I certify that this Public Bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

W. R. McCOURT,

For Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 12 December, 1928.

New South Wales.



ANNO UNDEVICESIMO

GEORGII V REGIS.

Act No. 35, 1928.

An Act to provide for the assessment and collection of a tax on incomes, and for purposes consequent thereon or incidental thereto; and to amend the Income Tax (Management) Act, 1912, and the Co-operation Acts, 1923-1928, and certain other Acts. [Assented to, 14th December, 1928.]

DE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Income Tax short title. (Management) Act, 1928."

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

R. B. WALKER,
Chairman Committees f the Legislative Assembly.

Operation of Act No. 11, 1912. See C'wth

Act, 1922– 1927, s. 2, and N.S.W. Act, s. 3 (2).

2. The Income Tax (Management) Act, 1912, as amended by subsequent Acts, shall, subject to the amendments made therein by sections twenty-nine, fifty-three, and sixty-six, and subsection four of section eighty-nine of this Act, continue in force for all 1912, No. 11, purposes in connection with income tax payable in respect of the income which has been received prior to the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight, or prior to such other period as may be or may have been accepted by the Commissioner in lieu of such year.

Existing regulations. N.S.W. Act, 1912, No. 11, s. 3 (1).

3. (1) All existing rules, regulations and forms made or prescribed under the Income Tax (Management) Act, 1912, as amended by subsequent Acts, or continuing in force by virtue of such Act, shall continue in force and shall apply to proceedings under this Act, so far as such rules, regulations and forms may be applicable until rules, regulations and forms are made and prescribed under this Act.

Notices and returns as to income for year ended on 30th June, 1928.

Ibid. s. 3 (3)

(2) All notices given and returns made during the year one thousand nine hundred and twenty-eight, under the Income Tax (Management) Act, 1912, as amended by subsequent Acts in respect of income for the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight, shall (without prejudice to the power of the Commissioner to give any notices which may be given or require any returns which may be required in respect of income for such year under this Act) be deemed to have been made or given also under this Act.

Definitions. C'wth Act. 1922-1927, s. 4. N.S.W. Act, 1912, No. 11, s. 4.

4. In this Act, unless the context requires another meaning,-

"Agent" includes every person who in the State for or on behalf of any person out of the State (in this paragraph 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, and also includes sub-agent.

"Agricultural

- "Agricultural pursuit" includes horticulture, viticulture, poultry farming, bee farming, and the growth of fruit, vegetables and the like.
- "Assessable income" means the gross income after excluding all income which is exempt from income tax.
- "Assessment" means the ascertainment of the amount of any taxable income, and also means the ascertainment of the amount of tax imposed thereon.
- "Assistant Commissioner" means the Assistant Commissioner of Taxation.
- "Business" includes any profession, trade, employment, vocation or calling.
- "Commissioner" means the Commissioner of Taxation.
- "Company" includes all bodies or associations, corporate or unincorporate, but does not include partnerships.
- "Co-operative Society" means a co-operative society registered under the Co-operation Acts, 1923–1928.
- "Dividend" includes profit and bonus and bonus share, whether declared or dealt with by the company issuing the bonus share as capital or not, except to the extent to which a bonus share represents a writing-up or revaluation of assets without disposal thereof, or the capitalization of profits derived from the sale of capital assets, if such profits were not liable to income tax under this or the previous Act.

"Foreign Company" means a company, not being a New South Wales company.

"Income" means income derived or deemed to be derived directly or indirectly from any source in the State or in respect of which tax is otherwise expressly made payable under this Act and includes interest upon money secured by the mortgage of any property in the State.

"Income

"Income derived from personal exertion" means income consisting of earnings, salaries, wages, commission, fees, bonuses, pensions, superannuation allowances, retiring allowances, and gratuities, 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, but does not include interest, unless the taxpayer's principal business consists of the lending of money or unless the interest is received in respect of a trade debt, and does not include rents and dividends.

"Income derived from property" means all income not being income derived from personal exertion.

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

"Income year" means the year beginning on the first day of July and ending on the thirtieth day of June (or such other period as may be accepted by the Commissioner) during which the income in question was derived.

"Lease" includes sublease.

"Liquidator" includes 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.

"Mutual life assurance company" means a life assurance company none of the divisible profits of which are payable to persons other than policy-holders.

"Net income" means the assessable income less all deductions allowable under this Act except the statutory deductions allowed under subsection three of section nineteen.

"New

- "New South Wales Company" means a company of which the head office or the principal place of business is in New South Wales; or a company incorporated under the Companies Act, 1899, or any other Act of the Parliament of New South Wales, wherever its head office or principal place of business may be.
- "Non-resident person" means a person whose usual or principal place of abode is not in the State.
- "Partnership" means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company.
- "Person" includes a company.
- "Prescribed" means prescribed by this Act or by any rules or regulations made or in force under this Act, or the Income Tax (Management) Act, 1912, as amended by subsequent Acts.
- "Previous Act" means the Income Tax (Management) Act, 1912, as amended by subsequent Acts.
- "Resident person" means a person whose usual or principal place of abode is in the State, and includes a public officer of the State who is absent in the performance of his duty, or the wife of such officer absent from the State with him.
- "Tax" means income tax.
- "Taxable income" means the amount of assessable income remaining after all the deductions allowed by this Act have been made.
- "Taxpayer" means every person or company deriving income whether on his own behalf or on behalf of another.
- "the Court" means the Court of Review.
- "the State" means the State of New South Wales.
- "this Act" or "the previous Act" include the regulations in force thereunder.

"Trustee"

- "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.

PART II.

ADMINISTRATION.

Commissioner of Taxation.

N.S.W. Act, 1912, No. 11, s. 5.

- 5. (1) For the due administration of this Act and the previous Act, the Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a Commissioner of Taxation, who may sue and be sued by that name.
- (2) All references to the Commissioner of Taxation in the previous Act, and the rules and regulations in force thereunder, shall be read and understood as referring to the Commissioner of Taxation appointed under this Act.

Assistant Commissioner. (3) (a) The Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint an Assistant Commissioner of Taxation.

Officers.

(b) Such other persons may be appointed under the said Act as may be deemed necessary for the carrying out of this Act and the previous Act.

(4)

(4) In the event of the absence, incapacity, or Acting suspension of the Commissioner, his powers, duties, and Commissioner. functions may be exercised and performed during such absence, incapacity, or suspension, by the Assistant Commissioner, and in the event of the absence, incapacity, or suspension of both the Commissioner and the Assistant Commissioner, the powers, duties, and functions of the Commissioner may be exercised and performed during the absence, incapacity, or suspension of the Commissioner and Assistant Commissioner by an Acting Commissioner appointed by the Governor.

(5) The Commissioner may, by writing under his Delegation. hand, delegate to the Assistant Commissioner, or any other person, any powers, duties, and functions conferred or imposed upon him by this Act, or the previous Act, or the rules or regulations in force under any of such Acts (except this power of delegation). Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power, duty, or function by the Commissioner.

(6) A notification in the Gazette that any person has been appointed as Commissioner, Assistant Commissioner, Acting Commissioner, or other person for the purpose of this Act, or the previous Act, shall be

conclusive evidence of such appointment.

(7) Where in or under this Act or the previous Authorities of Act the exercise of any power or the discharge of any Assistant Commissioner duty or function by the Commissioner or the operation and Acting of any provision of this Act or the previous Act is commisdependent upon the opinion, belief, or state of mind of C'wth Act, the Commissioner in relation to any matter, that power, 1922-1927, duty, or function, may be exercised or discharged by s. 7 (2). duty, or function, may be exercised or discharged by the Assistant Commissioner when authorised to act by a delegation as aforesaid or during the absence, incapacity, or suspension of the Commissioner, or by the Acting Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant Commissioner, or that provision may operate (as the case may be) upon the opinion, belief, or state of mind in relation to that matter of the Assistant Commissioner

when

when so authorised to act, or during the absence, incapacity, or suspension of the Commissioner or upon the opinion, belief, or state of mind in relation to that matter of the Acting Commissioner during the absence, incapacity, or suspension of the Commissioner and Assistant Commissioner.

Secrecy. 1912, No. 11, s. 6. C'wth Act, 1922-1927, s. 12.

- 6. (1) Every Commissioner, Assistant Commissioner, N.S.W. Act, and Acting Commissioner and other person appointed to act in the administration of this Act shall, before acting in the execution of his office, take and subscribe before a justice of the peace such oath of fidelity and secrecy as may be prescribed.
 - (2) Every such person who without lawful excuse makes a record of or reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.
 - (3) If any such person acts in the execution of his office before he has taken the prescribed oath, he shall be liable to a penalty of not less than ten and not more than one hundred pounds.
 - (4) Any person who has been an officer or who has performed any duty under this Act or the regulations in force under this Act, or under the previous Act, or the regulations in force thereunder, and who reveals any information acquired by him in the performance of any duty under any such Act or regulations, to any person other than a person to whom he is authorised by the Commissioner to communicate it, shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.
 - (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 the previous Act, except as may be necessary for the purpose of carrying into effect the provisions of any such Act.

(6)

- (6) Notwithstanding anything contained in this section the Commissioner, Assistant Commissioner, or Acting Commissioner may communicate any matter which comes to his knowledge in the performance of his official duties to the Commissioner of Stamp Duties, or to the officer or authority administering any Act of the Commonwealth or of any State relating to income tax, stamp duties, succession duties, or estate duties who is authorised by law to afford like information to the Commissioner.
- 7. Nothing in this Act shall affect the operation or Income Tax continuance of the Income Tax (Commonwealth) Collection Act, 1923.

 Collection Act, 1923.

PART III.

LIABILITY TO TAXATION.

8. (1) Subject to the provisions of this Act, income Incidence tax at such rates as may be fixed by any Act shall be of tax.

paid to the Commissioner in respect of the taxable 1912, No. 11, income derived by any person during every income year s. 9.

C'wth Act, 1992-1997.

(2) The first assessment of income tax under this s. 13.

Act shall be in respect of the income of the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight, or such other period as may be accepted by the Commissioner in lieu thereof, and subsequent assessments shall be in respect of the income for each succeeding income year.

(3) Where a company is wound up, or an Adjustment individual person dies or ceases to be a taxpayer, in any by reason of alteration of year, and such company or person has under the year of inprovisions of the previous Act been assessed on the come by Act income of the whole or part of any year a second time, s. 5. and no adjustment in regard to such second assessment has previously been made, the Commissioner shall make such adjustment as is just.

Money credited re-C'wth Act,

(4) Income shall be deemed to have been derived invested, &c., by any person within the meaning of this Act, although to be income it has not actually been paid over to him, but has been N.S.W. Act, credited in account or reinvested or accumulated or 1912, No. 11, credited in account or reinvested or accumulated or capitalised or carried to any reserve, sinking fund, or insurance fund howsoever designated, or otherwise dealt with on his behalf or as he directs.

Continuance transactions.

1922-1927,

s. 19.

(5) In any case in which the whole of the income of liability to in respect of a transaction which occurred during an income year prior to the income year which ended on the thirtieth day of June, one thousand nine hundred and twenty-eight, was not liable to assessment prior to such last-mentioned year, the Commissioner may assess income for the same income year or years and in the same manner in which and as it would have been assessable had the previous Act continued to apply.

Fixed deposits in Federal Capital Territory.

(6) Income shall for the purpose of this Act include interest on fixed deposits effected in the Territory of the Seat of Government of the Commonwealth by persons resident in the State or by New South Wales companies or by any other company carrying on business in the State and effecting such deposit in connection with or as an operation of its business so carried on.

Income of individuals pastoral pursuits.

9. (1) Where the income of a taxpayer (other than from agricul a company) is derived wholly or in part from any tural, dairy- agricultural, dairying, or pastoral pursuit carried on by the taxpayer, the following provisions shall be applied to so much of the taxable income as is derived N.S.W. Act, from any such pursuits :-

1912, No. 11, s. 9A.

(a) In assessments of tax payable upon income derived in each income year subject to assessment under this Act, the rate to be applied to the taxable income so derived in the income year shall be calculated under the Act by which the rates of income tax are declared as if the taxable income so derived by the taxpayer were an amount equal to the average of the taxable income so derived by the taxpayer in the years (in this section called "average years ") beginning with and including the first average year and ending with and including the income year.

- (b) The first average year shall be the fourth year before the income year, except in the cases in which the subsequent provisions of this section provide for the first average year being a later year. An income year, subject to assessment under the previous Act, shall be capable of being taken as a first or subsequent average year.
- (c) Where the taxable income so derived of the taxpayer for the year which would otherwise be the first average year was greater than his taxable income so derived 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 so derived of the taxpayer was less than his taxable income so derived in the next subsequent year:

Provided that this paragraph shall not apply to the assessment of a taxpayer who has been assessed for any previous year at an average rate determined under this section or section 9A of the previous Act.

(d) Any year in which the taxpayer was not carrying on any such pursuit shall not be counted as a first average year, but any year in which the deductions allowable in his assessment to a taxpayer carrying on any such pursuit left no taxable income derived therefrom shall be capable of being an average year, and if an average year, shall be taken into account in ascertaining the average taxable income derived from any such pursuit. In such a case the excess of allowable deductions over income in any average year shall be taken into account in calculating the average, but only to the extent to which such excess of deductions is greater than the net income, if any, of the taxpayer derived in that year otherwise than from any such pursuit.

(e) 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 tax to be applied in any 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.

Rate of tax on other income of such individuals.

(2) Where such a taxpayer derives taxable income otherwise than from any such agricultural, dairying, or pastoral pursuit, the rate of tax on such other taxable income shall be the rate which would be applicable to a total taxable income equal to an amount arrived at by adding to such other taxable income the average income (if any), or if paragraph (e) of subsection one applies, the actual taxable income from any such agricultural, dairving, or pastoral pursuit.

Exclusion. 1912, No. 11,

(3) For the purposes of this section, a person N.S.W. Act, whose sole business consists of buying and selling livestock shall not to the extent of such business be deemed to be carrying on an agricultural, dairying or pastoral pursuit.

Exemptions. s. 10.

C'wth Act, 1922-1927, ss. 14, 54 (4)

10. (1) The following incomes, revenues, and funds N.S.W. Act, shall be exempt from income tax—1912, No. 11,

(a) the salary of the Governor of New South Wales;

(b) the official salaries of foreign consuls and the trade commissioners of any part of the British Dominions:

(c) the revenues of municipal corporations or of local or public authorities;

(d) the incomes of mutual life assurance companies not being income from investments or income from rent, or income assessable under section twelve;

(e) the profits of the Government Savings Bank;

(f) the incomes of societies registered under the Friendly Societies Act, 1912;

(g) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or the State relating to the settlement of industrial disputes;

- (h) the income of any ecclesiastical, charitable, or educational institution of a public character, whether supported wholly or partly by grants from the Consolidated Revenue or not;
- (i) 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 purpose for which it was established;
- (j) the incomes of Starr-Bowkett building societies;
- (k) the income of any society or association not carried on for the purpose of profit or gain to the individual members thereof, established for the purpose of promoting the development of the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing, or industrial resources of Australia;
- (1) 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 purpose of profit or gain to the individual members thereof;
- (m) the income of any other company, society, or association which does not derive profit or gain out of transactions with persons other than their members, and which does not carry on business for purposes of profit or gain except as regards any income from investments or income from rent or income assessable under section twelve;
- (n) pensions paid by the Government of the Commonwealth under the Australian Soldiers' Repatriation Act, 1920–1921;
- (o) the remuneration paid by the Government of the Commonwealth or of a State to a person residing outside Australia for expert advice to that Government or as a member of a Royal Commission;

- (p) the incomes of persons derived in their capacity of—
 - (i) representatives of an association or club established in any country for the control of any outdoor athletic sport or game in that country visiting Australia for the purpose of engaging in contests in Australia;

(ii) representatives of any Government visiting Australia in an official capacity, and members of the entourage of any such representative;

(iii) representatives of any society or association established for educational, scientific, religious or philanthropic purposes visiting Australia for the purpose of attending international or empire conferences or for the purpose of carrying on investigation or research for such society or association;

(iv) representatives of the press outside Australia visiting Australia for the purpose of reporting the proceedings relating to any of the matters referred to in (i), (ii), and (iii); or

(v) visitors to Australia whose visit, in the opinion of the Colonial Treasurer, is primarily or principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia;

(q) 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 the State by or on behalf of that person of produce of the territory or island of which he is a resident, provided that the purchase of the produce in the State is made for the purpose of export for sale outside Australia

Australia and that the Commissioner is satisfied that the produce has been exported without

unnecessary delay.

(r) interest from bonds, debentures, stock and other securities issued by the Government of New South Wales, the Commissioners of the Government Savings Bank of New South Wales or the Government of the Commonwealth of Australia:

Provided that this exemption shall not extend to interest from any such security in cases where by this Act, or any Act of the Parliament of the Commonwealth or the State, interest on any such security is made liable to

the payment of income tax.

(2) The exemptions in this section shall not - Declarations (i) extend to the salaries, wages, allowances, or as to exemptions. pensions of persons employed by any such C'wth Act, corporation, company, authority, union, 1922-1927, society institution or person page 6.1 society, institution, or person specified therein, although the same may be paid wholly or in part out of the income, revenues, or funds so exempt; or

(ii) exempt any such corporation, company, authority, union, society, institution, or person, from furnishing any returns or information which may be required by the Commissioner;

(iii) exempt any person from including in his returns such information as may be prescribed or as may be required by the Commissioner;

11. The assessable income of any person shall (with- What out in any way limiting the meaning of the words) assessable include include—

(a) profits derived from any trade or business and Ibid. s. 16. 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

working beasts) and trading stock (not being live stock) not disposed of at the beginning or end of the income year shall be taken into account.

For the purposes of this paragraph "value" means—

(i) in the case of trading stock (not being live stock) the actual cost price or market selling 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:

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 income year in which the income was derived (including for the purposes of this proviso the last year of income under the previous Act) shall for the purposes of the assessment of the person's income derived in the next income year be deemed to be the value of that article as at the commencement of that next income year;

(ii) in the case of live stock (not being live stock used as beasts of burden or as working beasts) the value per head which the person with the consent of the Commissioner adopted for the purposes of his return as the value at the end of the last year of income under the previous Act or where by reason of there being no such return, or for any other reason there is no such value, then such value per head as any person adopts with the approval of the Commissioner, or in default of agreement between such person and the Commissioner, then such value per head as is in the opinion of the Commissioner just and reasonable. The value per head

so fixed as herein mentioned, shall be adopted for the beginning and end of every income year to which this Act applies, unless and until altered with the consent of the Commissioner.

Notwithstanding anything contained in this paragraph an owner of live-stock who has made or who may after the passing of this Act make an election under the provisions of paragraph (aa) of section sixteen of the Commonwealth Income Tax Assessment Act, 1922-1928, to omit natural increase from his returns under that Act until disposed of (if the election is operative in any year to which this Act applies) may elect to omit from the account required by this paragraph the value of all natural increase of live-stock owned by him, and born during the income year, 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 shall be irrevocable and shall apply to the assessment of income derived in the income year in respect of which the election is made and to assessments for all subsequent income years. The proceeds from the sale of 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 this paragraph shall be returned as income in the year in which that natural increase is sold.

If any such natural increase is disposed of otherwise than by way of sale, an amount equal to the market value of natural increase so disposed of shall be returned as income in the income year in which the disposal is effected.

(b) in the case of a member or shareholder (other than a company) of—

(i) a company which derives income from a source in the State; or

(ii) a company which is a shareholder in a company which derives income or dividends from a source in the State,

all dividends (but not including a reversionary bonus issued on a policy of life assurance) credited, paid, or distributed to the member or shareholder from any profit derived from any source by the company:

Provided that-

- (i) where a company derives income from a source in the State, and from a source outside the State, a taxpayer shall be taxable on so much of the dividend as bears to the whole dividend the same proportion that the profits derived by the company from a source in the State bear to the total profits of the company; and
- (ii) if a company, which has derived income from the bonds, debentures, stock, or other securities mentioned in paragraph (r) of subsection one of section ten, pays in any year any portion of that income in dividends to its shareholders, the exemption under that paragraph shall (so long as it continues to apply) extend to the proportion of the dividend for that year which has been paid out of such income:

Provided further that notwithstanding any other provision of this Act where a dividend is paid wholly and exclusively out of profits derived from the sale of capital assets, the member

First proviso.

C wth Act, 1922-1927, s. 14 (2).

Second pro-

member or shareholder shall not, if the company was not liable to income tax in respect of such profits under this or a previous Act, be liable to tax on that dividend:

Provided further that any such member or Third shareholder shall be entitled to a rebate in his proviso. assessment of the lesser of the two following amounts:—

(i) the sum which bears the same proportion C'wth Act, to the tax payable by him on his income 1922-1927, derived from property as the amount of his income from dividends which is included in his taxable income derived from property bears to his total taxable income derived from property; or

(ii) the proportion of the tax paid by the company (under this Act or the previous Act or any Act repealed by the previous Act) attributable to the dividends included in the taxable income of the taxpayer.

For the purposes of this proviso, in arriving at the amount of dividends included in a taxpayer's taxable income, deductions allowable under subsections two and three of section nineteen shall be treated as deductible in the first place from the income, if any, other than that from dividends:

Provided further that increased tax shall not Fourth be imposed on a taxpayer by the operation of proviso. the preceding provisions of this paragraph (b), except to the extent to which—

(ia) the amount of the tax that would be assessed on the income of the tax-payer, including the dividends, as if they were not dividends, but were other income from property

exceeds-

(iia) the amount obtained by adding to the proportion of the tax paid by the company mentioned in subparagraph

(ii) of the second proviso of this paragraph (b) the tax that would be assessed on the taxpayer's income, excluding the dividends.

(c) beneficial interests in income derived under any will, settlement, deed of gift, or instrument

of trust;

(d) money derived by way of royalty or bonus, and premiums, fines or foregifts or consideration in the nature of premiums, fines or foregifts demanded and given in connection with leasehold estates (including the goodwill of any business carried on on the land);

(e) money received as an annuity;

- (f) the amount or value of any consideration demanded and given in connection with a right to remove standing timber from land less the amount, if any, by which the value of the land is or will be diminished by the removal of the timber;
- (g) amounts expended by a lessee under an obligation in an agreement in writing (not exceeding the sum, if any, specified in the agreement) with the landlord to the extent to which the landlord's interest in the property is increased in value, and for which the tenant has no right to reimbursement by the landlord:

Provided that amounts so expended whether before or after the commencement of this Act shall be apportioned over the period of the tenancy unexpired at the date of such expenditure and returned by the landlord as income accordingly.

- (h) the annual rental value to him of premises or quarters provided rent free by his employer;
- (i) five per centum of the capital amount of a retiring allowance or gratuity (not being an amount paid to a director of a company) paid in a lump sum;

- (j) all allowances, gratuities (except retiring allowances or gratuities paid in lump sums otherwise than to a director of a company', 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;
- (k) the proceeds derived from the sale (whether compulsory or otherwise and whether for the purpose of putting an end to a business or otherwise) of—
 - (a) the whole or part of the trading stock of any business;
 - (b) any standing crop; and
 - (c) all live-stock forming part of the assets of any business (not being live-stock which in the opinion of the Commissioner were ordinarily used by the person as beasts of burden or as working beasts):

Provided that-

First proviso.

(i) this paragraph shall not apply to the proceeds derived from the sale of any live-stock which, in the opinion of the Commissioner, were ordinarily used by the person for breeding purposes and were sold by that person 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 the State which contains a provision for the compulsory acquisition or resumption of land, 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 is determined as the price or value of the wool

as distinct from the sheep;

(ii) notwithstanding anything contained in this section or in section nineteen of this Act, no deduction shall be allowed to any person on account of live-stock sold by him in respect of which, by virtue of paragraph (i) of this proviso, no amount (other than in respect of wool) has been included in his assessable income; and

(iii) for the purpose of paragraph (k) of this section, "sale" includes any disposition otherwise than by way of sale, and in any such case the sale price shall be deemed to be the market value of the trading stock, standing crop or live-stock ruling on the day on which the disposition is made, and the person acquiring any such property shall be deemed to have purchased it at the amount so fixed as the sale price:

Provided that where any trading stock, standing crop or live-stock is sold with other assets or any such sheep which in the opinion of the Commissioner were ordinarily used for breeding purposes are sold in the wool the consideration for the sale which is attributable to the trading stock, standing crop, live-stock, or wool shall be determined by the Commissioner, and the amount so determined shall be deemed to be the price paid by the purchaser for the trading stock, standing crop, live-stock, or wool as the case may be;

(l) interest credited or paid to or otherwise derived by any depositor or debenture holder of a company, and amounts derived by any member or shareholder in a company from the sale of rights to take up shares or debentures in a company; (m)

C'wth Act 1922-1925, s. 17 (2). Second proviso

(m) money or consideration derived from the, granting of an option of purchase of any property;

(n) the amount of the consideration for the transfer, assignment, cancellation, or surrender of a lease of land (including the goodwill of any business carried on on the land) less the deductions provided for in paragraphs (a), (b) and (c) of subsection three of section twelve:

Provided that-

(i) where the lease transferred, assigned, cancelled, or surrendered was acquired by the taxpayer prior to the first day of July, one thousand nine hundred

and twenty-three; or

(ii) where the lease was transferred, assigned, cancelled, or surrendered after the thirtieth day of June, one thousand nine hundred and twenty-eight, and was acquired by the taxpayer during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-four; or

(iii) where in any other case the lease transferred, assigned, cancelled, or surrendered was acquired by the taxpayer before the sixth year prior to the income year in which the lease is transferred, assigned, cancelled, or

surrendered,

the amount to be included as assessable income shall not be greater than the total of the amounts of depreciation in respect of the lease allowed to the taxpayer under this and the

previous Act:

Provided further that this paragraph (n) shall not apply to the transfer or assignment of the lease of a mining property (other than coal mining) where the Commissioner is satisfied that the lease has been assigned or transferred by a bona fide prospector.

12.

Net profits on sale of certain property are Income (see N.S.W. Act 1912 No. 11, s. 4). 12. (1) Where the proceeds of the sale during the income year by any person of any real property situated in the State are not liable to be returned as assessable income under any other provision of this Act, the net profit or gain, if any, arising from such sale shall be deemed to be assessable income of that person, if such real property was bought by him during such year or the six years next prior thereto.

"Real property."

"Real property" in this section means any estate or interest in land within the State, including a lease of such land and including the goodwill of any business carried on on the land.

Provided that this subsection shall not apply to—

(i) The sale by any person of real property which was bought by him prior to the first day of July, one thousand nine hundred and twenty-three; or

(ii) the sale by any person after the thirtieth day of June, one thousand nine hundred and twenty-eight, of real property which was bought by him during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-four; or

(iii) the sale by any person of premises owned and solely used by him as his principal place of abode during any period of or exceeding four years.

(2) Where the proceeds of the sale during the income year by any person of any personal property situated in the State are not liable to be returned as assessable income under any other provision of this Act, the net profit, if any, arising from such sale shall be deemed to be assessable income of that person if such personal property was bought by him during such year or the two years next prior thereto.

Provided that this subsection shall not apply to—

(i) The sale by any person of personal property other than shares in any company which was bought by him prior to the first day of July, one thousand nine hundred and twenty-seven; or

(ii) the sale by any person after the thirtieth day of June, one thousand nine hundred and twenty-eight, of personal property other than shares in any company which was bought by him during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight; or

(iii) the sale during the income year by any person of personal property (other than shares or securities) of an aggregate value not exceeding

two hundred pounds.

(3) The amount of the net profit or gain referred Assessment to in subsections one and two hereof shall be arrived at of profit. in the following manner, namely, by deducting from the amount realised by the sale—

(a) the expenses of sale;

(b) the cost of the property to the vendor (less all amounts in respect of depreciation which were allowable as deductions from his assessable income under this and the previous Act); and

(c) any other expenses, including interest on borrowed money, proved to the satisfaction of the Commissioner to have been incurred in connection with the acquisition, improving and holding of any such property, and which were not allowable as a deduction from the income of the income year or any previous income year:

Provided that any loss (ascertained in the same manner) First proviso, incurred during the income year on the sale during such year of any property coming within subsection one or two shall be allowed as a deduction in arriving at the net profits or gains from sales of property coming within subsections one and two, but shall not be allowed as a deduction from income derived from any other source:

Provided further that any similar loss incurred during Secon the two preceding income years, but not prior to the provise. first income year to which this Act applies, shall also be allowed as a deduction to the extent to which such loss is not set off against any similar profit in the year in which it is incurred or the succeeding year.

Sales on terms. (4) Where in the case of any sale coming under this section the payment of the purchase price extends over a period of years so much of the consideration as would be profit if the sale were for cash shall be treated as apportioned among the income years over which the payments of the purchase price extend, and the amount of profit assessable in each income year shall be the amount which bears the same proportion to the profit to be apportioned as the amount of the payments received in the income year bears to the purchase price.

(5) The rate of tax in respect of taxable income which consists of or includes taxable income derived from any sale made after the passing of this Act to which the provisions of subsection one or two of this

section apply shall be arrived at as follows:—

Division of profit to determine rate of tax.

The net profit or gain derived from any such sale which is included in the taxable income shall be divided by the number of years for which the taxpayer had held the property at the time of the sale, and the amount arrived at (together with the amounts similarly arrived at in respect of every other such sale the net profit or gain from which is included in the taxable income) shall be added to the taxpayer's other taxable income (if any), and the rate that would be applicable if the amount so ascertained were the taxpayer's total taxable income.

Gifts by purchaser.

(6) Where a person has bought property and assures it otherwise than by way of sale whether by delivery or otherwise to a person who sells it, the net profit or gain if any arising from such sale shall be deemed to be assessable income of the vendor under subsection one in the case of real property and under subsection two in the case of personal property if the net profit or gain from such sale would have been assessable income of the first-mentioned person under the provisions of this section had such person continued to hold the property and made such sale.

The cost to the said vendor of the property sold by him shall, for the purposes of subsection three (b) of this

section

section, be deemed to be the price at which the said first-mentioned person bought the property less all amounts in respect of depreciation which were allowable as deductions from the assessable incomes of such person and the said vendor under this and the previous Act.

(7) Where a person who has bought real pro-Sale of shares perty assures it or causes it to be assured to a company of private to which the provisions of section thirty-one may be applied, and he is at or about the date of the assurance substantially interested as a shareholder therein and he sells substantially the whole of his shares in such company the net profit or gain, if any, arising from such sale, shall be deemed to be assessable income of such person under subsection one of this section if, had he continued to hold such real property and had he sold the same at the time when he sold the shares, the net profit or gain on such a sale of the real property would have been deemed to be assessable income of such person under subsection one of this section.

In computing the net profit or gain arising from such sale of the shares the cost of the property to the vendor for the purposes of paragraph (b) of subsection three of this section shall be the price at which the said first-mentioned person purchased such real property less all amounts in respect of depreciation which were allowable as deductions from the assessable incomes of such person and the said company under this and the previous Act.

- (8) For the purpose of this section—"Sale" "Sale" "Includes an exchange of property and any statutory "Bought." resumption, and "bought" includes in respect of shares the acquisition of shares by the issue thereof.
- 13. Subject to the provisions of this Act, if in Consideration respect of any transaction to which this Act applies to be valued. the whole or part of any consideration is paid or given otherwise than by cash, the money value of such consideration shall be stated by the taxpayer in his return, and if the value so stated is not accepted by the Commissioner he shall assess the same.

