayer means the average of his taxable incomes of the years (in this section called “average years”), beginning with the first average year and ending with the year next preceding the financial year for which the tax is payable.

(3.) The first average year shall be the fifth year before the financial year for which the tax is payable—except in the cases in which the subsequent provisions of this section provide for the first average year being a later year.

(4.) The first average year shall not be earlier than the year beginning on the first day of July One thousand nine hundred and twenty.

(5.) Where the taxable income of the taxpayer ascertained from the income of the year which would otherwise be the first average year was greater than his taxable income of the next succeeding year, the first average year shall be the first year, subsequent to the first-mentioned year, in which the taxable income of the taxpayer was less than his taxable income in the next subsequent year.

(6.) Any year in which the taxpayer was not carrying on business and was not in receipt of a taxable income shall not be counted as a first average year.

(13.) Any year in which the taxpayer was not carrying on business and was not in receipt of assessable income shall not be counted as an average year, and the provisions of this section shall thereafter apply as if he had never been a taxpayer in a previous year.

(7.) Any year in which the taxpayer was carrying on business but had no taxable income shall be capable of being a first average year.

(8.) The excess of allowable deductions over the assessable income of any taxpayer in any year which is an average year shall be taken into account in calculating the average:

Provided that in the case of any loss which is deductible under sub-section (1.) of section twenty-six of this Act the following amounts shall not be taken into account under this sub-section in

ducers, the retention was admitted to be a very doubtful benefit, if not a distinct disadvantage, to other classes of taxpayers. As, however, the disadvantage has mostly been suffered by taxpayers during recent years of depression, it is con-

sidered only equitable to retain the advantage of the averaging provisions for all classes of taxpayers during the recovery period up to 1938, before the recommendation of the Royal Commission is given effect to.

Permanent  
reduction of  
income.

156.—(1.) Where a taxpayer establishes that, owing to his retirement from his occupation, or from any other cause (but not including a change in the investment of assets from which assessable income was derived into assets from which the taxpayer derives income which is not liable to be assessed under this Act), his taxable income has been permanently reduced to an amount which is less than two-thirds of his average taxable income, he shall be assessed, and the provisions of this Division shall apply to the income thereafter derived by him, as if he had never been a taxpayer before that year.

(2.) For the purposes of this section, "average taxable income" means the average taxable income by reference to which the taxpayer's rate of tax would be calculated apart from the provisions of this section, if there were excluded from his assessable income of the average years any income received by him from sources from which he does not usually receive income.

## Rates of tax.

157. The rates of tax payable by a taxpayer to whom this Division applies shall be the rates declared by the Parliament.

Application of  
division to  
primary  
producers.

158.—(1.) In respect of income derived during the year ending on the thirtieth day of June, One thousand nine hundred and thirty-eight and during any subsequent year or during any accounting period adopted in lieu of any such year, the foregoing provisions of this Division shall not apply except in respect of income derived by a primary producer.

(2.) For the purposes of this section, "primary producer" means a person who carries on in Australia a business of primary production.

(3.) For the purpose only of determining whether a person is carrying on a business of primary production, a beneficiary in a trust estate shall, to the extent to which he is presently entitled to the income or part of the income of that estate, be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.

(4.) If in respect of any year in which this Division applies only to taxpayers who are primary producers, a taxpayer who has in previous years been a primary producer does not carry on business as a primary producer, the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.

ascertaining the excess of allowable deductions for the year in which the loss was incurred—

- (a) where the taxpayer did not derive any assessable income in that year—the amount of the loss which is deductible under sub-section (1.) of section twenty-six of this Act: or
- (b) where the taxpayer derived assessable income in that year—the excess of the amount of the loss which is deductible under sub-section (1.) of section twenty-six of this Act over the net assessable income as defined in that section.

(9.) Where a taxpayer establishes that, owing to his retirement from his occupation, or from any other cause (but not including a change in the investment of assets from which assessable income was derived into assets from which the taxpayer derives income which is not liable to be assessed under this Act), his taxable income has been permanently reduced to an amount which is less than two-thirds of his average taxable income, he shall be assessed, and the provisions of this section shall thereafter apply, as if he had never been a taxpayer in a previous year.

For the purposes of this sub-section, "average taxable income" means the average taxable income by reference to which the taxpayer's rate of tax would be calculated apart from the provisions of this sub-section, if there were excluded from his assessable income of the average years any income received by him from sources from which he does not usually receive income.

Application of  
Division.

**159.** This Division shall not apply in any case where there are not at least two average years, and shall not apply to the taxable income of a company<sup>(a)</sup> except income in respect of which it is assessable as a trustee.

Rebate to  
non-resident  
taxpayer.

Division 17.—Rebates on Income Taxed Abroad and on  
Business Income.

**160.**—(1.) Where an amount of income derived from sources in Australia is included in the taxable income of a non-resident taxpayer,<sup>(c)</sup> and income tax is paid by the taxpayer on that amount of income under the law of the United Kingdom but not under the law of a State, and the Commonwealth rate is greater than one-half of the British rate, the taxpayer shall be entitled to a rebate of tax of the sum obtained by applying to that amount of income a rate which shall be—

- (a) where the Commonwealth rate is greater than the British rate—one-half of the British rate; and
- (b) where the Commonwealth rate is not greater than the British rate—the excess of the Commonwealth rate over one-half of the British rate.

(a) The corresponding provision in regard to companies is contained in the proviso to section 13(2) supra of the present Act.

(b) Sub-section 11 is not now necessary in view of the altered definition of "business" in clause 6 of the Bill.

(c) Income derived in Australia by a resident of Australia is liable to tax under the Commonwealth Act, but would not be liable to tax in the United Kingdom. Ex-Australian income derived by him is not assessable for Commonwealth purposes if it is subject to tax abroad. Therefore, st

(10.) Where there are not at least two average years for the purpose of calculating the rate under the foregoing provisions of this section, the rate of income tax to be applied in a year to the taxable income of a taxpayer shall be the rate applicable in that year, under the Act by which the rates of income tax are declared, to a taxable income of that amount.

(11.) For the purposes of this section, a person in any office or employment from which salary, wages or other emolument is derived shall not, so far as that office or employment is concerned, be deemed to be carrying on a business. (b)

(12.) Sub-sections (4.), (5.), (6.) and (7.) of this section shall be applicable only in ascertaining the first average year to be taken into account under sub-section (2.) of this section for purposes of making the first calculation under that sub-section of the rate of income tax of any taxpayer.

**18.**—(1.) Any person who has an amount of income which is liable to income tax for any year of assessment—

Rebates in  
cases of  
double and  
treble taxation.

(a) under this Act and in the United Kingdom, or  
(b) under this Act and in the United Kingdom and in a State  
of the Commonwealth of Australia,  
and who satisfies the Commissioner as to—

(c) the amount of the income which is so liable; and  
(d) the amounts of taxes to which the income is so liable,  
together with the rate or rates of those taxes,  
shall be entitled to a rebate of tax upon that amount of income at a  
rate which shall be ascertained as follows:—

(i) In the case where the amount of income is liable to tax  
under this Act and in the United Kingdom, and the  
Commonwealth rate is greater than one-half of the  
British rate—

(a) where the Commonwealth rate is greater than the  
British rate, the rate of rebate shall be one-half  
of the British rate;  
(b) where the Commonwealth rate is not greater than  
the British rate, the rate of rebate shall be the  
excess of the Commonwealth rate over one-half  
of the British rate:

Provided that no rebate shall be claimable  
under this paragraph with respect to any  
amount of income to which the next following  
paragraph is applicable:

far as the resident is concerned, the question of double taxation as between the Commonwealth and the United Kingdom does not usually arise.

In the case of the non-resident, income derived in Australia is liable to tax under the Commonwealth Act, and may also be

taxable in the United Kingdom. It is in respect of this class of taxpayer that the relief under Section 18 applies.

The provisions of the section have been differently expressed in clause 160, to make it clearer to what class of person the section applies.

(2.) Where an amount of income derived from sources in Australia is included in the taxable income of a non-resident taxpayer, and income tax is paid by the taxpayer on that amount of income under the law of the United Kingdom and under the law of a State, and the sum of the Commonwealth and State rates is greater than one-half of the British rate, the proportion which the Commonwealth rate bears to the sum of the Commonwealth and State rates shall be ascertained, and the taxpayer shall be entitled to a rebate of tax of the sum obtained by applying to that amount of income a rate which shall bear that proportion to the following—

- (a) where the sum of the Commonwealth and State rates is greater than the British rate—one-half of the British rate; and
- (b) where the sum of the Commonwealth and State rates is not greater than the British rate—the excess of the sum of the Commonwealth and State rates over one-half of the British rate.

(3.) In this section the following expressions, in relation to an amount of income, have the following meanings:—

- (a) “Commonwealth rate” means the rate ascertained by dividing the total amount of income tax paid or payable for the year by the taxpayer (before the deduction of rebate granted under this section) by the amount of the total taxable income in respect of which the tax paid or payable under this Act has been charged for that year; except that, where the tax is charged on an amount other than the ascertained amount of actual profits, the rate of tax shall be as determined by the Commissioner;
- (b) “State rate” has a corresponding meaning in relation to the income tax paid or payable on the amount of income under the law of a State;
- (c) “British rate” means the rate at which tax is paid under the law of the United Kingdom on the amount of income.

(4.) In this section, a reference to a State shall be read as including a reference to a Territory which is part of the Commonwealth.

(5.) For the purposes of this section, a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show—

- (a) what is the rate at which tax has been paid under the law of the United Kingdom; and
- (b) the particular amount of income which is liable to tax under this Act on which tax has been paid under the law of the United Kingdom.

## 18.—(1.)—

(ii) In the case where the amount of income is liable to tax under this Act and in a State and in the United Kingdom, and the sum of the Commonwealth and State rates is greater than one-half of the British rate, the proportion which the Commonwealth rate bears to the sum of the Commonwealth and State rates shall be ascertained, and the rate of rebate shall be that proportion of the following rates:—

- (a) Where the sum of the Commonwealth and State rates is greater than the British rate—one-half of the British rate;
- (b) Where the sum of the Commonwealth and State rates is not greater than the British rate—the excess of the sum of the Commonwealth and State rates over one-half of the British rate.

(2.) In this section the following expressions, in relation to an amount of income, have the following meanings:—

- (a) "Commonwealth rate" means the rate ascertained by dividing the total amount of income tax paid or payable for the year by the taxpayer (before the deduction of rebate granted under this section) by the amount of the total taxable income in respect of which the tax paid or payable under this Act has been charged for that year; except that, where the tax is charged on an amount other than the ascertained amount of actual profits, the rate of tax shall be as determined by the Commissioner;
- (b) "State rate" has a corresponding meaning in relation to the income tax paid or payable on the amount of income under the law of a State; and
- (c) "British rate" means the appropriate rate of the tax in the United Kingdom upon the amount of income.

(2A). In this section, a reference to a State shall be read as including a reference to a Territory which is part of the Commonwealth.

(3) For the purposes of this section a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show—

- (a) what is the appropriate rate of United Kingdom tax, and
- (b) the particular amount of income which is liable to tax under this Act and in the United Kingdom.

Rebate in  
respect of  
business  
income.

**161.**—(1.) Where the taxable income of an individual includes income derived by him from a business carried on by him either alone or as a partner with any other person, and the rate of tax payable by him upon his income from personal exertion exceeds the rate of tax payable by companies for the year of tax, a rebate of tax shall be allowed in his assessment of the amount arrived at by applying a rate equal to the difference between those rates of tax to fifteen per centum of the income so included in his taxable income.<sup>(a)</sup>

(2.) In this section, "business" means a business which from its nature and character requires for its efficient working the retention in the business of some part of the taxable income of each year.

(3.) This section shall not apply in any case by reason only of the fact that the amount set aside, appropriated or written off the value of assets in the accounts of an individual in respect of depreciation, exceeds the amount, if any, allowable under this Act in respect of depreciation of those assets.

#### PART IV.—RETURNS AND ASSESSMENTS.

Annual return.

**162.**—(1.) Every person shall, if required by the Commissioner by notice published in the *Gazette*, furnish to the Commissioner in the prescribed manner, within the time specified in the notice, or such extended time as the Commissioner may allow, a return signed by him setting forth a full and complete statement of the total income derived by him during the year of income, and of any deductions claimed by him.<sup>(b)</sup>

Provided that the Commissioner may, in the notice, exempt from liability to furnish returns such classes of persons not liable to pay income tax as he thinks fit, and any person so exempted need not furnish a return unless he is required by the Commissioner to do so.

(2.) If the taxpayer is absent from Australia, or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person duly authorized.

(a) Section 30 of the present Act has been redrafted to express its original intention, which had to be departed from in certain directions as the result of the judgment of the late Sir Leo Cussen of the Victorian Supreme Court in the case of *Kiddle v. Commissioner of Taxation*.

One effect of the judgment was that the word "income" appearing in sub-section (2) of the present section had no relation to assessable or taxable income as ascertained in accordance with the Act, but meant income in the ordinary accountancy sense. The position that results is that a person can claim the benefit of the section if it is necessary for him to retain in the business some part of his "income" in

the ordinary sense of the word, even if the part of that income which he must retain is not part of his taxable income, and is therefore not subject to tax.

To overcome this, the word "taxable" has been inserted in sub-section (2) in order that before the section can be applied, the income which must be retained should be income which is taxable.

A further effect of the judgment was that in ascertaining the amount of the rebate, the rate of tax payable by the person in respect of the business income should be regarded as the rate of tax which would be payable on that income by the person if it were his only income.

**30.**—(1.) Where an individual derives income from a business carried on by himself or in partnership with other persons, and his rate of tax on that income exceeds the rate imposed on the taxable income of a company, he shall be entitled to a rebate in his assessment of a sum equal to the amount by which his tax on fifteen per centum of that income exceeds the tax that would be payable on that percentage of that income, at the rate imposed on the taxable income of a company.

(2.) In this section "business" means a business which from its nature and character requires for its efficient working the retention in the business of some part of the income of each year.

#### PART IV.—RETURNS AND ASSESSMENTS.

**32.**—(1.) For the purpose of assessment and levy of income tax, every person shall, when called upon by the Commissioner by notice published in the *Gazette*, furnish to the Commissioner in the prescribed manner a return setting forth a full and complete statement of the total assessable income derived by him during the financial year ending on the preceding thirtieth day of June if—

- (a) in the case of a resident (not being a company) the total assessable income is not less than Two hundred and fifty pounds.
- (b) in the case of a company or an absentee the total assessable income exceeds the sum of One pound.

(2.) The first assessment of income tax under this Act shall be for the financial year commencing on the first day of July One thousand nine hundred and twenty-two, and each subsequent assessment shall be for the succeeding financial year:

Provided that nothing in this sub-section shall prevent the Commissioner requiring returns to be furnished to him before the commencement of any financial year for which income tax is to be assessed.

The rate of tax thus ascertained is always less than the actual rate payable if the person concerned has other income, and the effect of the judgment in this respect is that the rebate allowable is less than was the intention. Sub-section (1) has, therefore, been redrafted to ensure that the rebate shall be calculated with regard to the full excess of the actual rate over the rate payable by companies.

A new sub-section (3) has been inserted to clarify the intention of the section. Claims may arise for the application of the section to cases where a person chooses to write off in his accounts a greater amount of depreciation than is allowable to

him as a deduction under the Act. With regard to such claims, the departmental attitude in the past has been that the excess depreciation does not constitute a necessary retention of income for the efficient working of the business, and that attitude has never been contested in a Court. It is, however, considered desirable to take this opportunity of providing expressly that this shall not be a ground for the application of the section, thus removing any misapprehension which otherwise might arise in this connexion.

(b) This clause requires a taxpayer to sign his return personally, unless prevented by illness or absence from Australia.

Further returns, &c.

**163.**—(1.) Every person shall, if required by the Commissioner, whether before or after the expiration of the year of income, furnish to the Commissioner, in the manner and within the time required by him, a return, or a further or fuller return, of the income or any part of the income derived by him in any year, whether on his own behalf or as agent or trustee, and whether a return has or has not previously been furnished by him for the same period.

(2.) If no income has been so derived by the person so required to furnish a return, he shall nevertheless furnish a return stating that fact.

Special returns.

**164.** Every person, whether a taxpayer or not, if required by the Commissioner, shall, in the manner and within the time required by him, furnish any return required by the Commissioner for the purposes of this Act.

Returns deemed to be duly made.

**165.** Every return purporting to be made or signed by or on behalf of any person shall be deemed to have been duly made by him or with his authority until the contrary is proved.

Certificate of sources of information.

**166.**—(1.) Any person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner shall sign a certificate (in this Act called an "agent's certificate") in the prescribed form to be endorsed on or annexed to the return setting out the sources of information from which the return was compiled. (a)

(2.) Every person carrying on business who does not furnish with his return an agent's certificate shall furnish particulars in the prescribed form, endorsed on or annexed to the return, setting out the sources of information from which the return was compiled. (b)

Assessments.

**167.** From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner shall make an assessment of the amount of the taxable income of any taxpayer, and of the tax payable thereon.

Default assessments.

**168. If—**

- (a) any person makes default in furnishing a return; or
- (b) the Commissioner is not satisfied with the return furnished by any person; or
- (c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income,

(a) The Royal Commission recommended that provision should be made for the registration of tax agents, and that registration should be effected either by the Commonwealth or by the States. As it would be more convenient to have the supervision of tax agents undertaken in

the States, and as some of the States already provide for registration and other States propose to make similar provision, Commonwealth action is not necessary.

Experience has shown, however, the need to provide in the Act for agents to sign

33.—(1.) The Commissioner may at any time require any person <sup>New or further and fuller returns.</sup> to furnish a return or a further and fuller return of income either in respect of the whole or any part of income received by such person, whether on his own behalf or as an agent or trustee, and although a return has been previously made by such person for the same annual period.

(2.) All the provisions of this Act shall extend and apply to any such return or further and fuller return, and assessments may be made upon or in respect of it by the Commissioner in such manner as may be necessary.

(3.) In addition to the returns specified in this and the preceding section every person, whether a taxpayer or not, shall, as and when required by the Commissioner, make such further or other returns as the Commissioner requires for the purposes of this Act.

34. Any return purporting to be made or signed by or on behalf <sup>Returns deemed to be duly made.</sup> of any taxpayer or person shall be deemed to have been duly made and signed by him until the contrary is proved.

35. From the returns and from any other information in his <sup>Assessments to be made.</sup> possession, or from any one or more of these sources, the Commissioner shall cause assessments to be made for the purpose of ascertaining the taxable income upon which income tax shall be levied.

36. If—

- (a) any person makes default in furnishing any return; or
- (b) the Commissioner is not satisfied with the return made by <sup>Assessment in case of default or unsatisfactory return.</sup> any person; or
- (c) the Commissioner has reason to believe that any person (though he may not have furnished any return) is a taxpayer,

a certificate setting out the sources of information from which the return was compiled. Such a provision will tend to greater accuracy, and greater care being exercised in the furnishing of returns. A penalty is provided under clause 228 for

failure to sign the certificate, or for furnishing a false certificate.

(b) In the case of persons in business who do not employ a taxation agent, sub-clause (2) requires particulars to be furnished of the sources of information from which the return was compiled.

the Commissioner may make an assessment of the amount upon which in his judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of the last preceding section.

**Special Assessments.**

**169.**—(1.) The Commissioner may at any time during any year, or after its expiration, make an assessment of the taxable income derived in that year or any part of it by any taxpayer, and of the tax payable thereon.<sup>(a)</sup>

(2.) Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

**Assessments on all persons liable to tax.**

**170.** Where under this Act any person is liable to pay tax, the Commissioner may make an assessment of the amount of such tax.

**Amendment of assessments.**

**171.**—(1.) The Commissioner may, subject to this section, at any time amend any assessment by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.<sup>(b)</sup>

(2.) Where a taxpayer has not made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and the Commissioner is of opinion that there has been an avoidance of tax, the Commissioner may—

(a) where he is of opinion that the avoidance of tax is due to fraud or evasion—at any time; and

(b) in any other case—within six years from the date upon which the tax became due and payable under the assessment,

amend the assessment by making such alterations therein or additions thereto as he thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of tax as the case may be.

(3.) Where a taxpayer has made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and an assessment is made after that disclosure, no amendment of the assessment increasing the liability of the taxpayer in any particular shall be made except to correct an error in calcula-

(a) This clause sets out in a separate provision the substance of that portion of sub-section (2) of Section 33 of the present Act which refers to the making of special assessments.

Sub-clause (2) will permit of trading stock on hand being brought to account in an assessment for a period of less than a year in the same manner as it would be brought to account if the period were a full year.

(b) One of the chief criticisms in the past in respect of amended assessments has related to amendments due to an alteration in the interpretation of the law. The Bill provides that no assessments shall be re-opened on a point of law (except, of course, as the result of the determination of an objection lodged by the taxpayer). Under sub-clauses (2), (3) and (4), no amendment shall be made except to correct an error in calculation or a mis-

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, income tax ought to be levied, and the person assessed shall be liable to income tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

**37.**—(1.) The Commissioner may, subject to this section, cause <sup>Alteration of assessment.</sup> to be made all such alterations in or additions to any assessment as he thinks necessary in order to insure its completeness and accuracy, notwithstanding that income tax may have been paid in respect of income included in the assessment:

(1A.) An alteration in or addition to an assessment may be made under this section—

- (a) where the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance is due to fraud or evasion—at any time;
- (b) where the Commissioner is of opinion that there has been an avoidance of tax in the assessment owing to the failure or omission of the taxpayer to keep books, accounts or records from which the income of the taxpayer might reasonably be ascertained, and that the avoidance is not due to fraud or evasion—within six years from the date when the tax payable on the assessment was originally due and payable;
- (c) in any other case—within three years from the date when the tax payable on the assessment was originally due and payable:

take of fact, or, in cases where there has been a non-disclosure of information resulting in an avoidance of tax, to prevent such avoidance.

The introduction of the test of non-disclosure of information makes unnecessary the test of failure to keep proper accounts, as set out in section 37 (1A) (b) of the present Act. For practical purposes, the Taxation Department is largely

in the hands of the taxpayer, who is the person, and the only person in the position to submit the full facts in order to permit of an accurate assessment being made. Full disclosure of the facts will materially assist the Department in reaching finality in its assessments, and in sub-clause (3), where such disclosure has been made, the assessment is definitely closed after the expiration of three years.

tion or a mistake of fact; and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.

(4.) No amendment effecting a reduction in the liability of a taxpayer under an assessment shall be made except to correct an error in calculation or a mistake of fact; and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.

(5.) Where an assessment has, under this section, been amended in any particular, the Commissioner may, within three years from the date upon which the tax became due under the amended assessment make, in or in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the taxpayer under the assessment as is just.

(6.) Where an application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment, and the taxpayer has supplied to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application, the Commissioner may amend the assessment when he decides that application notwithstanding that that period has elapsed.

(7.) Nothing contained in this section shall prevent the amendment of any assessment in order to give effect to the decision upon any appeal or review, or its amendment by way of reduction in any particular in pursuance of an objection made by the taxpayer or pending any appeal or review.

(8.) Where—

- (a) any provision of this Act is expressly made to depend in any particular upon a determination, opinion or judgment of the Commissioner; and
- (b) any assessment is affected in any particular by that determination, opinion or judgment,

then if, after the making of the assessment it appears to the Commissioner that the determination, opinion or judgment was erroneous, he may correct it and amend the assessment accordingly in the same circumstances as he could under this section amend an assessment by reason of a mistake of fact.(a)

(9.) Notwithstanding anything contained in this section, when the assessment of the taxable income of any year includes an estimated amount of income derived by the taxpayer in that year from an operation or series of operations the profit or loss on which was not ascertainable at the end of that year owing to the fact that the operation or series of operations extended over more than

(a) There is no express power under the present Act for the Commissioner to alter or vary a determination once made, and

acted upon, such as, for example, the amount of depreciation allowable as a deduction. Sub-clause (8) will provide for

Provided that where as the result of an alteration or addition to an assessment any fresh liability is, or has been, imposed on the taxpayer a further alteration or addition may be made within three years from the date upon which the tax became due and payable under the amended assessment, but only for the purpose of adjusting that liability by way of reduction.

(ba) where an application for an alteration in his assessment is made by the taxpayer within three years from the date when the tax payable on the assessment was originally due and payable, and the taxpayer has supplied to the Commissioner, within that period, all information needed by the Commissioner for the purpose of deciding the application—at any time; and

**37.**—(3.) Notwithstanding anything contained in this section, where an assessment for any financial year includes the estimated amount of taxable income derived by the taxpayer, during the preceding financial year, from an operation or series of operations the profit or loss on which was not ascertainable at the end of that preceding year owing to the fact that the operation or series of

an assessment which is based on a determination of the Commissioner being amended in the same circumstances as an

amendment resulting from a mistake of fact.

one or parts of more than one year, the Commissioner may at any time within three years after ascertaining the total profit or loss actually derived or arising from the operation or series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

*Where no notice of assessment served.*

**172.**—(1.) Where a taxpayer has duly furnished to the Commissioner a return of income, and no notice of assessment in respect thereof has been served within twelve months thereafter, he may in writing by registered post request the Commissioner to make an assessment. (a)

(2.) If within three months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer, any assessment issued thereafter in respect of that income shall be deemed to be an amended assessment, and for the purpose of determining whether such amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the three months with a notice of assessment in respect of which income tax was payable on that day.

*Refund of tax overpaid.*

**173.** Where by reason of any amendment the taxpayer's liability is reduced, the Commissioner may refund any tax overpaid.