Interest on loans raised in N.S.W. by countries outside the Commonwealth.
C'wth Taxation of Loans Act, 1923, s. 5.

14. (1) Subject to subsection two of this section, the interest accruing on loans raised in New South Wales after the thirty-first day of December, one thousand nine hundred and twenty-three, by the Government of any country or dominion outside the Commonwealth, or by any authority constituted by or under any law of any such country or dominion, shall be subject to income tax in the same manner as if it were income derived from a source in New South Wales.

(2) Subsection one of this section shall not apply

in relation to any interest unless either-

(a) the interest is received directly or indirectly by a resident person or by a New South Wales company or by any other company carrying on business in the State in connection with or as an operation of its business so carried on; or

(b) such interest is otherwise liable to income tax

under this Act.

(3) For the purpose of this section a loan shall be deemed to have been raised in New South Wales if subscriptions to the loan were invited in New South Wales by public advertisement, or by the issue of a prospectus, or otherwise.

prospectus, or other

Interest on State loans Ibid. s. 3.

15. Notwithstanding anything contained in any Act, the interest on any loan raised after the date of the coming into operation of this section, by the States or by any authority constituted by or under any State law, shall be subject to income tax and for that purpose shall be deemed to be part of the income of the respective persons to whom the interest is payable.

This section shall come into operation on a date to be fixed by the Governor by proclamation published in

the Gazette.

16. For the purpose of the last two preceding sections, "loan" includes a conversion loan and a loan raised for the redemption or repayment of an existing loan.

17. In addition to any other income tax payable by

it, a company shall also pay income tax-

(a) at such rate as may be fixed by the Income Tax Act by which the rates of income tax are declared on the interest paid or credited by the company

What "loans" includes.

Ibid. sec.
Company taxable on interest paid by it.
C'wth Act 1922-1927,

s. 20.

company to any non-resident person or foreign company on money raised by debentures of the company and used in the State, or on money lodged at interest in the State with the com-

pany; and

(b) on interest paid or credited in respect of debentures payable to bearer issued in the State or to secure money used in the State 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 taxable income of an individual:

18. For the purposes of the preceding section—

(a) a company shall be entitled to deduct and and refund for the retain for the use of the company from the purposes of amount payable to any of the persons referred 8.17. to in paragraph (a) of such section such amount 1922-1927, as is necessary to pay the tax which becomes \$ 20. due in respect of that amount;

C'wth Act.

Deductions

(b) 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 (b) of such section as the interest payable to that person bears to the total interest payable in respect of those debentures;

(c) where a company pays tax under such section on any interest, and any person includes that interest in his return, and is liable to pay income tax thereon, the amount of tax paid by the company in respect of that interest shall be deducted from the total tax payable by the

person;

(d) where the Commissioner is satisfied that the holder of debentures payable to bearer is a person who is not liable to pay income tax. the Commissioner shall refund to the person entitled thereto the amount of tax paid by the company in respect of the debentures of that person.

General deductions.

N.S.W. Act, 1912, No. 11, s. 16.

19. In calculating the taxable income of a taxpayer the there shall, subject to this Act, be deducted from the following deductions:—

C'wth Act, 192'-1927, s. 23.

- (1) (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:
 - (b) Rates and taxes (except income tax) imposed by Acts of the Parliament of New South Wales or by any authority constituted by or under any such Act, and land tax levied in respect of land situated in the State under any Act of the Parliament of the Commonwealth if such rates, taxes, and land tax were actually paid by a taxpayer during the income year, and were incurred in the production of his assessable income:

Provided that when a taxpayer receives a refund of the whole or any part of any rates or taxes allowed as a deduction under this or the previous Act, the amount of the refund shall be returned as income in the income year in which the refund is received.

- (c) Sums expended by the taxpayer during the income year for repairs to or on that part of any property occupied for the purpose of producing the assessable income, or from which the assessable income is derived, and for the repair of machinery, implements, and plant used by the taxpayer for the purpose of producing the assessable income;
- (d) The sum actually expended by the taxpayer during the income year for food and for rent of quarters provided for an employee who is employed exclusively in a business of the taxpayer yielding assessable income:

Provided

Provided that if the sum actually expended on such food cannot be ascertained such sum may be deducted as the Commissioner thinks just. Such sum shall not, however, be less than the amount fixed as the value of keep under any award or agreement, made under any Act of the State or the Commonwealth relating to industrial matters or disputes under which such employee is engaged after deducting therefrom the part, if any, attributable to lodging or quarters.

(e) Retiring allowances and pensions paid to employees and former employees in respect of past services in the taxpayer's business and so much of the assessable income as 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:

Provided that-

- (i) a deduction shall not be allowed under this paragraph (e) unless the Commissioner is satisfied that the fund has been established or the payment has been made in such a manner that the rights of the employees to receive the benefits, pensions, or retiring allowances have been fully secured;
- (ii) if the Commissioner is satisfied that any part of the assessable income of any person (whether an employer of labour or not) has been so set aside or paid by that person to provide individual personal benefits, pensions, or retiring allowances to employees in any business or class of business, the person setting aside or paying the sum shall be entitled to deduct it.

- (f) Expenses incurred in relation to the obtaining of an award or agreement under any Act of the Commonwealth or of the State relating to employees engaged in the tax-payer's business.
- (g) A proportionate part of the amount paid by the taxpayer as a procuration fee or bonus in connection with money borrowed and used by him in the production of assessable income arrived at by distributing the amount so paid over the period for which the money was borrowed.
- (h) Sums paid to any bona fide industrial union of employers or employees, trade or professional association, or agricultural society approved by the Commissioner but not exceeding fifty pounds to each respectively.
- (i) Sums expended by the taxpayer on grassing grazing lands, on suckering or eradicating seedlings, noxious plants and noxious weeds, and for the destruction of noxious animals on lands owned, held or occupied by the taxpayer for the purpose of his business.
- (j) The proportionate yearly sum which in the opinion of the Commissioner represents the purchase price or consideration for any annuity purchasing by the taxpayer.
- (k) Bad debts proved to be such to the satisfaction of the Commissioner and to have been incurred in and actually written off by the taxpayer in the income year, but the Commissioner may allow a deduction for bad debts claimed in respect of any year if he is satisfied that the debts were not incurred more than six years prior to the commencement of the income year, and that the taxpayer has in any previous year included those debts as assessable income in his return:

Provided

Provided that all amounts at any time received on account of any such bad debts or of any bad debts allowed as a deduction under the previous Act shall be returned as income in the income year in which the same were received.

(l) Such sum as the Commissioner may think just and reasonable as representing the diminution in value, by reason of wear and tear during the income year of any machinery, implements, and plant (including furniture, beasts of burden and working beasts) owned and used by the taxpayer for the purpose of producing the assessable income:

Provided that the following conditions shall apply in relation to the deduction under this paragraph—

(i) where a deduction has been allowed under paragraph (c) of this subsection, the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;

(ii) 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 income 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 under this paragraph (1). If the sale price exceeds that depreciated value the amount of the excess shall be returned as income in the income year in which the sale was effected.

"Depreciated

"Depreciated value" shall mean the cost price of the property to the taxpayer, or where condition (iii) hereof applies, the cost price to the first owner, less the total of the amounts of depreciation allowed under this or the previous Act or any Act repealed by the previous Act, in respect of the property to the taxpayer or to the taxpayer and the prior owner, as the case may be.

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 this condition of this paragraph be deemed to be the selling price of that property;

(iii) where any property in respect of which a deduction is allowable under this paragraph has been acquired (either before or after the commencement of this Act) from one person by another person, the person who acquired 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, unless the surplus over the depreciated value has been returned as income by the vendor in pursuance of condition (ii) of this paragraph, in which case the purchaser shall be entitled to a deduction for depreciation based on the cost price of the property to him:

Provided

Provided that if the Commissioner is satisfied that the purchase of the property is bona fide and not for the purpose of avoiding taxation, then, notwithstanding anything contained in the preceding sub-paragraph, a deduction based on the actual amount of the consideration given shall be allowed. This proviso shall not, however, apply where the person who acquired the property was a company in which the transferror was at or about the date of the transfer substantially interested as a shareholder or was a company the shareholding interests in which were at or about the date of the transfer in substantially the same hands as those of the company from which it was acquired;

(iv) no deduction under this paragraph (l) shall be allowable in respect of any property where the amount already allowed for depreciation under this Act or the previous Act or any Act repealed by the previous Act equals the value on which depreciation is allowable under this paragraph.

(m) A proportionate part of-

(1) the amount paid by any taxpayer (being the lessee under a lease or the transferee or assignee of a lease) as a premium, fine, or foregift or consideration in the nature of a premium, fine, or foregift for a lease or a renewal of a lease, or as an amount for the assignment or transfer of a lease of land, premises, or machinery used for the production of income, arrived at by distributing the amount so paid proportionately

over the unexpired period of the lease at the date the amount was so paid;

(2) the amount paid for a right to remove standing timber from land (not including an amount paid in connection with the purchase of a freehold or leasehold estate in land) which in the opinion of the Commissioner is the part of the amount paid for such right attributable to the timber removed and sold during the income year:

Provided that—

(i) the taxpayer proves to the satisfaction of the Commissioner that he has paid such an amount;

(ii) the deduction under sub-paragraph
(1) of this paragraph shall not be
made with respect to any lease from
the Commonwealth or the State or
any authority of the State, being a
perpetual lease without re-valuation
or a lease with a right of purchase:

or a lease with a right of purchase; (iii) where in the case of an assignment or transfer (either before or after the commencement of this Act) of a lease, or of a right to remove standing timber from land, the amount received has not been returned as income by the assignor or transferror of the lease or right and the person who acquired the lease or right was a company in which the assignor or transferror was at or about the date of the assignment or transfer substantially interested as a shareholder, or was a company the shareholding interests in which were at or about the date of such assignment or transfer in substantially the same hands as those of the company from

from which it was acquired, no deduction shall be allowed beyond the sum (if any) to which the assignor or transferror was entitled. In any case to which this clause (iii) of this proviso is applied the assignor or transferor shall not be assessable under this Act in respect of the amount received on such assignment or transfer.

(n) A proportion of the sum necessary to recoup amounts expended under an agreement in writing, on improvements on land by a lessee who has no tenant rights in the improvements, arrived at by distributing the amount expended (not exceeding the sum agreed upon) proportionately over the unexpired period of the lease at the date the improvements were effected:

Provided that this paragraph shall not apply in any case where there is a lease of land (granted either before or after the commencement of this Act) to a company from any individual who at or about the date of such agreement directly or indirectly controls or controlled the voting power of the company, or in any other case in which the Commissioner is of opinion that, in consequence of the terms and conditions of the lease or of any other circumstances the lessor was at or about such date in substantial control of the operations of the lessee. In any case to which this proviso is applied, the landlord shall not be assessable under paragraph (g) of section eleven.

(o) The expenditure actually incurred during the income year by any taxpayer carrying on mining operations (other than coal mining or quarrying) in the State for labour and materials

materials employed in sinking shafts in a producing mine and in the course of extending the area of operations.

(p) The sum of one hundred pounds in respect of the annual allowance of members of the Legislative Assembly of New South Wales or of New South Wales' members of the Parliament of the Commonwealth.

(q) Gifts of ten shillings and upwards made out of the assessable income derived during the year in which the gifts are made to public charitable institutions in the State, to the Sydney University, or to colleges affiliated therewith, if the gifts are verified to the satisfaction of the Commissioner.

For the purpose of this subparagraph—

"Affiliated college" means a residential educational institution affiliated under a statutory provision with the Sydney University.

"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.

"Public charitable institution" means a public hospital, a public institution, benevolent Australian trustees of the Museum, the trustees of the Public Library of New South Wales, the trustees of the National Art Gallery, the National Library referred to in the National Library Act, 1924, a public educational institution not carried on for the profit of individuals, an institution for the benefit of returned soldiers, 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.

(r) Such amount as the Commissioner considers just and reasonable (not exceeding fifty pounds for each child) as representing the cost to a taxpayer for food, quarters and other expenses in respect of children who are over the age of sixteen years and under twenty-one years of age at the beginning of the income year and who are wholly or partly employed by him in his business, and to whom no payments are made for wages.

(s) Sums expended in boring, sinking wells or excavating tanks for water by a taxpayer carrying on a pastoral or agricultural business, if such operations are either unsuccessful or result in other than drinkable water being obtained but not including the cost of plant or of material which may

be used elsewhere.

(2) In the case of a resident person—

(a) every premium or sum paid by the tax-allowed to residents. payer during the income year for the N.S. W. Act, insurance of the taxpayer's own life or 1912, No. 11, that of the wife, husband or children of (c), (d). the taxpayer or for a deferred annuity C'wth Act, or other like provision for the husband, 1922-1927, or other like provision for the husband, s. 23 (1), (c), wife or children of such taxpayer, or in (g), (k), (o). respect of any fidelity guarantee or bond which such taxpayer is required to provide for 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.

- (b) payments not exceeding one hundred pounds in the aggregate made for the personal benefit of the taxpayer or his wife or children during the income year by a taxpayer who is in receipt of salary, wages, allowances, stipends or annuity, or whose taxable income does not exceed eight hundred pounds, to superannuation, sustentation widows' or orphans' fund established in Australia, or any society duly registered under any Friendly Societies Act of the Commonwealth or State;
- (c) (i) the amount of fifty pounds in respect of each child who is wholly maintained by the taxpayer and who is under the age of sixteen years at the beginning of the income year.

Where the child is not wholly maintained by the taxpayer for the whole of the income year, or where the child is but partially maintained by the taxpayer either for the whole or part of the income year, or where the child so wholly or partially maintained attains the age of sixteen years during the income year, such proportionate part of fifty pounds as the Commissioner shall decide as fair and equitable in the circumstances;

- (ii) the amount of fifty pounds in respect of the wife of a taxpayer who is not separated from her husband either under an order of a court of competent jurisdiction or a separation agreement, or who, if so separated, is wholly maintained by him;
- (iii) an amount not exceeding fifty pounds for sums actually expended towards the maintenance of dependants by

an unmarried taxpayer. A dependent means a relative of the taxpayer by blood, marriage or adoption. Any payments to the dependent which, in the opinion of the Commissioner, are for board and lodging of or other services to the taxpayer shall be excluded in calculating such expenditure:

Provided that a person whose income during the income year exceeds the sum of one hundred pounds, or in respect of whom a deduction is allowed to any taxpayer under subparagraphs (i) or (ii) of this paragraph shall not be deemed to be a dependant;

(d) such sum as is paid by the taxpayer to-

(i) any legally qualified medical practitioner, dentist, public or private hospital, nurse or chemist in respect of any illness of or operation upon the taxpayer or the wife, husband or any of the children or dependants (as defined in paragraph (c) (iii)) of the taxpayer; and to

(ii) any undertaker for funeral and burial or cremation expenses arising out of the death of the wife or husband of the taxpayer or of any of his children or dependants (as defined in paragraph (c) (iii)).

The deductions mentioned in subparagraphs (i) and (ii) of this paragraph are to be allowed only when the taxable income of the taxpayer does not exceed four hundred pounds, and in no case shall a deduction be allowed under subparagraph (ii) exceeding the sum of twenty pounds; and

(e) expenses actually incurred by a taxpayer in educating his children under eighteen years of age (not exceeding fifty pounds

for each child during the income year) if suitable educational facilities are not provided by the State within reasonable daily travelling distance of the place of residence of the taxpayer. This paragraph shall not apply where the taxable income exceeds eight hundred pounds.

Deduction to individual resident.

N.S.W. Act, 1912, No. 11, s. 16 (1) (a).

C'wth Act, 1922-1927, s. 24 (1).

- (3) (a) In the case of a resident person (other than a company) the sum of two hundred and fifty pounds less the sum of one pound for every eight pounds by which the net income exceeds two hundred and fifty pounds;
 - (b) In the case of a non-resident person (other than a company) the sum of fifty pounds less the sum of one pound for every eight pounds by which the net income exceeds fifty pounds.

Parts of income rom which deductions are be made. N.S.W. Act, 1912, No. 11, s. 16 (2).

- **20.** (1) The deductions in paragraph (q) of subsection one, and in subsection two and in subsection three of section nineteen shall be made in the first place from income derived from personal exertion.
- (2) The other deductions provided in subsection one of section nineteen shall be made in the first place from income derived from personal exertion unless such loss, outgoing or expense was incurred in the production of income derived from property, in which case such deduction shall be made in the first place from income derived from property.
- (3) When the provisions of section nine are resorted to, the deductions in paragraphs (p) and (q) of subsection one and in subsections two and three of section nineteen shall be made in the first place from income other than that derived from agricultural, dairying, or pastoral pursuits.
- (4) If the income of the class from which the deduction is in the first place to be made does not amount to the sum to be deducted, the difference shall be deducted from the other class or classes.

21.

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

in Matters not allowed as deductions.

(a) the cost incurred in the maintenance of the tax- C'wth Act, payer, his family or establishment, other than 1922-1927, as specified in section nineteen of this Act; N.S.W. Act,

(b) domestic or private expenses, other than as 1912, No. 11, specified in subsection two of section nineteen; (iid), and

(c) income carried to any reserve fund, or capita-s. 16 (3). lized in any way;

(d) money not wholly or exclusively laid out or expended for the production of the assessable income;

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

(f) any bad debts, except as provided for in paragraph (k) of subsection one of section nineteen of this Act;

(g) any loss not connected with or arising out of the production of assessable income, except as specified in sections twelve and twenty-two;

(h) investment, expenditure, loss or withdrawal of capital; money used or intended to be used as capital; capital used in the improvement of premises occupied for the purpose of any business, or used in the production of income; interest which might have been made on such capital or money if laid out at interest—except as specifically allowed by subsection one of section nineteen;

(i) interest, except as provided in paragraph (a) of subsection one of section nineteen of this Act;

(j) any wastage or depreciation of any lease or in respect of any loss occasioned by the expiration of any lease, except as provided in paragraph (m) of subsection one of section nineteen of this Act;

(k) any payment of income tax or of any other rates or taxes not allowed as a deduction by paragraph (b) of subsection one of section nineteen. (l)

losses.

Income Tax (Management).

(1) any expenses which have been incurred in deriving income which is exempt from income

(m) any sum as a bonus or fee, salary, commission or allowance paid or credited to a director of a company or to a member of the family of a director of a company in excess of what the Commissioner considers a reasonable amount; but such excess shall be treated as dividends from a company in the hands of the recipients. This paragraph shall apply only to companies to which section thirty-one may be applied;

(n) head office expenses of a company beyond an amount which bears the same proportion to the total head office expenses as the revenue derived by the company in the State bears to the total revenue or beyond such an amount in excess thereof as may be fixed by the

Commissioner:

(o) any sum paid by a taxpayer to a relative by blood, marriage, or adoption, in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business

and for services rendered;

(p) any sum paid or payable by a company to any member or shareholder in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business or for services rendered. This paragraph shall apply only to companies to which section thirty-one may be applied:

(q) any loss or expense which is recoverable under

any contract of insurance or indemnity.

22. (1) Where a taxpayer makes a loss in any Deduction o business income year in carrying on a business or businesses either alone or as a partner with other persons, the C'wth Act, 1922-27 proceeds of which, if any, would be assessable income, N.S.W. Act, he shall be entitled to deduct the loss from any assess-1912, No. 11, able income derived by him in that year from other s. 16 (1) (e) sources:

Provided

Provided that the loss shall be deducted in the first First place from the income returnable under paragraph (b) proviso. of section eleven, if any, but if that income does not amount to the loss to be deducted, the difference shall be deducted from his income from personal exertion, if any, in the same year, and if this income does not amount to such difference, the balance shall be deducted from his other income from property, if any, in the same year:

Provided, further, that if the loss results from the second carrying on of any agricultural, dairying or pastoral proviso pursuit as defined in section nine, it shall be deducted in the first place from any other income from any such pursuit during that year, and if this income does not amount to such loss, the balance shall be deducted from the income from other sources in the order set out in

the first proviso to this subsection.

- (2) If the taxpayer did not derive any assessable income from other sources in that year or if the loss exceeds the net assessable income derived by him from other sources, the loss or the excess of the loss over such net assessable income, as the case may be, shall be carried forward into his subsequent yearly returns, but not exceeding two years subsequent to the year in which the loss occurs. In this subsection "net assessable income" means net income as defined in section four of this Act, but not including any deduction allowable under this section.
- (3) The loss or the excess of the loss which is carried forward under the provisions of subsection two hereof shall be deducted from the assessable income of the year or years into which it is carried forward in the order provided in the provisos to subsection one hereof.
- (4) Where any taxpayer who is entitled to a deduction under subsection two hereof is a taxpayer to whom section nine of this Act applies, then the amount of the loss carried forward under subsection two hereof shall not be taken into account under paragraph (d) of subsection one of section nine in ascertaining the excess of allowable deductions for the year in which the loss was incurred.

(5) Nothing in this section shall apply with respect to any loss incurred by a taxpayer prior to the first income year to which this Act applies.

Co-operative societies and the like.

23. In the case of any company (other than a co-operative society) which entirely or mainly either purchases from or sells to its own members or shareholders, or of a mutual building, investment or insurance company (other than a co-operative society or a life assurance company), the following provisions shall apply:—

(1) The assessable income of any such company shall include—

(a) all sums received from members in payment of interest or premiums of insurance or for commodities supplied or for animals or land sold to them or received in respect of commodities, animals or land sold by the company whether on its own account or on account of its members; and

(b) contributions levied on its suppliers based on the quantity or value of commodities, animals or land supplied, which in the opinion of the Commissioner are in effect a reduction in the amounts paid to suppliers for commodities, animals or land so supplied:

Provided that when any such contributions so levied are included in the income of such company, they shall not be included in the assessable income of the suppliers.

(2) In arriving at the taxable income of any such company, there shall be deducted, in addition to any other deductions allowed by this Act, the amount distributed, within nine months after the close of the income year, among its members or shareholders, based on purchases or payments of interest or premiums of insurance by members or shareholders or on sales by members or shareholders to the company:

Provided

Provided that where any such company makes sales to persons other than members or shareholders, only so much of the amount distributed as bears to the total amount distributed the same proportion as the amount of the sales to the shareholders or members bears to the total amount of the sales by the company, shall be allowed as a deduction.

- (3) No deduction shall in any case be allowed in respect of the amount distributed among the members or shareholders as interest in respect of, or as dividends on, shares.
- (4) The taxable income of a co-operative society shall be assessed subject to section sixty-three of the Co-operation Acts, 1923–1928, or any amendment thereof or any enactment substituted therefor.
- 24. (1) When a foreign company or non-resident Carriers by person carries passengers, live-stock, mails, or goods ship. shipped in the State, either as owner or charterer of any Cwth Act, 1922-27, vessel, such company or person shall by itself or himself s. 27. or by the master or its or his agent in the State, within N.S.W. Act, the prescribed time or when the Commissioner may s. 19 (1A). require, make a return of the full amount payable to it or to him, whether such amount is payable in the State or beyond the State, in respect of the carriage of such passengers, live-stock, mails or goods.

Such company, person or master or other agent shall be assessed thereon in respect of income directly or indirectly derived from a source within the State, and the taxable income shall, if such taxable income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed at an amount equal to five pounds for every one hundred pounds so payable as aforesaid.

(2) Where no return is made under this section by such person or company, or by the master or other such agent, the Commissioner may determine the amount payable to such person or company in respect of the carriage

carriage of 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 and shall be liable to pay the tax assessed.

- (3) Where a return is made as required by this section, and an assessment in respect of that return is made on the master or other agent, and the tax is not paid as required by or under this Act, the master shall be liable to pay the tax so assessed.
- (4) Wherever an assessment is made upon the master or wherever the master becomes otherwise liable to pay the tax assessed, the Commissioner shall give notice of such assessment or liability to the master, and such master shall thereupon pay the tax prior to the clearance of the ship, and subject to any law of the Commonwealth, the Collector of Customs shall have power to detain the ship until such payment is made.

Agents selling goods in the State for nonresident. See N.S.W. Act, 1912, Hughes v.

- 25. (1) When any person in the State (herein termed "the agent") on behalf of a principal resident or carrying on business out of the State or on behalf of a foreign company, sells or disposes, or is instrumental in selling No. 11, s. 18. or disposing of any property for the principal, whether such property is in the State or is by the contract to be Munro, 9 C.L., R 289. brought into the State, and whether the contract is made by the agent in the State or by or on behalf of the principal out of the State, and whether the moneys arising therefrom are paid to or received by the principal directly or otherwise, the moneys arising therefrom shall be deemed to be income derived by the principal from a business carried on by him in the State, and the taxable income derived therefrom by the principal shall, if such income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed on an amount of taxable income equal to five pounds for every one hundred pounds of the amount for which such property has been sold or disposed of.
 - (2) Such agent shall as regards such income be subject to the provisions and entitled to the benefits relating to agents contained in this Act.

- (3) The method of assessment provided by this section shall not apply to the proceeds of the sale in the State by an agent on behalf of a person resident or carrying on business in any other State of the Commonwealth of any agricultural or orchard produce, wool or livestock produced in such other State.
- 26. (1) The taxable income of a mutual life Life assurance company, carrying on business in the State, assurance companies. shall be arrived at by taking as a basis all assessable See Cwth income from investments, including income from rents Act, 1922-derived from a source in the State, and deducting therefrom the expenses arrived at under subsection two hereof. 1927, No. To the amount so ascertained there shall be added any 1,787, s. 30. taxable income assessable under the provisions of section twelve.
- (2) The amount allowable as a deduction on account of the expenses of a mutual life assurance company shall be such amount as bears to the total expenses (both in and outside the State) incurred by the company in the general management of the business, not including expenditure exclusively incurred in gaining or producing the premium income of the company, the same proportion as the assessable income from investments, including income from rents, bears to the total income of the company from its investments (wherever derived) including income from rents.

"Expenses" in this subsection shall not include any payment of income tax or any other deduction which is prohibited under provisions

of section twenty-one of this Act.

"Total income from investments (wherever derived)" shall not, so long as the exemption provided in section ten continues, include any interest derived from any bonds, debentures, stock, or other securities referred to in paragraph (r) of subsection one of section ten.

(3) The taxable income (other than taxable income assessed under the provisions of section twelve) of a mutual life assurance company shall not be assessed at an amount less than an amount which bears the same proportion to the amount which would

be assessed as the taxable income of such a company if all its income from investments, including income from rents, were treated as derived from a source in the State, as the amount assured under policies held by New South Wales policy-holders at the end of the income year bears to the total of the amount assured under policies held by all its policy-holders at the end of such income year.

- (4) In the case of a company (other than a mutual life assurance company) carrying on the business of life assurance in the State the taxable amount of income from life assurance business shall be determined on a similar basis to that herein provided in the case of a mutual life assurance company.
- (5) In the case of any company to which this section applies, and which also carries on a business other than life assurance, the investments and expenses to be taken into account shall be the investments and expenses in respect of its life assurance business, and the taxable income of such other business shall be added to the taxable income of the life assurance business.
- (6) No assessment shall be made on any company (including a mutual life assurance company) in respect of its life assurance business unless the company derives a profit and surplus from such business. In ascertaining such profit and surplus, all rents, interest and other profits and earnings in respect of or in relation to such business (whether derived in or outside the State) including interest chargeable by the company on overdue premiums shall be included, but no deduction shall be made in respect of any of the matters prohibited to be deducted by section twenty-one of this Act.

27. In the case of any person carrying on business (other than a business to which sections twenty-four and twenty-six apply) both in and outside the State the income derived from sources in the State shall be determined as follows:—

(a) Where the taxable income derived from sources in the State is capable of being kept separate and apart from income derived from sources

Income of person carrying on business in and outside the State.

N.S.W. Act, 1912, No. 11, s. 19 (2).

ed

- sources outside the State the taxable income derived from sources in the State shall be the actual amount of taxable income so derived.
- (b) In all other cases the person liable to make the return shall furnish the Commissioner with a return showing a true estimate of the amount of the net income which has been derived from sources in the State. In making such estimate there shall be added to the income definitely ascertainable as being derived in the State a proper proportion of the income which cannot be definitely allocated to sources in or outside the State. The return shall set out the method by which any such apportionment has been ascertained, and shall be accompanied by a full and complete statement of all income and expenditure and assets and liabilities in connection with the business both inside and outside the State. The Commissioner may accept such estimate or may without limitation of his powers under section forty-two or any other section of this Act assess the taxable income derived from sources in the State by ascertaining in accordance with this Act the total taxable income which would have been derived from the business if the income from sources both in and outside the State were derived from sources in the State and apportioning such total taxable income as between sources in and outside the State in proportion to either—

(i) the sales in the State as compared with the total sales, or if there are no sales both in and outside the State, the revenue derived from sources in the State as compared with the total revenue; or

(ii) the assets used in the State in connection with the production of taxable income as compared with the total assets employed in the production of the total taxable income referred to:

Provided

See 11. Act, 1 No. 11.

Provided that if in the case of any nonresident person, or in the case of a foreign company, the Commissioner is satisfied that the information necessary to determine the income arising from sources in the State cannot be obtained or is not satisfied that the return discloses the true state of affairs (without limiting any other powers possessed by him under this Act), he may assess the taxable income of that person or company at a sum equal to seven and one half pounds in every one hundred pounds of the total sales made in the State, or, if there are no sales in the State, at a sum equal to seven and one half pounds for every one hundred pounds of the total revenue derived in the State, and such person or company shall be liable to pay income tax thereon.

Apportionment of income derived within and outside the State from manufactures, 20.

28. (1) Whenever—

- (a) by reason of the manufacture, extraction from the earth, winning, production or purchase of any goods, substance, product, or commodity in the State and their sale outside the State; or
- (b) by reason of successive steps of extraction, winning, production, or manufacture in and outside the State; or
- (c) by reason of the making of contracts in the State and their performance outside the State, or vice versa; or
- (d) for any other like reason

the source of any income is not exclusively in the State, that income shall be apportioned between its source in the State and its source outside the State in such manner as shall be determined by the Commissioner.

See N.S.W. Act, 1912, No. 11, s. 33 (1) (d).

(2) Provided that where in the opinion of the Commissioner it is difficult or impracticable to determine whether income is assessable under this section or under some other section or sections of this Act, or where in the opinion of the Commissioner such income is assessable

assessable both under this section and under some other section or sections of this Act, the Commissioner may at his option assess such income under the provisions of the section which is in his opinion the most appropriate to the circumstances of the case.

29. (1) Notwithstanding any other provision in this Taxation Act, when any business which is carried on in the State business (other than a business to which sections twenty-four controlled and twenty-six apply)—

(a) is controlled principally by non-resident persons 1922-1927, or a foreign company; or

- (b) is carried on by a company, a majority of the 8 & 9 Geo. V. c. 40, Gen. shares in which are held by or on behalf of- Rules 7 to 9.
 - (i) a foreign company; or
 - (ii) another company which carries on business outside the State; or
 - (iii) persons who hold a majority of the shares in a company such as is referred to in subparagraphs (i) and (ii); or
- (c) is carried on by a New South Wales company which holds, or on behalf of which other persons hold, a majority of the shares in a foreign company or a company carrying on business outside the State.

and it appears to the Commissioner that on account of these circumstances, or on account of any other circumstances, the course of the business can be so arranged, and is so arranged, 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 or company carrying on the business in the State 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. If in his opinion, upon information subsequently obtained, the circumstances so warrant, the Commissioner may vary such percentage either by way of increase or reduction, and the assessment shall be adjusted accordingly.

C'wth Act, Imperial Act,

Rep eal of s. 18A. N.S.W. Act,

- (2) Section 18A of the Income Tax (Management) Act, 1912, as inserted by section five of the 1912, No. 11. Income Tax (Management) Amendment Act, 1925, is hereby repealed, and such repeal shall be retrospective from the date of the commencement of such section.
 - (3) This section shall be applied retrospectively to the income of the years of income ended on the thirtieth day of June, one thousand nine hundred and twenty-five, the thirtieth day of June, one thousand nine hundred and twenty-six, and the thirtieth day of June, one thousand nine hundred and twenty-seven, as far as regards any company engaged during those years in the transactions mentioned in the said section 18A, or in the business of distributing motion picture films.
 - (4) For the purposes of this section and section thirty, shares held by or in the names of persons who are relatives by blood, marriage, or adoption, may be treated by the Commissioner as if they were held by any one of such persons.

Companies consisting of substantially the same shareholders. C'wth Land Tax Act, 1910-1927, 8. 40.

- **30.** (1) Any two or more companies which consist substantially of the same shareholders may, if the Commissioner considers fit, be deemed to be a single company, and in such case shall be jointly assessed and liable accordingly.
- (2) Two companies shall be deemed to consist substantially of the same shareholders if not less than three-fourths of the paid-up capital of one of them is held by or on behalf of persons who hold three-fourths of the paid up capital of the other. Shares in one company held by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last mentioned company.

Where a company has not reasonably distributed its taxable income.

C'wth Act, 1922-1927. s. 21.

- **31.** With a view to preventing the avoidance of income tax through the withholding from distribution of income of a company, it is hereby enacted as follows:—
 - (a) Where a company has not within nine months after the close of any income year distributed to its members or shareholders (in such manner as to render the amount distributed liable to be included by them as assessable income in

their

their returns) at least two-thirds of its taxable income of such income year, the Commissioner may determine whether a sum or a further sum (not exceeding the excess of two-thirds of the taxable income of the company over the amounts, if any, distributed by it to its members or shareholders) could reasonably have been distributed by the company to them out of such taxable income:

Provided that in the case of a company to which this section applies, which, in the opinion of the Commissioner is a holding company, this paragraph shall be read as if, in place of the words "at least two-thirds" there were substituted the words "the whole," and as if the words "of two-thirds" were omitted.

- (b) The Commissioner shall assess the tax and the additional tax, if any, which would have been payable by the members or shareholders if the sum or the further sum determined by the Commissioner in accordance with paragraph (a) of this section had been distributed to the members or shareholders who would have been entitled to receive it in proportion to their interests in the paid-up capital of the company.
- (c) The company shall pay to the Commissioner the amount of the tax and additional tax assessed under paragraph (b).
- (d) The provisions contained in the Schedule to this Act shall have effect as to the companies to which this section shall apply, the computation of the taxable income of a company for the purposes of this section, the basis on which a determination may be made by the Commissioner, the basis on which the tax or the additional tax payable by the members or shareholders shall be assessed, and otherwise for the purpose of carrying into effect, and in connection with, this section.

Income Tax (Amendment).

Post-nuptial settlements.

- 32. (1) Subject to the following provisions of this section—
 - (a) the income derived by a wife from a postnuptial settlement made by her husband since the thirteenth day of September, one thousand nine hundred and fifteen, may be assessed for income tax as if it were income derived by her husband, and if so assessed her husband shall be liable to income tax in respect thereof accordingly;

(b) the income derived by a husband from a postnuptial settlement made by his wife since the thirteenth day of September, one thousand nine hundred and fifteen, may be assessed for income tax as if it were income derived by his wife, and if so assessed his wife shall be liable to income tax in respect thereof accordingly;

(c) where a company to which section thirty-one may be applied and in which a wife is a substantial shareholder by virtue of shares comprised in a post-nuptial settlement to which paragraph (a) applies or in which the husband is a substantial shareholder, pays any sum as a bonus, fee, salary, commission, or allowance to the wife in excess of what the Commissioner considers a reasonable amount, the excess may (notwithstanding any other provision of this Act) be assessed for income tax as if it were income derived by her husband, and if so assessed her husband shall be liable to income tax in respect thereof accordingly:

Provided that a husband shall not be liable to be assessed under paragraph (a) or (c) hereof and a wife shall not be liable to be assessed under paragraph (b) hereof if he or she as the case may be satisfies the Commissioner that the post-nuptial settlement referred to in paragraph (a) or (b) or that the payment of the bonus, fee, salary, commission, or allowance referred to in paragraph (c) was not made with a view to avoiding or evading any liability to income tax on the part of a husband or wife.

Income Tax (Amendment).

(2) Subsection one of this section shall not apply to—

(a) the income derived by a wife from a postnuptial settlement referred to in paragraph (a)

thereof, or

(b) the income derived by a husband from a postnuptial settlement referred to in paragraph (b) thereof, or

(c) the excess of payments of bonus, fee, salary, commission, or allowance referred to in para-

graph (c) thereof;

except to the extent to which the income referred to in paragraph (a) of this subsection and the excess of payments referred to in paragraph (c) of this subsection or, as the case may be, the income referred to in paragraph (b) of this subsection exceeds the sum of two

hundred and fifty pounds in any income year.

(3) For the purposes of this section a postnuptial settlement includes any conveyance, delivery or transfer of property, but does not include a post-nuptial settlement in writing made in pursuance of a written ante-nuptial agreement for such settlement entered into by the husband and the wife in consideration of the marriage.

(4) For the purposes of subsection one the income derived from a post-nuptial settlement shall include the income from property substituted for the

property settled, or being a conversion thereof.

(5) Notwithstanding any other provision in this Act the deduction in respect of a wife referred to in subparagraph (ii) of paragraph (c) of subsection two of section nineteen shall be reduced by the sum of one pound for every pound by which the net income of the wife exceeds two hundred pounds.

(6) In any case to which subsection one of this section applies, the Commissioner may recover from the spouse in receipt of the income referred to in paragraph (a) or paragraph (b) of that subsection or in receipt of the excess of payments referred to in paragraph (c) thereof the sum which bears the same proportion to the total tax payable by the spouse assessed under the said

subsection

subsection in respect of such income or excess as such income or excess bears to the total income included in that spouse's assessment. This subsection shall only apply where the Commissioner is of opinion that it is impracticable to recover the tax from the spouse so assessed. The right of appeal by a taxpayer under sections forty-eight and fifty-two of this Act applies to this section.

Partners.
C'wth Act,
1922-1927,
s. 29.
Qld.
15 Geo. V,
No. 34, s. 24
(ii) (iii).

33. 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 any tax, but each partner shall, subject to section thirty-two, 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 subsections two and three of section nineteen, and under subsection three of section twenty-two, together with;
- (b) any other income derived by him separately; and
- (c) his individual interests in the income derived by any other partnership:

Provided that if any person is carrying on business in partnership—

- (i) with his or her spouse and any of his or her relatives by blood, marriage or adoption who is under the age of twenty-one years; or
- (ii) with any such relative; or
- (iii) with his or her spouse; and whether in any of the cases referred to in subparagraphs (i), (ii), and (iii) of this proviso any other person is also a partner, the individual interests of such relative and spouse, or such relative or spouse, as the case may be, in the income of the partnership shall, for the purposes of this Act, be deemed to be the individual interest of such first-mentioned person in addition to his

or her other individual interest, and he or she shall be allowed to deduct such amounts as the Commissioner considers reasonable and as are actually paid to any such spouse and relative, or spouse or relative, as the case may be, for services actually performed in the business.

This proviso shall not be applied in any case where the partnership was entered into prior to the thirteenth day of September one thousand nine hundred and fifteen, or in any other case where the Commissioner is satisfied that the partnership was not entered into with a view to avoiding or evading any liability to income-tax. The right of appeal by a taxpayer under sections forty-eight and fifty-two of this Act applies to this section.

34. (1) A trustee shall not be liable to pay income Trustees. tax as trustee, except as provided by this Act, but each C'wth Act, beneficiary who is not under a legal disability, and who s. 31. is presently entitled to a share of the income of the trust estate shall, subject to section thirty-two, 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 deductions under subsections two and three of section nineteen, and under subsection three of section twenty-two, together with—
- (b) any other income derived by him separately; and
- (c) his individual interests in the income derived from any other source.
- (2) A trustee shall be separately assessed and liable to pay income 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 deductions under subsections two and three of section nineteen and under subsection three of section twenty-two; 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.
- (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 subsection two 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.
- (5) Notwithstanding anything contained in this section the Governor may make regulations applying the provisions of section twenty-two, either in whole or in part, with such additions, modifications, and limitations as he thinks fit to trustees carrying on a business and to incomes of beneficiaries derived from their interests in such business.

35. Notwithstanding anything in the preceding Income under section or elsewhere contained in this Act, any income a disposition made by a which by virtue or in consequence of any disposition person applicmade, directly or indirectly, by any person, either before minor or after the commencement of this Act, is payable to, unmarried or accumulated, or applicable for the benefit of a child of such person. of that person, shall, if and so long as the child is a See Imp. Act, minor and unmarried, be deemed for the purposes of this 12 and 13 Geo. V, c. 17, Act, to be the income of the person, if living, by whom s. 20 (c). the disposition was made:

Provided that any income tax which by virtue of this subsection is chargeable on and is paid by the person by whom the disposition was made, may be recovered by that person from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition.

36. For the purpose of section thirty-five—

Definitions. purpose of s. 35.

- (i) the expression "child" includes a step-child for the or adopted child; and
- (ii) the expression "disposition" includes any trust, covenant, agreement, or arrangement.
- 37. The rates of income tax on the taxable incomes Graduated of companies may be fixed (either as regards the whole rates of tax on or part of the taxable income, and either as regards all companies. companies or any class or classes of companies) on such graduated scale as may be fixed by the Income Tax Act declaring the rates of income tax.

PART IV.

RETURNS AND ASSESSMENTS.

Persons to furnish returns. C'wth Act, 1922-1927, s. 32. N.S.W. Act, 1912 No. 11, s. 20.

38. (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 income derived by him during any income year to which this Act applies. The Commissioner may in such notice exempt such classes of persons as he may specify from liability to furnish a return, but such exemption shall not exempt any such person from liability to furnish a return if so required by the Commissioner under the provisions of the next succeeding section:

Provided that the Commissioner may as and when he thinks fit require returns to be furnished to him before the end of any income year in respect of the income of any part of that year.

(2) Within the time mentioned in such notice or within such further time as the Commissioner may allow, every person shall deliver in the prescribed manner to the person appointed to receive the same a return in the prescribed form signed by such person setting out the prescribed particulars in respect of all his income during the income year:

Provided that if the taxpayer is absent from the State or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person authorised by him.

(3) When the income of any person cannot be conveniently returned as for a year ending on the thirtieth day of June, the Commissioner may accept returns made up to the date of the annual balance of the accounts of that person, and in such case such person shall not be entitled without the consent of the Commissioner to alter the period for which his returns are made.

- 39. (1) The Commissioner may at any time require New further any person to furnish a return or a further and fuller and fuller return of income either in respect of the whole or any See C'wth part of income received by such person, whether on Act, 1922 his own behalf or as an agent or trustee, and although 1927, s. 33. a return has been previously made by such person for the same 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.
- (4) Except in the case of fraud, or in respect of any year for which a return has not been furnished, nothing in this section shall empower the Commissioner to require a return or a further or fuller return in respect of any year of income more than six years prior to the year in which the requirement is made.
- **40.** Any return purporting to be made or signed by Returns or on behalf of any taxpayer or person shall be deemed deemed delig made. to have been duly made and signed by him until the C'wth Act, contrary is proved.

41. From the returns and from any other informa- Assessment. tion in his possession, or from any one or more of Ibid. s. 35. 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.

42. If—

(a) any person makes default in furnishing any Ibid. s. 36. return; or

(b) the Commissioner is not satisfied with the ss. 21, 22. return made by any person, whether or not he has previously made an assessment in respect of such return; or

1922-1927, s. 34.

Default assessment. N.S.W. Act,

(c) the Commissioner has reason to believe that any person (though he may not have furnished any return or been required to furnish a return) is a taxpaver; or

(d) the Commissioner has reason to believe that any person is about to leave the State: or

(e) any person who is resident out of the State has not, in the opinion of the Commissioner, a fixed and permanent place of business in the State, the Commissioner may cause an assessment or, as the case may be, an amended assessment in respect of the income of the whole or part of an income year to be made of the amount upon which, in his judgment, income tax ought to be levied, and the person so assessed shall be liable to income tax accordingly, excepting so far as he establishes on objection that the assessment is excessive.

Particulars of assessment. 1912, No. 11, s. 23 (5).

43. Every taxpayer who has received a notice of assessment other than a notice of an assessment made N.S.W. Act, under section forty-two (a) shall, within fourteen days after request, be informed by the Commissioner of the amount at which the income of such taxpayer has been assessed, the amount of the deductions allowed therefrom, and the rate at which tax has been assessed thereon.

Alterations to and reinassessment. C'wth Act, 1922–1927, s. 37.

44. (1) The Commissioner may at any time cause to and additions be made all such alterations in or additions to any assessstatement of ment 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:

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:

Provided further that an alteration or addition shall not be made in or to an assessment 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. (2)

- (2) The Commissioner may at any time cause any assessment to be rescinded or he may cause any assessment previously rescinded (excepting and in so far as such action was taken in consequence of a decision on an objection or an appeal) to be reinstated, provided that any reinstatement of an assessment shall, unless made with the consent of the taxpayer, be subject to objection.
- (3) When any alteration in an assessment has the effect of reducing the taxpayer's liability, such alteration shall be notified to the taxpayer, and any tax overpaid shall be refunded by the Colonial Treasurer:

Provided that no refund shall be made after six years have elapsed from the date on which the tax was originally due and payable by the taxpayer, unless to the extent to which additional tax may be payable by such taxpayer in consequence of an addition to an assessment for an income year prior to the income year to which the refund is applicable.

Notwithstanding, however, that such period of six years may have elapsed if an application therefor has been made by the taxpayer within the period of six years such refund shall be made.

- 45. The validity of any assessment shall not be Validity of assessment. affected by reason that any of the provisions of this Act C'wth Act, have not been complied with.
- 46. (1) The production of any notice of assessment Copies as or of any document under the hand of the Commis-evidence. sioner, Assistant Commissioner, or Acting Commissioner purporting to be a copy of a notice of assessment shall—
 - (a) be conclusive evidence of the due making of the assessment; and
 - (b) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be prima facie evidence only.

- (2) The production of any document under the hand of the Commissioner, Assistant Commissioner, or Acting 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.
- (3) Any document purporting to be under the hand of the Commissioner, Assistant Commissioner, or Acting Commissioner shall be received in evidence in all courts without proof of the signature.

Notice of assessment. C'wth Act, 1922-1927, s. 40.

N.S.W. Act, 1912, No. 11, 8. 24.

- 47. (1) As soon as conveniently may be after an assessment is made the Commissioner shall cause notice n 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.

PART V.

OBJECTIONS AND APPEALS.

Objections. C'wth Act, 1922-1927, ss. 50, 514.

- 48. (1) A taxpayer who is dissatisfied with the assessment made by the Commissioner under this Act may, within sixty days after service by post or otherwise of the notice of assessment post to or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail all the grounds on which he relies.
- (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 may, within thirty days after the service of notice by post or otherwise of the decision

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decision of the Commissioner, in writing request the Commissioner to treat his objection as an appeal and to forward it to a Court of Review or to the Supreme Court of New South Wales in order that the objection may be heard and determined.

- (5) The Commissioner shall, if the taxpayer's request is accompanied by such fee (not exceeding one guinea) as may be prescribed, forward the appeal as requested.
- (6) A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection, unless the court hearing the appeal gives leave to add further grounds.
- (7) For the purpose of hearing appeals under this section, the Supreme Court shall consist of a single justice.
- (8) On the hearing of the appeal the court may make such order as it thinks fit, and may reduce, increase, or vary the assessment.
- (9) An order of the court shall be final and conclusive on all parties except as provided in this section.
- (10) The costs of the appeal shall be in the discretion of the court.
- (11) On the hearing of the appeal, the court may, if it thinks fit, state a case in writing for the opinion of the Full Court upon any question which in the opinion of the court is a question of law.
- (12) The Full 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.
- (13) The Commissioner or a taxpayer may appeal to the Full Court, in its appellate jurisdiction, from any order made under subsection (8) of this section.
- (14) If the assessment has been reduced by the Commissioner after considering any objection, the reduced assessment shall be the assessment appealed from.

(15) It shall not be competent for the taxpayer to take any further objection to the original assessment, nor any further objection to any amended assessment unless in such amended assessment a further liability to tax is imposed upon him, and then only with respect to such further liability.

Pending payment. C'wth Act, 1922-1927, s. 52.

49. (1) The fact that an objection or appeal is appeal not to pending shall not in the meantime interfere with or affect the assessment objected to; and income tax may be levied and recovered on the assessment as if no objection or appeal were pending.

(2) If the assessment is altered on objection or appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded by the Colonial Treasurer, and amounts short-paid shall be recoverable by the Commissioner as arrears.

Court of Review. N.S.W. Act, 1912, No. 11, s. 8.

50. The Governor may, from time to time, by notice in the Gazette, declare that any judge of the District Court shall be a Court of Review within the meaning of this Act, and thereupon every Court of Review constituted as aforesaid shall within such limits and in such cases as the Governor may prescribe in the said notice have jurisdiction to hear and determine appeals from assessments made under this Act, or the previous Act. Until a Court of Review is constituted under this Act every Court of Review existing at the date of this Act shall have jurisdiction as aforesaid.

Proceedings and powers of Court of Review.

29, 31, 32.

51. (1) The Court of Review constituted under this Act or existing at the date of this Act shall be a Court of Record, and shall hear and determine any appeal Ibid. 15. 26 to transmitted to it as hereinbefore provided and subject to this Act any appeal under the previous Act and may alter any assessment appealed against and assess the tax and additional tax payable by the taxpayer in respect of the assessment appealed against.

(2) In addition to any other powers conferred

upon it by this Act, the court may-

(a) fix the time and place for the sittings of the court and adjourn such sittings to another time and place;

(b) amend any order of the court;

- (c) order the Commissioner to pay to the appellant his costs of an appeal from any assessment in respect of which the Commissioner may have acted unreasonably or oppressively towards the appellant;
- (d) order the appellant to pay to the Commissioner any tax or additional tax found to be due, and his costs of any frivolous or vexatious appeal;
- (e) on the application of the appellant exclude from the court during the hearing of an appeal all or any persons other than the parties or their representatives;
- (f) assess any costs payable under any order of the court, or order that such costs be taxed by the taxing officer of the Supreme Court or of any District Court, whereupon such costs shall be taxed by such officer accordingly;
- (g) exercise all the powers for the time being of a District Court with reference to the issue of summonses and subpœnas compelling the attendance of witnesses and production of documents, and punishing persons who have disobeyed subpœnas, or who being in court refuse to be sworn in or to give evidence;
- (h) for cause shown allow further time within which an objection may be made (but in no case shall time be allowed so as to exceed nine months from the date of service of the notice of assessment) notwithstanding that the time for making an objection may have expired;
- (i) order the Commissioner to cause any judgment N.S.W Act, obtained by him against the appellant to be \$\frac{1912}{s.}\$, No. 11, amended or vacated to conform to the determination on the appeal.
- (3) Any order of the court for the payment of any tax, additional tax, or costs may be made subject to conditions, and shall have the effect of and shall be deemed to be a judgment of the Supreme Court for the amount

amount of such payment, and judgment for such amount may be entered up in such court by the Commissioner against the appellant, and the said amount may be recovered by process of such court as in pursuance of such judgment.

(4) Twenty-one days' notice of the day and place fixed for the hearing of any appeal shall be given by the court to the Commissioner and to the appellant.

(5) The Commissioner and the appellant may appear on any appeal by counsel, solicitor, or agent

authorised in that behalf.

(6) The determination of the court on appeal shall relate solely to the income the subject of the assessment appealed from, and shall not affect the right of the Commissioner to assess any other income of the appellant.

(7) An order or decision of the court shall be final and conclusive on all parties except as provided in

this section.

(8) The court shall, if required in writing by any party, within the prescribed time and upon prescribed conditions, or may of its own motion, state and submit a case for decision by the Supreme Court on any question of law arising before the court.

(9) The Supreme Court, for the purposes of this section, may consist of two judges only, and shall have power to deal with the costs of and incidental to any case submitted under this section as it may think fit.

(10) The Governor may by regulations prescribe the rules to be observed in proceedings under this

section or section forty-eight.

(11) Subsections eight to thirteen both inclusive of section forty-eight shall not apply to a Court of Review.

Appeals to Court of Review assisted by assessors. 52. (1) Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner under this Act (whether in the exercise of a discretion conferred upon the Commissioner or otherwise) and who is dissatisfied with the assessment made pursuant to or involving such opinion, decision or determination shall,

after

after the assessment has been made, have the same right of objection in respect of such opinion, decision or determination and assessment as is provided in section forty-eight, and also the same right of appeal against any decision of the Commissioner upon any such objection, except that such appeal shall be made to a Court of Review only.

- (2) For the purpose of any appeal in pursuance of this section the Court of Review shall be assisted by two assessors appointed under this Act, who may advise the court, but shall not adjudicate on the matter before the court.
- (3) The assessors shall be appointed by the Governor, but one of them shall be a public accountant of at least ten years' standing.
- (4) The assessors shall be appointed in such manner and shall be paid such allowances and fees as may be prescribed.
- 53. (1) The provisions of this part of this Act shall Appeals apply to all assessments which may hereafter be made against under the provisions of the previous Act, and also to all under assessments made under such previous Act in respect of which the time for lodging an appeal has not elapsed at the commencement of this Act.

(2) Any appeal against any assessment under the previous Act, the hearing of which had not been commenced by the Court of Review as constituted under that Act at the date of the commencement of this Act, shall be treated in the same manner as if it were an objection lodged under the provisions of this Act.

PART VI.

COLLECTION AND RECOVERY OF TAX.

Date of payment of tax.

N.S.W. Act, to the Commissioner on such day as shall be fixed in 1912, No. 11, the notice of assessment.

8. 24.

C'wth Act, 1922-1927, 88. 54, 56.

- (2) Where an assessment is amended in accordance with this Act and additional tax is thereby payable by the taxpayer, the additional tax shall be due and payable to the Commissioner on such day as shall be fixed in the notice of amended assessment.
- (3) If any income tax or additional income tax payable under an assessment made before the thirtyfirst day of July, one thousand nine hundred and twenty-nine, is not paid within thirty days after such tax shall have become due and payable by the taxpayer or within such further time as the Commissioner may allow under the next succeeding section, or if any income tax or additional income tax payable under an assessment made on or after the thirty-first day of July, one thousand nine hundred and twenty-nine is not paid within sixty days after such tax shall have become due and payable by the taxpayer, or within such further time as the Commissioner may allow under the next succeeding section, the taxpayer shall be liable to pay additional tax of an amount equal to ten per centum upon the amount of the tax unpaid:

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.

Extension of time to pay and instalments.

C'wth Act, 1922-1927, s. 55. 55. The Commissioner may in such cases as he thinks fit—

- (a) extend the time for payment as he considers the circumstances warrant, or
- (b) permit the payment of tax to be made by instalments within such time as he considers the circumstances warrant.

56.

56. Income tax or additional tax due to the Tax a Crown Commissioner under this Act shall be deemed to be a debt.

N.S.W. Act, debt due to the King, and shall be collected and 1912, No. 11, received by the Commissioner on account of and shall s. 7.

be paid into the Consolidated Revenue. Any income C'wth Act, 1922-1927, tax unpaid, including any additional tax, may be sued s. 57.

for and recovered in any court of competent jurisdiction by the Commissioner:

Provided that a payment of income tax by means of Exchange. a cheque drawn by a taxpayer on a branch of a bank situated in any place in New South Wales where the taxpayer carries on his business need not include

57. If, in any proceedings against a taxpayer for substituded the recovery of income tax or additional tax, the Service. C'wth Act, 1922-1927,

(a) is absent from Australia and has not to the s. 58.

knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia authorised to accept service on behalf of his principal and 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.

(a) trustee or official assignee in the estate of any agents, and others to give person whose property is being administered under any law of the State or the Commonsular wealth relating to bankruptcy, or who has in 1922-1927, any manner assigned his estate or part thereof ss. 59, 60. for the benefit of his creditors or any of them;

(b) receiver for any debenture holders and who has taken possession of the assets of a company; or

(c) liquidator of any company which is being wound up; or

(d) trustee in the estate of any deceased person; or (e) an agent for a principal who is a non-resident

person and has been required by his principal to wind up the business or to realise the assets of his principal,

shall, subject to the Commonwealth Constitution and any law of the Commonwealth thereunder, give notice in writing to the Commissioner within fourteen days after his becoming such trustee, official assignee, receiver in possession, liquidator, or agent, and shall set aside such sum out of such estate or the property of such company, estate, or principal as appears to the Commissioner to be sufficient to provide for any income tax and additional tax which then is or will thereafter become payable in respect of such estate or by such company or principal.

(2) Any person who fails to comply with any of the provisions of this section shall be personally liable for any income tax and additional tax which then is or will thereafter become payable in respect of such estate or by such company or principal, and in addition shall be guilty of an offence and shall be liable to a penalty of not less than one pound nor more than fifty pounds:

Provided that where more persons than one become personally liable for income tax or additional tax such liability shall be several as well as joint.

59. 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:-

(1) The Commissioner shall have the same powers and remedies against the trustees of the taxpayer in respect of the taxable income of the taxpayer as he would have had against the taxpayer in his lifetime;

(2) the trustee shall make such returns as the Commissioner requires for the purpose of an accurate assessment;

(3) the assessment shall be at the rates applicable to the income of the income year in which the income was derived, and the amount shall

Where tax not paid in lifetime. C'wth Act, 1922-1927, 8. 61.

(where

(where the taxpayer's default was intentional) be double the amount of the difference between the income tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the hands of the trustees;

- (4) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section, and recovering the tax or double tax as in the case of ordinary assessments and taxation.
- (5) The trustees shall only be personally responsible to the extent of the taxpayer's estate in the hands of such trustees at the date when any claim is made under this section by the Commissioner against such trustees.
- **60.** (1) Where at the time of a person's death, Provision for income tax has not been assessed and paid on the whole payment by of the income derived by that person up to the date of tives of his death, the Commissioner shall have the same powers decessed person. and remedies for the assessment and recovery of income Cwth Act, tax from the trustees as he would have had against 1922-1927, 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, under section forty-two of this Act, make an assessment of the amount on which, in his judgment, income tax ought to

be charged.

61. For the purpose of recovering all moneys due Powers over to him under this Act, the Commissioner shall have property such and the like remedies against all property of any in agent or kind vested in or under the control or management or trustee. in the possession of any agent or trustee of a taxpayer [bid. s. 89] as he would have if such property were vested in or under the control or management or in the possession of the taxpayer himself, and in as full and ample a manner.

Consolidation residents.

62. When it appears that several persons are in of assessment receipt of income for or on behalf of a non-resident person or person absent from the State, the Commissioner, if it appears to him to be expedient to do so, 20. 34, 8. 59. may consolidate all or any of the assessments thereof, and declare any one of such persons to be the agent of such non-resident person or person absent from the State in respect of such consolidated assessment, and require him to pay income tax on the amount thereof, and thereupon such person shall become liable therefor.

Recovery of tax paid on behalf of another. C'wth Act, 1922-1927 . 63 and 89.

63. (1) Every trustee and agent and every other person who, under the provisions of this Act, pays any income tax for or on behalf of any other person, 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, and 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 the same out of any moneys in his hands or that may subsequently come into his hands belonging or payable to that other person.

(2) Every trustee, agent, or person who by or under this Act is made liable to pay income tax for or on behalf of any other person is hereby authorised and required to retain from time to time all moneys (whether capital or income) which come to him in his representative capacity or so much thereof as is sufficient to pay the income tax which is or will become

due.

He is hereby made personally liable for the income tax if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he parts with any such money, but he shall not be otherwise personally liable for the tax:

Provided that the Commissioner may, upon application by such agent or trustee or other person, permit disposal of such money or part thereof as he considers

necessary.

Contributions from joint taxpayers. C'wth Act, 1922-1927. s. 64.

64. Where two or more persons are jointly liable to income tax they shall each be liable for the whole of the tax, but any of them who has paid the tax may recover contribution as follows:—

(a) a person who has paid the tax in respect of any of the taxable income may recover by way of contribution

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.
- 65. (1) The Commissioner may, by notice in writing Commissioner (a copy of which shall be forwarded to the taxpayer to may collect tax from the last place of address known to the Commissioner), person owing taxpayer require-

(a) any person from whom money is due or C'wth Act, accruing or may become due to a taxpayer;

(b) any person who holds or may subsequently s. 65. 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 allows, the money or so much thereof as is sufficient to pay the tax due by the taxpayer, and the penalties 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 and liable to a penalty of 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.

money. 1922-1927

(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 penalties 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" means income tax and includes any additional income tax and judgment debt and costs in respect of income tax and additional income tax.

"Person" includes company, partnership, State officer and any public authority or body (corporate or unincorporate) of the State and, subject to the Commonwealth Constitution and any law of the Commonwealth, shall include any Commonwealth officer and any public authority or body (corporate or unincorporate) constituted under any law of the Commonwealth.

Application of sections 54 (3), 55 and fifty-four and of section fifty-five of this Act shall apply 65 in connect to any assessments which may hereafter be made under to any acceptable to the previous Act.

(2) The provisions of section sixty-five of this Act shall be applicable to any tax assessed under the previous Act which, at the date of commencement of this Act, had not been paid, and to any tax which may hereafter be assessed under such previous Act. "Tax" in this subsection means "tax" as defined in the preceding section and also includes all fines, penalties and costs imposed on the taxpayer by and under the previous Act.

PART VII.

PENAL PROVISIONS.

(a) fails or neglects duly to furnish any return C'wth Act, or information or give the security required by s. 66.

section eighty-six or to comply with any other requirement of the Commissioner as and when required by this Act or the regulations in force

under this Act, or by the Commissioner; or
(b) without just cause shown by him refuses or
neglects duly to attend and give evidence when
required by the Commissioner or other duly
authorised person, or to answer fully and
truly any question put to him, or to produce
any book or paper required of him by the
Commissioner or any such person; or

(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, and shall be liable to a penalty of not less than two pounds nor more than one hundred pounds.

(2) A prosecution in respect of an offence against paragraph (a) or (c) of subsection one of this section may be commenced at any time.

(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 seventy of this Act.

(4) It shall be a defence to a prosecution for an offence against paragraph (c) of subsection one of this section if the defendant proves that the false particulars were given or the false statement was made through ignorance or inadvertence.

68. (1) Notwithstanding anything contained in the Additional last preceding section, any person who—

(a) fails or neglects duly to furnish any return or C'wth Act, information as and when required by this Act 1922-1927, or the regulations in force thereunder or by . 67. the Commissioner; or (b)

- (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 subsection 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 subsection 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 tax assessed upon the basis of the return lodged, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-four 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 the next succeeding section, such action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

Understatement of income.
C'wth Act, 1922-1927, s. 68.