*Amended assessment to be an assessment.*

**174.** Except as otherwise provided every amended assessment shall be an assessment for all the purposes of this Act.

*Notice of assessment.*

**175.** As soon as conveniently may be after any assessment is made, the Commissioner shall serve notice thereof in writing by post or otherwise upon the person liable to pay the tax.

*Validity of assessment.*

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

*Judicial notice of signatures.*

**177.** All courts and all persons having by law or consent of parties authority to hear, receive and examine evidence, shall take judicial notice of the signature of every person who is or has been the Commissioner, the Second Commissioner or a Deputy Commissioner, provided such signature is attached or appended to any official document. (b)

*Evidence.*

**178.**—(1.) The production of a notice of assessment, or of a document under the hand of the Commissioner, Second Commissioner, or a Deputy Commissioner, purporting to be a copy of a notice of assessment, shall be conclusive evidence of the due making of the assessment and (except in proceedings on appeal against the assessment) that the amount and all the particulars of the assessment are correct.

(a) In practice, the Department concentrates on the examination and assessment of returns which disclose a taxable income, and the revision of non-taxable returns is, in many cases, deferred. As a result,

assessments are at times issued in respect of these returns at a much later date. The final examination of all non-taxable returns concurrently with taxable returns would result in a considerable increase in

operations was carried on during a period which extends over more than one, or parts of more than one, financial year, the Commissioner, upon ascertaining the total profit or loss actually derived or arising from the operation or series of operations, may, at any time, cause that assessment to be altered so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

**37.**—(2.) When any alteration in an assessment has the effect of reducing the taxpayer's liability the Commissioner may refund the taxpayer any tax overpaid.

**40.**—(1.) As soon as conveniently may be after an assessment is made the Commissioner shall cause notice in writing of the assessment to be given to the person liable to pay the income tax.

(2.) The omission to give any such notice shall not invalidate the assessment.

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

**39.**—(1.) The production of any notice of assessment or of any document under the hand of the Commissioner, Assistant Commissioner, or a Deputy Commissioner purporting to be a copy of a notice of assessment—

(a) shall be conclusive evidence of the due making of the assessment; and

departmental expenditure. Clause 172 will, however, cover special cases, and will permit of the fixing of a time limit for the issue of any assessment after the date of the taxpayer's request.

(b) This clause has been inserted to ensure the acceptance by courts of the signatures of the officers mentioned on official documents without their personal attendance.

(2.) The production of a *Gazette* containing a notice purporting to be issued by the Commissioner shall be conclusive evidence that the notice was so issued.

(3.) The production of a document under the hand of the Commissioner, Second Commissioner, or a Deputy Commissioner, purporting to be a copy of a document issued by either the Commissioner, Second Commissioner, or a Deputy Commissioner, shall be conclusive evidence that the document was so issued.

(4.) The production of a document under the hand of the Commissioner, Second Commissioner, or a Deputy Commissioner, purporting to be a copy of or extract from any return or notice of assessment shall be evidence of the matter therein set forth to the same extent as the original would be if it were produced.

#### PART V.—OBJECTIONS AND APPEALS.

##### Boards of Review.

###### Division 1.—Constitution of Boards of Review.<sup>(a)</sup>

**179.**—(1.) For the purposes of this Part, there shall be a Board or Boards of Review.

(2.) Each Board shall consist of a Chairman and two other members, who shall be appointed by the Governor-General.

(3.) The persons who, immediately prior to the commencement of this Act, held office as members of a Board of Review under the previous Act, shall, subject to this Act, continue to hold office as if appointed members of a Board of Review under this Act, for the remainder of the terms for which they were appointed under the previous Act.

(4.) The members of a Board shall hold office for a term not exceeding seven years, but shall be eligible for re-appointment.

(a) Though the provisions of the present Act are being re-enacted for the continuance of the Board of Review, the Government proposes to establish, in con-

(b) shall, except in proceedings on appeal against the assessment (when it shall be *prima facie* evidence only), be conclusive evidence that the amount and all the particulars of the assessment are correct;

(2.) The production of any document under the hand of the Commissioner, Assistant Commissioner, or a Deputy Commissioner purporting to be a copy of or extract from any return or notice of assessment, shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

**PART V.—OBJECTIONS AND APPEALS.**

**41.**—(1.) For the purposes of this Part, there shall be a Board or <sup>Boards of</sup> ~~Review.~~

(2.) Each Board shall consist of a Chairman and two other members, who shall be appointed by the Governor-General.

(3.) The persons who were, prior to the commencement of this section, appointed, in relation to income tax, to be members of a Board of Appeal, shall be deemed, as from the commencement of this Act, to have been appointed to be members of a Board of Review and shall continue to hold office as such members as if appointed under this Act.

(4.) The members of a Board shall hold office for a term of seven years, but shall be eligible for re-appointment:

Provided that any appointment of a member of a Board of Review after the commencement of the *Income Tax Assessment Act* 1927 may be for such term not exceeding seven years, as is specified by the Governor-General in the appointment.

(5.) Notwithstanding anything contained in the Acts repealed by this Act or in this section, the persons mentioned in the first column of the table to this sub-section shall be deemed to have been appointed, on the dates respectively specified in the second column of that table, to the offices under this Act respectively specified in the third column of that table, and those persons shall be deemed to have continued in those offices until the commencement of this sub-section and shall thereafter, subject to sections forty-eight and forty-nine of this Act,

junction with the States, a Single Appellate Tribunal for Commonwealth and State

Taxation appeal cases.

Officers of  
Public Service  
appointed to  
Board.

**180.**—(1.) If any officer of the Public Service of the Commonwealth is appointed a member of a Board, his service as member shall, for the purpose of determining his existing and accruing rights, be counted as public service in the Commonwealth.

(2.) If any member of the Public Service of a State is appointed a member of a Board, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Illness or  
suspension  
of Chairman  
or member.

**181.**—(1.) In the case of the illness, suspension or absence of the Chairman, the Governor-General shall appoint one of the other members to act as Chairman during such illness, suspension or absence.

(2.) In the case of the illness, suspension or absence of any member of a Board, the Governor-General may appoint a person to act as the deputy of the member during his illness, suspension or absence, and the deputy shall, whilst so acting, have all the powers and perform all the duties of a member.

Board may  
not be sued.

**182.** No action or suit shall be brought or maintained against any person who is or has been a member of a Board, for any nonfeasance or misfeasance in connexion with his duties.

Remuneration  
of members.

**183.** The Chairman and each of the other members of a Board shall receive such remuneration and travelling allowance as the Governor-General determines, and the Consolidated Revenue Fund is, to the necessary extent, but not exceeding the sum of Ten thousand pounds per annum, hereby appropriated accordingly.

Removal or  
suspension of  
member.

**184.**—(1.) The Governor-General may remove any member of a Board from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

(2.) The Governor-General may suspend any member of a Board from office for misbehaviour or incapacity.

(3.) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House

so continue until the dates respectively specified in the fourth column of that table.

Alfred Fletcher Twine	26th May, 1922	Chairman, Board of Review	25th May, 1929.
Algernon Stratford Canning	22nd June, 1922	Member, Board of Review	21st June, 1929.
Russell Martin Lightband	25th June, 1922	Member, Board of Review	25th June, 1929.

**42.**—(1.) If any officer of the Public Service of the Commonwealth is appointed a member of a Board, his service as member shall, for the purpose of determining his existing and accruing rights, be counted as public service in the Commonwealth.

(2.) If any member of the Public Service of a State is appointed a member of a Board, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

**43.**—(1.) In the case of the illness, suspension or absence of the Chairman, the Governor-General shall appoint one of the other members to act as Chairman during such illness, suspension or absence.

(2.) In the case of the illness, suspension or absence of any member of a Board, the Governor-General may appoint a person to act as the deputy of the member during his illness, suspension or absence, and the deputy shall, whilst so acting, have all the powers and perform all the duties of a member.

**46.** No action or suit shall be brought or maintained against any person who is or has been a member of a Board, for any nonfeasance or misfeasance in connexion with his duties.

**47.** The Chairman and each of the other members of a Board shall receive such remuneration and travelling allowance as the Governor-General determines, and the Consolidated Revenue Fund is, to the necessary extent, but not exceeding the sum of Ten thousand pounds per annum, hereby appropriated accordingly.

**48.**—(1.) The Governor-General may remove any member of a Board from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

(2.) The Governor-General may suspend any member of a Board from office for misbehaviour or incapacity.

(3.) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of

of Representatives praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant, and the office shall thereupon become and be vacant.

Vacation of  
office of  
member.

**185.** A member of a Board shall be deemed to have vacated his office if—

- (a) he engages, during his term of office, in any paid employment outside the duties of his office;
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit;
- (c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months; or
- (d) he becomes permanently incapable of performing his duties.

#### Division 2.—Reviews and Appeals.

Objections.

**186.** A taxpayer dissatisfied with any assessment under this Act may, within sixty days after service of the notice of assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies: <sup>(a)</sup>

Provided that, where the assessment is an amended assessment, the taxpayer shall have no further right of objection than he would have had if the amendment had not been made, except to the extent to which by reason of the amendment a fresh liability in respect of any particular is imposed on him or an existing liability in respect of any particular is increased.

Decision of  
Commissioner.

**187.** The Commissioner shall consider the objection, and may either disallow it, or allow it either wholly or in part, and shall serve the taxpayer by post or otherwise with written notice of his decision.

Application for  
appeal or  
review.

**188.** A taxpayer dissatisfied with the decision may, within sixty days <sup>(b)</sup> after such service, in writing request the Commissioner either—

- (a) to refer the decision to a Board of Review for review; or

(a) The only alteration effected by this clause is the fixation of the time for objection at 60 days.

(b) The time for lodging an appeal or referring a decision to the Board of Review is extended from 30 days to 60 days, but

Representatives praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant, and the office shall thereupon become and be vacant.

**49.** A member of a Board shall be deemed to have vacated his <sup>Vacation of</sup> <sub>office of</sub> member if—

- (a) he engages, during his term of office, in any paid employment outside the duties of his office;
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit;
- (c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months; or
- (d) he becomes permanently incapable of performing his duties.

**50.**—(1.) A taxpayer who is dissatisfied with the assessment made <sup>Objections.</sup> by the Commissioner under this Act may, within forty-two days after service by post of the notice of assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies:

Provided that every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the taxpayer affected, and, unless made with his consent, shall be subject to objection.

(2.) The Commissioner shall consider the objection, and may either disallow it, or allow it, either wholly or in part.

(3.) The Commissioner shall give to the objector written notice of his decision on the objection.

(4.) A taxpayer who is dissatisfied with the decision of the Commissioner, Assistant Commissioner or Deputy Commissioner may within thirty days after the service by post of notice of that decision—

- (a) in writing, request the Commissioner to refer the decision to a Board of Review for review; or

the power of the Commissioner to extend the period for a further 30 days has been removed. The period of 60 days has been uniformly adopted for this and associated

clauses so as to do away with the confusion caused by the varying periods for different purposes.

(b) to treat his objection as an appeal and to forward it either to the High Court or to the Supreme Court of a State.

Reference to Board or Court.

**189.**—(1.) If the request is accompanied by a fee of one pound, the Commissioner shall refer the decision or forward the objection to a Board or Court in accordance with the request.(a)

(2.) The fee shall be refunded to the taxpayer if his assessment is reduced either by amendment or as a result of the decision of the Board or Court.

Notice to refer.

**190.** If within sixty days after receiving the request accompanied by the fee of one pound the Commissioner does not refer the decision or forward the objection, the taxpayer may at any time thereafter give him notice in writing to do so, and the Commissioner shall within sixty days after receiving the notice refer the decision or forward the objection to a Board or Court accordingly:(b)

Provided that, if, within sixty days after receiving the request, the Commissioner requires the taxpayer in writing to furnish information relating to the decision or objection, the Commissioner shall not be bound to refer the decision or forward the objection to a Board or Court until the expiration of sixty days after the receipt by him of that information.

Grounds of objection and burden of proof.

**191.** Upon every such reference or appeal—

(a) the taxpayer shall be limited to the ground stated in his objection; and

(b) the burden of proving that the assessment is excessive shall lie upon the taxpayer.(c)

Reduced assessments.

**192.** If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the reference or appeal.

(a) The deposit for an appeal or reference to the Board of Review has been fixed at £1. There is no deposit demanded at present for an appeal to a Court, but in the case of a reference to the Board of Review, the Regulations prescribe a minimum of £1 and a maximum of £50, the calculation being based upon 1 per cent. of the amount in dispute, according to the circumstances of the type of case involved. It is considered that the simple prescription in the Act itself for a fixed deposit of £1 will be sufficient to prevent frivolous or unreasonable appeals or references, and

save the Department from the work of preparing and transmitting unnecessary cases. The matter of refunding or retaining the deposit is made automatic, being dependent upon a reduction being secured in the assessment.