69. Any person who, with intention to defraud, in any return understates the amount of any income, shall be guilty of an offence, and shall be liable to a penalty of 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.

- **70.** Any person who, by any wilful act, default or Avoiding neglect, or by any fraud, art or contrivance whatever, taxation. avoids or attempts to avoid assessment or taxation, shall C'wth Act, be guilty of an offence and shall be liable to a penalty of s. 69. 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.
- 71. A prosecution in respect of an offence against time for either of the two last preceding sections may be comprosecution. menced at any time within six years after the commission 1927, s. 70.

 N.S.W. Act, 1912, No. 11,
- 72. Payment of penalties under this Act shall not relieve not to relieve any person from liability to assessment and pay- C wth Act, 1922-ment of any tax for which he would otherwise be liable. 1927, s. 71.
- 73. Any person who obstructs or hinders any officer obstructing or person acting in the discharge of his duty under this officers. Act or the regulations in force thereunder, shall be Ibid. s. 72. guilty of an offence, and shall be liable to a penalty of not less than one pound nor more than fifty pounds.
- 74. Any person guilty of a breach of this Act for General which no penalty is otherwise provided, shall be liable penalty.

 N.S.W. Act, 1912, No. 11, s. 38.
- **75.** Any penalty imposed by this Act or by regula-Recovery tions in force thereunder may be recovered in a penalty. summary manner before two or more justices, or a lbid. s. 39. stipendiary or police magistrate.
- 76. In any action against an officer or person for Action anything done in pursuance of this Act, or in the against execution of the powers conferred thereby, or by the *Ibid.* s. 40. regulations, the defendant in such action may plead the general issue, and give the special matter in evidence at the trial.
- 77. In any prosecution under this Act an officer or Protection of any person employed in the administration of this Act witness. shall not be compelled to disclose the fact that he 1922-1927, received any information, or the nature thereof, or the s. 82. name of the person who gave such information, and an officer or any other such person appearing as a witness

shall

shall not be compelled to produce any reports made or received by him confidentially in his official capacity, or containing confidential information.

PART VIII.

MISCELLANEOUS.

Public office of company. C'wth Act, 1922-1927, s. 88. 1912, No. 11, s. 15.

78. Every company which derives income shall at all times be represented by a person residing in the State duly appointed by the company or by its duly authorised agent or attorney, and with respect to every N.S.W. Act, such company and person the following provisions shall apply:-

> (a) such person shall be called the public officer of the company, and shall, if not already appointed, be appointed within three months after this section comes into force or after the company commences to derive income;

> (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 the address for service in the State, has been given to the Commissioner;

> (c) if the company fails or neglects duly to appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence and shall be liable to a penalty of 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 in force thereunder, 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) without prejudice to the liability of the company, the public officer shall be liable for the doing of all such things as are required to be done by or on behalf of the company under this Act or the regulations in force thereunder, and in case of default in doing any of such things, shall be liable for all penalties imposed for any breach of the provisions of this Act or such regulations, and the company, as well as such public officer, shall also be liable for such 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 excuse 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 or regulation 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:

Provided that every public officer of a company holding that office at the date of passing of this Act for any of the purposes of and duly appointed under the previous Act shall, until such appointment is terminated, be the public officer of that company for all the purposes of this Act, and this Act shall apply to that company and that public officer accordingly.

- 79. With respect to every agent, and with respect Agents and also to every trustee, the following provisions shall apply trustees. C'wth Act, unless otherwise provided in this Act:—

 C'wth Act, 1922-1927,
 - (1) He shall be answerable as taxpayer for the s. 89. 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

capacity or derived by the principal by virtue of his agency and the payment of income tax thereon.

- (2) 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.
- (3) If he is a personal representative 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.
- (4) Nothing herein contained shall exempt or discharge any principal or beneficiary from liability to make returns, and pay income tax upon the whole of his taxable income.

80. With respect to every person who has the receipt, control, or disposal of money belonging to a non-resident person who derives income from a source in the State, or who is a shareholder, stock-holder, debenture holder, or depositor in a company deriving income from a source in the State, 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 authorised and required to retain from time to time out of any money which comes to him on behalf of the non-resident person so much as is sufficient to pay the income tax which is or will become due by that person;

Persons in receipt or control of money for non-resident. C'wth Act, 1922-1927, s. 90.

(d) he is hereby made personally liable for the income tax payable by him on behalf of the non-resident person 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 afterwards 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.
- 81. Where any income of any person outside the Payment of State is paid into the account of that person with a non-resident's banker in the State, the banker shall be deemed to be tax by the person's agent in respect of the money so paid so banker. long as he is indebted in respect thereof, and shall C'wth Act, be subject to the provisions and entitled to the benefits s. 92 relating to agents contained in this Act.
- 82. (1) A covenant or a stipulation in a mortgage of Covenant by land which has or purports to have the purpose or effect mortgagor to of imposing on the mortgagor the obligation of paying to thid. s. 94. or on behalf of or for the benefit of the mortgagee income tax on the interest to be paid under the mortgage—
 - (a) if the mortgage was entered into on or before the date of the commencement of this Act—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 mortgage of land which contains a covenant to pay a certain rate of interest but provides that the mortgagee may accept a sum calculated to cover the interest chargeable at a lower rate together with an amount representing the income tax payable thereon shall be deemed to contain a covenant or stipulation imposing on the mortgagor the obligation of paying income tax within the preceding subsection, and shall as regards such covenant or stipulation to pay income tax be subject to such preceding subsection.

Covenant to evade tax.
C'wth Act, 1922-1927, s. 93.

83. Every contract, agreement or arrangement made or entered into, in writing or verbally, 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

(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.

Assignment of incomeproducing asset for certain periodical payments. Ibid. s. 93A. 84. 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.

Access to books.

Ibid. . 96.

85. The Commissioner, or any officer authorised 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 such purposes may make extracts from or copies of any such books, documents and papers.

86.

86. Wherever the Commissioner has reason to security for believe that any person establishing or carrying on tax. business in the State intends to carry on that business 1922-1927, for a short time only, or intends to leave the State, or s. 54 (5). where the Commissioner for any other reason thinks it proper so to do, 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 of such taxpayer.

87. (1) The Commissioner may by notice in writing Department require any person, whether a taxpayer or not-

information

(a) to furnish him with such information as he and evidence. Ibid. s. 97. may require; and

(b) to attend and give evidence before him or before any officer authorised by him in that behalf concerning his or any other person's income or assessment, or concerning any matter or thing in relation to which the Commissioner considers or suspects such person may be capable of giving information which may assist in the carrying out of this or the previous Act, and may require him to produce all books, documents, and other papers whatever in his custody or under his control relating thereto.

(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 authorised 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.

88. (1) In any case where it is shown to the satis- Release of faction of a board consisting of the Commissioner, the taxpayer in case of hard-Auditor-General or his deputy, and a person appointed ship. by the Governor.

(a) that a taxpayer liable to pay income tax has \$1922become bankrupt; or

(b) that a taxpayer has suffered such a loss or is Act, 1912, No. 11, 8. 35. in such circumstances, or, owing to the death of a person who, if he had lived, would have paid

(See N.S. W.)

paid tax, the dependants of that person are in such circumstances that the exaction of the full amount of the 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 assessments as are necessary for that purpose.

(2) The Commissioner shall be chairman of the board, and the decision of the majority shall prevail.

Writing off tax.

- 89. (1) In any case in which the board referred to in the last preceding section is satisfied that every reasonable effort has been made to recover income tax, or that it is impracticable without undue expense to recover such tax, it may direct the amount thereof to be written off.
- (2) The taxpayer shall not be released from his liability in consequence of any action taken by the board under subsection one hereof, and the Commissioner may at any future time take such action to recover any such income tax as he considers the circumstances warrant.

(3) For the purposes of this section income tax includes any additional income tax, or any costs incurred in attempting to recover such tax.

(4) The provisions of this and the preceding section shall apply to any tax assessed under the previous Act which has not been paid at the date of the commencement of this Act or which may after such date be assessed under the provisions of the previous Act.

Regulations.

90. (1) The Governor 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, including (but without limiting the foregoing power) the means of determining in all or any particular class of case, the amount of any assessable or taxable income in so far as the method of ascertainment is not herein already provided for.

(2) The regulations may impose a penalty not exceeding twenty pounds for any breach thereof, and may prescribe maximum and minimum penalties in case of any breach thereof.

(3) The regulations shall—

(a) be published in the Gazette;(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

91. (1) The Commissioner shall furnish to the Reports by Colonial Treasurer annually for presentation to Parlia-Commissioner.

ment a report on the working of the Act.

C'wth Act,

(2) In the report the Commissioner shall draw 1922-1927, attention to any breaches or evasions of this Act which s. 10. have come under his notice.

92. This Act shall be read and construed so as not Construction to exceed the legislative power of the State to the intent of Act. that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

83

Income Tax (Management).

THE SCHEDULE.

Application of Section Thirty-one in respect of Undistributed Income of a Company.

See Imp. Act, 17 & 18 Geo. V, c. 10, s. 31.

1. Section 31 shall apply to any company which is under the control of not more than seven persons, and which is not a subsidiary company or a company in which the public are substantially interested.

For the purposes of this paragraph—

- (i) A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of section 31 apply, or of two or more companies none of which is a company to which those provisions apply.
- (ii) 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 income year beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such income year been quoted on the official list of a stock exchange.
- (iii) A company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons.

The expression "relative" means a husband or wife, ancestor, or lineal descendant, brother or sister.

The expression "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

Persons in partnership and persons interested in the estate of a deceased person or in property held on a trust shall, respectively, be deemed to be a single person.

- 2. For the purposes of section 31, dividends credited, paid or distributed to a company which is a member or shareholder in any other company shall (to the extent to which such dividends would be taxable income if paragraph (b) of section 11 applied to a company) be deemed to be part of the first-mentioned company's taxable income.
- 3. In addition to any other facts which the Commissioner may consider in exercising the powers conferred upon him by paragraph (a) of section 31 the Commissioner shall take into consideration the relation

relation between the distributable income of the company and its taxable income, and the fact of the retention by the company of taxable income for the following purposes:—

(a) To restore unrecouped losses of paid-up capital or of accumu lated trading profits which had been invested in the business;

and

(b) To meet losses which the directors consider were certain to

arise during subsequent income years:

Provided that if a company carrying on an agricultural or pastoral pursuit so elects within the prescribed time and in the prescribed manner that paragraph (b) of this clause shall not apply in respect of the income from such pursuit that paragraph shall not apply accordingly but the amount which would otherwise be determined as the distributable income shall be reduced by an amount equal to fifteen per centum of the taxable income derived by the company from the carrying on of the agricultural or pastoral pursuit.

The Commissioner may have due regard to the develop-

ment of businesses and industries.

4. Any sum such as is hereafter described shall, for the purposes of paragraph (a) of section 31, be regarded as income which could reasonably have been distributed by a company among its members or shareholders—

- (a) any sum expended or applied, or intended to be expended or applied, out of the income of a company—
 - (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking, or property of a substantial character in fact acquired by the company; or
 - (ii) in redemption or repayment of any share or loan, capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking

or property;

- (b) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied in pursuance or in consequence of an arrangement which, in the opinion of the Commissioner, was made for the purpose of avoidance or reduction of any liability to income tax.
- 5. A determination under section 31 shall be made by the Commissioner not later than nine months after the date on which the tax assessed against the company under its ordinary assessment is due and payable.

- 6. Where the Commissioner has made a determination under section 31, and—
 - (a) the company satisfies the Commissioner that the sum or further sum which could reasonably have been distributed by the company among the members or shareholders is an amount which is less than the sum or further sum determined by the Commissioner under such section; or
 - (b) where the Commissioner is satisfied that the company has withheld information or has furnished incorrect or misleading information for the purpose of avoiding tax in an ordinary assessment or under such section,

the Commissioner may, either before or after the time limited for making his determination, make a determination or further determination, and thereupon the provisions of section 31 (b) shall apply to the sum or further sum specified in that determination as if it were the sum or further sum mentioned in section 31 (b).

- 7. The following provisions shall apply for the purpose of calculating the tax or additional tax which would have been payable by the shareholders:—
 - (i) The income apportioned to a member or shareholder shall be deemed to have been received by him on such date as the Commissioner determines to be just, having regard to the dates on which distributions of income, if any, have ordinarily been made by the company.
 - (ii) Where a person is a member or shareholder in more than one company to which section 31 has been applied in respect of income of the same year ended on the 30th day of June or of such other period accepted by the Commissioner in lieu of such year ended on the 30th day of June, the tax or additional tax which would have been payable by that member or shareholder shall be calculated as if all such sums had actually been distributed during such income year, and the total amount of tax or additional tax so ascertained shall be divided between the companies in such proportions as are prescribed by regulations, or if there are no regulations as the Commissioner considers just having regard to the amount which such member or shareholder is deemed to have received from each company, and to the rate of tax applicable to the income of each company.

C'wth Act,
1922-27, s. 21 otherwise than as a member or shareholder of the company would (if
(2).

8. Where any person (other than a company, trustee or partnership)
there had been successive distributions of the relevant parts of the
sum or further sum determined by the Commissioner to and by each
company, trustee, and partnership interposed between that person and
the company in respect of which the determination is made) have
received a part of that sum or further sum determined by the
Commissioner under paragraph (a) of section 31, the Commissioner
may

may, if he thinks fit, also assess the tax and the additional tax, if any, which would have been payable by that person if those distributions had been made, and such tax and additional tax shall be deemed to be tax and additional tax assessable under paragraph (b) of section 31.

9. Any undistributed income which has been assessed and charged to income tax under section 31 shall, when subsequently distributed, be deemed not to form part of the assessable income of the member or shareholder entitled thereto.

In the name and on behalf of His Majesty I assent to this Act.

W. P. CULLEN, Lieutenant-Governor.

Government House, Sydney, 14th December, 1928.

INCOME TAX (MANAGEMENT) BILL.

SCHEDULE of Amendments referred to in Message of 6th December, 1928.

Page 2, clause 2, line 3. After "made" insert "therein"
Page 2, clause 2, line 3. After "by" insert "sections twenty-nine, fifty-three, and sixty-six, and subsection four of section eighty-nine"

Page 2, clause 3, line 12. After "existing" insert "rules"

Page 2, clause 3, lines 17, 18. Insert "rules"

Page 2, clause 4. Insert new definition "agricultural pursuit"

Page 3, clause 4. At end of definition of "dividend" on line 52 insert "or the capitalization of profits derived from the sale of capital assets, if such profits were not liable to income tax under this or the previous Act"

Page 9, clause 8, lines 29, 30. Omit "become payable to him or been dealt with in his name or interest or on his behalf" insert "dealt with on his behalf as he directs"

Page 9, clause 8, lines 37, 38. Omit "the same" insert "income"

Page 12, clause 9, line 1. After "a" insert "person whose sole"
Page 12, clause 9, line 2. After "business" omit "which"

Page 12, clause 9, line 2. Omit "principally"

Page 12, clause 9. line 3. After "not" insert "to the extent of such business"

Page 12, clause 9, line 4. Omit "the"

Page 16, clause 11. Insert new paragraph "Notwithstanding anything contained in this paragraph an owner of live-stock who has made or who may after the passing of this Act make an election under the provisions of paragraph (aa) of section sixteen of the Commonwealth Income Tax Assessment Act, 1922-1928, to omit natural increase from his returns under that Act until disposed of (if the election is operative in any year to which this Act applies) may elect to omit from the account required by this paragraph the value of all natural increase of live-stock owned by him, and born during the income year, 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 shall be irrevocable, and shall apply to the assessment of income derived in the income year in respect of which the election is made and to assessments for all subsequent income years. The proceeds from the sale of any livestock 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 this paragraph shall be returned as income in the year in which that natural increase is sold. If any such natural increase is disposed of otherwise than by way of sale, an amount equal to the market value of natural increase so disposed of shall be returned as income in the income year in which the disposal is effected."

Page 18, clause 11. After paragraph (ii) insert new proviso.

Page 19, clause 11. After line 10 insert third proviso.

Page 19, clause 11. At end of paragraph (d) add "(including the goodwill of any business carried on on the land)"

Page 21, clause 11, line 2. After "business" omit "(except beasts of burden and working beasts)" insert "(not being live-stock which in the opinion of the Commissioner were ordinarily used by the person as beasts of burden or as

working beasts)" and insert new proviso.
Page 22, clause 11, line 9. After "assets" insert "or any such sheep which in the opinion of the Commissioner were ordinarily used for breeding purposes are

sold in the wool."

Page 22, clause 11, line 14. After "stock" insert "or wool."
Page 22, clause 11, line 18. Omit "or "After "live-stock" insert "or wool"
Page 22, clause 11. Omit paragraph (n) insert new paragraph "(n)"

Pages 23-26. Omit clause 12 insert new clause 12.

Page 33, clause 19, line 2. After "incurred" omit "in New South Wales."

Page 33, clause 19. Omit lines 4 to 22 inclusive.

Page 34, clause 19. Omit lines 14 to 18 inclusive, insert new proviso.

Page 35, clause 19, line 34. Omit "ten guineas" insert "fifty pounds"
Page 35, clause 19, line 36. After "taxpayer" insert "on grassing grazing lands"
Page 36, clause 19, line 4. Omit "him" insert "the taxpayer"
Page 36, clause 19, line 28. After "furniture" insert "beast of burden and working beast"

Page 38, clause 19, line 13. After "paragraph" insert "in which case the purchasee shall be entitled to a deduction for depreciation based on the cost price of thr property to him"

Page 38, clause 19. Omit lines 17 to 25 inclusive. Insert proviso.

Page 41, clause 19, line 25. Omit the word "subsidiary"

Page 42, clause 19, line 23. After "institution" insert "nor carried on for the profit of individuals"

Page 43, clause 19, line 1. After "boring" insert "sinking wells or excavating tanks"

Page 43, clause 19, line 3. Insert "or agricultural"

Page 43, clause 19, line 4. After "are" insert "either"

Page 43, clause 19, line 5. After "unsuccessful" insert "or result in other than drinkable water being obtained"

Page 44, clause 19, line 24. Omit "in respect" insert "towards the maintenance"

Page 44, clause 19, line 26. Omit "of" insert "by"
Page 44, clause 19, lines 26, 27. Omit "who are wholly maintained by him"

Page 44, clause 19, line 29. After "relative" insert "of the taxpayer"

Page 45, clause 19, line 3. After "practitioner" insert "dentist"

Page 45, clause 19, lines 7, 8. Omit "(under the age of twenty-one years)" insert "or dependants (as defined in paragraph (c) (iii))"

Page 45, clause 19, line 15. Omit "under the age of twenty-one years" insert "or

dependants (as defined in paragraph (c) (iii))"

Page 45, clause 19, line 22. Omit "six" insert "four"

Page 45, clause 19, line 29. At end of paragraph (e) insert "if suitable educational facilities are not provided by the State within reasonable daily travelling distance of the place of residence of the taxpayer"

Page 51, clause 24, line 29. Omit "seven and one half" insert "five" Page 51, clause 24, line 36. Omit "seven and one half" insert "five"

Page 52, clause 25, line 38. After "resident" insert "or carrying on business"

Page 5f, clause 28, lines 29-31. Omit "as prescribed by regulations, or if there is no regulation applying to the case"

Pages 59-61. Omit clause 32.
Pages 62-64. Insert new clause to stand as new clause 32.

Page 64, clause 33. Omit lines 26 to 40 on page 64 and from 1 to 5 on page 65 and insert new proviso on page 65.

Page 69, clause 39. After subclause (3) insert new paragraph (4).

Page 70, clause 42, line 33. After "levied" omit "and in addition, in the case of companies, of the amount of capital employed and of taxable income for the purposes of section thirty-seven of this Act."

Page 70, clause 43, line 36. Omit "or company"

Page 70, clause 43, line 38. Omit "or it"

Page 71, clause 43, line 3. After "forty-two" insert "(a)"

Page 71, clause 43, line 3. Omit "on" insert "within fourteen days after"

Page 71, clause 44. After line 18 insert new proviso. Page 72, clause 44, line 1. Omit "three" insert "six"
Page 72, clause 44, line 8. Omit "three" insert "six"
Page 72, clause 44, line 10. Omit "three" insert "six"
Page 72, clause 44, line 11. Omit "three" insert "six"
Page 73, clause 44, line 11. Omit "may" insert "shall"

Page 73, clause 48, line 26. After "review" insert "or to the Supreme Court of New South Wales"

Page 74, clause 48, line 2. After "fee" insert "(not exceeding one guinea)" Page 74, clause 48, line 3. After "repeal" omit "to a Court of Review"

Page 74, clause 48. At end of subclause (6) add "unless the court hearing the appeal gives leave to add further grounds" and insert new subclauses 7 to 13 both inclusive.

Page 74, clause 48, line 37. After "any" insert "further"

Page 77, clause 51. At end of subclause (10) add "or section forty-eight" and insert new subclause (11).

Page 77, clause 52. Omit subclause (1) and insert new subclause (1) on page 78. Page 82, clause 59. After subclause (4) insert new subclause (5).

Page 98. At end of clause 3 of Schedule insert proviso.

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This Public Bill originated in the Legislative Assembly, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

S. G. BOYDELL,

Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 2 November, 1928.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

> W. L. S. COOPER, Clerk of the Parliaments.

> > 1 10

03

Legislative Council Chamber, Sydney, 6th December, 1928.

New South Wales.



ANNO UNDEVICESIMO

Act No. , 1928.

An Act to provide for the assessment and collection of a tax on incomes, and for purposes consequent thereon or incidental thereto; and to amend the Income Tax (Management) Act, 1912, and the Co-operation Acts, 1923-1928, and certain other Acts.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of 5 the same. as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Income Tax short title, (Management) Act, 1928." 13-A

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2. The Income Tax (Management) Act, 1912, as operation of amended by subsequent Acts, shall, subject to the Act No. 11, amendments made therein by sections twenty-nine, See C'wth fifty-three, and sixty-six, and subsection four of section Act, 1922-5 eighty-nine of this Act, continue in force for all 1927, s. 2, and purposes in connection with income tax payable in 1912, No. 11, respect of the income which has been received prior to s. 3 (2). the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight, or prior to such the provided as may be or may have been accented by

10 other period as may be or may have been accepted by the Commissioner in lieu of such year.

3. (1) All existing rules, regulations and forms made Existing or prescribed under the Income Tax (Management) Act, regulations. 1912, as amended by subsequent Acts, or continuing in N.S.W. Act, 1912, No. 11,

15 force by virtue of such Act, shall continue in force and s. 3 (1). shall apply to proceedings under this Act, so far as such rules, regulations and forms may be applicable until rules, regulations and forms are made and prescribed under this Act.

20 (2) All notices given and returns made during the Notices and year one thousand nine hundred and twenty-eight, under returns as to the Income Tax (Management) Act, 1912, as amended year ended by subsequent Acts in respect of income for the year on 30th June, ended on the thirtieth day of June, one thousand nine N.S.W. Act,

25 hundred and twenty-eight, shall (without prejudice to the ¹⁹¹², No. 11, power of the Commissioner to give any notices which may be given or require any returns which may be required in respect of income for such year under this Act) be deemed to have been made or given also under this Act.

30 4. In this Act, unless the context requires another Definitions. C'wth Act,

"Agent" includes every person who in the State 1922-1927, for or on behalf of any person out of the State N.S.W. Act, (in this paragraph called "the principal") 1912, No. 11, 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, and also includes sub-agent.

"Agricultural pursuit" includes horticulture, viticulture, poultry farming, bee farming, and the growth of fruit, vegetables and the like.

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"Assessable income" means the gross income after excluding all income which is exempt from income tax.

"Assessable income" means the gross income after excluding all income which is exempt from income tax.

- "Assessment" means the ascertainment of the amount of any taxable income, and also means the ascertainment of the amount of tax imposed thereon.
 "Assistant Commissioner" means the Assistant Commissioner of Taxation.
 "Business" includes any profession, trade, employment, vocation or calling.
 "Commissioner" means the Commissioner of Taxation.
 - Taxation.

 "Company" includes all bodies or associations, corporate or unincorporate, but does not include partnerships.
- "Co-operative Society" means a co-operative society registered under the Co-operation Acts, 1923–1928.
- "Dividend" includes profit and bonus and bonus share, whether declared or dealt with by the company issuing the bonus share as capital or not, except to the extent to which a bonus share represents a writing-up or revaluation of assets without disposal thereof, or the capitalization of profits derived from the sale of capital assets, if such profits were not liable to income tax under this or the previous Act.
 - "Foreign Company" means a company, not being a New South Wales company.
 - "Income" means income derived or deemed to be derived directly or indirectly from any source in the State or in respect of which tax is otherwise expressly made payable under this Act and includes interest upon money secured by the mortgage of any property in the State.

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"Income derived from personal exertion" means income consisting of earnings, salaries, wages, commission, fees, bonuses, pensions, superannuation allowances, retiring allowances, and gratuities, 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

from any property where the income forms part of the emoluments of any office or employment of profit held by the individual, but does not include interest, unless the taxpayer's principal business consists of the lending of 5 money or unless the interest is received in respect of a trade debt, and does not include rents and dividends. "Income derived from property" means all income not being income derived from personal 10 exertion. "Income tax" means the income tax imposed as such by any Act as assessed under this Act. "Income year" means the year beginning on the first day of July and ending on the thirtieth 15 day of June (or such other period as may be accepted by the Commissioner) during which the income in question was derived. "Lease" includes sublease. "Liquidator" includes the person who whether or 20 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. 25 "Mutual life assurance company" means a life assurance company none of the divisible profits of which are payable to persons other than policy-holders. "Net income" means the assessable income less all 30 deductions allowable under this Act except the statutory deductions allowed under subsection three of section nineteen. "New South Wales Company" means a company of which the head office or the principal place 35 of business is in New South Wales; or a company incorporated under the Companies Act, 1899, or any other Act of the Parliament of New South Wales, wherever its head office or principal place of business may be. 40 "Non-resident person" means a person whose usual or principal place of abode is not in the State.

"Partnership"

	Income Tax (Management).
	"Partnership" means an association of persons carrying on business as partners or in receipt
	of income jointly, but does not include a
	company.
5	"Person" includes a company.
10	"Prescribed" means prescribed by this Act or by any rules or regulations made or in force under this Act, or the Income Tax (Management) Act, 1912, as amended by subsequent Acts. "Previous Act" means the Income Tax (Manage-
10	ment) Act, 1912, as amended by subsequent Acts.
	"Resident person" means a person whose usual or
	principal place of abode is in the State, and
	includes a public officer of the State who is
15	absent in the performance of his duty, or the wife
	of such officer absent from the State with him.
	"Tax" means income tax. "Taxable income" means the amount of assessable
	income remaining after all the deductions
20	allowed by this Act have been made.
	"Taxpayer" means every person or company
	deriving income whether on his own behalf or
	on behalf of another. "the Court" means the Court of Review.
25	"the State" means the State of New South Wales.
	"the State" means the State of New South Wales. "this Act" or "the previous Act" include the
	regulations in force thereunder.
	"Trustee" in addition to every person appointed or
30	constituted trustee by act of parties, by order, or declaration of a court, or by operation of law,
90	includes—
	(a) an executor or administrator, guardian,
	committee, receiver, or liquidator; and
	(b) every person having or taking upon
35	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
40	of a person under any legal or other
	disability.

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PART II.

ADMINISTRATION.

- 5. (1) For the due administration of this Act and commisthe previous Act, the Governor may, subject to the sioner of Taxation.
 5 Public Service Act, 1902, as amended by subsequent N.S.W. Act, Acts, appoint a Commissioner of Taxation, who may sue 1912, No. 11, and be sued by that name.
- (2) All references to the Commissioner of Taxation in the previous Act, and the rules and regulations
 10 in force thereunder, shall be read and understood as referring to the Commissioner of Taxation appointed under this Act.
- (3) (a) The Governor may, subject to the Public Assistant Service Act, 1902, as amended by subsequent Acts, Commissioner of Taxation.
 - under the said Act as may be deemed necessary for the carrying out of this Act and the previous Act.
- (4) In the event of the absence, incapacity, or Acting 20 suspension of the Commissioner, his powers, duties, and Commissioner functions may be exercised and performed during such absence, incapacity, or suspension, by the Assistant Commissioner, and in the event of the absence, incapacity, or suspension of both the Commissioner 25 and the Assistant Commissioner, the powers, duties,
- and functions of the Commissioner may be exercised and performed during the absence, incapacity, or suspension of the Commissioner and Assistant Commissioner by an Acting Commissioner appointed by the 30 Governor.
 - (5) The Commissioner may, by writing under his Delegation. hand, delegate to the Assistant Commissioner, or any other person, any powers, duties, and functions conferred or imposed upon him by this Act, or the previous Act, 5 or the rules or regulations in force under any of such
- 35 or the rules or regulations in force under any of such Acts (except this power of delegation). Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power, duty, or function by the Commissioner.

(6) A notification in the Gazette that any person has been appointed as Commissioner, Assistant Commissioner, Acting Commissioner, or other person for the purpose of this Act, or the previous Act, shall be

(7) Where in or under this Act or the previous Authorities of

5 conclusive evidence of such appointment.

Act the exercise of any power or the discharge of any Assistant duty or function by the Commissioner or the operation and Acting of any provision of this Act or the previous Act is Commissioner.

10 dependent upon the opinion, belief, or state of mind of Cwth Act, the Commissioner in relation to any matter, that power, 1922-1927, duty, or function, may be exercised or discharged by the Assistant Commissioner when authorised to act by a delegation as aforesaid or during the absence, in-

15 capacity, or suspension of the Commissioner, or by the Acting Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant Commissioner, or that provision may operate (as the case may be) upon the opinion, belief, or state of mind in

- 20 relation to that matter of the Assistant Commissioner when so authorised to act, or during the absence, incapacity, or suspension of the Commissioner or upon the opinion, belief, or state of mind in relation to that matter of the Acting Commissioner during the absence,
- 25 incapacity, or suspension of the Commissioner and Assistant Commissioner.
- 6. (1) Every Commissioner, Assistant Commissioner, Secrecy. and Acting Commissioner and other person appointed to N.S.W. Act, act in the administration of this Act shall, before acting \$\frac{1912}{s}\$, No. 11, 30 in the execution of his office, take and subscribe before C'wth Act, a justice of the peace such oath of fidelity and secrecy as \$\frac{1922-1927}{s}\$, 12.

may be prescribed.

- (2) Every such person who without lawful excuse makes a record of or reveals any matter or thing which 35 has come to his knowledge in his official capacity shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.
- (3) If any such person acts in the execution of 40 his office before he has taken the prescribed oath, he shall be liable to a penalty of not less than ten and not more than one hundred pounds. (4)

(4) Any person who has been an officer or who has performed any duty under this Act or the regulations in force under this Act, or under the previous Act, or the regulations in force thereunder, and who reveals any 5 information acquired by him in the performance of any duty under any such Act or regulations, to any person other than a person to whom he is authorised by the Commissioner to communicate it, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 10 any term not exceeding two years, with or without hard labour.

(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 15 or thing coming under his notice in the performance of his duties under this Act, or the previous Act, except

as may be necessary for the purpose of carrying into

effect the provisions of any such Act.