(b) This clause gives further time to the Commissioner for forwarding references to the Board of Review. There is no time limit fixed at present for forwarding an appeal to a Court, but 30 days is fixed for a reference to the Board of Review. In practice the time limit of 30 days has been found quite inadequate, since the

(b) in writing, request the Commissioner to treat his objection as an appeal and to forward it either to the High Court or to the Supreme Court of a State.

(5.) The Commissioner may in any case in his discretion and upon reasonable cause being shown by the taxpayer, extend for a further period not exceeding thirty days (a) the period of forty-two days mentioned in sub-section (1.) of this section and (b) the period of thirty days mentioned in sub-section (4.) of this section.

**51.**—(1.) Where a taxpayer has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the taxpayer's request is accompanied by a deposit of such amount as is prescribed for the particular class of case, refer the decision to the Board not later than thirty days after receipt of the request. References to Board.

(5.) The Board may, if it considers the reference to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount deposited in accordance with sub-section (1.) of this section.

**51.**—(2.) A taxpayer shall be limited on the review to the grounds stated in his objection.

**51A.**—(3.) A taxpayer shall be limited, on the hearing of the appeal, to the grounds stated in his objection.

**51.**—(3.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with by the Board under the next succeeding sub-section.

Deputy Commissioner in a State is required to prepare and forward the case to the Commissioner in Canberra for transmission to the Board. The 30 days does not give the Commissioner time for any reference back to the Deputy Commissioner or the taxpayer for examination of any fresh aspect or the collation of further information. Such action is frequently necessary in the interests of the taxpayer as well as the Department. If, within 60 days, the case has not been transmitted and if the taxpayer feels prejudiced by the delay,

the clause provides for 60 days' notice to be given for the transmission of the objection. Before the Commissioner can be compelled to comply with this demand, however, the taxpayer on his part must furnish all information required for the purpose of clarifying the issues before the Court or the Board.

(c) This sub-clause repeats, in effect, though in more direct words, the provision in section 39(1) (b) of the present Act—see page 167 that, on appeal, the assessment shall be *prima facie* evidence of its correctness.

Review by Board.

**193.** A Board of Review shall have power to review such decisions of the Commissioner, Second Commissioner or a Deputy Commissioner as are referred to it under this Act.

Powers of Board.

**194.** For the purposes of reviewing such decisions, the Board shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, other than decisions to remit additional tax or any part thereof<sup>(a)</sup>, and such assessments, determinations and decisions of the Board, and its decisions upon review, shall for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner.

Quorum and voting.

**195.** At all sittings of the Board—

- (a) any two members shall form a quorum;
- (b) the decision of the majority shall prevail;
- (c) the Chairman shall have a deliberative, but not a casting vote.

Decision of Board.

**196.**—(1.) Upon every reference to the Board, it shall give a decision in writing and may either confirm, reduce, increase or vary the assessment.

(2.) Upon the request of the Commissioner or the taxpayer, made at the hearing, the Board when giving its decision shall state in writing its findings of fact and its reasons in law for the decision.

Appeal or reference to High Court.

**197.**—(1.) The Commissioner or taxpayer may appeal to the High Court from any decision of the Board which involves a question of law.

(2.) The Board shall, upon the request of the Commissioner or taxpayer, refer to the High Court any question of law arising before the Board.

(3.) The decision of the High Court on such appeal or reference shall be final and conclusive.

(a) This clause takes away the right of the Board to remit additional tax by way of penalty imposed by the Act and reviewed by the Commissioner. Until recently, the view was held that the Board had no such right. Apart from the undesirability from a general and administra-

tive point of view of having a review by the Commissioner further reviewed by the Board, it would prove impracticable to give the Board the right to review the many cases of penalties that taxpayers could refer if the restraint were not imposed. It would call for the appointment of fur-

**51A.**—(4.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment appealed from.

**44.**—(1.) A Board of Review shall have power to review such decisions of the Commissioner, Assistant Commissioner or Deputy Commissioner as are referred to it by the Commissioner under this Act and, for the purpose of reviewing such decisions, shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of the Board, and the decisions of the Board upon review, shall, for all purposes (except for the purposes of sub-section (4.) of section fifty and sub-section (6.) of section fifty-one of this Act) be deemed to be assessments, determinations or decisions of the Commissioner. Powers of Board.

(2.) Notwithstanding anything contained in this Act, a determination made by the Board under section twenty-one of this Act shall not be invalidated by reason of the fact that it is not made within the time prescribed by that section.

**45.**—(1.) For the conduct of the business of a Board any two members shall form a quorum. Quorum and voting.

(2.) At a meeting of a Board the decision of the majority shall prevail.

(3.) The Chairman of a Board shall have a deliberative, but not a casting vote.

**51.**—(4.) The Board, on review, shall give a decision in writing and may either confirm the assessment or reduce, increase or vary the assessment.

(4A.) Where, during the hearing of a review, the Commissioner or the taxpayer so requests, the Board shall, when giving its decisions on the review, state in writing its reasons, both of law and of fact, for the decision including the particular terms of the Act which have been considered by the Board in arriving at the decision.

**51.**—(6.) The Commissioner or a taxpayer may appeal to the High Court from any decision of the Board under this section which, in the opinion of the High Court, involves a question of law and the Board shall, upon the request of the Commissioner or a taxpayer, refer to the High Court any question of law arising before the Board and the decision of the High Court thereon shall be final and conclusive.

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ther Boards, with additional expense, to meet a situation which is at present equitably and reasonably met by the Department. It is to be remembered that Parliament in the Act itself prescribes the penalties and gives the Commissioner power to remit

the penalties wholly or in part if the circumstances warrant. Not merely are penalties imposed for evasions of tax, omissions from returns, and failure to lodge returns, but for late lodgment of returns and late payments of tax.

Constitution of  
Court on appeal.

**198.** Where, at the request of the taxpayer, the Commissioner has treated his objection as an appeal and forwarded it to the High Court or the Supreme Court of a State, the appeal shall be heard by a single Justice or Judge of the Court.

Case stated to  
High Court.

**199.**—(1.) The Court may, if it thinks fit, state a case in writing for the opinion of the High Court upon any question of law arising on the appeal.

(2.) The High Court shall hear and determine the question and remit the case with its opinion to the Court below, and may make such order as to the costs of the case stated as it thinks fit.

Order of Court  
on appeal.

**200.**—(1.) The Court hearing the appeal may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment. The costs of the appeal shall be in the discretion of the Court.

(2.) Every such order shall be final and conclusive except as hereinafter provided.

Appeal to High  
Court.

**201.** The Commissioner or taxpayer may appeal to the High Court in its appellate jurisdiction from any such order.

Pending appeal  
not to delay  
payment of tax.

**202.** The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal or reference; and income tax may be recovered on the assessment as if no appeal or reference were pending.

Adjustment of  
tax after appeal.

**203.** If the assessment is altered on the appeal or reference a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

Rules of Court.

**204.**—(1.) The Justices of the High Court or a majority of them may make Rules of Court for regulating the practice and procedure in relation to appeals to a Court against assessments and decisions.

(2.) All Rules so made shall—

- (a) be notified in the *Gazette*;
- (b) take effect from the date of notification or from a later date specified in the Rules; and
- (c) be laid before both Houses of the Parliament within thirty days of the making thereof, or if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(3.) If either House of the Parliament within fifteen sitting days after the Rules have been laid before the House passes a resolution of which notice has been given disallowing any Rule, that Rule shall thereupon cease to have effect.

**51A.**—(1.) Where a taxpayer has, in accordance with section fifty of this Act, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or the Supreme Court of a State, the Commissioner shall forward it accordingly.

(2.) The appeal shall be heard by a single Justice of the Court.

(8.) On the hearing of the appeal, the Court may, if it thinks fit, state a case in writing for the opinion of the High Court upon any question which in the opinion of the Court is a question of law.

(9.) The High Court shall hear and determine the question, and remit the case with its opinion to the Court below, and may make such order as to costs of the case stated as it thinks fit.

(5.) On the hearing of the appeal, the Court may make such order as it thinks fit, and may reduce, increase or vary the assessment.

(7.) The costs of the appeal shall be in the discretion of the Court.

(6.) An order of the Court shall be final and conclusive on all parties except as provided in this section.

(10.) The Commissioner or a taxpayer may appeal to the High Court, in its appellate jurisdiction, from any order made under sub-section (5.) of this section.

**52.**—(1.) The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of that appeal or reference; and income tax may be levied and recovered on the assessment as if no appeal or reference were pending.

(2.) If the assessment is altered on appeal or reference a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

**53.**—(2.) The Justices of the High Court or a majority of them may make rules of Court for regulating the practice and procedure in relation to appeals to a Court against assessments and decisions.

(3.) All rules by the Justices of the High Court shall—

- (a) be notified in the *Gazette*;
- (b) take effect from the date of notification, or from a later date specified in the rules; and
- (c) be laid before both Houses of the Parliament within thirty days of the making thereof, or if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(4.) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before that House, disallowing any rule, that rule shall thereupon cease to have effect.

When tax  
payable.

PART VI.—COLLECTION AND RECOVERY OF TAX.

**205.**—(1.) Subject to the provisions of this Part, any income tax assessed shall be due and payable by the person liable to pay the tax sixty days after the service of a notice of assessment.

(2.) Where a date is specified in the notice as the date upon which the tax is to be due and payable, that date shall be deemed to be the date upon which it is due and payable unless the contrary is proved.

Taxpayer  
leaving  
Australia.

**206.** Where the Commissioner has reason to believe that a person liable to pay tax may leave Australia before the expiration of such sixty days, the tax shall be due and payable on such date as the Commissioner notifies to that person.

Extension of  
time and  
payment by  
installments.

**207.** The Commissioner may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he considers the circumstances warrant; and in such case the tax shall be due and payable accordingly.

Penalty for  
unpaid tax.

**208.**—(1.) If any tax remains unpaid after the time when it becomes due and payable, additional tax shall be due and payable at the rate of ten per centum per annum on the amount unpaid, computed from that time:

Provided that the Commissioner may in any case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(2.) Notwithstanding anything contained in this section, the Commissioner may sue for recovery of any tax unpaid immediately after the expiry of the time when it becomes due and payable.

(a) This section was inserted in the present Act in 1930, for the particular purpose of giving the Court the right to review the discretion of the Commissioner with

regard to the assessment of husband and wife partnerships under section 29 (2). Section 23 (1) (n) referred to relates to an allowance for improvements effected

51B. Notwithstanding anything contained in this Act a taxpayer <sup>objections and appeals</sup> who is dissatisfied with any opinion, decision or determination of the Commissioner under paragraph (n) of sub-section (1.) of section twenty-three, or sub-section (2.) of section twenty-nine of this Act (whether in the exercise of a discretion conferred upon the Commissioner or otherwise) and who is dissatisfied with any assessment made pursuant to or involving such opinion, decision or determination shall, after the assessment has been made, have the same right of objection and appeal in respect of such opinion, decision or determination and assessment as is provided in sections fifty, fifty-one and fifty-one A of this Act. (a)

#### PART VI.—COLLECTION AND RECOVERY OF TAX.

54.—(1.) Income tax shall be due and payable sixty days after the service by post of a notice of assessment. <sup>Date of payment of tax.</sup>

(2.) Where an assessment is amended in accordance with this Act and additional income tax is thereby payable by the taxpayer, the additional income tax shall be due and payable sixty days after the service by post of the notice of amended assessment upon the taxpayer.

(3.) When the Commissioner has reason to believe that a taxpayer may leave Australia before the tax on an assessment or the additional tax on an amended assessment becomes due and payable, the tax or additional tax shall be due and payable on such date as the Commissioner fixes and notifies to the taxpayer.

55. The Commissioner may in such cases as he thinks fit—

- (a) extend the time for payment as he considers the circumstances warrant, or <sup>Time to pay—extensions and instalments.</sup>
- (b) permit the payment of tax to be made by instalments within such time as he considers the circumstances warrant.

56. If the income tax or additional income tax payable on an <sup>Penal tax.</sup> amended assessment is not paid before the expiration of the time specified in section fifty-four of this Act, or such further time as may be allowed by the Commissioner under section fifty-five of this Act, additional tax shall be payable at the rate of ten per centum per annum upon the amount of tax unpaid, to be computed from the expiration of the time specified in section fifty-four of this Act, or, where further time has been allowed by the Commissioner under section fifty-five of this Act, from the expiration of that further time:

Provided that the Commissioner may in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax imposed or any part thereof.

under a lease, and the amendment effected thereto in 1930 was of a minor nature. With the abolition of specific provisions depending upon the opinion of the Com-

missioner in regard to husband and wife partnerships—*vide* clause 94 of the Bill—section 51B will not be necessary.

*Tax a debt due to the King.*

**209.** Income tax when it becomes due and payable shall be a debt due to the King on behalf of the Commonwealth, and payable to the Commissioner in the manner and at the place prescribed.