(6) Notwithstanding anything contained in this 20 section the Commissioner, Assistant Commissioner, or Acting Commissioner may communicate any matter which comes to his knowledge in the performance of his official duties to the Commissioner of Stamp Duties, or to the officer or authority administering any Act of 25 the Commonwealth or of any State relating to income tax, stamp duties, succession duties, or estate duties who

is authorised by law to afford like information to the Commissioner.

7. Nothing in this Act shall affect the operation or Income Tax 30 continuance of the Income Tax (Commonwealth) (C'wth) Collection Act, 1923.

Act, 1923, affected.

Specific .

PART III.

LIABILITY TO TAXATION.

8. (1) Subject to the provisions of this Act, income Incidence tax at such rates as may be fixed by any Act shall be of tax: 5 paid to the Commissioner in respect of the taxable 1912, No. 11, income derived by any person during every income year s. 9. C'wth Act, to which this Λ ct applies.

(2) The first assessment of income tax under this s. 13. Act shall be in respect of the income of the year ended 10 on the thirtieth day of June, one thousand nine hundred and twenty-eight, or such other period as may be accepted by the Commissioner in lieu thereof, and subsequent assessments shall be in respect of the income for each succeeding income year.

(3) Where a company is wound up, or an Adjustment 15 individual person dies or ceases to be a taxpayer, in any by reason of alteration of year, and such company or person has under the year of inprovisions of the previous Act been assessed on the come by Act provisions of the previous Act been assessed on the No. 27, 1918, income of the whole or part of any year a second time, s. 5.

20 and no adjustment in regard to such second assessment has previously been made, the Commissioner may shall make such adjustment as he-considers is just.

(4) Income shall be deemed to have been derived Money by any person within the meaning of this Act, although invested, &c., 25 it has not actually been paid over to him, but has been to be income. credited in account or reinvested or accumulated or N.S.W. Act, 1912, No. 11, capitalised or carried to any reserve, sinking fund, or s. 4. insurance fund howsoever designated, or otherwise C'wth Act, become payable to him-or been-dealt with-in-his-name 1922-1927, s. 19. 30 or-interest-or-on-his-behalf. dealt with on his behalf or

as he directs.

(5) In any case in which the whole of the income Continuance in respect of a transaction which occurred during an of liability to assessment of income year prior to the income year which ended on the whole of in-35 thirtieth day of June, one thousand nine hundred and come of past transactions. twenty-eight, was not liable to assessment prior to such last-mentioned year, the Commissioner may assess the same income for the same income year or years and in the same manner in which and as it would have been assessable had the previous Act continued to apply.

(6) Income shall for the purpose of this Act in-Fixed clude interest on fixed deposits effected in the Territory deposits in of the Seat of Government of the Commonwealth by Capital persons resident in the State or by New South Wales Territory. 5 companies or by any other company carrying on business in the State and effecting such deposit in connection with or as an operation of its business so carried on.

9. (1) Where the income of a taxpayer (other than Income of a company) is derived wholly or in part from any individuals from agricul-10 agricultural, dairying, or pastoral pursuit carried on tural, dairyby the taxpayer, the following provisions shall be ing, or pastoral applied to so much of the taxable income as is derived pursuits. from any such pursuits:-

N.S.W. Act, 1912, No. 11,

- (a) In assessments of tax payable upon income s. 94. 15 derived in each income year subject to assessment under this Act, the rate to be applied to the taxable income so derived in the income year shall be calculated under the Act by which the rates of income tax are declared as 20 if the taxable income so derived by the taxpayer were an amount equal to the average of the taxable income so derived by the taxpayer in the years (in this section called "average years") beginning with and including the first 25 average year and ending with and including the income year.
- (b) The first average year shall be the fourth year before the income year, except in the cases in which the subsequent provisions of this section 30 provide for the first average year being a later An income year, subject to assessment under the previous Act, shall be capable of being taken as a first or subsequent average
- 35 (c) Where the taxable income so derived of the taxpayer for the year which would otherwise be the first average year was greater than his taxable income so derived of the next succeeding year, the first average year shall be the 40 first year, subsequent to the first-mentioned year

year in which the taxable income so derived of the taxpayer was less than his taxable income so derived in the next subsequent year:

Provided that this paragraph shall not apply to the assessment of a taxpayer who has been assessed for any previous year at an average rate determined under this section or section

9A of the previous Act.

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(d) Any year in which the taxpayer was not carrying on any such pursuit shall not be counted as a first average year, but any year in which the deductions allowable in his assessment to a taxpayer carrying on any such pursuit left no taxable income derived therefrom shall be capable of being an average year, and if an average year, shall be taken into account in ascertaining the average taxable income derived from any such pursuit. In such a case the excess of allowable deductions over income in any average year shall be taken into account in calculating the average, but only to the extent to which such excess of deductions is greater than the net income, if any, of the taxpayer derived in that year otherwise than from any such pursuit.

(e) 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 tax to be applied in any 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.

(2) Where such a taxpayer derives taxable income Rate of tax on 35 otherwise than from any such agricultural, dairying, or other income pastoral pursuit, the rate of tax on such other taxable viduals. income shall be the rate which would be applicable to a total taxable income equal to an amount arrived at by adding to such other taxable income the average income 40 (if any), or if paragraph (e) of subsection one applies, the actual taxable income from any such agricultural,

dairying, or pastoral pursuit.

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Income Tax (Management).

(3) For the purposes of this section, a person Exclusion.	
whose sole business which consists principally of buying N.S.W. Act and selling live-stock shall not to the extent of such 1912, No. 11	,
and selling live-stock shall not to the extent of such 1912, No. 11	,
business be deemed to be the carrying on an agricultural,	
5 dairying, or pastoral pursuit.	

10. (1) The following incomes, revenues, and funds Exemptions. shall be exempt from income tax—

N.S.W. Act.

(a) the salary of the Governor of New South Wales; 1912, No. 11,

(b) the official salaries of foreign consuls and the C'wth Act, trade commissioners of any part of the British 1922-1927, Sec. 14, 54 (4).

(c) the revenues of municipal corporations or of

local or public authorities;

(d) the incomes of mutual life assurance companies not being income from investments or income from rent, or income assessable under section twelve;

(e) the profits of the Government Savings Bank;

(f) the incomes of societies registered under the

Friendly Societies Act, 1912;

(g) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or the State relating to the settlement of industrial disputes;

(h) the income of any ecclesiastical, charitable, or educational institution of a public character, whether supported wholly or partly by grants from the Consolidated Revenue or not;

(i) 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 purpose for which it was established:

(i) the incomes of Starr-Bowkett building societies;

(k) the income of any society or association not carried on for the purpose of profit or gain to the individual members thereof, established for the purpose of promoting the development of the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing, or industrial resources of Australia;

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(1) 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 purpose of profit or gain to the individual members thereof;

(m) the income of any other company, society, or association which does not derive profit or gain out of transactions with persons other than their members, and which does not carry on business for purposes of profit or gain except as regards any income from investments or income from rent or income assessable under section twelve;

(n) pensions paid by the Government of the Commonwealth under the Australian Soldiers' Repatriation Act, 1920–1921;

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

(p) the incomes of persons derived in their capacity

(i) representatives of an association or club established in any country for the control of any outdoor athletic sport or game in that country visiting Australia for the purpose of engaging in contests in Australia;

(ii) representatives of any Government visiting Australia in an official capacity, and members of the entourage of any such representative;

(iii) representatives of any society or association established for educational, scientific, religious or philanthropic purposes visiting Australia for the purpose of attending international or empire conferences or for the purpose of carrying on investigation or research for such society or association; (iv)

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(iv) representatives of the press outside Australia visiting Australia for the purpose of reporting the proceedings relating to any of the matters referred to in (i), (ii), and (iii); or

(v) visitors to Australia whose visit, in the opinion of the Colonial Treasurer, is primarily or principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia;

(q) 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 the State by or on behalf of that person of produce of the territory or island of which he is a resident, provided that the purchase of the produce in the State is made for the purpose of export for sale outside Australia and that the Commissioner is satisfied that the produce has been exported without unnecessary delay.

(r) interest from bonds, debentures, stock and other securities issued by the Government of New South Wales, the Commissioners of the Government Savings Bank of New South Wales or the Government of the Commonwealth of Australia;

Provided that this exemption shall not extend to interest from any such security in cases where by this Act, or any Act of the Parliament of the Commonwealth or the State, interest on any such security is made liable to the payment of income tax.

(2) The exemptions in this section shall not— Declarations (i) extend to the salaries, wages, allowances, or as to pensions of persons employed by any such Cwth Act, corporation, company, authority, union, 1922-1927, society,

society, institution, or person specified therein, although the same may be paid wholly or in part out of the income, revenues, or funds so exempt; or

(ii) exempt any such corporation, company, authority, union, society, institution, or person, from furnishing any returns or information which may be required by the Commissioner; or

(iii) exempt any person from including in his returns such information as may be prescribed or as may be required by the Commissioner;

11. The assessable income of any person shall (with-what out in any way limiting the meaning of the words) assessable income includes.

15 include—

includes.

(a) profits derived from any trade or business and C'wth Act, converted into stock-in-trade or added to the s. 16. 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 or end of the income year shall be taken into account.

For the purposes of this paragraph "value" means—

(i) in the case of trading stock (not being live stock) the actual cost price or market selling 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:

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 income year in which the income was derived (including for the purposes of this proviso the last year of income under

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the previous Act) shall for the purposes of the assessment of the person's income derived in the next income year be deemed to be the value of that article as at the commencement of that next income year;

(ii) in the case of live stock (not being live stock used as beasts of burden or as working beasts) the value per head which the person with the consent of the Commissioner adopted for the purposes of his return as the value at the end of the last year of income under the previous Act or where by reason of there being no such return, or for any other reason there is no such value, then such value per head as any person adopts with the approval of the Commissioner, or in default of agreement between such person and the Commissioner, then such value per head as is in the opinion of the Commissioner just and reasonable. The value per head so fixed as herein mentioned, shall be adopted for the beginning and end of every income year to which this Act applies, unless and until altered with the consent of the Commissioner.

Notwithstanding anything contained in this paragraph an owner of live-stock who has made or who may after the passing of this Act make an election under the provisions of paragraph (aa) of section sixteen of the Commonwealth Income Tax Assessment Act, 1922–1928, to omit natural increase from his returns under that Act until disposed of (if the election is operative in any year to which this Act applies) may elect to omit from the account required by this paragraph the value of all natural increase of live-stock owned by him, and born during the income year, and shall

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Income Tax (Management).

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 shall be irrevocable. and shall apply to the assessment of income derived in the income year in respect of which the election is made and to assessments for all subsequent income years. The proceeds from the sale of any livestock 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 this paragraph shall be returned as income in the year in which that natural increase is sold. If any such natural increase is disposed of otherwise than by way of sale, an amount equal to the market value of natural increase so disposed of shall be returned as income in the income year in which the disposal is effected.

- (b) in the case of a member or shareholder (other than a company) of—
 - (i) a company which derives income from a source in the State; or
 - (ii) a company which is a shareholder in a company which derives income or dividends from a source in the State,

all dividends (but not including a reversionary bonus issued on a policy of life assurance) credited, paid, or distributed to the member or shareholder from any profit derived from any source by the company:

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Provided

	Income Tax (Management).
5	Provided that— (i) where a company derives income from a First provisor source in the State, and from a source outside the State, a taxpayer shall be taxable on so much of the dividend as bears to the whole dividend the same proportion that the profits derived by the
10	company from a source in the State bear to the total profits of the company; and (ii) if a company, which has derived income C'wth Act, from the bonds, debentures, stock, or 1922-1927, other securities mentioned in paragraph
15	(r) of subsection one of section ten, pays in any year any portion of that income in dividends to its shareholders, the exemption under that paragraph shall (so long as it continues to apply) extend to the proportion of the dividend for that year which has been resident of such income.
20	which has been paid out of such income: Provided further that notwithstanding any other provision of this Act where a dividend is paid wholly and exclusively out of profits derived from the sale of capital assets, the
25	member or shareholder shall not, if the company was not liable to income tax in respect of such profits under this or a previous Act, be liable to tax on that dividend:
3 0	Provided further that any such member or second proshareholder shall be entitled to a rebate in his viso. assessment of the lesser of the two following amounts:—
35	(i) the sum which bears the same proportion <i>Ibia</i> . to the tax payable by him on his income s. 20 (4) (b). derived from property as the amount of his income from dividends which is in- cluded in his taxable income derived from property bears to his total taxable income derived from property; or
40	(ii) the proportion of the tax paid by the company (under this Act or the previous Act

Act or any Act repealed by the previous Act) attributable to the dividends included in the taxable income of the taxpayer.

For the purposes of this proviso, in arriving at the amount of dividends included in a tax-payer's taxable income, deductions allowable under subsections two and three of section nineteen shall be treated as deductible in the first place from the income, if any, other than that from dividends:

Provided further that increased tax shall not Third be imposed on a taxpayer by the operation of proviso. the preceding provisions of this paragraph (b), except to the extent to which—

(ia) the amount of the tax that would be assessed on the income of the taxpayer, including the dividends, as if they were not dividends, but were other income from property

exceeds-

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- (iia) the amount obtained by adding to the proportion of the tax paid by the company mentioned in subparagraph (ii) of the second proviso of this paragraph (b) the tax that would be assessed on the taxpayer's income, excluding the dividends.
- (c) beneficial interests in income derived under any will, settlement, deed of gift, or instrument of trust;
- (d) money derived by way of royalty or bonus, and premiums, fines or foregifts or consideration in the nature of premiums, fines or foregifts demanded and given in connection with leasehold estates (including the goodwill of any business carried on on the land);

(e) money received as an annuity;

(f) the amount or value of any consideration demanded and given in connection with a right

right to remove standing timber from land less the amount, if any, by which the value of the land is or will be diminished by the removal of the timber;

(g) amounts expended by a lessee under an 5 obligation in an agreement in writing (not exceeding the sum, if any, specified in the agreement) with the landlord to the extent to which the landlord's interest in the property is increased in value, and for which 10 the tenant has no right to reimbursement by the landlord:

Provided that amounts so expended whether before or after the commencement of this Act shall be apportioned over the period of the tenancy unexpired at the date of such expenditure and returned by the landlord as

income accordingly.

(h) the annual rental value to him of premises or quarters provided rent free by his employer;

(i) five per centum of the capital amount of a retiring allowance or gratuity (not being an amount paid to a director of a company) paid in a lump sum;

(j) all allowances, gratuities (except retiring allowances or gratuities paid in lump sums otherwise than to a director of a company), 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;

(k) the proceeds derived from the sale (whether compulsory or otherwise and whether for the purpose of putting an end to a business or otherwise) of-

(a) the whole or part of the trading stock of any business;

(b) any standing crop; and

(c)

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(c) all live-stock forming part of the assets of any business (except-beasts-of-burden-and working-beasts): (not being live-stock which in the opinion of the Commissioner were ordinarily used by the person as beasts of burden or as working beasts):

Provided that—

First proviso.

(i) this paragraph shall not apply to the proceeds derived from the sale of any live-stock which, in the opinion of the Commissioner, were ordinarily used by the person for breeding purposes and were sold by that person 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 the State which contains a provision for the compulsory acquisition or resumption of land, 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 is determined as the price or value of the wool as distinct from the sheep;

(ii) notwithstanding anything contained in this section or in section nineteen of this Act, no deduction shall be allowed to any person on account of live-stock sold by him in respect of which, by virtue of paragraph (i) of this proviso, no amount (other than in respect of wool) has been included in his assessable income; and

(iii) for the purpose of paragraph (k) of this section, "sale" includes any disposition otherwise than by way of sale, and in any such case the sale price shall be deemed to be the market value of the trading

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trading stock, standing erop or livestock ruling on the day on which the disposition is made, and the person acquiring any such property shall be deemed to have purchased it at the amount so fixed as the sale price:

Provided that where any trading stock, C'wth Act, standing crop or live-stock is sold with other 1922-1925, assets or any such sheep which in the opinion second of the Commissioner were ordinarily used for proviso. Threeding purposes are sold in the wool the consideration for the sale which is attributable to the trading stock, standing crop, or live-stock, or wool shall be determined by the Commissioner, and the amount so determined shall be deemed to be the price paid by the purchaser for the trading stock, standing crop, or live-stock, or wool as the case may be;

- (1) interest credited or paid to or otherwise derived by any depositor or debenture holder of a company, and amounts derived by any member or shareholder in a company from the sale of rights to take up shares or debentures in a company;
- 25 (m) money or consideration derived from the, granting of an option of purchase of any property;
- (n) the amount of the consideration for the transfer assignment, cancellation, or surrender of a lease, less the deductions provided for in paragraphs (a), (b) and (c) of subsection one of section twelve, or where the lease was acquired prior to the first day of July, one thousand nine hundred and twenty-three the total of the amounts of the depreciation in respect of the lease allowed to the vendor under this and the previous Act, which ever is the lesser sum.
- (n) the amount of the consideration for the transfer, assignment, cancellation, or surrender of a lease of land (including the goodwill of any business carried

carried on on	the land) less t	he deductions
provided for in	paragraphs (a),	(b) and (c) of
subsection three	of section twelve	

Provided that—

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 (i) where the lease transferred, assigned, cancelled, or surrendered was acquired by the taxpayer prior to the first day of July, one thousand nine hundred and twenty-three; or

(ii) where the lease was transferred, assigned, cancelled, or surrendered after the thirtieth day of June, one thousand nine hundred and twenty-eight, and was acquired by the taxpayer during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-four;

iii) where in any other case the lease transferred, assigned, cancelled, or surrendered was acquired by the taxpayer before the sixth year prior to the income year in which the lease is transferred, assigned, cancelled, or surrendered,

the amount to be included as assessable income shall not be greater than the total of the amounts of depreciation in respect of the lease allowed to the taxpayer under this and the previous Act:

Provided further that this paragraph (n) shall not apply to the transfer or assignment of the lease of a mining property (other than coal mining) where the Commissioner is satisfied that the lease has been assigned or transferred by a bona fide prospector.

of any real or personal property situated in the State are en-sale of not liable to be returned as preceding section or any of her provision of this Act, the net profit or gain, if a ny, arising from such sale (See N.S.W. Act if such real or personal property was acquired by him 11, s-4.) after the thirtieth day of June, one thousand nine

after the thirtieth day of June, one thousand nine hundred and twenty-three, and during the income year or the nine income years next prior thereto.

The amount of such net profit or gain shall be arrived at in the following manner, namely, by deducting from the amount realised by the sale—

(a) the expenses of sale;

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(b) the cost of the property to the vendor (less any amount in respect of depreciation which was allowable as a deduction from his assessable income under this or the previous Act); and

(c) any other expenses sproved to the satisfaction of the Commission er to have been incurred in connection with the acquisition and holding of any such property, and which were not allowable as a deduction from the income of any previous year.

For the purposes of this paragraph the labour of the ven dor and his family shall be deemed to be an expense to the extent to which it is represented in permanent improvements on the property at the time of the sale:

20 Provided that any loss (ascertained in the same First manner) incurred during the income year on the sale provised during such year of any property coming within this subsection shall be allowed as a deduction from income derived from any other source:

Provided that any similar loss incurred during the Second two preceding income year s, but not prior to the first provise. Act applies, shall also be the extent to which they are not set off against any similar profit in the year in which they are incurred or the su cceeding year:

Provided that this section shall not apply to-

(i) the sale by any the first day of hundred and two passing of this in land within such land and including the goodwill of any business

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business carried on on the land if such property was acquired by such person before first day of July, one thousand nine hundred and twenty-four;

- (ii) the sale by any person of shares in any company bought by him prior to the first day of July, one thousand eight, to the date of the passing of this prior to the first day of July, one thousand eight, to the date of the passing of this prior to the first day of July, one thousand nine hundred and twenty-six;
- property bought day of July, one twenty-seven, c of any such property during the period from the first day of hundred and the passing of were bought by of July, one thousand nine hundred and twenty-eight.

 person of any other personal by him prior to the first thousand nine hundred and result the passing of this Act, if such property him prior to the first day housand nine hundred and twenty-eight.

(2) For the purpose of this section—

(i) the cost to the ven dor under subsection one (b) Subsection one of property sold which has been acquired by the vendor as a beneficiary or as a trustee in the estate of a deceased person shall be deemed to 30 be the value (if a ny) of such property fixed for the purpose of assessment of death duties in the estate of such deceased person, and where no value has been so fixed for death duties, shall be deemed the market value as at 35 the date of death of the deceased person, and the date on which sluch property was purchased or acquired by such deceased person shall be taken to be the date on which such beneficiary or trustee acquired such property; and 40 (#)

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Income Tax (Management).

(ii) in any other case the cost to the vendor under subsection one (b) of property sold which has been acquired by the vendor otherwise than by purchase shall be deemed to be the market value as at the date of its acquisition by the predecessor in title of such vendor and such date shall be taken to be the date upon which the vendor acquired such property;

(iii) in cases under paragraph (i) of this subsection Commonwealth Estate Duty and State Probate Duty borne by the vendor in respect of the property sold shall be deemed to be expenses under subsection (i) (c).

(3) Where the payment of the purchase price Subsection (3): 1. extends over a period of years so much of the consideration as would be profit if the sale were for cash shall be treated as apportioned among the income years over which the payments of the purchase price extend and the amount of profit so apportioned to each year shall be 20 deemed to be derived by the taxpayer in that year:

(4) Nothing in this section shall apply to the Subsection. sale by a taxpayer of premises owned and solely used by him as his principal place of abode during the income year and the four years next prior thereto: Provided 25 that if the taxpayer sells his place of abode within six months after vacating the same as his principal place of abode and the sale otherwise comes within this subsection he shall be deemed to occupy such place of

abode as his principal place of abode at the time of sale 30 or to the sale in the income year by the taxpayer of personal property (other than shares and securities) of an aggregate value not exceleding two hundred pounds.

(5) "Sale" for the purposes of this section "Sale." includes an exchange of property and any statutory 35 resumption.

12. (1) Where the proceeds of the sale during the Net profits on income year by any person of any real property situated sale of certain in the State are not liable to be returned as assessable income (see income under any other provision of this Act, the net N.S.W. Act profit or gain, if any, arising from such sale shall be s, 4).

deemed

deemed to be assessable income of that person, if such real property was bought by him during such year or the six years next prior thereto.

"Real property" in this section means any estate or "Real interest in land within the State, including a lease of such property." land and including the goodwill of any business carried on on the land:

Provided that this subsection shall not apply to-

(i) The sale by any person of real property which was bought by him prior to the first day of July, one thousand nine hundred and twenty-three; or

(ii) the sale by any person after the thirtieth day of June, one thousand nine hundred and twentyeight, of real property which was bought by him during the year ended on the thirtieth day of June one thousand nine hundred and twentyfour; or

(iii) the sale by any person of premises owned and solely used by him as his principal place of abode during any period of or exceeding four

years.

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(2) Where the proceeds of the sale during the income year by any person of any personal property situated in the State are not liable to be returned as assessable income under any other provision of this Act, 25 the net profit, if any, arising from such sale shall be deemed to be assessable income of that person if such personal property was bought by him during such year

Provided that this subsection shall not apply to-

or the two years next prior thereto:

(i) The sale by any person of personal property other than shares in any company which was bought by him prior to the first day of July, one thousand nine hundred and twenty-seven; or

of June, one thousand nine hundred and twenty-eight, of personal property other than shares in any company which was bought by him during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight; or

(iii) the sale during the income year by any person of personal property (other than shares or securities) of an aggregate value not exceeding two hundred pounds.

(3) The amount of the net profit or gain referred Assessment to in subsections one and two hereof shall be arrived of profit. at in the following manner, namely, by deducting from the amount realised by the sale—

(a) the expenses of sale;

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(b) the cost of the property to the vendor (less all amounts in respect of depreciation which were allowable as deductions from his assessable income under this and the previous Act); and

(c) any other expenses, including interest on borrowed money, proved to the satisfaction of the Commissioner to have been incurred in connection with the acquisition, improving and holding of any such property, and which were not allowable as a deduction from the income of the income year or any previous income year:

Provided that any loss (ascertained in the same First proviso. manner) incurred during the income year on the sale during such year of any property coming within subsection one or two shall be allowed as a deduction in 25 arriving at the net profits or gains from sales of property coming within subsections one and two, but shall not be allowed as a deduction from income derived from any other source:

Provided further that any similar loss incurred during second 30 the two preceding income years, but not prior to the first proviso. income year to which this Act applies, shall also be allowed as a deduction to the extent to which such loss is not set off against any similar profit in the year in which it is incurred or the succeeding year.

35 (4) Where in the case of any sale coming under sales on this section the payment of the purchase price extends terms. over a period of years so much of the consideration as would be profit if the sale were for each shall be treated as apportioned among the income years over which the 40 payments of the purchase price extend, and the amount of profit assessable in each income year shall be the amount

amount which bears the same proportion to the profit to be apportioned as the amount of the payments received in the income year bears to the purchase price.

(5) The rate of tax in respect of taxable income by which consists of or includes taxable income derived from any sale made after the passing of this Act to which the provisions of subsection one or two of this section apply shall be arrived at as follows:—

The net profit or gain derived from any such sale Division of which is included in the taxable income shall profit to 10 be divided by the number of years for which rate of tax. the taxpayer had held the property at the time of the sale, and the amount arrived at (together with the amounts similarly arrived at in respect of every other such sale the net profit or gain 15 from which is included in the taxable income) shall be added to the taxpayer's other taxable income (if any), and the rate that would be applicable if the amount so ascertained were the taxpayer's total taxable income shall be 20 applied to the taxpayer's total taxable income.

assures it otherwise than by way of sale whether by delivery or otherwise to a person who sells it, the net profit or gain if any arising from such sale shall be deemed to be assessable income of the vendor under subsection one in the case of real property and under subsection two in the case of personal property if the net profit or gain from such sale would have been assessable income of the first-mentioned person under the provisions of this section had such person continued to hold the property and made such sale.

The cost to the said vendor of the property sold by him shall, for the purposes of subsection three (b) of this section, be deemed to be the price at which the said first-mentioned person bought the property less all amounts in respect of depreciation which were allowable as deductions from the assessable incomes of such person and the said vendor under this and the previous Act.

assures it or causes it to be assured to a company to which the provisions of section thirty-one may be applied, and he is at or about the date of the assurance substantially interested as a shareholder therein and he sells substantially the whole of his shares in such company the net profit or gain, if any, arising from such sale, shall be deemed to be assessable income of such person under subsection one of this section if, had he continued to 10 hold such real property and had he sold the same at the time when he sold the shares, the net profit or gain on such a sale of the real property would have been deemed to be assessable income of such person under subsection one of this section.

In computing the net profit or gain arising from such sale of the shares the cost of the property to the vendor for the purposes of paragraph (b) of subsection three of this section shall be the price at which the said first-mentioned person purchased such real property less all 20 amounts in respect of depreciation which were allowable as deductions from the assessable incomes of such person and the said company under this and the previous Act.

(8) For the purposes of this section—"Sale" "Sale." includes an exchange of property and any statutory "Bought." 25 resumption, and "bought" includes in respect of shares the acquisition of shares by the issue thereof.

13. Subject to the provisions of this Act, if in Consideration respect of any transaction to which this Act applies to be valued. the whole or part of any consideration is paid or given 30 otherwise than by cash, the money value of such consideration shall be stated by the taxpayer in his return, and if the value so stated is not accepted by the Commissioner he shall assess the same.

14. (1) Subject to subsection two of this section, Interest on 35 the interest accruing on loans raised in New South loans raised wales after the thirty-first day of December, one thou-countries sand nine hundred and twenty-three, by the Government countries of any country or dominion outside the Commonwealth, wealth. or by any authority constituted by or under any law of C'wth Taxation of any such country or dominion, shall be subject to income Loans Act, tax in the same manner as if it were income derived 1923, s. 5. from a source in New South Wales.

(2) Subsection one of this section shall not apply in relation to any interest unless either—

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(a) the interest is received directly or indirectly by a resident person or by a New South Wales company or by any other company carrying on business in the State in connection with or as an operation of its business so carried on; or

(b) such interest is otherwise liable to income tax under this Act.

10 (3) For the purpose of this section a loan shall be deemed to have been raised in New South Wales if subscriptions to the loan were invited in New South Wales by public advertisement, or by the issue of a prospectus, or otherwise.

15. Notwithstanding anything contained in any Interest on Act, the interest on any loan raised after the date of State loans. the coming into operation of this section, by the States C'wth Taxation of by any authority constituted by or under any State Act, 1923, law, shall be subject to income tax and for that s. 3.

20 purpose shall be deemed to be part of the income of the respective persons to whom the interest is payable.

This section shall come into operation on a date to be fixed by the Governor by proclamation published in the Gazette.

25 **16.** For the purpose of the last two preceding sec-what tions, "loan" includes a conversion loan and a loan raised "loans" includes. for the redemption or repayment of an existing loan.

1bid. sec.

17. In addition to any other income tax payable by Company taxable on interest paid

(a) at such rate as may be fixed by the Income by it.

Tax Act by which the rates of income tax are Cwth Act declared on the interest paid or credited by the s. 20. company to any non-resident person or foreign company on money raised by debentures of the company and used in the State, or on money lodged at interest in the State with the company; and

(b) on interest paid or credited in respect of debentures payable to bearer issued in the State or to secure money used in the State the names and

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 taxable income of an individual:

18. For the purposes of the preceding section—
Deductions
(a) a company shall be entitled to deduct and and refund for the retain for the use of the company from the purposes of amount payable to any of the persons referred so 17.
to in paragraph (a) of such section such amount 1922-1927, as is necessary to pay the tax which becomes so 20.

due in respect of that amount;

(b) 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 (b) of such section as the interest payable to that person bears to the total interest payable in respect of those debentures;

(c) where a company pays tax under such section on any interest, and any person includes that interest in his return, and is liable to pay income tax thereon, the amount of tax paid by the company in respect of that interest shall be deducted from the total tax payable by the

person;

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(d) where the Commissioner is satisfied that the holder of debentures payable to bearer is a person who is not liable to pay income tax, the Commissioner shall refund to the person entitled thereto the amount of tax paid by the company in respect of the debentures of that person.

25 19. In calculating the taxable income of a taxpayer General there shall, subject to this Act, be deducted from the deductions. N.S.W. Act, total assessable income derived by the taxpayer the 1912, No. 11, following deductions:—

8. 16.

(1) (a) All losses and outgoings (including commission, discount, travelling expenses, interest and expenses and not being in the nature

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Income Tax (Management).

of losses and outgoings of capital) actually incurred in-New-South-Wales in gaining or producing the assessable income:

Provided that to ascertain the amount First of such interests, if a taxpayer has paid provised any income year, and has derived in that the year any income which is not liable to in come tax under this Act, the interest allowald ble as a deduction from the assessable income of such taxpayer may, if the Commission are thinks fit, be computed at a sum which bears the same proportion to the total interest paid as the value at the end of the income year of the assessable income of such taxpayer bears to the value of his total assets at the end of such year:

Provided fur ther that the Commissioner Second may allow as a deduction, losses and expression penses incurred by the taxpayer outside the State during the income year exclusively in the production of the taxable income.

(b) Rates and taxes (except income tax) imposed by Acts of the Parliament of New South Wales or by any authority constituted by or under any such Act, and land tax levied in respect of land situated in the State under any Act of the Parliament of the Commonwealth if such rates, taxes, and land tax were actually paid by a taxpayer during the income year, and were incurred in the production of his assessable income:

Provided that when a taxpayer receives a refund of the whole or any part of any rates or taxes allowed as a deduction under this or the previous Act, the amount of the refund shall be returned as income in the income year in which the refund is received.

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(c) Sums expended by the taxpayer during the income year for repairs to or on that part of any property occupied for the purpose of producing the assessable income, or from which the assessable income is derived, and for the repair of machinery, implements, and plant used by the taxpayer for the purpose of producing the assessable income; (d) The sum actually expended by the taxpayer during the income year for food and for rent of quarters provided for an employee who is employed exclusively in a business of the taxpayer yielding assessable income: Provided that, if the taxpayer is unable to state the sum actually expended on such food, such sum may be deducted as the Commissioner thinks just. Provided that if the sum actually expended A VINE

Provided that if the sum actually expended on such food cannot be ascertained such sum may be deducted as the Commissioner thinks just. Such sum shall not, however, be less than the amount fixed as the value of keep under any award or agreement, made under any Act of the State or the Commonwealth relating to industrial matters or disputes under which such employee is engaged after deducting therefrom the part, if any, attributable to lodging or quarters.

(e) Retiring allowances and pensions paid to employees and former employees in respect of past services in the taxpayer's business and so much of the assessable income as 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:

Provided that-

(i) a deduction shall not be allowed under this paragraph (e) unless the Commissioner is satisfied that the fund

	Thousand Law (Michiegement).
	fund has been established or the pay ment has been made in such a manner that the rights of the employees to receive the benefits, pensions, or
5	retiring allowances have been fully secured; ii) if the Commissioner is satisfied that any part of the assessable income of
10	any person (whether an employer of labour or not) has been so set aside or paid by that person to provide individual personal benefits, pensions or retiring allowances to employees in any business or class of business.
15	in any business or class of business the person setting aside or paying the sum shall be entitled to deduce it. (f) Expenses incurred in relation to the obtain-
20	ing of an award or agreement under any Act of the Commonwealth or of the State relating to employees engaged in the tax-payer's business. (g) A proportionate part of the amount paid by the tax payer as a progrupation for on benue
25	the taxpayer as a procuration fee or bonus in connection with money borrowed and used by him in the production of assessable income arrived at by distributing the amount so paid over the period for which the money was borrowed.
30	(h) Sums paid to any bona fide industrial union of employers or employees, trade or professional association, or agricultural society approved by the Commissioner but not exceeding ten guineas fifty pounds to each
35	respectively. (i) Sums expended by the taxpayer on grassing grazing lands, on suckering or eradicating seedlings, noxious plants and noxious weeds, and for the destruction of noxious animals
40	on lands owned, held or occupied by the taxpayer for the purpose of his business. (j)

(j) The proportionate yearly sum which in the opinion of the Commissioner represents the purchase price or consideration for any annuity purchased by him the taxpayer.

(k) Bad debts proved to be such to the satisfaction of the Commissioner and to have been incurred in and actually written off by the taxpayer in the income year, but the Commissioner may allow a deduction for bad debts claimed in respect of any year if he is satisfied that the debts were not incurred more than six years prior to the commencement of the income year, and that the taxpayer has in any previous year included those debts as assessable income in his return:

Provided that all amounts at any time received on account of any such bad debts or of any bad debts allowed as a deduction under the previous Act shall be returned as income in the income year in which the same were received.

(l) Such sum as the Commissioner may think just and reasonable as representing the diminution in value, by reason of wear and tear during the income year of any machinery, implements, and plant (including furniture, beasts of burden and working beasts) owned and used by the taxpayer for the purpose of producing the assessable income:

Provided that the following conditions shall apply in relation to the deduction under this paragraph—

(i) where a deduction has been allowed under paragraph (c) of this subsection, the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;

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(ii)

(ii)	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 income 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 under this
	paragraph (1). If the sale price
	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 under this paragraph (l). If the sale price exceeds that depreciated value the
	amount of the excess shall be returned
	as income in the income year in which
	the sale was effected.
	"Depreciated value" shall mean
	the cost price of the property to the
	taxpayer, or where condition (iii)
	hereof applies, the cost price to the
	first owner, less the total of the
	amounts of depreciation allowed
	under this or the previous Act or
	any Act repealed by the previous
	Act, in respect of the property to the
	taxpayer or to the taxpayer and the
	prior owner, as the case may be.
	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 Commis-
	otherwise than by sale, the Commis-
	sioner shall determine the amount
	which shall for the purposes of this
	condition of this paragraph be
	deemed to be the selling price of that
	nuonouty

property;
(iii) where any property in respect of which a deduction is allowable under this paragraph has been acquired (either

either before or after the commencement of this Act) from one person by another person, the person who acquired 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, unless the surplus over the depreciated value has been returned as income by the vendor in pursuance of condition (ii) of this paragraph, in which case the purchaser shall be entitled to a deduction for depreciation based on the cost price of the property to him:

If 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:

Provided that the Commissioner shall not exercise such discretion

Provided that if the Commissioner is satisfied that the purchase of the property is bona fide and not for the purpose of avoiding taxation, then, notwithstanding anything contained in the preceding sub-paragraph, a deduction based on the actual amount of the consideration given shall be allowed. This proviso shall not, however, apply where the person who acquired the property was a company in which the transferror was at or about the date of the transfer substantially interested as a shareholder or was a company the shareholding interests in which were at or about

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Income Tax (Management). about the date of the transfer in substantially the same hands as those of the company from which it was acquired; 5 (iv) no deduction under this paragraph (1) shall be allowable in respect of any property where the amount already allowed for depreciation under this Act or the previous Act or any Act 10 repealed by the previous Act equals the value on which depreciation is allowable under this paragraph. (m) A proportionate part of— (1) the amount paid by any taxpayer 15 (being the lessee under a lease or the 7 A transferee or assignee of a lease) as a premium, fine, or foregift or consideration in the nature of a premium, fine, or foregift for a lease or a 20 renewal of a lease, or as an amount 00 the assignment or transfer of a lease of land, premises, or machinery used for the production of income, arrived at by distributing 25 the amount so paid proportionately over the unexpired period of the lease at the date the amount was so paid; (2) the amount paid for a right to remove 30 standing timber from land (not in-0% cluding an amount paid in connection with the purchase of a freehold or leasehold estate in land) which in the opinion of the Commissioner is 35 the part of the amount paid for such right attributable to the timber (8)

Provided that—

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vear:

(i) the taxpayer proves to the satisfaction of the Commissioner that he has paid such an amount; (ii)

removed and sold during the income

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- (ii) the deduction under sub-paragraph
 (1) of this paragraph shall not be
 made with respect to any lease from
 the Commonwealth or the State or
 any authority of the State, being a
 perpetual lease without re-valuation
 or a lease with a right of purchase;
- (iii) where in the case of an assignment or transfer (either before or after the commencement of this Act) of a lease, or of a right to remove standing timber from land, the amount received has not been returned as income by the assignor or transferror of the lease or right and the person who acquired the lease or right was a company in which the assignor or transferror was at or about the date of the assignment or transfer substantially interested as a shareholder, or was a company the shareholding interests in which were at or about the date of such assignment or transfer in substantially the same hands as those of the company from which it was acquired, no deduction shall be allowed beyond the sum (if any) to which the assignor or transferror was entitled. In any case to which this clause (iii) of this proviso is applied the assignor or transferor shall not be assessable under this Act in respect of the amount received on such assignment or transfer.
- (n) A proportion of the sum necessary to recoup amounts expended under an agreement in writing, on improvements on land by a lessee who has no tenant rights in the improvements, arrived at by distributing the amount expended (not exceeding the

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Income Tax (Management).

sum agreed upon) proportionately over the unexpired period of the lease at the date the improvements were effected:

Provided that this paragraph shall not apply in any case where there is a lease of land (granted either before or after the commencement of this Act) to a company from any individual who at or about the date of such agreement directly or indirectly controls or controlled the voting power of the company, or in any other case in which the Commissioner is of opinion that, in consequence of the terms and conditions of the lease or of any other circumstances the lessor was at or about such date in substantial control of the operations of the lessee. In any case to which this proviso is applied, the landlord shall not be assessable under paragraph (g) of section eleven.

- (o) The expenditure actually incurred during the income year by any taxpayer carrying on mining operations (other than coal mining or quarrying) in the State for labour and materials employed in sinking subsidiary shafts in a producing mine and in the course of extending the area of operations.
- (p) The sum of one hundred pounds in respect of the annual allowance of members of the Legislative Assembly of New South Wales or of New South Wales' members of the Parliament of the Commonwealth.
- (q) Gifts of ten shillings and upwards made out of the assessable income derived during the year in which the gifts are made to public charitable institutions in the State, to the Sydney University, or to colleges affiliated therewith, if the gifts are verified to the satisfaction of the Commissioner.

For

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	For the purpose of this subparagraph—
	"Affiliated college" means a resi-
	dential educational institution
	affiliated under a statutory pro-
5	vision with the Sydney Uni-
	versity.
	"Gift" means a gift in the form of
	money or a gift in kind when the Commissioner is satisfied
10	that the donor has used part of
	his assessable income of the year
	for the acquisition of the gift.
	"Public charitable institution" means
	a public hospital, a public
15	benevolent institution, the
	trustees of the Australian Museum, the trustees of the
	Public Library of New South
	Wales, the trustees of the National
20	Art Gallery, the National Library
	referred to in the National Library
	Act, 1924, a public educational
	institution not carried on for the profit of individuals, an
25	institution for the benefit of
	returned soldiers, and includes
	a public fund established and
	maintained for the purpose of
	providing money for such institu-
30	tions, or for the relief of persons
	in necessitous circumstances.
	(r) Such amount as the Commissioner considers just and reasonable (not exceeding fifty
	pounds for each child) as representing the
35	cost to a taxpayer for food, quarters and
	other expenses in respect of children who
	are over the age of sixteen years and under
	twenty-one years of age at the beginning
10	of the income year and who are wholly or
10	partly employed by him in his business, and to whom no payments are made for
	wages. (s)
	(9)

(s) Sums expended in boring, sinking wells or excavating tanks for water by a taxpayer carrying on a pastoral or agricultural business, if such operations are either unsuccessful or result in other than drinkable water being obtained but not including the cost of plant or of material which may be used elsewhere.

(2) In the case of a resident person—

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Deductions allowed to

(a) every premium or sum paid by the tax-residents. payer during the income year for the N.S.W. Act, insurance of the taxpayer's own life or s. 16 (1), (b), that of the wife, husband or children of (c), (d). the taxpayer or for a deferred annuity Cwth Act, or other like provision for the husband, s. 23 (1), (c), wife or children of such taxpayer, or in (g), (k), (o). respect of any fidelity guarantee or bond which such taxpayer is required to provide for 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.

- (b) payments not exceeding one hundred pounds in the aggregate made for the personal benefit of the taxpayer or his wife or children during the income year by a taxpayer who is in receipt of salary, wages, allowances, stipends or annuity, or whose taxable income does not exceed eight hundred pounds, to superannuation, sustentation widows' or orphans' fund established in Australia, or any society duly registered under any Friendly Societies Act of the Commonwealth or State;
- (c) (i) the amount of fifty pounds in respect of each child who is wholly maintained by

by the taxpayer and who is under the age of sixteen years at the beginning of the income year.

Where the child is not wholly maintained by the taxpayer for the whole of the income year, or where the child is but partially maintained by the taxpayer either for the whole or part of the income year, or where the child so wholly or partially maintained attains the age of sixteen years during the income year, such proportionate part of fifty pounds as the Commissioner shall decide as fair and equitable in the circumstances;

(ii) the amount of fifty pounds in respect of the wife of a taxpayer who is not separated from her husband either under an order of a court of competent jurisdiction or a separation agreement, or who, if so separated, is wholly maintained by him;

(iii) an amount not exceeding fifty pounds for sums actually expended in respect towards the maintenance of dependants of by an unmarried taxpayer. , who are wholly maintained by him. A dependant means a relative of the taxpayer by blood, marriage or adoption. Any payments to the dependant which, in the opinion of the Commissioner, are for board and lodging of or other services to the taxpayer shall be excluded in calculating such expenditure:

Provided that a person whose income during the income year exceeds the sum of one hundred pounds, or in respect of whom a deduction is allowed to any taxpayer under subparagraphs (i) or (ii) of this paragraph shall not be deemed to be a dependant;

(d)

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(d) such sum as is paid by the taxpayer to-(i) any legally qualified medical practitioner, dentist, public or private hospital, nurse or chemist in respect of any illness of or operation upon the tax-5 payer or the wife, husband or any of the children -(under-the-age-of-twenty-one years)- or dependants (as defined in paragraph (c) (iii)) of the taxpayer; 10 and to (ii) any undertaker for funeral and burial or cremation expenses arising out of the death of the wife or husband of the taxpayer or of any of his children under-the-age-of-twenty-one-years. or 15 dependants (as defined in paragraph (c) (iii)). The deductions mentioned in subparagraphs (i) and (ii) of this paragraph are to be allowed only when the taxable 20 income of the taxpayer does not exceed six four hundred pounds, and in no case shall a deduction be allowed under subparagraph (ii) exceeding the sum of twenty pounds; and 25 (c) expenses actually incurred by a taxpayer in educating his children under eighteen years of age (not exceeding fifty pounds for each child during the income year) if suitable educational facilities are not 30 provided by the State within reasonable daily travelling distance of the place of residence of the taxpayer. paragraph shall not apply where the taxable income exceeds eight hundred 35 pounds. (3) (a) In the case of a resident person (other than Deduction to a company) the sum of two hundred and individual resident. fifty pounds less the sum of one pound for N.S.W. Act,

every eight pounds by which the net in- 1912, No. 11, come exceeds two hundred and fifty C'wth Act, pounds;

1922-1927, s. 24 (1).

(b)

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Income Tax (Management).

- (b) In the case of a non-resident person (other than a company) the sum of fifty pounds less the sum of one pound for every eight pounds by which the net income exceeds fifty pounds.
- 20. (1) The deductions in paragraph (q) of sub-Parts of income from which section one, and in subsection two and in subsection deductions are three of section nineteen shall be made in the first place to be made.

 N.S.W. Act, 1912, No. 11 s. 16 (2).

(2) The other deductions provided in subsection one of section nineteen shall be made in the first place from income derived from personal exertion unless such loss, outgoing or expense was incurred in the production
15 of income derived from property, in which case such deduction shall be made in the first place from income derived from property.

(3) When the provisions of section nine are resorted to, the deductions in paragraphs (p) and (q) of subsection one and in subsections two and three of section nineteen shall be made in the first place from income other than that derived from agricultural, dairying, or pastoral pursuits.

(4) If the income of the class from which the deduction is in the first place to be made does not amount to the sum to be deducted, the difference shall be deducted from the other class or classes.

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

allowed as deductions.

(a) the cost incurred in the maintenance of the tax-C'wth Act, payer, his family or establishment, other than 1922-1927, as specified in section nineteen of this Act; N.S.W. Act, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-1927, 1922-192

(b) domestic or private expenses, other than as s. 16 (1) (e) specified in subsection two of section nineteen; (iid), and s. 16 (3).

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

(d) money not wholly or exclusively laid out or expended for the production of the assessable income;

(e)

	Income Tax (Management).			
		rent, or value of, or cost of repairs to any premises or part of premises not usually occupied for the purpose of producing assessable income;		
5		any bad debts, except as provided for in paragraph (k) of subsection one of section nineteen of this Act;		
		any loss not connected with or arising out of the production of assessable income, except as		
10	(h)	specified in sections twelve and twenty-two; investment, expenditure, loss or withdrawal of capital; money used or intended to be used as capital; capital used in the improvement of premises occupied for the purpose of any		
15		business, or used in the production of income; interest which might have been made on such capital or money if laid out at interest—except as specifically allowed by subsection one of section nineteen;		
20		interest, except as provided in paragraph (a) of subsection one of section nineteen of this Act;		
25	(j)	any wastage or depreciation of any lease or in respect of any loss occasioned by the expiration of any lease, except as provided in paragraph (m) of subsection one of section nineteen of this Act;		
30		any payment of income tax or of any other rates or taxes not allowed as a deduction by paragraph (b) of subsection one of section nineteen.		
		any expenses which have been incurred in deriving income which is exempt from income tax;		
35	(m)	any sum as a bonus or fee, salary, commission or allowance paid or credited to a director of a company or to a member of the family of a director of a company in excess of what		
40	· · · · · · · · · · · · · · · · · · ·	the Commissioner considers a reasonable amount; but such excess shall be treated as dividends		

dividends from a company in the hands of the recipients. This paragraph shall apply only to companies to which section thirty-one may be applied;

5 (n) head office expenses of a company beyond an amount which bears the same proportion to the total head office expenses as the revenue

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derived by the company in the State bears to the total revenue or beyond such an amount in excess thereof as may be fixed by the Commissioner:

(o) any sum paid by a taxpayer to a relative by blood, marriage, or adoption, in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business and for services rendered;

(p) any sum paid or payable by a company to any member or shareholder in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business or for services rendered. This paragraph shall apply only to companies to which section thirty-one may be applied;

(q) any loss or expense which is recoverable under any contract of insurance or indemnity.

22. (1) Where a taxpayer makes a loss in any Deduction of income year in carrying on a business or businesses losses. either alone or as a partner with other persons, the Cwth Act, proceeds of which, if any, would be assessable income, 1922-27 s 26.

30 he shall be entitled to deduct the loss from any assess- N.S.W. Act, able income derived by him in that year from other 1912, No. 11, s. 16 (1) (e)

Provided that the loss shall be deducted in the first place from the income returnable under paragraph (b) proviso.

35 of section eleven, if any, but if that income does not amount to the loss to be deducted, the difference shall be deducted from his income from personal exertion, if any, in the same year, and if this income does not amount to such difference, the balance shall be deducted 40 from his other income from property, if any, in the same year:

Provided

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Income Tax (Management).

Provided, further, that if the loss results from the second carrying on of any agricultural, dairying or pastoral proviso pursuit as defined in section nine, it shall be deducted in the first place from any other income from any such pursuit during that year, and if this income does not amount to such loss, the balance shall be deducted from the income from other sources in the order set out in the first proviso to this subsection.

- (2) If the taxpayer did not derive any assessable income from other sources in that year or if the loss exceeds the net assessable income derived by him from other sources, the loss or the excess of the loss over such net assessable income, as the case may be, shall be carried forward into his subsequent yearly returns, but not exceeding two years subsequent to the year in which the loss occurs. In this subsection "net assessable income" means net income as defined in section four of this Act, but not including any deduction allowable under this section.
- 20 (3) The loss or the excess of the loss which is carried forward under the provisions of subsection two hereof shall be deducted from the assessable income of the year or years into which it is carried forward in the order provided in the provisos to subsection one hereof.
- 25 (4) Where any taxpayer who is entitled to a deduction under subsection two hereof is a taxpayer to whom section nine of this Act applies, then the amount of the loss carried forward under subsection two hereof shall not be taken into account under paragraph (d) of 30 subsection one of section nine in ascertaining the excess of allowable deductions for the year in which the loss was incurred.
- (5) Nothing in this section shall apply with respect to any loss incurred by a taxpayer prior to the 35 first income year to which this Act applies.
 - 23. In the case of any company (other than a Co-operative co-operative society) which entirely or mainly either societies and purchases from or sells to its own members or shareholders, or of a mutual building, investment or 12—D insurance

insurance company (other than a co-operative society or a life assurance company), the following provisions shall apply:—

- (1) The assessable income of any such company shall include—
 - (a) all sums received from members in payment of interest or premiums of insurance or for commodities supplied or for animals or land sold to them or received in respect of commodities, animals or land sold by the company whether on its own account or on account of its members; and
- (b) contributions levied on its suppliers based on the quantity or value of commodities, animals or land supplied, which in the opinion of the Commissioner are in effect a reduction in the amounts paid to suppliers for commodities, animals or land so supplied:

Provided that when any such contributions so levied are included in the income of such company, they shall not be included in the assessable income of the suppliers.

- (2) In arriving at the taxable income of any such company, there shall be deducted, in addition to any other deductions allowed by this Act, the amount distributed, within nine months after the close of the income year, among its members or shareholders, based on purchases or payments of interest or premiums of insurance by members or shareholders or on sales by members or shareholders to the company:
 - Provided that where any such company makes sales to persons other than members or shareholders, only so much of the amount distributed as bears to the total amount distributed the same proportion as the amount of

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of the sales to the shareholders or members bears to the total amount of the sales by the company, shall be allowed as a deduction.

(3) No deduction shall in any case be allowed in respect of the amount distributed among the members or shareholders as interest in respect of, or as dividends on, shares.

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(4) The taxable income of a co-operative society shall be assessed subject to section sixty-three of the Co-operation Acts, 1923–1928, or any amendment thereof or any enactment substituted therefor.

24. (1) When a foreign company or non-resident Carriers by person carries passengers, live-stock, mails, or goods ship.

15 shipped in the State, either as owner or charterer of any C'wth Act, 1922-27, vessel, such company or person shall by itself or himself s. 27.

or by the master or its or his agent in the State, within N.S.W. Act, the prescribed time or when the Commissioner may s. 1912, No. 11, require, make a return of the full amount payable to

20 it or to him, whether such amount is payable in the State or beyond the State, in respect of the carriage of such passengers, live-stock, mails or goods.

Such company, person or master or other agent shall be assessed thereon in respect of income directly or 25 indirectly derived from a source within the State, and the taxable income shall, if such taxable income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed at an amount equal to seven and one half five pounds for every one hundred 30 pounds so payable as aforesaid.

by such person or company, or by the master or other such agent, the Commissioner may determine the amount payable to such person or company in respect of the 35 carriage of passengers, live-stock, mails and goods, and may assess the tax payable on seven and one half five pounds per centum of that amount, and the master shall be assessed thereon and shall be liable to pay the tax assessed.

(3) Where a return is made as required by this section, and an assessment in respect of that return is made on the master or other agent, and the tax is not paid as required by or under this Act, the master shall

5 be liable to pay the tax so assessed.

(4) Wherever an assessment is made upon the master or wherever the master becomes otherwise liable to pay the tax assessed, the Commissioner shall give notice of such assessment or liability to the master, and such 10 master shall thereupon pay the tax prior to the clearance of the ship, and subject to any law of the Commonwealth, the Collector of Customs shall have power to detain the ship until such payment is made.

25. (1) When any person in the State (herein termed Agents selling 15 "the agent") on behalf of a principal resident or carry-goods in the State for noning on business out of the State or on behalf of a foreign resident. company, sells or disposes, or is instrumental in selling See N.S.W. or disposing of any property for the principal, whether No. 11, s. 18, such property is in the State or is by the contract to be Hughes v.

20 brought into the State, and whether the contract is made Murro, 9 C.L., R 289. by the agent in the State or by or on behalf of the principal out of the State, and whether the moneys arising therefrom are paid to or received by the principal directly or otherwise, the moneys arising therefrom shall

25 be deemed to be income derived by the principal from a business carried on by him in the State, and the taxable income derived therefrom by the principal shall, if such income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed on an

30 amount of taxable income equal to five pounds for every one hundred pounds of the amount for which such property has been sold or disposed of.

(2) Such agent shall as regards such income be subject to the provisions and entitled to the benefits

35 relating to agents contained in this Act.

(3) The method of assessment provided by this section shall not apply to the proceeds of the sale in the State by an agent on behalf of a person resident or carrying on business in any other State of the Commonwealth 40 of any agricultural or orchard produce, wool or livestock produced in such other State.

26. (1) The taxable income of a mutual life Life assurance company, carrying on business in the State, assurance companies, shall be arrived at by taking as a basis all assessable See C'wth income from investments, including income from rents Act, 1922-1927, s. 20. S.A. Act, from the expenses arrived at under subsection two hereof. 1927, No. To the amount so ascertained there shall be added any 1,787, s. 30. taxable income assessable under the provisions of section twelve.

10 (2) The amount allowable as a deduction on account of the expenses of a mutual life assurance company shall be such amount as bears to the total expenses (both in and outside the State) incurred by the company in the general management of the business, not including

15 expenditure exclusively incurred in gaining or producing the premium income of the company, the same proportion as the assessable income from investments, including income from rents, bears to the total income of the company from its investments (wherever derived) 20 including income from rents.

"Expenses" in this subsection shall not include any payment of income tax or any other deduction which is prohibited under provisions of section twenty-one of this Act.

"Total income from investments (wherever derived)" shall not, so long as the exemption provided in section ten continues, include any interest derived from any bonds, debentures, stock, or other securities referred to in paragraph (r) of subsection one of section ten.

(3) The taxable income (other than taxable income assessed under the provisions of section twelve) of a mutual life assurance company shall not be assessed at an amount less than an amount which

35 bears the same proportion to the amount which would be assessed as the taxable income of such a company if all its income from investments, including income from rents, were treated as derived from a source in the State, as the amount assured under policies held by New

40 South Wales policy-holders at the end of the income 1 door

year bears to the total of the amount assured under policies held by all its policy-holders at the end of such income year.

- (4) In the case of a company (other than a 5 mutual life assurance company) carrying on the business of life assurance in the State the taxable amount of income from life assurance business shall be determined on a similar basis to that herein provided in the case of a mutual life assurance company.
- 10 (5) In the case of any company to which this section applies, and which also carries on a business other than life assurance, the investments and expenses to be taken into account shall be the investments and expenses in respect of its life assurance business, and 15 the taxable income of such other business shall be added to the taxable income of the life assurance business.
- (6) No assessment shall be made on any company (including a mutual life assurance company) in respect of its life assurance business unless the company derives 20 a profit and surplus from such business. In ascertaining such profit and surplus, all rents, interest and other profits and earnings in respect of or in relation to such business (whether derived in or outside the State) including interest chargeable by the company on overdue 25 premiums shall be included, but no deduction shall be made in respect of any of the matters prohibited to be deducted by section twenty-one of this Act.
- 27. In the case of any person carrying on business Income of (other than a business to which sections twenty-four and person carrying on busi-30 twenty-six apply) both in and outside the State the ness in and income derived from sources in the State shall be deter-outside the State. mined as follows:-

(a) Where the taxable income derived from $^{\text{N.S.W. Act,}}_{\text{s. 19 (2)}}$. sources in the State is capable of being kept separate and apart from income derived from sources outside the State the taxable income derived from sources in the State shall be the actual amount of taxable income so derived.

(b) In all other cases the person liable to make the return shall furnish the Commissioner

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Income Tax (Management).

with a return showing a true estimate of the amount of the net income which has been derived from sources in the State. In making such estimate there shall be added to the income definitely ascertainable as being derived in the State a proper proportion of the income which cannot be definitely allocated to sources in or outside the State. The return shall set out the method by which any such apportionment has been ascertained, and shall be accompanied by a full and complete statement of all income and expenditure and assets and liabilities in connection with the business both inside and outside the State. The Commissioner may accept such estimate or may without limitation of his powers under section forty-two or any other section of this Act assess the taxable income derived from sources in the State by ascertaining in accordance with this Act the total taxable income which would have been derived from the business if the income from sources both in and outside the State were derived from sources in the State and apportioning such total taxable income as between sources in and outside the State in proportion to either—

- (i) the sales in the State as compared with the total sales, or if there are no sales both in and outside the State, the revenue derived from sources in the State as compared with the total revenue; or
- (ii) the assets used in the State in connection with the production of taxable income as compared with the total assets employed in the production of the total taxable income referred to:

Provided that if in the case of any nonresident person, or in the case of a foreign company, the Commissioner is satisfied that the information necessary to determine the income arising

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arising from sources in the State cannot be obtained or is not satisfied that the return discloses the true state of affairs (without limiting any other powers possessed by him under this Act), he may assess the taxable income of that person or company at a sum equal to seven and one half pounds in every one hundred pounds of the total sales made in the State, or, if there are no sales in the State, at a sum equal to seven and one half pounds for every one hundred pounds of the total revenue derived in the State, and such person or company shall be liable to pay income tax thereon.

15 **28.** (1) Whenever—

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(a) by reason of the manufacture, extraction from ment of income derived the earth, winning, production or purchase of within and any goods, substance, product, or commodity in State from the State and their sale outside the State; or manufactures, &c.

Apportion-

- (b) by reason of successive steps of extraction, 20 winning, production, or manufacture in and outside the State; or
 - (c) by reason of the making of contracts in the State and their performance outside the State, or vice versa; or
 - (d) for any other like reason

the source of any income is not exclusively in the State, that income shall be apportioned between its source in the State and its source outside the State, as-prescribed 30 by regulations, or if there is no regulation applying to

the ease in such manner as shall be determined by the Commissioner.

(2) Provided that where in the opinion of the See N.S.W. Commissioner it is difficult or impracticable to determine Act, 1912, No. 11, s. 33 35 whether income is assessable under this section or under (1)(d). some other section or sections of this Act, or where in the opinion of the Commissioner such income is assessable both under this section and under some other section or sections of this Act, the Commissioner may

at his option assess such income under the provisions of the section which is in his opinion the most appropriate to the circumstances of the case.

29. (1) Notwithstanding any other provision in this Taxation 5 Act, when any business which is carried on in the State where local to the state business (other than a business to which sections twenty-four controlled and twenty-six apply)—

C'wth Act,

(a) is controlled principally by non-resident persons 1922-1927, or a foreign company; or

- (b) is carried on by a company, a majority of the 8 & 9 Geo. V c. 40, Gen. 10 shares in which are held by or on behalf of—Rules 7 to 9.
 - (i) a foreign company; or
 - (ii) another company which carries on business outside the State; or
- 15 (iii) persons who hold a majority of the shares in a company such as is referred to in subparagraphs (i) and (ii); or
- (c) is carried on by a New South Wales company which holds, or on behalf of which other 20 persons hold, a majority of the shares in a foreign company or a company carrying on business outside the State,

and it appears to the Commissioner that on account of these circumstances, or on account of any other circum-

- 25 stances, the course of the business can be so arranged, and is so arranged, 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 or company carrying on the business in the
- **30** State 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. If in his opinion, upon information subsequently obtained, the circumstances so

35 warrant, the Commissioner may vary such percentage either by way of increase or reduction, and the assessment shall be adjusted accordingly.

(2) Section 18A of the Income Tax (Manage-Repeal of ment) Act, 1912, as inserted by section five of the N.S.W. Act, Income 1912, No. 11.

Income Tax (Management) Amendment Act, 1925, is hereby repealed, and such repeal shall be retrospective from the date of the commencement of such section.

(3) This section shall be applied retrospectively 5 to the income of the years of income ended on the thirtieth day of June, one thousand nine hundred and twenty-five, the thirtieth day of June, one thousand nine hundred and twenty-six, and the thirtieth day of June, one thousand nine hundred and twenty-seven, as 10 far as regards any company engaged during those years in the transactions mentioned in the said section 18A, or in the business of distributing motion picture films.

(4) For the purposes of this section and section thirty, shares held by or in the names of persons who 15 are relatives by blood, marriage, or adoption, may be treated by the Commissioner as if they were held by any one of such persons.

30. (1) Any two or more companies which consist Companies substantially of the same shareholders may, if the consisting of substantially 20 Commissioner considers fit, be deemed to be a single the same company, and in such case shall be jointly assessed and shareholders. liable accordingly.