*Recovery of tax.*

**210.** Any tax unpaid may be sued for and recovered in any Court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

*Persons leaving Australia to obtain certificate.*

**211.** Upon the application of any person about to leave Australia, the Commissioner, Second Commissioner, or a Deputy Commissioner may issue a certificate—

- (a) that that person is not liable to pay income tax; or
- (b) that arrangements have been made to the satisfaction of the Commissioner for the payment of all income tax that is or may become payable by that person.

*Authority to travel not to issue without certificate.*

**212.**—(1.) Unless and until such certificate has been presented to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship, airplane or airship by which that person intends to leave Australia at the port or place at which his passage is to be booked, an authority for that person to travel by that ship, airplane or airship shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

(2.) Any person who, in contravention of this section, issues an authority to any person to travel by the ship, airplane or airship shall be personally liable to pay the amount of tax, if any, which is or may become due and payable by such person, and shall be guilty of an offence.

*Penalty:* Not less than Fifty pounds or more than Two hundred pounds.

*Certificates and list of passengers to be lodged by ship-owner.*

**213.**—(1.) The owner or charterer, or the representative of the owner or charterer, of every ship, airplane or airship which takes passengers on board at any port or place shall, on the first working day after the departure of the ship, airplane or airship from that port or place, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port or place is situated, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship, airplane or airship) who travelled on the ship, airplane or airship.

**57.**—(1.) Income tax shall be deemed when it becomes due and payable to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.

(2.) Any income tax unpaid, including any additional tax, may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

**54.**—(4.) Subject to this section, every person who is about to leave Australia shall apply to the Commissioner at his office or at the office of a Deputy Commissioner for a certificate that—

- (a) income tax is not payable by that person; or
- (b) all income tax which has been assessed to that person has been paid or that arrangements satisfactory to the Commissioner have been made for the payment of that tax and of any further income tax which may become due and payable by that person,

and the Commissioner, Assistant Commissioner or Deputy Commissioner, upon being satisfied as to the facts, may issue a certificate accordingly.

**54.**—(4A.) Every certificate issued under the last preceding subsection shall be presented by or on behalf of the person to whom it is issued to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship by which the person intends to leave Australia at the port at which passage by the ship is to be booked, and unless and until such certificate is so presented an authority for that person to travel by that ship shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

(4B.) Any owner or charterer or the representative or employee of the owner or charterer of any ship who issues in contravention of the provisions of the last preceding sub-section an authority to any person to travel by the ship shall be guilty of an offence.

Penalty: The amount of tax, if any, which is, or may become, due and payable by the person to whom the authority to travel is issued and in addition a fine not less than Fifty pounds or more than Two hundred pounds.

(4C.) The owner, charterer, or the representative of the owner, or charterer, of every ship which takes passengers on board at any port shall on the first working day after the advertised date of departure of the ship from the port in Australia at which the certificate mentioned in this section is required to be presented, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port is situated, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship) who sailed on the ship.

(2.) Every owner or charterer, or his representative who fails to comply with this section shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than One hundred pounds.

**Temporary business.**

**214.**—(1.) Where the Commissioner has reason to believe that any person establishing or carrying on business in Australia intends to carry on that business for a limited period only, or where the Commissioner for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived by that person.

(2.) A person who fails to give security when required to do so under this section shall be guilty of an offence.

Penalty: Not less than Two pounds or more than One hundred pounds.

**Substituted service.**

**215.** If a taxpayer—

(a) is absent from Australia and has not to the knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia on whom service of process can be effected; or  
 (b) cannot after reasonable inquiry be found, service of any process in proceedings against him for recovery of income tax may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

**Liquidators &c.**

**216.**—(1.) Every person (in this section called "the trustee")—

- (a) who is liquidator of any company which is being wound up; or
- (b) who is receiver for any debenture holders, and has taken possession of any assets of a company; or
- (c) who is agent for a non-resident and has been required by his principal to wind up the business or realize the assets of his principal,

shall within fourteen days after he has become liquidator, or after he has so taken possession of assets, or after he has been so required by his principal, give notice thereof to the Commissioner. (a)

(a) This clause amalgamates sections 59 and 60 of the present Act, and also includes receivers for debenture holders. Under the two sections mentioned, the liquidator or agent, as the case may be, who fails to comply with the provisions of

the Act, is personally liable for the whole of any income tax which becomes payable. In sub-clause (4) of the Bill, the liability is limited to the extent of the value of the assets taken possession of.

The inclusion of the "Receiver" in this

(4p.) Every owner or charterer of a ship or his representative who fails to comply with the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than One hundred pounds.

(5.) Whenever the Commissioner has reason to believe that any taxpayer establishing or carrying on business in Australia intends to carry on that business for a short time only, he may at any time and from time to time require the taxpayer to give security by way of bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived from the business.

**58.** If, in any proceedings against a taxpayer for the recovery of income tax or additional income tax, the defendant—

(a) is absent from Australia and has not to the knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia on whom service of process can be effected; or

(b) cannot after reasonable inquiry be found, service of any process in the proceedings may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

**59.—(1.)** Where a company is being wound up the liquidator of the company shall give notice to the Commissioner within fourteen days after the approval of the shareholders for the winding-up has been given, or the order for the winding-up has been made, and shall set aside such sum out of the assets of the company as appears to the Commissioner to be sufficient to provide for any income tax that then is or will thereafter become payable.

(2.) A liquidator who fails to give notice to the Commissioner within the time specified in the last preceding sub-section or fails to provide for payment of the tax as required by this section shall be personally liable for any income tax that then is or thereafter becomes payable in respect of the company.

clause puts that person in the same category as the Liquidator in the matter of responsibility for providing for tax due to the Department. It does not give the Department any preference over debenture holders or other secured creditors, but if

the assets are more than sufficient to meet the requirements of the secured creditors, the Department's liability will be the more speedily met by this requirement being placed upon the shoulders of the Receiver.

(2.) The Commissioner shall as soon as practicable thereafter, notify to the trustee the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company or principal, as the case may be.

(3.) The trustee—

- (a) shall not without the leave of the Commissioner part with any of the assets of the company or principal until he has been so notified;
- (b) shall set aside out of the assets available for the payment of the tax assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
- (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.

(4.) If the trustee fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under the last preceding sub-section), he shall, to the extent of the value of the assets of which he has taken possession and which were available at any time for the payment of tax, be personally liable to pay the tax, and shall be guilty of an offence.

Penalty: Not less than One pound or more than Fifty pounds.

(5.) Where more than one person is the trustee, the obligations and liabilities attaching to the trustee under this section shall attach to those persons jointly.

When tax not paid during lifetime.

217. The following provisions shall apply in any case where, whether intentionally or not, a taxpayer escapes full taxation in his lifetime by reason of not having duly made full complete and accurate returns:—

- (a) The Commissioner shall have the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living.
- (b) The trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment.
- (c) The trustees shall be subject to additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living:

Provided that the Commissioner may in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

- (d) The amount of any tax payable by the trustees shall be a first charge on all the taxpayer's estate in their hands. (a)

(a) "Trustee", as defined in clause 6 of the Bill, includes "executors and adminis-

(4.) Where more than one person are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of such persons:

Provided that where any one of such persons has paid the income tax due in respect of the company being wound-up the other person or persons shall be liable to pay that person each his equal share of the amount of the tax so paid.

**60.**—(1.) Where an agent for an absentee principal has been required by his principal to wind-up the business of his principal, he shall, before taking any steps to wind-up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any income tax that becomes payable. *Agent for  
absentee  
principal  
winding-up  
business.*

(2.) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any income tax that becomes payable in respect of the business of the principal.

**61.** The following provisions shall apply in any case where, *when tax not  
paid during  
lifetime.* whether intentionally or not, a taxpayer escapes full taxation in his lifetime by reason of not having duly made full complete and accurate returns:—

- (a) the Commissioner shall have the same powers and remedies against the executors and administrators of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living;
- (b) the executors and administrators shall make such returns as the Commissioner requires for the purpose of an accurate assessment;
- (c) the executors and administrators shall be subject to penalties by way of additional tax to the same extent as the taxpayer would be subject to such penalties if the taxpayer were still living:

Provided that the Commissioner may in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof:

- (d) the amount of any tax or additional tax payable by the executors and administrators shall be a first charge on all the taxpayer's estate in their hands.

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trators", and is used throughout the clause in place of the latter expression.

Provision for payment of tax by trustees of deceased person.

**218.**—(1.) Where at the time of a person's death, tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the trustees of that person's estate as he would have had against that person, if that person were alive.

(2.) The trustees shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him.

(3.) Where the trustees are unable or fail to furnish a return, the Commissioner may make an assessment of the amount on which, in his judgment, tax ought to be levied and the trustees shall be liable to pay tax as if that amount were the taxable income of the deceased.<sup>(a)</sup>

Commissioner may collect tax from person owing money to taxpayer.

**219.**—(1.) The Commissioner may, by notice in writing (a copy of which shall be forwarded to the taxpayer at his last place of address known to the Commissioner), require—

- (a) any person by whom any money is due or accruing or may become due to a taxpayer;
- (b) any person who holds or may subsequently hold money for or on account of a taxpayer;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer; or
- (d) any person having authority from some other person to pay money to a taxpayer,

to pay to him, forthwith upon the money becoming due or being held, or within such further time as the Commissioner, Second Commissioner, or Deputy Commissioner allows, the money or so much thereof as is sufficient to pay the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act.

(2.) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty: Fifty pounds.

(3.) Where the amount payable to the taxpayer by the person so notified is less than the amount due by the taxpayer, that person shall pay to the Commissioner in reduction of the amount so due the amount payable by that person to the taxpayer.

(4.) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of such payment.

(5.) If the Commissioner receives any payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice thereof to that person.

(a). See clause 222 for the limitation of clause 218 in cases where the estate is

**62.**—(1.) Where at the time of a person's death, tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the executors and administrators as he would have had against that person, if that person were alive.

(2.) The executors or administrators shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him.

(3.) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the amount on which, in his judgment, tax ought to be charged.

**65.**—(1.) The Commissioner may, by notice in writing (a copy of which shall be forwarded to the taxpayer to the last place of address known to the Commissioner), require—

- (a) any person by whom any money is due or accruing or may become due to a taxpayer;
- (b) any person who holds or may subsequently hold money for or on account of a taxpayer;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer; or
- (d) any person having authority from some other person to pay money to a taxpayer,

to pay him, forthwith upon the money becoming due or being held, or within such further time as the Commissioner, Assistant Commissioner, or Deputy Commissioner allows, the money or so much thereof as is sufficient to pay the tax due by the taxpayer or the fines and costs (if any) imposed by a Court on him in respect of an offence against this Act.

(2.) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty: Fifty pounds.

(3.) Where the amount payable by the person to the taxpayer is less than the amount of tax due by the taxpayer, the person shall pay to the Commissioner in reduction of the amount of tax due the amount payable by that person to the taxpayer.

(4.) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of such payment.

(5.) If the tax due by the taxpayer, or the fine and costs (if any) imposed by a court on him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.

## (6.) In this section—

“tax” includes any judgment debt and costs in respect of tax; “person” includes company, partnership, the government, and any department of the government of and any public authority (corporate or unincorporate) of the Commonwealth or a State.

Consolidation  
of assessments.

220. Where several persons are in receipt of income for or on behalf of a non-resident or a person absent from Australia, the Commissioner, if it appears to him to be expedient to do so, may consolidate all or any of the assessments thereof, and declare any one of such persons to be the agent of the non-resident or absent person in respect of the consolidated assessment, and require him to pay income tax on the amount thereof, and thereupon the person so declared to be agent shall be liable to pay the tax.<sup>(a)</sup>

Where no  
administration.

221.—(1.) Where, in respect of the estate of any deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death, and tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner may make an assessment of the amount of tax payable in respect of that income.

(2.) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State in which the taxpayer resided.

(3.) Any person claiming an interest in the estate of the taxpayer, may, within sixty days of the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the taxpayer.

(4.) Subject to any amendment of the assessment by the Commissioner, or by the Board of Review or by a Court, the published notice of the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(5.) The Commissioner may issue an order in the prescribed form authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein, to levy the amount of tax assessed, with costs, by distress and sale of any property of the deceased.

(6.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

(a) This provision is inserted to facilitate the issue of assessments and the col-

lection of tax where there are several persons in receipt of income for the one non-

## (6.) In this section—

“Tax” means income tax and includes additional tax imposed by this Act or by any Act incorporated with this Act, and any judgment debt and costs in respect of tax;

“Person” includes company, partnership, Commonwealth or State Officer, and any public authority (corporate or unincorporate) of the Commonwealth or a State.

**62.**—(3A.) Where, in respect of the estate of any deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.

(3B.) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State in which the taxpayer resided.