(2) Two companies shall be deemed to consist 1910-1927, substantially of the same shareholders if not less than 25 three-fourths of the paid-up capital of one of them is held by or on behalf of persons who hold three-fourths of the paid up capital of the other. Shares in one company held by or on behalf of another company shall for this purpose be deemed to be held by shareholders

30 of the last mentioned company.

31. With a view to preventing the avoidance of where a income tax through the withholding from distribution company has of income of a company, it is hereby enacted as follows :- ably distri-

(a) Where a company has not within nine months buted its after the close of any income year distributed income. to its members or shareholders (in such manner C'wth Act, as to render the amount distributed liable to \$.21. be included by them as assessable income in their returns) at least two-thirds of its taxable income of such income year, the Commissioner shall may determine whether a sum or a further

C'wth Land

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sum (not exceeding the excess of two-thirds of the taxable income of the company over the amounts, if any, distributed by it to its members or shareholders) could reasonably have been distributed by the company to them out of such taxable income:

Provided that in the case of a company to which this section applies, which, in the opinion of the Commissioner is a holding company, this paragraph shall be read as if, in place of the words "at least two-thirds" there were substituted the words "the whole," and as if the words "of two-thirds" were omitted.

- (b) The Commissioner shall assess the tax and the additional tax, if any, which would have been payable by the members or shareholders if the sum or the further sum determined by the Commissioner in accordance with paragraph (a) of this section had been distributed to the members or shareholders who would have been entitled to receive it in proportion to their interests in the paid-up capital of the company.
 - (c) The company shall pay to the Commissioner the amount of the tax and additional tax assessed under paragraph (b).
- (d) The provisions contained in the Schedule to this Act shall have effect as to the companies to which this section shall apply, the computation of the taxable income of a company for the purposes of this section, the basis on which a determination may be made by the Commissioner, the basis on which the tax or the additional tax payable by the members or shareholders shall be assessed, and otherwise for the purpose of carrying into effect, and in connection with, this section.

32. (1) Subject to the following provisions of this Income of section the income derived by a husband and wife husband and who are not separated either under an order of a court wife not 20 of competent jurisdiction or under a separation agreement shall be assessed for, and liable to income tax as

if it were income derived by one person, whose residence shall be deemed to be the residence of the husband unless apart from the provisions of this section such husband would not be liable to pay income tax, in 5 which case the residence shall be deemed to be that of the wife.

- (2) The husband and the wife shall each be assessed and shall be liable in respect of his or her proportion of the total income tax so assessed.
- 10 (3) The amount of such income tax for which each party shall be liable shall be ascertained by dividing the total income tax assessed under subsection one hereof in proportion to the respect ive amounts of such income which, if the husband and the wife were single persons, 15 would be assessed as their net income respectively: Provided that for this purpose in ascertaining such amounts no deductions shall be made under the provisions of subsection two of section nineteen.
- (4) If, during any income year, both parties are 20 resident persons and the net income of either party is less than one hundred and lifty pounds, in making an assessment under the preceding provisions of this section the amount of the deduction ascertained under the provisions of paragraph (a) of subsection three of section 25 nineteen shall be increased by the amount of such net income:

Provided that if the net in come of each of such parties exceeds one hundred and lifty pounds, there shall in making any such assessment be substituted for the 30 amount of two hundred and fifty pounds, wherever appearing in paragraph (a) of subsection three of section nineteen, the amount of four hundred pounds.

(5) Subsection one of this section shall not apply to-

(a) the income of a wife arising from property which has not been derived directly or indirectly from her husband, or arising from property not being a conversion or investment of property so

35 derived;

(b)

	Income Tax (Management).			
	(b) the earnings, pe	nsion, superannuation or		
	earnings in or in	es of a wife other than		
	(i) any busine	ss carried on by her husband		
5	or by her a	nd her husband and in either		
	case with o	r without any other person;		
	(ii) any busine	ss carried on by her which		
	was substa	ntially established by her		
	husband;			
10	(iii) any busine	ss carried on by a company		
	to which th	e provisions of section thirty-		
	one may b	e applied and in which her		
	husband is	a substantial shareholder or		
7-	in which sh	e is a substantial shareholder		
15	by virtue	of shares derived by her		
	(6) (a) The wife sh	indirectly from her husband. all be assessed for and liable		
	to income tax in respect of	f her income excepted from		
	the operation of subsection	one by subsection five.		
20	(b) Any deduct	ions under subsection two		
	of section nineteen to which	h the wife may be entitled		
	shall be made in the first p	lace from such income, and		
	the excess, if any, shall b	e deducted from her other		
	income.			
25	(c) The deductio	n otherwise allowable under		
		nineteen from the income of		
	the wife referred to in par	agraph (a) of this subsection		
	snall be reduced by the amo	unt by which the deduction three is increased by the		
30	operation of subsection four	of this section.		
	(7) If in any case	to which subsection one of		
	this section would otherwis	e apply during any income		
	year—			
	(a) a husband and wif	e are divorced; or		
35	(b) a husband and w	ife have separated either		
	under an order of	a court of competent juris-		
	diction or under a	separation agreement; or		
	(c) either husband or			
10	the husband and wife or the	personal representatives as		
40	the case may be shall each	be separately assessed and		
		pect of income derived by		
		whole of the income year.		
	(8) Nothing in this	section shall relieve either a or her liability to furnish a		
45	separate return of income.	or her hability to furnish a 32.		
	separate return of income.	32.		

Income Tax (Amendment).

32. (1) Subject to the following provisions of this section—

(a) the income derived by a wife from a postnuptial settlement made by her husband since the thirteenth day of September, one thousand nine hundred and fifteen, may be assessed for income tax as if it were income derived by her husband, and if so assessed her husband shall be liable to income tax in respect thereof accordingly:

accordingly;

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(b) the income derived by a husband from a postnupital settlement made by his wife since the thirteenth day of September, one thousand nine hundred and fifteen, may be assessed for income tax as if it were income derived by his wife, and if so assessed his wife shall be liable to income tax in respect thereof accordingly;

(c) where a company to which section thirty-one may be applied and in which a wife is a substantial shareholder by virtue of shares comprised in a post-nuptial settlement to which paragraph (a) applies, or in which the husband is a substantial shareholder, pays any sum as a bonus, fee, salary, commission, or allowance to the wife in excess of what the Commissioner considers a reasonable amount, the excess may (notwithstanding any other provision of this Act) be assessed for income tax as if it were income derived by her husband, and if so assessed her husband shall be liable to income tax in respect thereof accordingly:

Provided that a husband shall not be liable to be assessed under paragraph (a) or (c) hereof and a wife shall not be liable to be assessed under paragraph (b) hereof if he or she as the case may be satisfies the Commissioner that the post-nuptial settlement referred to in paragraph (a) or (b) or that the payment of the bonus, fee, salary, commission, or allowance referred to in paragraph (c) was not made with a view to avoiding or evading any liability to income tax on the part of a husband or wife.

Income Tax (Amendment).

(2) Subsection one of this section shall not apply to-

(a) the income derived by a wife from a postnuptial settlement referred to in paragraph (a)

thereof, or 5

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(b) the income derived by a husband from a postnuptial settlement referred to in paragraph (b) thereof, or

(c) the excess of payments of bonus, fee, salary, commission, or allowance referred to in para-

graph (c) thereof; except to the extent to which the income referred to in paragraph (a) of this subsection and the excess of payments referred to in paragraph (c) of this subsection 15 or, as the case may be, the income referred to in para-

graph (b) of this subsection exceeds the sum of two

hundred and fifty pounds in any income year.

(3) For the purposes of this section a postnuptial settlement includes any conveyance, delivery or 20 transfer of property, but does not include a post-nuptial settlement in writing made in pursuance of a written ante-nuptial agreement for such settlement entered into by the husband and the wife in consideration of the marriage.

(4) For the purposes of subsection one the income derived from a post-nuptial settlement shall include the income from property substituted for the

property settled, or being a conversion thereof.

(5) Notwithstanding any other provision in this 30 Act the deduction in respect of a wife referred to in sub-paragraph (ii) of paragraph (c) of subsection two of section nineteen shall be reduced by the sum of one pound for every pound by which the net income of the wife exceeds two hundred pounds.

(6) In any case to which subsection one of this 35 section applies, the Commissioner may recover from the spouse in receipt of the income referred to in paragraph (a) or paragraph (b) of that subsection or in receipt of the excess of payments referred to in paragraph (c)

40 thereof the sum which bears the same proportion to the total tax payable by the spouse assessed under the said subsection

subsection in respect of such income or excess as such income or excess bears to the total income included in that spouse's assessment. This subsection shall only apply where the Commissioner is of opinion that it is 5 impracticable to recover the tax from the spouse so assessed. The right of appeal by a taxpayer under sections forty-eight and fifty-two of this Act applies to this section.

- 33. A partnership shall be liable to furnish a return Partners.

 10 in respect of the income of the partnership but shall C'wth Aot, not, except as provided in this section, be liable to pay s. 29.

 any tax, but each partner shall, subject to section Qld. thirty-two, be assessed in his individual capacity in No. 34, s. 24 respect of—

 (ii) (iii).
- (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 subsections two and three of section nineteen, and under subsection three of section twenty-two, together with;
 - (b) any other income derived by him separately; and
- 25 (c) his individual interests in the income derived by any other partnership:

Provided that if any person is carrying on business in partnership—

- (i) with his wife and any of his relatives by blood, marriage, or adoption, who is under the age of twenty-one years, or
- (ii) with any such relative and whether in either case any other person is also a partner, the individual interest of such relative in the income of the partnership shall for the purposes of this Act be deemed to be the individual interest of such first-mentioned person in addition to his other individual interest,

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and he shall be allowed to deduct such amount as reasonable any such performed by him in the business.

Provided that if any person is carrying on a business in partnership—

- (i) with his or her spouse and any of his or her relatives by blood, marriage or adoption who is under the age of twentyone years; or
- (ii) with any such relative; or

(iii) with his or her spouse; and whether in any of the cases referred to in subparagraphs (i), (ii) and (iii) of this proviso any other person is also a partner, the individual interests of such relative and spouse, or such relative or spouse, as the case may be, in the income of the partnership shall, for the purposes of this Act, be deemed to be the individual interest of such first-mentioned person in addition to his or her other individual interest, and he or she shall be allowed to deduct such amounts as the Commissioner considers reasonable and as are actually paid to any such spouse and relative, or spouse or relative, as the case may be, for services actually performed in the business.

This proviso shall not be applied in any case where the partnership was entered into prior to the thirteenth day of September, one thousand nine hundred and fifteen, or in any other case where the Commissioner is satisfied that the partnership was not entered into with a view to avoiding or evading any liability to income tax. The right of appeal by a taxpayer under sections forty-eight and fifty-two of this Act applies to this section.

34. (1) A trustee shall not be liable to pay income Trustees.

40 tax as trustee, except as provided by this Act, but each C'wth Act, beneficiary who is not under a legal disability, and who so 31.

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is presently entitled to a share of the income of the trust estate shall, subject to section thirty-two, 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 deductions under subsections two and three of section nineteen, and under subsection three of section twenty-two, together with—
 - (b) any other income derived by him separately; and
- (c) his individual interests in the income derived from any other source.
 - (2) A trustee shall be separately assessed and liable to pay income tax in respect of that part of the income of the trust estate which if the trustee were
- 20 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 deductions under subsections two and three of section nineteen and under subsection three of 25 section twenty-two; and
 - (a) which is proportionate to the interest in the trust estate of any beneficiary who is under a legal disability; or
- 30 (b) to which no other person is presently entitled and in actual receipt thereof and liable as a taxpayer in respect thereof.
- (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 35 assessed in his individual capacity in respect of.
 - (a) his individual interest, upon which the trustee is liable to be assessed under subsection two of this section, in the income of each trust estate;
- (b) any other income derived by him separately; and (c)

(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 5 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 10 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 15 exercise of his discretion under the deed, will, or settlement.
- (5) Notwithstanding anything contained in this section the Governor may make regulations applying the provisions of section twenty-two, either in whole or in 20 part, with such additions, modifications, and limitations as he thinks fit to trustees carrying on a business and to incomes of beneficiaries derived from their interests in such business.
- 35. Notwithstanding anything in the preceding Income under 25 section or elsewhere contained in this Act, any income a disposition which by virtue or in consequence of any disposition person applicable, directly or indirectly, by any person, either before able to the minor or after the commencement of this Act, is payable to, unmarried or accumulated, or applicable for the benefit of a child of such person.

 30 of that person, shall, if and so long as the child is a See Imp. Act, minor and unmarried, be deemed for the purposes of this 12 and 13 Geo. V, c. 17, Act, to be the income of the person, if living, by whom s. 20 (c). the disposition was made:

Provided that any income tax which by virtue of this 35 subsection is chargeable on and is paid by the person by whom the disposition was made, may be recovered by that person from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition.

36.

36. For the purpose of section thirty-five-

Definitions (i) the expression "child" includes a step-child for the purpose of or adopted child; and

(ii) the expression "disposition" includes any trust, covenant, agreement, or arrangement.

37. The rates of income tax on the taxable incomes Graduated of companies may be fixed (either as regards the whole rates of tax on or part of the taxable income, and either as regards all companies. companies or any class or classes of companies) on 10 such graduated scale as may be fixed by the Income Tax Act declaring the rates of income tax.

PART IV.

RETURNS AND ASSESSMENTS.

38. (1) For the purpose of assessment and levy of Persons to 15 income tax, every person shall, when called upon by the furnish returns. Commissioner by notice published in the Gazette, fur- C'wth Act, nish to the Commissioner in the prescribed manner a 1922-1927, s. 32. return setting forth a full and complete statement of the N.S.W. Act, income derived by him during any income year to which 1912, No. 11, 20 this Act applies. The Commissioner may in such notice *s. 20. exempt such classes of persons as he may specify from liability to furnish a return, but such exemption shall not exempt any such person from liability to furnish a return if so required by the Commissioner under the 25 provisions of the next succeeding section:

Provided that the Commissioner may as and when he thinks fit require returns to be furnished to him before the end of any income year in respect of the income of any part of that year.

(2)

(2) Within the time mentioned in such notice or within such further time as the Commissioner may allow, every person shall deliver in the prescribed manner to the person appointed to receive the same a 5 return in the prescribed form signed by such person setting out the prescribed particulars in respect of all his income during the income year:

Provided that if the taxpayer is absent from the State or is unable from physical or mental infirmity to 10 make such return, the return may be signed and delivered by some person authorised by him.

- (3) When the income of any person cannot be conveniently returned as for a year ending on the thirtieth day of June, the Commissioner may accept 15 returns made up to the date of the annual balance of the accounts of that person, and in such case such person shall not be entitled without the consent of the Commissioner to alter the period for which his returns are made.
- 20 **39.** (1) The Commissioner may at any time require New further any person to furnish a return or a further and fuller returns. return of income either in respect of the whole or any See C'wth part of income received by such person, whether on Act, 1922-his own behalf or as an agent or trustee, and although 25 a return has been previously made by such person for

(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 30 of it by the Commissioner in such manner as may be necessary.

the same period.

- (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 35 Commissioner, make such further or other returns as the Commissioner requires for the purposes of this Act.
 - (4) Except in the case of fraud, or in respect of any year for which a return has not been furnished, nothing in this section shall empower the Commissioner

to require a return or a further or fuller return in respect of any year of income more than six years prior to the year in which the requirement is made.

40. Any return purporting to be made or signed by Returns 5 or on behalf of any taxpayer or person shall be deemed deemed duly made. to have been duly made and signed by him until the C'wth Act, contrary is proved.

41. From the returns and from any other informa-Assessment. tion in his possession, or from any one or more of Ibid. 8. 35.

10 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.

42. If-

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Default assessment.

(a) any person makes default in furnishing any *Ibid.* s. 36.

return; or

N.S.W. Act,
1912, No. 11,

- (b) the Commissioner is not satisfied with the ss. 21, 22. return made by any person, whether or not he has previously made an assessment in respect of such return; or
- 20 (c) the Commissioner has reason to believe that any person (though he may not have furnished any return or been required to furnish a return) is a taxpayer; or
- (d) the Commissioner has reason to believe that any person is about to leave the State; or

(e) any person who is resident out of the State has not, in the opinion of the Commissioner, a fixed and permanent place of business in the State, the Commissioner may cause an assessment or, as the

30 case may be, an amended assessment in respect of the income of the whole or part of an income year to be made of the amount upon which, in his judgment, income tax ought to be levied, and-in-addition, in the case-of-companies, of the amount of capital-employed

35 and-of-taxable income for the purposes of section thirty-seven-of this Act, and the person er-company so assessed shall be liable to income tax accordingly, excepting so far as he or-it establishes on objection that the assessment is excessive.

43,

- 43. Every taxpayer who has received a notice Particulars of of assessment other than a notice of an assessment made assessment. under section forty-two (a) shall, on within fourteen days N.S.W. Act, 1912, No. 11, after request, be informed by the Commissioner of the s. 23 (5). 5 amount at which the income of such taxpayer has been assessed, the amount of the deductions allowed therefrom, and the rate at which tax has been assessed thereon.
- 44. (1) The Commissioner may at any time cause to Alterations be made all such alterations in or additions to any assess- and additions to and rein-10 ment as he thinks necessary in order to insure its statement of completeness and accuracy, notwithstanding that income assessment. tax may have been paid in respect of income included in 1922-1927, the assessment:

Provided that every alteration or addition which has 15 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:

Provided further that an alteration or addition shall 20 not be made in or to an assessment 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 25 fraud or evasion

- (2) The Commissioner may at any time cause any assessment to be rescinded or he may cause any assessment previously rescinded (excepting and in so far as such action was taken in consequence of a decision 30 on an objection or an appeal) to be reinstated, provided that any reinstatement of an assessment shall, unless made with the consent of the taxpayer, be subject to objection.
- (3) When any alteration in an asse sment has 35 the effect of reducing the taxpayer's liability, such alteration shall be notified to the taxpayer, and any tax overpaid shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be refunded by the Colonial Treasurer and all shall be

Provided

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Income Tax (Management).

Provided that no refund shall be made after three six years have elapsed from the date on which the tax was originally due and payable by the taxpayer, unless to the extent to which additional tax may be payable by such taxpayer in consequence of an addition to an assessment for an income year prior to the income year to which the refund is applicable.

Notwithstanding, however, that such period of three six years may have elapsed if an application therefor has 10 been made by the taxpayer within the period of three six years such refund may shall be made.

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

 Cwth Act, 1922-1927, s. 33.
- 15 46. (1) The production of any notice of assessment copies as or of any document under the hand of the Commis-evidence. sioner, Assistant Commissioner, or Acting Commissioner Thid. s. 39. purporting to be a copy of a notice of assessment shall—
- 20 (a) be conclusive evidence of the due making of the assessment; and
- (b) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be prima facie evidence only.
- (2) The production of any document under the hand of the Commissioner, Assistant Commissioner, or Acting Commissioner purporting to be a copy of or 30 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.
- (3) Any document purporting to be under the hand of the Commissioner, Assistant Commissioner, or 35 Acting Commissioner shall be received in evidence in all courts without proof of the signature.

47. (1) As soon as conveniently may be after an Notice of assessment is made the Commissioner shall cause notice in writing of the assessment to be given to the person 1922-1927, s. 40.

N.S.W. Act,

(2) The omission to give any such notice shall ¹⁹¹², No. 11, not invalidate the assessment.

PART V.

OBJECTIONS AND APPEALS.

- 48. (1) A taxpayer who is dissatisfied with the objections.

 10 assessment made by the Commissioner under this Act C'wth Act, may, within sixty days after service by post or otherwise of the notice of assessment post to or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail all the grounds

 15 on which he relies.
 - (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 20 written notice of his decision on the objection.
- (4) A taxpayer who is dissatisfied with the decision of the Commissioner may, within thirty days after the service of notice by post or otherwise of the decision of the Commissioner, in writing request the 25 Commissioner to treat his objection as an appeal and to forward it to a Court of Review or to the Supreme Court of New South Wales in order that the objection may be heard and determined.

- (5) The Commissioner shall, if the taxpayer's request is accompanied by such fee (not exceeding one guinea) as may be prescribed, forward the appeal to—a Court of Review as requested.
- 6 (6) A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection, unless the court hearing the appeal gives leave to add further grounds.
- (7) For the purpose of hearing appeals under this 10 section, the Supreme Court shall consist of a single justice.
 - (8) On the hearing of the appeal the court may make such order as it thinks fit, and may reduce, increase, or vary the assessment.
- 15 (9) An order of the court shall be final and conclusive on all parties except as provided in this section.
 - 10) The costs of the appeal shall be in the discretion of the court.
- (11) On the hearing of the appeal, the court 20 may, if it thinks fit, state a case in writing for the opinion of the Full Court upon any question which in the opinion of the court is a question of law.
- (12) The Full Court shall hear and determine the question, and remit the case, with its opinion, to the 25 court below, and may make such order as to costs of the case stated as it thinks fit.
- (13) The Commissioner or a taxpayer may appeal to the Full Court, in its appellate jurisdiction, from any order made under subsection (8) of this 30 section.
 - (7 14) If the assessment has been reduced by the Commissioner after considering any objection, the reduced assessment shall be the assessment appealed from
- 35 (8 15) It shall not be competent for the taxpayer to take any further objection to the original assessment, nor any further objection to any amended assessment unless in such amended assessment a further liability to tax is imposed upon him, and then only with respect 40 to such further liability.

49. (1) The fact that an objection or appeal is Pending pending shall not in the meantime interfere with or appeal not to affect the assessment objected to; and income tax may payment. be levied and recovered on the assessment as if no objec-C'wth Act, 1922-1927, 5 tion or appeal were pending.

(2) If the assessment is altered on objection or appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded by the Colonial Treasurer, and amounts short-paid shall be 10 recoverable by the Commissioner as arrears.

50. The Governor may, from time to time, by notice court of in the Gazette, declare that any judge of the District Review Court shall be a Court of Review within the meaning N.S.W. Act, No. 11, of this Act, and thereupon every Court of Review con-s. 8.

15 stituted as aforesaid shall within such limits and in such cases as the Governor may prescribe in the said notice have jurisdiction to hear and determine appeals from assessments made under this Act, or the previous Act. Until a Court of Review is constituted under this Act 20 every Court of Review existing at the date of this Act

shall have jurisdiction as aforesaid.

51. (1) The Court of Review constituted under this Proceedings Act or existing at the date of this Act shall be a Court and powers of of Record, and shall hear and determine any appeal Review. 25 transmitted to it as hereinbefore provided and subject Ibid. ss. 26 to to this Act any appeal under the previous Act and may 29, 31, 32.

alter any assessment appealed against and assess the tax and additional tax payable by the taxpayer in respect of the assessment appealed against.

(2) In addition to any other powers conferred

upon it by this Act, the court may-

(a) fix the time and place for the sittings of the court and adjourn such sittings to another time and place;

35 (b) amend any order of the court;

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(c) order the Commissioner to pay to the appellant his costs of an appeal from any assessment in respect of which the Commissioner may have acted unreasonably or oppressively towards the appellant;

(d)

- (d) order the appellant to pay to the Commissioner any tax or additional tax found to be due, and his costs of any frivolous or vexatious appeal;
- (e) on the application of the appellant exclude from the court during the hearing of an appeal all or any persons other than the parties or their representatives;

- (f) assess any costs payable under any order of the court, or order that such costs be taxed by the taxing officer of the Supreme Court or of any District Court, whereupon such costs shall be taxed by such officer accordingly;
- (g) exercise all the powers for the time being of a District Court with reference to the issue of summonses and subpœnas compelling the attendance of witnesses and production of documents, and punishing persons who have disobeyed subpœnas, or who being in court refuse to be sworn in or to give evidence;
- (h) for cause shown allow further time within which an objection may be made (but in no case shall time be allowed so as to exceed nine months from the date of service of the notice of assessment) notwithstanding that the time for making an objection may have expired;
- (i) order the Commissioner to cause any judgment N.S.W Act, obtained by him against the appellant to be \$\frac{1912}{s.30}\$, No. 11, amended or vacated to conform to the determination on the appeal.
- (3) Any order of the court for the payment of any tax, additional tax, or costs may be made subject to conditions, and shall have the effect of and shall be deemed to be a judgment of the Supreme Court for the 35 amount of such payment, and judgment for such amount may be entered up in such court by the Commissioner against the appellant, and the said amount may be recovered by process of such court as in pursuance of such judgment.

(4) Twenty-one days' notice of the day and place fixed for the hearing of any appeal shall be given by the court to the Commissioner and to the appellant.

(5) The Commissioner and the appellant may bappear on any appeal by counsel, solicitor, or agent

authorised in that behalf.

(6) The determination of the court on appeal shall relate solely to the income the subject of the assessment appealed from, and shall not affect the right 10 of the Commissioner to assess any other income of the appellant.

(7) An order or decision of the court shall be final and conclusive on all parties except as provided in

this section.

16 (8) The court shall, if required in writing by any party, within the prescribed time and upon prescribed conditions, or may of its own motion, state and submit a case for decision by the Supreme Court on any question of law arising before the court.

20 (9) The Supreme Court, for the purposes of this section, may consist of two judges only, and shall have power to deal with the costs of and incidental to any case submitted under this section as it may think fit.

(10) The Governor may by regulations prescribe 25 the rules to be observed in proceedings under this section or section forty-eight.

(11) Subsections eight to thirteen both inclusive of section forty-eight shall not apply to a Court of Review.

30 **52.** (1) Notwithstanding anything contained in Appeals of the proviso to paragraph (k) of section eleven, sec-Review (m), (o), and (p) of section assisted by twenty-one and sections the twenty-nine and thirty-one a taxpayer who is dissatisfied determination or assessment assisted by the Companion of the the Companion of the taxpayer who is dissatisfied determination or assessment assisted by taxpayer who is dissatisfied determination or assessment assisted by the control of the

twenty-nine and thirty-one a taxpayer who is dissatisfied 35 with any opinion, decision, by the Commissioner under or section, shall, after the have the same right of objection as is provided in section forty-eight, and also the same right of appeal against 40 any decision of the Commissioner upon any such objective.

tion:

52. (1) Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner under this Act (whether in the exercise of a discretion conferred upon the Commissioner or otherwise) and who is dissatisfied with the assessment made pursuant to or involving such opinion, decision or determination shall, after the assessment has been made, have the same right of objection in respect of such opinion, decision or determination and assessment as is provided in section forty-eight, and also the same right of appeal against any decision of the Commissioner upon any such objection, except that such appeal shall be made to a Court of Review only.

15 (2) For the purpose of any appeal in pursuance of this section the Court of Review shall be assisted by two assessors appointed under this Act, who may advise the court, but shall not adjudicate on the matter before

the court.

20 (3) The assessors shall be appointed by the Governor, but one of them shall be a public accountant of at least ten years' standing.

(4) The assessors shall be appointed in such manner and shall be paid such allowances and fees as

25 may be prescribed.

53. (1) The provisions of this part of this Act shall Appeals apply to all assessments which may hereafter be made against under the provisions of the previous Act, and also to all under assessments made under such previous Act in respect of previous Act.

30 which the time for lodging an appeal has not elapsed at the commencement of this Act.

(2) Any appeal against any assessment under the previous Act, the hearing of which had not been commenced by the Court of Review as constituted 35 under that Act at the date of the commencement of this Act, shall be treated in the same manner as if it were an objection lodged under the provisions of this Act.

PART VI.

COLLECTION AND RECOVERY OF TAX.

54. (1) The income tax shall be due and payable Date of payto the Commissioner on such day as shall be fixed in ment of tax. 5 the notice of assessment.

1912, No. 11,

- (2) Where an assessment is amended in accord- C'wth Act, ance with this Act and additional tax is thereby payable 1922-1927, by the taxpayer, the additional tax shall be due and ss. 54, 56. payable to the Commissioner on such day as shall be 10 fixed in the notice of amended assessment.
 - (3) If any income tax or additional income tax payable under an assessment made before the thirtyfirst day of July, one thousand nine hundred and twenty-nine, is not paid within thirty days after such
- 15 tax shall have become due and payable by the taxpayer or within such further time as the Commissioner may allow under the next succeeding section, or if any income tax or additional income tax payable under an assessment made on or after the thirty-first day of July,
- 20 one thousand nine hundred and twenty-nine is not paid within sixty days after such tax shall have become due and payable by the taxpayer, or within such further time as the Commissioner may allow under the next succeeding section, the taxpayer shall be

25 liable to pay additional tax of an amount equal to ten per centum upon the amount of the tax unpaid:

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 30 thereof.

55. The Commissioner may in such cases as he Extension of thinks fit-

time to pay and instal-

C'wth Act,

- (a) extend the time for payment as he considers ments. the circumstances warrant, or
- (b) permit the payment of tax to be made by . 55. instalments within such time as he considers the circumstances warrant.

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56. Income tax or additional tax due to the Tax a Crown Commissioner under this Act shall be deemed to be a debt. debt due to the King, and shall be collected and 1912, No. 11, received by the Commissioner on account of and shall s. 7. 5 be paid into the Consolidated Revenue. Any income C'wth Act, 1922-1927, tax unpaid, including any additional tax, may be sued s. 57. for and recovered in any court of competent jurisdiction by the Commissioner:

Provided that a payment of income tax by means of Exchange, 10 a cheque drawn by a taxpayer on a branch of a bank situated in any place in New South Wales where the taxpayer carries on his business need not include

exchange.

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57. If, in any proceedings against a taxpayer for substituded 15 the recovery of income tax or additional tax, the Service. defendant—

(a) is absent from Australia and has not to the s. 58. knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia authorised to accept service on behalf of his principal and 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 25 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.

58. (1) Every person who is— Trustees, 30 (a) trustee or official assignee in the estate of any agents, and person whose property is being administered notice. under any law of the State or the Common- See C'wth wealth relating to bankruptcy, or who has in Act, 1922-1927, any manner assigned his estate or part thereof ss. 59, 60. 35

for the benefit of his creditors or any of them:

(b) receiver for any debenture holders and who has taken possession of the assets of a company; or

(c) liquidator of any company which is being 40 wound up; or

(d)

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Income Tax (Management).

(d) trustee in the estate of any deceased person; or
(e) an agent for a principal who is a non-resident person and has been required by his principal to wind up the business or to realise the assets

of his principal, shall, subject to the Commonwealth Constitution and any law of the Commonwealth thereunder, give notice in writing to the Commissioner within fourteen days

after his becoming such trustee, official assignee,
10 receiver in possession, liquidator, or agent, and shall set
aside such sum out of such estate or the property of
such company, estate, or principal as appears to the
Commissioner to be sufficient to provide for any income
tax and additional tax which then is or will thereafter

15 become payable in respect of such estate or by such company or principal.

(2) Any person who fails to comply with any of the provisions of this section shall be personally liable for any income tax and additional tax which then is or 20 will thereafter become payable in respect of such estate or by such company or principal, and in addition shall be guilty of an offence and shall be liable to a penalty of not less than one pound nor more than fifty pounds:

Provided that where more persons than one become 25 personally liable for income tax or additional tax such

liability shall be several as well as joint.

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59. The following provisions shall apply in any case where tax where, whether intentionally or not, a taxpayer escapes not paid in full taxation in his lifetime by reason of not having C'wth Act, 30 duly made full, complete and accurate returns:—

1922-1927,

(1) The Commissioner shall have the same powers and remedies against the trustees of the taxpayer in respect of the taxable income of the taxpayer as he would have had against the taxpayer in his lifetime;

(2) the trustee shall make such returns as the Commissioner requires for the purpose of an accurate assessment;

(3) the assessment shall be at the rates applicable to the income of the income year in which the income was derived, and the amount shall 13—F (where

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Income Tax (Management).