(3C.) Any person claiming an interest in the estate of the taxpayer, may, within forty-two days of the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the taxpayer.

(3D.) Subject to any amendment of the assessment by the Commissioner, or by the Board of Review or by a Court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(3E.) The Commissioner may issue an order in the form in the Second Schedule to this Act authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein to levy the amount of tax due by the deceased, with costs, by distress and sale of any property of the deceased.

(3F.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

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resident taxpayer. It has particular application to cases where there are several

selling agents for the same absentee firm.

(7.) Notwithstanding anything contained in the last three preceding sub-sections, if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by, a person, that person may, within sixty days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if that person were the taxpayer.

Sections 218  
and 221 not to  
apply to certain  
income.

**222.** Nothing in sections two hundred and eighteen or two hundred and twenty-one shall apply to the income derived by a person during the period commencing on the first day of the year of income in which he dies and ending on the date of his death if his estate is liable to estate duty under the *Estate Duty Assessment Act 1914-1928*.

Taxation  
prosecutions.

#### PART VII.—PENAL PROVISIONS AND PROSECUTIONS.

**223.** In this Part, “taxation prosecution” means a proceeding by the Crown for the recovery of a pecuniary penalty under this Act.

Failure to  
furnish returns  
or information,  
&c.

**224.** (1.) Any person who fails to duly furnish any return or information or comply with any requirement of the Commissioner as and when required by this Act or the regulations or by the Commissioner shall be guilty of an offence.

Penalty: Not less than Two pounds or more than One hundred pounds.

(2.) A prosecution for an offence against this section may be commenced at any time.

Refusal to give  
evidence.

**225.** Any person who refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him by, or to produce any book or paper required of him by the Commissioner or any such officer, shall, unless just cause or excuse for the refusal or neglect is shown by him, be guilty of an offence.

Penalty: Not less than Two pounds or more than One hundred pounds.

(3c.) Notwithstanding anything contained in the last three preceding sub-sections, if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by, a person, that person may, within forty-two days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if that person were the taxpayer.

(4.) This section shall not apply to the income derived by a person from—

- (a) the thirtieth day of June; or
- (b) the end of the accounting period (where the returns lodged were for an accounting period)

immediately preceding his death to the date of his death, if his estate is liable to estate duty under the *Estate Duty Assessment Act 1914-1916*.

#### PART VIII.—TAXATION PROSECUTIONS.

**73.** Proceedings by the Crown for the recovery of penalties under <sup>Taxation</sup> <sub>prosecution.</sub> this Act are hereinafter referred to as "taxation prosecutions".

#### PART VII.—PENAL PROVISIONS.

**66.—(1.)** Any person who—

**Offences.**

- (a) fails or neglects to duly furnish any return or information or give the security required by sub-section (5.) of section fifty-four of this Act or to comply with any requirement of the Commissioner as and when required by this Act or the regulations, or by the Commissioner; or
- (b) without just cause shown by him refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer,

shall be guilty of an offence.

**Penalty:** Not less than Two pounds nor more than One hundred pounds.

(2.) A prosecution in respect of an offence against paragraph (a) of sub-section (1.) of this section may be commenced at any time.

Order to  
comply with  
requirement.

**226.**—(1.) Upon the conviction of any person for an offence against either of the last two preceding sections, the Court may order him within a time specified in the order to do the act which he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than Five hundred pounds.

(2.) An order under this section may be made orally by the Court to the defendant, or may be served in the manner prescribed.

Additional tax  
in certain cases.

**227.**—(1.) Notwithstanding anything contained in the last three preceding sections, any taxpayer who fails to duly furnish as and when required by this Act or the regulations, or by the Commissioner, any return or any information in relation to any matter affecting either his liability to tax or the amount of the tax, shall be liable to pay as additional tax an amount equal to the tax assessable to him or the amount of one pound whichever is the greater. (a)

(2.) Any taxpayer who omits from his return any assessable income, or includes in his return as a deduction for expenditure incurred by him an amount in excess of the expenditure actually incurred by him, shall be liable to pay as additional tax an amount equal to double the difference between the tax properly payable by him and the tax that would be payable if it were assessed upon the basis of the return furnished by him, or the amount of One pound, whichever is the greater.

(3.) The Commissioner may in any case, for reasons which he thinks sufficient, and either before or after making any assessment, remit the additional tax or any part thereof.

(4.) If in any case in which a taxpayer is liable to pay additional tax under this section a taxation prosecution is instituted in respect of the same subject matter, the additional tax shall not be payable unless and until the prosecution is withdrawn.

(a) The present maximum penalty imposed by the Commissioner for failure to furnish a return is 10 per cent. per annum upon the amount of tax. It is considered that, whilst that penalty is suitable for

the ordinary case of a late lodgment, it is not sufficient where the neglect to furnish the return is due to an intention to avoid assessment. As the Act provides for a penalty of double tax in respect of income

(3.) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements, in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section sixty-nine of this Act.

67.—(1.) Notwithstanding anything contained in the last preceding section, any person who—<sup>Additional tax in certain cases.</sup>

- (a) fails or neglects to duly furnish any return or information as and when required by this Act or the regulations or by the Commissioner; or
- (b) fails to include any assessable income in any return; or
- (c) includes in any return as a deduction an amount which is in excess of that actually expended or incurred by him,

shall, if a taxpayer to whom paragraph (a) of this sub-section applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax assessable to him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater, or, if a taxpayer to whom paragraph (b) or (c) of this sub-section applies, shall be liable to pay by way of additional tax the amount of One pound or double the amount of the difference between the tax properly payable and the amount of tax previously assessed to be paid by the taxpayer, or, if no amount of tax has previously been assessed, the amount of tax that would be payable by him if he were assessed for tax upon the basis of the return furnished by him, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-six of this Act:

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(2.) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by the last preceding section or by section sixty-eight or sixty-nine of this Act, such action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

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omitted from the return, it is considered that provision should be made for a maximum penalty of at least single tax where the return itself is not furnished. In sub-

section (1), the maximum penalty provided is, therefore, an amount equal to the tax assessed.

False returns  
or statements.

**228.**—(1.) Any person who makes or delivers a return which is false in any particular, or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorized by him, shall be guilty of an offence.

Penalty: Not less than Two pounds or more than One hundred pounds and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the return or answer had been accepted as correct.(a)

(2.) In any prosecution for an offence under this section of a person who has not previously been convicted of an offence against this Act, or against any law of the Commonwealth or of a State relating to Income Tax, it shall be a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
- (b) that the false return or false answer was made through ignorance or inadvertence.(b)

(3.) A prosecution for an offence against this section may be commenced at any time.

Failure to sign  
or false  
certificate.

**229.**—(1.) Any person required by this Act to sign an agent's certificate who fails to do so or who signs an agent's certificate which is false in any particular shall be guilty of an offence.(c)

Penalty: Not less than One pound or more than Fifty pounds.

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

False  
declarations.

**230.** Any person who, in any declaration made under, or authorized or prescribed by this Act or the regulations, knowingly and wilfully declares to any matter or thing which is false or untrue, shall be deemed to be guilty of wilful and corrupt perjury, and shall upon conviction be liable to imprisonment for a period not exceeding four years.

Understating  
income.

**231.**—(1.) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company, in any return knowingly and wilfully understates the amount of any income or makes any misstatement affecting the liability of any person to tax or the amount of tax shall be guilty of an offence.

(a) Under the present Act, the offence of making a false return or answer is set out in sub-sections (1) (c), (2) and (4) of section 66. In the Bill, this offence is dealt with in clause 228. The maximum penalty

is now brought more into harmony with that provided for understatement of income, provision being made for the Court to impose, in addition to a pecuniary penalty, a penalty not exceeding double the amount

**66.—(1.) Any person who—**

(c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing,

*shall be guilty of an offence.*

*Penalty: Not less than Two pounds nor more than One hundred pounds.*

(4.) It shall be a defence to a prosecution for an offence against paragraph (c) of sub-section (1.) of this section if the defendant proves that the false particulars were given or the false statement was made through ignorance or inadvertence.

(2.) *A prosecution in respect of an offence against paragraph (c) of sub-section (1.) of this sub-section may be commenced at any time.*

**67A.** If any person, in any declaration made under, or authorized <sup>false</sup> <sub>declarations.</sub> or prescribed by, this Act or the regulations thereunder, knowingly and wilfully declares to any matter or thing which is false or untrue, he shall be deemed to be guilty of wilful and corrupt perjury and shall upon conviction be liable to imprisonment for a period not exceeding four years.

**68.** Any person who, with intention to defraud, in any return <sup>under-</sup> <sub>statement of</sub> income, understates the amount of any income, shall be guilty of an offence. <sup>income.</sup>

*Penalty: Not less than Fifty pounds, nor more than Five hundred pounds, and in addition an amount equal to treble the amount of income tax which would have been avoided if the income stated in the return had been accepted as the correct income.*

of tax avoided.

(b) Sub-clause (2) is in substantially similar terms to the amendment made in 1935 in the Sales Tax Assessment Act,

in connexion with false returns made under that Act.

(c). See note to clause 166.

**Penalty:** Not less than Twenty-five pounds, or more than Five hundred pounds and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the statement in the return had been accepted as correct.(a)

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.(b)

Fraudulent avoidance of tax.

**232.**—(1.) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation shall be guilty of an offence.

**Penalty:** Not less than Twenty-five pounds, or more than Five hundred pounds and, in addition, the Court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that has been avoided or attempted to be avoided.

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.(c)

Obstructing officers.

**233.** Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations shall be guilty of an offence.

**Penalty:** Not less than One pound or more than Fifty pounds.

Taxation prosecutions.

**234.**—(1.) A taxation prosecution may be instituted in the name of the Commissioner by action in the High Court or in the Supreme Court of any State.

(2.) Where the penalty sought to be recovered does not exceed Five hundred pounds, or the excess is abandoned, the prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner by information in a court of summary jurisdiction.

(a) Specific reference has been made in the clause to the officers of a company, so as to make the company liable for the consequences of understatement of income made on behalf of the company by its officers.

The minimum penalty has been reduced from £50 to £25 to meet cases where the

amount of tax involved is not large.

In regard to the maximum penalty, the High Court has held that the treble tax provided under section 69 of the present Act is not subject to reduction by the Court. It is considered that the amount of the penalty tax should be within the discretion of the Court, and the clause

**69.** Any person who, by any wilful act, default or neglect, or by <sup>Avoiding taxation.</sup> any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation, shall be guilty of an offence.

**Penalty:** Not less than Fifty pounds nor more than Five hundred pounds and in addition treble the amount of tax payment whereof he has avoided or attempted to avoid.

**70.** A prosecution in respect of an offence against either of the <sup>Time for commencing prosecutions.</sup> two last preceding sections may be commenced at any time within three years after the commission of the offence.

**72.** Any person who obstructs or hinders any officer acting in <sup>Obstructing officers.</sup> the discharge of his duty under this Act, or the regulations, shall be guilty of an offence.

**Penalty:** Not less than One pound nor more than Fifty pounds.

**74.** Taxation prosecutions may be instituted in the name of the <sup>Proceedings, how instituted.</sup> Commissioner by action, information or other appropriate proceeding—

- (a) in the High Court of Australia; or
- (b) in the Supreme Court of any State, and when the prosecution is for a pecuniary penalty not exceeding Five hundred pounds or the excess is abandoned, the taxation prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner.
- (c) in a County Court, District Court, Local Court or Court of Summary Jurisdiction.

has been framed accordingly. At the same time, the treble tax provided under the present Act has been reduced to double tax, as treble tax added to the original tax meant that the taxpayer was liable, in effect to quadruple tax.

(b) The period within which a prosecu-

tion may be commenced has been varied from three years under the present Act (section 70) to six years, in order to achieve uniformity with the States.

(c) The notes to clause 231 also apply to this clause.

Defendant to have right of trial in Superior Court.

**235.** In any taxation prosecution instituted in a court of summary jurisdiction, where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant within seven days after service of process may elect in manner prescribed to have the case tried in the High Court or a Supreme Court, and thereupon the prosecution shall stand removed at the option of the Commissioner to the High Court or the Supreme Court of the State in which the prosecution has been instituted, and shall be conducted as if it had been originally instituted in the Court to which it is removed.

Mode of trial.

**236.** In any taxation prosecution in the High Court or a Supreme Court, the case shall be tried and the penalty, if any, adjudged by a Justice or Judge of the Court.

Appeal.

**237.** In any taxation prosecution in a court of summary jurisdiction in a State, an appeal shall lie from any conviction or order of dismissal to such Court and in such manner as is provided by the law of that State for appeals from convictions or orders of dismissal.

Prosecution in accordance with Practice Rules.

**238.** Every taxation prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

Information, &c., to be valid if in words of Act.

**239.** All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

No objection for informality.

**240.**—(1.) An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

(2.) If any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

Conviction not to be quashed.

**241.** A conviction, warrant of commitment or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of such defect.

**76.** In any taxation prosecution where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant within seven days after service of process shall have the right in manner prescribed to elect to have the case tried in the option of the prosecutor either in the High Court of Australia or in the Supreme Court of the State in which the prosecution has been instituted and thereupon the proceedings shall stand removed accordingly and may be conducted as if originally instituted in the Court to which they are so removed.

Defendant to have right of trial in High or State Court.

**78.** Subject to this Act the provisions of the law relating to summary proceedings before Justices in force in the State where the proceedings are instituted shall apply to all taxation prosecutions before a Court of Summary Jurisdiction in that State and an appeal shall lie from any conviction or order of dismissal to the Court, and in the manner, provided by the law of the State where such a conviction or order is made for appeals from convictions or orders of dismissal.

**77.** Every taxation prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

**79.** All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

**80.—(1.)** An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

**(2.)** If any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

**81.** A conviction, warrant of commitment or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of such defect.

Place where  
offence  
committed.

**242.** Any of the following offences, namely:—

- (a) failure to duly furnish any return or information;
- (b) making or delivering a return which is false in any particular, or making a false answer; or
- (c) failure to comply with any requirement,

shall be deemed to have been committed either—

- (i) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with; or
- (ii) at the usual or last known place of business or abode of the defendant,

and may be charged as having been committed at either of those places. (a)

Protection  
to witnesses.

**243.** A witness on behalf of the Commissioner or Deputy Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Averment of  
prosecutor  
sufficient.

**244.** (1.) In any taxation prosecution, every averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter averred.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) This section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

(a) The substance of this provision is at present set out in the regulations made

**82.** A witness on behalf of the Commissioner or Deputy Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

**83.**—(1.) In any taxation prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

**Evidence of authority to institute proceedings.**

**245.**—(1.) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be.

(2.) The production of a telegram purporting to have been sent by the Commissioner or a Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution shall be sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner or Deputy Commissioner, as the case may be.

**Appearance by Commissioner.**

**246.**—(1.) In any action, prosecution or other proceeding in any Court by the Commissioner or a Deputy Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the Commonwealth or a State.

(2.) The appearance of any such officer, and his statement that he appears by authority of the Commissioner or Deputy Commissioner shall be sufficient evidence of such authority.<sup>(a)</sup>

**Minimum penalties.**

**247.** No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the Court.

**Treatment of convicted offenders.**

**248.** Where any pecuniary penalty is adjudged to be paid by any convicted person the Court shall—

- (a) commit the offender to gaol until the penalty is paid;
- (b) release the offender upon his giving security for the payment of the penalty; or
- (c) exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the Court for the enforcement and recovery of penalties or money adjudged to be paid in any other case.

**Release of offenders.**

**249.**—(1.) The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge such person—

- (a) on payment to him of the penalty adjudged;
- (b) on a certificate by the Commissioner or the Deputy Commissioner that the penalty has been paid or released; or

(a) The regulations under the Income Tax Assessment Act at present provide for the appearance before Courts of Summary Jurisdiction of an officer on behalf of the

75.—(1.) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or Deputy Commissioner the prosecution shall, in the absence of evidence to the contrary be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be.

(2.) The production of a telegram purporting to have been sent by the Commissioner or Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution or proceedings shall be admissible as evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner or Deputy Commissioner, as the case may be.

84. No minimum penalty proposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the Court.

85. Where any pecuniary penalty is adjudged to be paid by any convicted person the Court—

- (a) may commit the offender to gaol until the penalty is paid; or
- (b) may release the offender upon his giving security for the payment of the penalty; or
- (c) may exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

86. The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge such person—

- (a) on payment to him of the penalty adjudged;
- (b) on a certificate by the Commissioner or the Deputy Commissioner that the penalty has been paid or released;

Commissioner.

(c) if the penalty adjudged to be paid is not paid or released, according to the following table:—

Amount of penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under .. .. ..	7 days.
Over £2 and not more than £5 .. .. ..	14 days.
Over £5 and not more than £20 .. .. ..	1 month.
Over £20 and not more than £50 .. .. ..	2 months.
Over £50 and not more than £100 .. .. ..	3 months.
Over £100 and not more than £200 .. .. ..	6 months.
Over £200 .. .. ..	1 year.

(2.) Where any person is committed to gaol for non-payment of more than one penalty, the imprisonment of that person, for the period specified in the last preceding sub-section in respect of the amount of any one of those penalties, shall not relieve him from liability to imprisonment for the period so specified in respect of the amount of any other such penalty, and the last-mentioned period of imprisonment shall commence at the expiration of the first-mentioned period of imprisonment. (a)

Enforcement of orders for payment.

**250.**—(1.) Where an order for the payment of a sum of money by any person to the Commissioner is made under this Part by a court of summary jurisdiction, a certificate of such order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is hereby required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.

(2.) From the date of registration the certificate shall be a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court and, subject to the prescribed conditions, the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of that court in favour of the Commissioner.

(3.) The Commissioner's costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions, be deemed to be payable under the certificate. (b)

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Penalties not to relieve from tax.

**251.** In all taxation prosecutions the court may award costs against any party, and all the provisions of this Act relating to the recovery of penalties, except commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

**252.** The adjudgment or payment of a penalty under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

(a) Sub-clause (2) is necessary to make the intention of the law clear that committal to gaol for non-payment of one penalty does not relieve the taxpayer from

liability in respect of other penalties.

(b) In the re-draft of the provisions dealing with the imposition of penalties by a Court by way of additional tax—see

(c) if the penalty adjudged to be paid is not paid or released according to the following table:—

Amount of Penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under .. .. ..	7 days.
Over £2 and not more than £5 .. .. ..	14 days.
Over £5 and not more than £20 .. .. ..	1 month.
Over £20 and not more than £50 .. .. ..	2 months.
Over £50 and not more than £100 .. .. ..	3 months.
Over £100 and not more than £200 .. .. ..	6 months.
Over £200 .. .. ..	1 year.

**87.** In all taxation prosecutions the Court may award costs Parties may recover costs. against any party and all provisions of this Act relating to the recovery of penalties except commitment to gaol shall extend to the recovery of any costs adjudged to be paid.

**71.** Payment of penalties under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

clauses 231 and 232—it is provided that the Court may order the taxpayer to pay to the Commissioner a sum not exceeding

double the amount of tax avoided. Clause 250 provides for the manner of enforcement of such orders.

## PART VIII.—MISCELLANEOUS.

Public officer  
of company.

253.—(1.) Every company carrying on business in Australia, or deriving in Australia income from property, (a) shall at all times, unless exempted by the Commissioner, be represented for the purposes of this Act by a public officer being a person residing in Australia and duly appointed by the company or by its duly authorized agent or attorney. With respect to every such company and public officer the following provisions shall apply:—

- (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the commencement of this Act or after the company commences to carry on business or derive income in Australia.
- (b) The company shall keep the office of the public officer constantly filled.
- (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and an address for service upon him has been given to the Commissioner.
- (d) If the company fails to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

Penalty: Two pounds for every day during which the failure continues. (b)

- (e) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (f) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.
- (g) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.

(a) The words "or deriving in Australia income from property" have been inserted

to cover a company deriving investment income only.

## PART IX.—MISCELLANEOUS.

**88.** Every company which carries on business in Australia shall <sup>Public officer of company.</sup> at all times be represented by a person residing in Australia duly appointed by the company or by its duly authorized agent or attorney, and with respect to every such company and person the following provisions shall apply:—

- (a) such person shall be called the public officer of the company for the purposes of this Act and shall, if not already appointed, be appointed within three months after the commencement of this paragraph or after the company commences to carry on business in Australia;
- (b) the company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner;
- (c) if the company fails or neglects to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.  
Penalty: Fifty pounds for every day during which the failure or neglect continues;
- (d) service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient;
- (e) the public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations by a taxpayer, and in case of default shall be liable to the same penalties;
- (f) everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not exclude the company from the necessity of complying with any of the provisions of this Act or the regulations, or from the penalties of the section on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer;

(b) The penalty has been reduced to a more reasonable figure.

- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.<sup>(a)</sup>
- (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.<sup>(b)</sup>
- (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

(2.) A public officer of a company duly appointed under the previous Act, and holding that office at the commencement of this Act, shall be deemed to be the public officer of the company duly appointed under this Act.

Deduction of  
special property  
tax from  
preference  
shareholders.

**254.** A company which has paid or is liable to pay special property tax may, notwithstanding anything contained in its memorandum or articles of association, or in any other document or agreement, deduct from any dividends payable to the preference shareholders of the company an amount equal to the amount of special property tax which it has paid or is liable to pay upon taxable income distributed to its preference shareholders.

(a) Certain obligations are imposed by the section on the public officer, and under paragraph (h) any notice given to him is deemed to be given to the company

- (g) in any proceedings under this Act taken against the public officer of the company the proceedings shall be deemed to have been taken against the company, and the company shall be liable for any penalty imposed upon the public officer;
- (h) notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

**88A.** Where a company has paid or is liable to pay, in addition to income tax payable at the rates fixed for companies, further income tax of a specified percentage of its taxable income which is derived—

Deduction of  
tax from  
dividends  
payable to  
preference  
shareholders.

- (a) from property;
- (b) by way of interest, dividends, rents or royalties, whether derived from personal exertion or from property; and
- (c) in the course of carrying on a business, where the income is of such a class that, if derived otherwise than in the course of carrying on a business, it would be income from property,

the company may, notwithstanding anything contained in the memorandum or articles of association of the company, or in any other document or agreement, deduct from any dividends payable to the preference shareholders of the company an amount equivalent to the amount of that further income tax which has been paid or is payable by the company upon taxable income which has been distributed to its preference shareholders.

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(b) This paragraph makes the company and the public officer jointly liable for any penalty imposed upon the public officer.

**255.** With respect to every agent and with respect also to every trustee, the following provisions shall apply:—

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon.
- (b) He shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is a trustee of the estate of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of the income.
- (e) He is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph; but he shall not be otherwise personally liable for the tax.<sup>(b)</sup>
- (f) Where as one of two or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid.<sup>(c)</sup>
- (g) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under

(a) Paragraph (d) of section 89 of the Act is covered in clause 259 of the Bill.

(b) Paragraph (e) limits the personal

liability of the agent to amounts which he should have retained out of money which comes to him in his representative capacity.

89. With respect to every agent and with respect also to every <sup>Agents and trustees.</sup> trustee, the following provisions shall apply:—

- (a) he shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity or derived by the principal by virtue of his agency and the payment of income tax thereon;
- (b) he shall in respect of such income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) where as agent or trustee he pays income tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person; <sup>(a)</sup>
- (e) he is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the income tax which is or will become due in respect of the income;
- (f) he is hereby made personally liable for the income tax payable in respect of the income if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which income tax could legally be paid, but he shall not be otherwise personally liable for the tax:

Provided that the Commissioner may, upon application by the agent, permit disposal of such fund or money or part thereof as he considers necessary;

- (g) he is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner; <sup>(d)</sup>

- (h) for the purpose of insuring the payment of income tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the

(c) This paragraph provides for contributions from joint agents.

(d) An agent is protected under the general law for making a payment required

under a statute, and specific indemnification is not necessary in the Income Tax Assessment Act.

the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax.

Person in receipt or control of money for non-resident.

**256.**—(1.) With respect to every person having the receipt control or disposal of money belonging to a non-resident, who derives income from a source in Australia or who is a shareholder, debenture holder, or depositor in a company deriving income from a source in Australia, the following provisions shall, subject to this Act, apply:—

(a) he shall when required by the Commissioner pay the tax due and payable by the non-resident;

(b) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the non-resident so much as is sufficient to pay the tax which is or will become due by the non-resident;

(c) he is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph; but he shall not be otherwise personally liable for the tax; <sup>(a)</sup>

(2.) Every person who is liable under any contract to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and all money due by him under the contract shall be deemed to be money which comes to him on behalf of the non-resident. <sup>(b)</sup>

Person paying royalty to a non-resident taxpayer.

**257.**—(1.) Every person who is liable under any contract to pay money as or by way of royalty to a non-resident shall, before making any payment to or on behalf of that non-resident, furnish to the Commissioner a statement of the amount of royalty due to the non-resident, whether such royalty became due either before or after

(a) The notes on clause 255 have general application to clause 256, also.

(b) Sub-section (2) has been inserted for the protection of the revenue in cases

control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of income tax, and in as full and ample a manner.

**90.** With respect to every person who has the receipt, control or disposal of money belonging to a person resident out of Australia, who derives income from a source in Australia or who is a shareholder, stock holder, debenture holder, or depositor in a company carrying on business in Australia, the following provisions shall, subject to this Act, apply:—

- (a) he shall when required by the Commissioner pay the income tax due and payable by the person on whose behalf he has the control, receipt or disposal of money;
- (b) where he pays income tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person;
- (c) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the income tax which is or will become due by that person;
- (d) he is hereby made personally liable for the income tax payable by him on behalf of the person resident out of Australia if after the Commissioner has required him to pay the tax he disposes of or parts with any fund or money then in his possession or which comes to him from or out of which the income tax could legally be paid, but he shall not be otherwise personally liable for the tax: Provided that the Commissioner may upon application permit disposal of such fund or money or part thereof as he considers necessary;
- (e) he is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner.

the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

(2.) The last preceding section shall apply in respect of payments of royalty referred to in this section.<sup>(a)</sup>

**Payment of tax by banker.**

**258.** Where any income of any person out of Australia is paid into the account of that person with a banker, the banker shall be deemed to be the person's agent in respect of the money so paid so long as he is indebted in respect thereof.

**Recovery of tax paid on behalf of another person**

**259.** Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the same from that other person as a debt, together with the costs of recovery, in any court of competent jurisdiction, or may retain or deduct the same out of any money in his hands belonging or payable to that other person.

**Contribution from joint taxpayers.**

**260.** Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax in respect of any of the taxable income—

- (a) shall be entitled to receive by way of contribution from any other of such persons a sum bearing the same proportion to the tax as that other person's share of the taxable income bears to the whole taxable income; and
- (b) may recover that sum from that other person in any court of competent jurisdiction; or may retain or deduct that sum out of any money in his hands belonging or payable to that other person.

**Contracts to evade tax void.**

**261.** Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) altering the incidence of any income tax;
- (b) relieving any person from liability to pay any income tax or make any return;

(a) Difficulty has been experienced in the past in issuing assessments and collecting the tax on royalties received by non-residents from persons in Australia. Large sums are paid to non-residents in respect

of royalties on copyrights, machinery, &c., used by taxpayers in Australia in the production of their income. These royalties form part of the manufacturing expenses of the taxpayer using that machinery, &c.,

**92.** Where any income of any person outside Australia is paid into the account of that person with a banker, the banker shall be deemed the person's agent in respect of the money so paid so long as he is indebted in respect thereof, and shall be subject to the provisions of section eighty-nine of this Act and entitled to the benefits conferred by that section.

**63.** Every person who, under the provisions of this Act, pays any income tax for or on behalf of any other person shall be entitled to recover the same from that other person as a debt, together with the costs of recovery, or to retain or deduct same out of any money in his hands belonging or payable to that other person.

**64.** Where two or more persons are jointly liable to income tax they shall each be liable for the whole tax, but any of them who has paid the tax may recover contributions as follows:—

- (a) a person who has paid the tax in respect of any of the taxable income may recover by way of contribution from any other owner thereof a sum which bears the same proportion to the tax as the share of the taxable income of such other person bears to the whole of the taxable income;
- (b) every person entitled to contribution in respect of income tax under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request; or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

**93.** Every contract, agreement, or arrangement made or entered into, in writing or verbal, whether before or after the commencement of this Act, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) altering the incidence of any income tax; or
- (b) relieving any person from liability to pay any income tax or make any return; or

and are frequently not shown separately in the accounts submitted to the Department. Clause 257 will ensure that particulars of royalties payable to non-resi-

dents are notified to the Commissioner so that where tax is payable assessments may be issued.

(c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or

(d) preventing the operation of this Act in any respect, be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose.<sup>(a)</sup>

Covenant by  
mortgagor  
to pay tax.

**262.**—(1.) A covenant or stipulation in a mortgage, which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying income tax on the interest to be paid under the mortgage—

(a) if the mortgage was entered into on or before the thirteenth day of September, One thousand nine hundred and fifteen—shall not be valid to impose on the mortgagor the obligation of paying income tax to any greater amount than the amount (if any) which would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any income tax payable on that interest; and

(b) if the mortgage was entered into after that date—shall be absolutely void.

(2.) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this sub-section, which has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

(3.) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

(a) The words "as against the Commissioner, or in regard to any proceeding under this Act" have been inserted in the clause. The absence of this limitation in the present Act makes the section operate in a manner which was not intended. By way of illu-

stration, the case of *de Romero v. The Executors of Hordern's Estate*, decided by the High Court in 1932, may be quoted. The testator had covenanted in a separation deed to pay his wife the clear annual sum of £10,000 free from all State income tax,

- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect; be absolutely void, but without prejudice to its validity in any other respect or for any other purpose.

**94.**—(1.) A covenant or stipulation in a mortgage, which has Covenant by mortgagor to pay tax. or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying income tax on the interest to be paid under the mortgage—

- (a) if the mortgage was entered into on or before the thirteenth day of September One thousand nine hundred and fifteen—shall not be valid to impose on the mortgagor the obligation of paying income tax to any greater amount than the amount (if any) which would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any income tax payable on that interest; and
- (b) if the mortgage was entered into after that date—shall be absolutely void.

(2.) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this sub-section, which has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

(3.) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee, the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

and to refund and repay to her any such tax which she might pay in respect of such annuity. An action brought by her against his executors to recover an amount of tax paid by her was dismissed on the ground that the covenant was one to alter

the incidence of the tax, and was therefore void.

Under the amendment proposed contracts between parties for one or the other to carry the tax will be void only so far as the taxation authorities are concerned.

(4.) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise), be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise.

(5.) For the purposes of this section, "mortgage" includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted. (a)

Periodical payments in the nature of income.

**263.** Where under any contract agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments which, in the opinion of the Commissioner, are either wholly or in part really in the nature of income of that person such of those payments as are derived in the year of income shall, to the extent to which they are in that opinion in the nature of income, be included in his assessable income.

Access to books, &c.

**264.** The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act, and for that purpose may make extracts from or copies of any such books, documents or papers.

Department to obtain information and evidence.

**265.**—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connexion with any department of a Government or by any public authority—

- (a) to furnish him with such information as he may require; and
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(a) The definition of mortgage contained in sub-clause (5) is set out in section

(4.) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise), be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise.

**93A.** Where under any contract agreement or arrangement made or entered into in writing or verbally, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of an income-producing asset on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the asset by periodical payments which, in the opinion of the Commissioner, are really in the nature of income of the person assigning, conveying, transferring or disposing of the asset, that person shall be assessed to pay income tax upon those periodical payments.

**96.** The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act and for that purpose may make extracts from or copies of any such books, documents or papers.

**97.—(1.)** The Commissioner may by notice in writing require any person, whether a taxpayer or not—

- (a) to furnish him with such information as he may require; and
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

<sup>4</sup> of the present Act.

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(2.) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.

(3.) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

Release of  
taxpayers  
in cases of  
hardship.

**266.**—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that—

(a) a taxpayer has suffered such a loss or is in such circumstances; or

(b) owing to the death of a person, who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the Board may release the taxpayer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose. (a)

(2.) The Commissioner or his substitute shall be Chairman of the Board, and the decision of the majority shall prevail.

(3.) Where an application is made for release in respect of an amount of tax if that amount is not less than Five hundred pounds, the Board shall, and if that amount is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review constituted under this Act and shall notify the applicant in writing of its having done so.

(4.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

(5.) The applicant may appear before the member of the Board of Review or the member of the Board of Review may require the applicant to appear before him, either in person or by a representative, and the member of the Board of Review may examine the applicant or his representative upon oath concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.

(6.) The member of the Board of Review shall be assisted in his examination of the applicant by an officer of the Department of Taxation who is a qualified accountant.

(7.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

(a) The reference to bankruptcy in the present section has been omitted from clause 266, as the term "serious hardship" now qualifying the whole clause is

(2.) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing and for that purpose he or the officer so authorized by him may administer an oath.

(3.) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

95.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time—  
Release of  
taxpayers  
in cases of  
hardship.

(a) that a taxpayer liable to pay income tax has become bankrupt or insolvent; or

(b) that a taxpayer has suffered such a loss or is in such circumstances, or, owing to the death of a person, who, if he had lived, would have paid tax, the dependants of that person are in such circumstances, that the exaction of the full amount of tax will entail serious hardship,

the Board may release the taxpayer or the executor or administrator of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.

(2.) The Commissioner shall be Chairman of the Board and the decision of the majority shall prevail.

(3.) In every case in which the amount of tax from which the taxpayer applies to be released is not less than Five hundred pounds, the Board shall, and in any case in which the amount of tax from which the taxpayer applies to be released is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review constituted under this Act and shall notify the taxpayer in writing of its having done so.

(4.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

(5.) The taxpayer may appear before the member of the Board of Review or the member of the Board of Review may require the taxpayer to appear before him, either in person or by a representative, and the member of the Board of Review may examine the taxpayer or his representative upon oath concerning any statements which the taxpayer has, or desires to have, placed before the Board constituted by this section.

(6.) The member of the Board of Review shall be assisted in his examination of the taxpayer by an officer of the Department of Taxation who is a qualified accountant.

(7.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

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an all-embracing provision.

(8.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

(9.) The member of the Board shall submit a report to the Board constituted by this section upon the facts disclosed by his examination, and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the application for release from tax. The report shall be accompanied by the record mentioned in sub-section (8.) of this section.

Regulations.

**267.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and for prescribing penalties not less than One pound or more than Twenty pounds for any breach of the regulations.

#### THE SCHEDULE.

FIRST COLUMN. Acts Repealed.	SECOND COLUMN. Extent of Repeal.
<i>Income Tax Assessment Act 1922</i> .....	The whole.
<i>Income Tax Assessment Act 1923</i> .....	The whole.
<i>Taxation of Loans Act 1923</i> .....	Section five
<i>Income Tax Assessment Act 1924</i> .....	The whole.
<i>Income Tax Assessment (Live Stock) Act 1924</i> .....	The whole.
<i>Income Tax Assessment Act 1925</i> .....	The whole.
<i>Income Tax Assessment Act 1927</i> .....	The whole.
<i>Income Tax Assessment Act 1928</i> .....	The whole.
<i>Income Tax Assessment Act 1920</i> .....	The whole.
<i>Income Tax Assessment Act 1930</i> .....	The whole.
<i>Income Tax Assessment Act (No. 2) 1930</i> .....	The whole.
<i>Income Tax Assessment Act 1931</i> .....	The whole.
<i>Financial Relief Act 1932</i> .....	Part III.
<i>Income Tax Assessment Act 1932</i> .....	The whole.
<i>Financial Relief Act 1933</i> .....	Part III.
<i>Income Tax Assessment Act 1933</i> .....	The whole.
<i>Income Tax Assessment Act 1934</i> .....	The whole.
<i>Income Tax Assessment Act (No. 2) 1934</i> .....	The whole.
<i>Income Tax Assessment (Bonus Shares) Act 1926</i> .....	The whole.

(a) Sections 98 and 99 have no application in respect of future years, and have been

(8.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

(9.) The member of the Board shall submit a report to the Board constituted by this section upon the facts disclosed by his examination and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the taxpayer's application for release from tax. The report shall be accompanied by the record mentioned in sub-section (8.) of this section.

98. Notwithstanding anything contained in any Act repealed by ~~Naval service~~ this Act, a person who was on active service with or in any way attached to the Naval Forces of the Commonwealth during the war which commenced on the fourth day of August One thousand nine hundred and fourteen shall not, by reason of such service, be entitled to exemption in respect of income derived by him from personal exertion after the thirtieth day of June One thousand nine hundred and twenty-one. (a)

99. Statutory Rules 1922, No. 150, shall have effect, and shall be deemed to have had effect, in relation to assessments for the financial year commencing on the first day of July One thousand nine hundred and twenty-one, as if they had been made on the first day of July One thousand nine hundred and twenty-one. (a)

100. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act, and for prescribing penalties not less than One pound nor more than Twenty pounds for any breach of the regulations.

#### THE FIRST SCHEDULE.

*Income Tax Assessment Act 1915.*  
*Income Tax Assessment Act (No. 2) 1915.*  
*Income Tax Assessment Act 1916.*  
*Income Tax Assessment Act (No. 2) 1916.*  
*Income Tax Assessment Act 1918.*  
*Income Tax Assessment Act 1921.*  
*Income Tax Assessment Act (No. 2) 1921.*

#### THE SECOND SCHEDULE.

COMMONWEALTH OF AUSTRALIA.  
*Income Tax Assessment Act 1922-1927.*

Order.

To at  
 WHEREAS at the time of the death of deceased, income tax has not been assessed and paid on the whole of the income derived by the said up to the date of his death:

AND WHEREAS probate has not been granted or letters of administration have not been taken out in respect of the estate of the said deceased

AND WHEREAS the amount of income tax remaining due by the said at the time of his death has been assessed by me as

THESE ARE THEREFORE to require and authorize you forthwith to levy the said sum of together with the costs of these presents by distress and sale of any property of the estate of the said found by you and that you certify to me on the day of what you shall do by virtue of this warrant.

Dated this day of One thousand  
 nine hundred and Commissioner of Taxation.

omitted from the Bill.