(where the taxpayer's default was intentional) be double the amount of the difference between the income tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the hands of the trustees;

(4) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section, and recovering the tax or double tax as in the case of ordinary assessments and taxation.

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- (5) The trustees shall only be personally responsible 15 to the extent of the taxpayer's estate in the hands of such trustees at the date when any claim is made under this section by the Commissioner against such trustees.
- 60. (1) Where at the time of a person's death, Provision for 20 income tax has not been assessed and paid on the whole payment by of the income derived by that person up to the date of tives of his death, the Commissioner shall have the same powers deceased and remedies for the assessment and recovery of income Cwth Act, tax from the trustees as he would have had against 1922-1927, 25 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 30 furnish a return, the Commissioner may, under section forty-two of this Act, make an assessment of the amount on which, in his judgment, income tax ought to be charged.

61. For the purpose of recovering all moneys due Powers over 35 to him under this Act, the Commissioner shall have property such and the like remedies against all property of any in agent or kind vested in or under the control or management or trustee. in the possession of any agent or trustee of a taxpayer (h). as he would have if such property were vested in or 40 under the control or management or in the possession of

the taxpayer himself, and in as full and ample a manner.

62. When it appears that several persons are in Consolidation receipt of income for or on behalf of a non-resident of assessment person or person absent from the State, the Commis-residents. sioner, if it appears to him to be expedient to do so, Qld., 5 may consolidate all or any of the assessments thereof, No. 34, 8. 59. and declare any one of such persons to be the agent of such non-resident person or person absent from the State in respect of such consolidated assessment, and require him to pay income tax on the amount thereof,

10 and thereupon such person shall become liable therefor.
63. (1) Every trustee and agent and every other Recovery of person who, under the provisions of this Act, pays any tax paid on income tax for or on behalf of any other person, shall another. be deemed to have been acting under the authority of Cwth Act, 1922-1927,
15 the taxpayer and of all other persons concerned, and is ss. 63 and s9.

hereby indemnified in respect of such payment, and 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 the same out of any moneys in his

20 hands or that may subsequently come into his hands belonging or payable to that other person.

(2) Every trustee, agent, or person who by or under this Act is made liable to pay income tax for or on behalf of any other person is hereby authorised 25 and required to retain from time to time all moneys

(whether capital or income) which come to him in his representative capacity or so much thereof as is sufficient to pay the income tax which is or will become due.

30 He is hereby made personally liable for the income tax if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he parts with any such money, but he shall not be otherwise personally liable for the tax:

25 Provided that the Commissioner may, upon application by such agent or trustee or other person, permit disposal of such money or part thereof as he considers

necessary.

64. Where two or more persons are jointly liable to Contributions 40 income tax they shall each be liable for the whole of from joint the tax, but any of them who has paid the tax may C'wth Act, recover contribution as follows:—

1922-1927.

(a) a person who has paid the tax in respect of any of the taxable income may recover by way of contribution

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.

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65. (1) The Commissioner may, by notice in writing Commissioner 15 (a copy of which shall be forwarded to the taxpayer to may collect tax from the last place of address known to the Commissioner), person owing taxpayer money.

(a) any person from whom money is due or C'wth Act, accruing or may become due to a taxpayer; 1922-1927

(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

25 (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 allows, the money or so much thereof as 30 is sufficient to pay the tax due by the taxpayer, and the penalties 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 35 and liable to a penalty of 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 pay-40 able by that person to the taxpayer.

(4)

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Income Tax (Management).

(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 5 of such payment.

(5) If the tax due by the taxpayer, or the penalties 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 10 shall forthwith give notice to the person of the payment.

(6) In this section—

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"Tax" means income tax and includes any additional income tax and judgment debt and costs in respect of income tax and additional income tax.

"Person" includes company, partnership, State officer and any public authority or body (corporate or unincorporate) of the State and, subject to the Commonwealth Constitution and any law of the Commonwealth, shall include any Commonwealth officer and any public authority or body (corporate or unincorporate) constituted under any law of the Commonwealth.

fifty-four and of section fifty-five of this Act shall apply of sections to any assessments which may hereafter be made under 65 in connection with the previous Act.

(2) The provisions of section sixty-five of this 30 Act shall be applicable to any tax assessed under the previous Act which, at the date of commencement of this Act, had not been paid, and to any tax which may hereafter be assessed under such previous Act. "Tax" in this subsection means "tax" as defined in

35 the preceding section and also includes all fines, penalties and costs imposed on the taxpayer by and under the previous Act.

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PART VII. PENAL PROVISIONS. **67.** (1) Any person who— Offences. (a) fails or neglects duly to furnish any return C'wth Act, or information or give the security required by \$\frac{1922-1927}{s. 66}\$. 5 section eighty-nine six or to comply with any other requirement of the Commissioner as and when required by this Act or the regulations in force under this Act, or by the Commissioner; 10 (b) without just cause shown by him refuses or. neglects duly to attend and give evidence when required by the Commissioner or other duly authorised person, or to answer fully and truly any question put to him, or to produce 15 any book or paper required of him by the Commissioner or any such person; or (c) makes or delivers a return which is false in any particular or makes any false answer moiwhether verbally or in writing, 20 shall be guilty of an offence, and shall be liable to a penalty of not less than two pounds nor more than one hundred pounds. (2) A prosecution in respect of an offence 25 against paragraph (a) or (c) of subsection one of this section may be commenced at any time. (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 30 convicted, shall be guilty of an offence and punishable as provided in section seventy of this Act. (4) It shall be a defence to a prosecution for an offence against paragraph (c) of subsection one of this section if the defendant proves that the false particulars 35 were given or the false statement was made through ignorance or inadvertence.

ignorance of inadvertence.

68. (1) Notwithstanding anything contained in the Additional tax in certain tax in

(a) fails or neglects duly to furnish any return or cases.

(b) cases.

(a) fails or neglects duly to furnish any return or cases.

(b) cases.

(c) wth Act,

(c) wth Act,

(d) or the regulations in force thereunder or by s. 67.

(b)

- (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 subsection 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

10 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

15 the greater, or, if a taxpayer to whom paragraph (b) or (c) of this subsection 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 tax assessed upon the basis of 20 the return lodged, whichever is the greater in addition

20 the return lodged, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-four of this Act:

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, 25 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 the next succeeding section, such action 30 may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

69. Any person who, with intention to defraud, in Understate-any return understates the amount of any income, shall ment of income.

35 be guilty of an offence, and shall be liable to a penalty C'wth Act, of not less than fifty pounds nor more than five 1922-1927, 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 40 been accepted as the correct income.

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Income Tax (Management).

70. Any person who, by any wilful act, default or Avoiding neglect, or by any fraud, art or contrivance whatever, taxation. avoids or attempts to avoid assessment or taxation, shall 1922-1927, be guilty of an offence and shall be liable to a penalty of s. 69. 5 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.

71. A prosecution in respect of an offence against Time for commencing either of the two last preceding sections may be com- prosecution of the offence.

Procedure Sections may be compressed in Procedure 100 menced at any time within six years after the commission 1927, y. 70.

N.S.W. Act, 1912, No. 11, p. 36.

72. Payment of penalties under this Act shall not relieve from tax relieve any person from liability to assessment and pay-C'wth Act, 1923-ment of any tax for which he would otherwise be liable. C'wth Act, 1923-ment of any tax for which he would otherwise be liable.

- 73. Any person who obstructs or hinders any officer Obstructing or person acting in the discharge of his duty under this officers. Act or the regulations in force thereunder, shall be Ibid. s. 72. guilty of an offence, and shall be liable to a penalty of not less than one pound nor more than fifty pounds.
- 74. Any person guilty of a breach of this Act for General which no penalty is otherwise provided, shall be liable penalty. N.S.W. Act, to a penalty not exceeding fifty pounds. 1912, No. 11,

75. Any penalty imposed by this Act or by regula- Recovery tions in force thereunder may be recovered in a penalty. 25 summary manner before two or more justices, or a Ibid. s. 39. stipendiary or police magistrate.

76. In any action against an officer or person for Action anything done in pursuance of this Act, or in the against execution of the powers conferred thereby, or by the Ibid. s. 40. 30 regulations, the defendant in such action may plead the general issue, and give the special matter in evidence at the trial.

77. In any prosecution under this Act an officer or Protection of any person employed in the administration of this Act witness. 35 shall not be compelled to disclose the fact that he 1922-1927, received any information, or the nature thereof, or the s. 82. name of the person who gave such information, and an officer or any other such person appearing as a witness shall

shall not be compelled to produce any reports made or received by him confidentially in his official capacity, or containing confidential information.

PART VIII.

MISCELLANEOUS.

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78. Every company which derives income shall at Public office all times be represented by a person residing in the Crath Act, State duly appointed by the company or by its duly 1922-1927, authorised agent or attorney, and with respect to every 5. 88.

10 such company and person the following provisions shall N.S.W. Act, 1912, No. 11, apply:—

(a) such person shall be called the public officer of the company, and shall, if not already appointed, be appointed within three months after this section comes into force or after the company commences to derive income;

(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 the address for service in the State, has been given to the Commissioner;

a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence and shall be liable to a penalty of 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 in force thereunder, and if at any time there

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) without prejudice to the liability of the company, the public officer shall be liable for the doing of all such things as are required to be done by or on behalf of the company under this Act or the regulations in force thereunder, and in case of default in doing any of such things, shall be liable for all penalties imposed for any breach of the provisions of this Act or such regulations, and the company, as well as such public officer, shall also be liable for such penalties;

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(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 excuse 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 or regulation 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:

Provided that every public officer of a company holding that office at the date of passing of this Act for any of the purposes of and duly appointed under the 30 previous Act shall, until such appointment is terminated, be the public officer of that company for all the purposes of this Act, and this Act shall apply to that company and that public officer accordingly.

79. With respect to every agent, and with respect Agents and 35 also to every trustee, the following provisions shall apply trustees.

C'wth Act, 1922-1927,

(1) He shall be answerable as taxpayer for the state 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

capacity or derived by the principal by virtue of his agency and the payment of income tax thereon.

- (2) 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.
- 10 (2) If he is a personal representative 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.

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- (4) Nothing herein contained shall exempt or discharge any principal or beneficiary from liability to make returns, and pay income tax upon the whole of his taxable income.
- 80. With respect to every person who has the Persons in receipt, control, or disposal of money belonging to a receipt or control of 20 non-resident person who derives income from a source money for in the State, or who is a shareholder, stock-holder, control of debenture holder, or depositor in a company deriving 1922-1927, income from a source in the State, the following s. 90. 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 authorised and required to retain from time to time out of any money which comes to him on behalf of the non-resident person so much as is sufficient to pay the income tax which is or will become due by that person;

(d)

(d) he is hereby made personally liable for the income tax payable by him on behalf of the non-resident person 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 afterwards 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:

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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

15 requirements of the Commissioner.

81. Where any income of any person outside the Payment of State is paid into the account of that person with a non-resident's banker in the State, the banker shall be deemed to be tax by the person's agent in respect of the money so paid so banker. 20 long as he is indebted in respect thereof, and shall C'wth Act, 1922-1927, be subject to the provisions and entitled to the benefits s. 92 relating to agents contained in this Act.

82. (1) A covenant or a stipulation in a mortgage of Covenant by land which has or purports to have the purpose or effect mortgagor to 25 of imposing on the mortgagor the obligation of paying to Ibid. 8. 94. or on behalf of or for the benefit of the mortgagee income tax on the interest to be paid under the mortgage—

(a) if the mortgage was entered into on or before the date of the commencement of this Act-30 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 35 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)

(2) A mortgage of land which contains a covenant to pay a certain rate of interest but provides that the mortgagee may accept a sum calculated to cover the interest chargeable at a lower rate together with an amount representing the income tax payable thereon shall be deemed to contain a covenant or stipulation imposing on the mortgagor the obligation of paying income tax within the preceding subsection, and shall as regards such covenant or stipulation to pay 10 income tax be subject to such preceding subsection.

83. Every contract, agreement or arrangement made Covenant to or entered into, in writing or verbally, whether before or evade tax. after the commencement of this Act, shall, so far as it 1922-1927, has or purports to have the purpose or effect of in any s. 93.

15 way, directly or indirectly—

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(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

(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.

25 84. Where under any contract, agreement or Assignment arrangement made or entered into, in writing or of income-producing verbally, either before or after the commencement of asset for this Act, a person assigns, conveys, transfers or disposes certain of an income-producing asset on terms and conditions payments.

30 which include the payment for the assignment, con-Ibid. 1. 924.

veyance, 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, 35 that person shall be assessed to pay income tax upon those periodical payments.

85. The Commissioner, or any officer authorised by Access to him in that behalf, shall at all times have full and free books. access to all buildings, places, books, documents and Ibid. s. 96.

40 other papers for any of the purposes of this Act, and for such purposes may make extracts from or copies of any such books, documents and papers.

86.

86. Wherever the Commissioner has reason to Security for believe that any person establishing or carrying on tax. business in the State intends to carry on that business Cwth Act, for a short time only, or intends to leave the State, or s. 54 (5).

5 where the Commissioner for any other reason thinks it proper so to do, 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 10 income tax on the income of such taxpayer.

87. (1) The Commissioner may by notice in writing Department require any person, whether a taxpayer or not—may obtain

(a) to furnish him with such information as he and evidence.

may require; and Ibid. s. 97.

(b) to attend and give evidence before him or before any officer authorised by him in that behalf concerning his or any other person's income or assessment, or concerning any matter or thing in relation to which the Commissioner considers or suspects such person may be capable of giving information which may assist in the carrying out of this or the previous Act, and may require him to produce all books, documents, and other papers whatever in his custody or under his control relating thereto.

(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 authorised by him may administer an oath.

30 (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

88. (1) In any case where it is shown to the satis-Release of faction of a board consisting of the Commissioner, the taxpayer in case of hard-35 Auditor-General or his deputy, and a person appointed ship.

by the Governor.

C'wth Act,

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(a) that a taxpayer liable to pay income tax has \$\frac{\text{C'wth Act,}}{\text{1922-1927,}}\$ become bankrupt; or \$\text{(See N.S.W.)}\$

(b) that a taxpayer has suffered such a loss or is Act, 1912, in such circumstances, or, owing to the death of a person who, if he had lived, would have paid

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A B

Income Tax (Management).

paid tax, the dependants of that person are in such circumstances that the exaction of the full amount of the tax will entail serious hardship,

- 5 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 assessments as are necessary for that purpose.
- 10 (2) The Commissioner shall be chairman of the board, and the decision of the majority shall prevail.
- 89. (1) In any case in which the board referred to writing off in the last preceding section is satisfied that every tax. reasonable effort has been made to recover income 15 tax, or that it is impracticable without undue expense to recover such tax, it may direct the amount thereof to be written off.
- (2) The taxpayer shall not be released from his liability in consequence of any action taken by the board 20 under subsection one hereof, and the Commissioner may at any future time take such action to recover any such income tax as he considers the circumstances warrant.
- (3) For the purposes of this section income tax 25 includes any additional income tax, or any costs incurred in attempting to recover such tax.
- (4) The provisions of this and the preceding section shall apply to any tax assessed under the previous Act which has not been paid at the date of the 30 commencement of this Act or which may after such date be assessed under the provisions of the previous Act.
- 90. (1) The Governor may make regulations, not Regulations. inconsistent with this Act, prescribing all matters which by this Act are required, or permitted to be prescribed, 35 or which are necessary or convenient to be prescribed for giving effect to this Act, including (but without limiting the foregoing power) the means of determining in all or any particular class of case, the amount of any assessable or taxable income in so far as the method 40 of ascertainment is not herein already provided for.

(2) The regulations may impose a penalty not exceeding twenty pounds for any breach thereof, and may prescribe maximum and minimum penalties in case of any breach thereof.

(3) The regulations shall—

(a) be published in the Gazette;

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(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

91. (1) The Commissioner shall furnish to the Reports by Colonial Treasurer annually for presentation to Parlia-Commissioner.

ment a report on the working of the Act.

(2) In the report the Commissioner shall draw 1922-1927, attention to any breaches or evasions of this Act which s. 10.

have come under his notice.

92. This Act shall be read and construed so as not construction to exceed the legislative power of the State to the intent of Act. that where any enactment thereof would, but for this section, have been construed as being in excess of that

power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

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THE SCHEDULE.

Application of Section Thirty-one in respect of Undistributed Income of a Company.

Section 31 shall apply to any company which is under the control see Imp. Act,
 of not more than seven persons, and which is not a subsidiary company ¹⁷ & 18 Geo. V,
 or a company in which the public are substantially interested.

For the purposes of this paragraph—

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- (i) A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of section 31 apply, or of two or more companies none of which is a company to which those provisions apply.
- (ii) 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 income year beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such income year been quoted on the official list of a stock exchange.
- (iii) A company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons.
- The expression "relative" means a husband or wife, ancestor, or lineal descendant, brother or sister.

The expression "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

Persons in partnership and persons interested in the estate of a deceased person or in property held on a trust shall, respectively, be deemed to be a single person.

- 2. For the purposes of section 31, dividends credited, paid or 40 distributed to a company which is a member or shareholder in any other company shall (to the extent to which such dividends would be taxable income if paragraph (b) of section 11 applied to a company) be deemed to be part of the first-mentioned company's taxable income.
- 3. In addition to any other facts which the Commissioner may
 45 consider in exercising the powers conferred upon him by paragraph (a)
 of section 31 the Commissioner shall take into consideration the
 13-G

relation between the distributable income of the company and its taxable income, and the fact of the retention by the company of taxable income for the following purposes:—

(a) To restore unrecouped losses of paid-up capital or of accumulated trading profits which had been invested in the business;

and

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(b) To meet losses which the directors consider were certain to

arise during subsequent income years:

Provided that if a company carrying on an agricultural or pastoral pursuit so elects within the prescribed time and in the prescribed manner that paragraph (b) of this clause shall not apply in respect of the income from such pursuit that paragraph shall not apply accordingly but the amount which would otherwise be determined as the distributable income shall be reduced by an amount equal to fifteen per centum of the taxable income derived by the company from the carrying on of the agricultural or pastoral pursuit.

The Commissioner may have due regard for the develop-

ment of businesses and industries.

4. Any sum such as is hereafter described shall, for the purposes of paragraph (a) of section 31, be regarded as income which could reasonably have been distributed by a company among its members or shareholders—

(a) any sum expended or applied, or intended to be expended or applied, out of the income of a company—

> (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking, or property of a substantial character in fact acquired

by the company; or

(ii) in redemption or repayment of any share or loan, capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking

or property;

(b) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied in pursuance or in consequence of an arrangement which, in the opinion of the Commissioner, was made for the purpose of avoidance or reduction of any liability to income

5. A determination under section 31 shall be made by the Commissioner not later than nine months after the date on which the tax assessed against the company under its ordinary assessment is due and payable.

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- 6. Where the Commissioner has made a determination under section 31, and—
- (a) the company satisfies the Commissioner that the sum or further sum which could reasonably have been distributed by the company among the members or shareholders is an amount which is less than the sum or further sum determined by the Commissioner under such section; or
- (b) where the Commissioner is satisfied that the company has withheld information or has furnished incorrect or misleading information for the purpose of avoiding tax in an ordinary assessment or under such section,

the Commissioner may, either before or after the time limited for making his determination, make a determination or further determination, and thereupon the provisions of section 31 (b) shall apply to the sum or further sum specified in that determination as if it were the sum or further sum mentioned in section 31 (b).

- 7. The following provisions shall apply for the purpose of calculating the tax or additional tax which would have been payable by the shareholders:—
- 20 (i) The income apportioned to a member or shareholder shall be deemed to have been received by him on such date as the Commissioner determines to be just, having regard to the dates on which distributions of income, if any, have ordinarily been made by the company.
- (ii) Where a person is a member or shareholder in more than one 25 company to which section 31 has been applied in respect of income of the same year ended on the 30th day of June or of such other period accepted by the Commissioner in lieu of such year ended on the 30th day of June, the tax or additional tax which would have been payable by that member or share-30 holder shall be calculated as if all such sums had actually been distributed during such income year, and the total amount of tax or additional tax so ascertained shall be divided between the companies in such proportions as are prescribed by regulations, or if there are no regulations as 35 the Commissioner considers just having regard to the amount which such member or shareholder is deemed to have received from each company, and to the rate of tax applicable to the income of each company.
- 8. Where any person (other than a company, trustee or partnership) C'wth Act, otherwise than as a member or shareholder of the company would (if 1922-27, s. 21 there had been successive distributions of the relevant parts of the (2). sum or further sum determined by the Commissioner to and by each company, trustee, and partnership interposed between that person and
- 45 the company in respect of which the determination is made) have received a part of that sum or further sum determined by the Commissioner under paragraph (a) of section 31, the Commissioner

may

may, if he thinks fit, also assess the tax and the additional tax, if any, which would have been payable by that person if those distributions had been made, and such tax and additional tax shall be deemed to be tax and additional tax assessable under paragraph (b) of section 31.

5 9. Any undistributed income which has been assessed and charged to income tax under section 31 shall, when subsequently distributed, be deemed not to form part of the assessable income of the member or *hareholder entitled thereto.

This Public Bill originated in the Legislative Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

S. G. BOYDELL, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 2 November, 1928.

New South Wales.



ANNO UNDEVICESIMO

GEORGII V REGIS.

Act No. , 1928.

An Act to provide for the assessment and collection of a tax on incomes, and for purposes consequent thereon or incidental thereto; and to amend the Income Tax (Management) Act, 1912, and the Co-operation Acts, 1923-1928, and certain other Acts.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Income Tax Short title. (Management) Act, 1928."

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2. The Income Tax (Management) Act, 1912, as operation of amended by subsequent Acts, shall, subject to the Act No. 11, amendments made by this Act, continue in force for all See C'wth purposes in connection with income tax payable in Act, 1922-5 respect of the income which has been received prior to N.S.W. Act, the year ended on the thirtieth day of June, one thou-1912, No. 11, sand nine hundred and twenty-eight, or prior to such other period as may be or may have been accepted by the Commissioner in lieu of such year.

3. (1) All existing regulations and forms made or Existing prescribed under the Income Tax (Management) Act, regulations. 1912, as amended by subsequent Acts, or continuing in N.S.W. Act, force by virtue of such Act, shall continue in force and s. 3 (1). shall apply to proceedings under this Act, so far as such

15 regulations and forms may be applicable until regulations and forms are made and prescribed under this Act.

(2) All notices given and returns made during the Notices and year one thousand nine hundred and twenty-eight, under returns as to the Income Tax (Management) Act, 1912, as amended year ended 20 by subsequent Acts in respect of income for the year on 30th June, ended on the thirtieth day of June, one thousand nine N.S.W. Act, hundred and twenty-eight, shall (without prejudice to 1912, No. 11, the power of the Commissioner to give any notices which may be given or require any returns which may be 25 required in respect of income for such year under this Act) be deemed to have been made or given also under

4. In this Act, unless the context requires another Definitions.

C'wth Act,

"Agent" includes every person who in the State \$\frac{1922-1927}{s. 4}\$. for or on behalf of any person out of the State \$\frac{N.S.W. Act,}{s. 4}\$. (in this paragraph called "the principal") \$\frac{1912}{s. 4}\$. No. 11, 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, and also includes sub-agent.

"Assessable income" means the gross income after excluding all income which is exempt from income tax.

"Assessment" all an he le de your to A ridle ...

(Management) Not, 1028."

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this Act.

	"Assessment" means the ascertainment of the	
	amount of any taxable income, and also means the ascertainment of the amount of tax	
5	imposed thereon. "Assistant Commissioner" means the Assistant	Z.
	"Business" includes any profession, trade, employ-	
	ment, vocation or calling. "Commissioner" means the Commissioner of	
10	Taxation.	(a.L
	"Company" includes all bodies or associations, corporate or unincorporate, but does not include	
	"Co-operative Society" means a co-operative	
15	society registered under the Co-operation	
	Acts, 1923–1928. "Dividend" includes profit and bonus and bonus	
	share, whether declared or dealt with by the company issuing the bonus share as capital or	
20	not, except to the extent to which a bonus	08
	share represents a writing-up or revaluation of assets without disposal thereof.	
	"Foreign Company" means a company, not being " a New South Wales company.	
25	"Income" means income derived or deemed to be	25
	derived directly or indirectly from any source in the State or in respect of which tax is	
	otherwise expressly made payable under this Act and includes interest upon money secured	
30	by the mortgage of any property in the State.	0%
	"Income derived from personal exertion" means income consisting of earnings, salaries, wages,	
	commission, fees, bonuses, pensions, super- annuation allowances, retiring allowances, and	
35	gratuities, allowances received in the capacity	J.
	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	
40	part of the emoluments of any office or emilia	40
	ployment of profit held by the individual, but	
	company.	

does not include interest, unless the taxpayer's principal business consists of the lending of money or unless the interest is received in respect of a trade debt, and does not include rents and dividends.

"Income derived from property" means all income not being income derived from personal exertion.

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

"Income year" means the year beginning on the first day of July and ending on the thirtieth day of June (or such other period as may be accepted by the Commissioner) during which the income in question was derived.

"Lease" includes sublease.

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"Liquidator" includes 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.

"Mutual life assurance company" means a life assurance company none of the divisible profits of which are payable to persons other than policy-holders.

"Net income" means the assessable income less all deductions allowable under this Act except the statutory deductions allowed under subsection three of section nineteen.

"New South Wales Company" means a company of which the head office or the principal place of business is in New South Wales; or a company incorporated under the Companies Act, 1899, or any other Act of the Parliament of New South Wales, wherever its head office or principal place of business may be.

"Non-resident person" means a person whose usual or principal place of abode is not in the State.

"Partnership" means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company. "Person"

includes a public officer of the State where absent in the performance of his duty, or wife of such officer absent from the State him. "Tax" means income tax. "Taxable income" means the amount of assess income remaining after all the deduct allowed by this Act have been made. "Taxpayer" means every person or come deriving income whether on his own behase on behalf of another. "the Court" means the Court of Review. "the State" means the State of New South Wester the State means the State of New South Wester this Act" or "the previous Act" include regulations in force thereunder. "Trustee" in addition to every person appoint constituted trustee by act of parties, by of or declaration of a court, or by operation of includes— (a) an executor or administrator, guard committee, receiver, or liquidator; (b) every person having or taking thimself the administration or contrincome affected by any express implied trust, or acting in any fiduction capacity, or having the possess control, or management of the income affected by any express implied trust, or acting in any fiduction capacity, or having the possess control, or management of the income affected by any express implied trust, or acting in any fiduction capacity, or having the possess control, or management of the income affected by any express implied trust, or acting in any fiduction capacity, or having the possess control, or management of the income affected by any express implied trust, or acting in any fiduction capacity.	
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Income Tax (Management).

PART II.

ADMINISTRATION.

- 5. (1) For the due administration of this Act and Commisted the previous Act, the Governor may, subject to the sioner of Taxation.

 5 Public Service Act, 1902, as amended by subsequent N.S.W. Act, Acts, appoint a Commissioner of Taxation, who may sue 1912, No. 11, and be sued by that name.
- (2) All references to the Commissioner of Taxation in the previous Act, and the rules and regulations
 10 in force thereunder, shall be read and understood as referring to the Commissioner of Taxation appointed under this Act.
- (3) (a) The Governor may, subject to the Public Assistant Service Act, 1902, as amended by subsequent Acts, Commissioner of Taxation.
 - (b) Such other persons may be appointed officers. under the said Act as may be deemed necessary for the carrying out of this Act and the previous Act.
- (4) In the event of the absence, incapacity, or Acting 20 suspension of the Commissioner, his powers, duties, and Commissioner. functions may be exercised and performed during such absence, incapacity, or suspension, by the Assistant Commissioner, and in the event of the absence, incapacity, or suspension of both the Commissioner 25 and the Assistant Commissioner, the powers, duties, and functions of the Commissioner may be everyised.
- and functions of the Commissioner may be exercised and performed during the absence, incapacity, or suspension of the Commissioner and Assistant Commissioner by an Acting Commissioner appointed by the 30 Governor.
- (5) The Commissioner may, by writing under his Delegation. hand, delegate to the Assistant Commissioner, or any other person, any powers, duties, and functions conferred or imposed upon him by this Act, or the previous Act, 35 or the rules or regulations in force under any of such Acts (except this power of delegation). Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any

power, duty, or function by the Commissioner.

(6) A notification in the Gazette that any person has been appointed as Commissioner, Assistant Commissioner, Acting Commissioner, or other person for the purpose of this Act, or the previous Act, shall be 5 conclusive evidence of such appointment.

(7) Where in or under this Act or the previous Authorities of Act the exercise of any power or the discharge of any Assistant Commissioner duty or function by the Commissioner or the operation and Acting of any provision of this Act or the previous Act is commis-sioner.

10 dependent upon the opinion, belief, or state of mind of cwth Act, the Commissioner in relation to any matter, that power, 1922-1927, duty, or function, may be exercised or discharged by s, 7 (2). the Assistant Commissioner when authorised to act by a delegation as aforesaid or during the absence, in-

15 capacity, or suspension of the Commissioner, or by the Acting Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant Commissioner, or that provision may operate (as the case may be) upon the opinion, belief, or state of mind in

20 relation to that matter of the Assistant Commissioner when so authorised to act, or during the absence, incapacity, or suspension of the Commissioner or upon the opinion, belief, or state of mind in relation to that matter of the Acting Commissioner during the absence,

25 incapacity, or suspension of the Commissioner and Assistant Commissioner.

6. (1) Every Commissioner, Assistant Commissioner, Secrecy. and Acting Commissioner and other person appointed to N.S.W. Act, act in the administration of this Act shall, before acting 1912, No. 11, 30 in the execution of his office, take and subscribe before C'wth Act,

a justice of the peace such oath of fidelity and secrecy as 1922-1927,

may be prescribed.

(2) Every such person who without lawful excuse makes a record of or reveals any matter or thing which 35 has come to his knowledge in his official capacity shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

(3) If any such person acts in the execution of 40 his office before he has taken the prescribed oath, he shall be liable to a penalty of not less than ten and not (4)more than one hundred pounds.

(4) Any person who has been an officer or who has performed any duty under this Act or the regulations in force under this Act, or under the previous Act, or the regulations in force thereunder, and who reveals any 5 information acquired by him in the performance of any duty under any such Act or regulations, to any person other than a person to whom he is authorised by the Commissioner to communicate it, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 10 any term not exceeding two years, with or without hard labour.

(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 15 or thing coming under his notice in the performance of his duties under this Act, or the previous Act, except as may be necessary for the purpose of carrying into

effect the provisions of any such Act.

(6) Notwithstanding anything contained in this 20 section the Commissioner, Assistant Commissioner, or Acting Commissioner may communicate any matter which comes to his knowledge in the performance of his official duties to the Commissioner of Stamp Duties, or to the officer or authority administering any Act of 25 the Commonwealth or of any State relating to income tax, stamp duties, succession duties, or estate duties who is authorised by law to afford like information to the Commissioner.

7. Nothing in this Act shall affect the operation or Income Tax 30 continuance of the Income Tax (Commonwealth) (C'wth) Collection Act, 1923.

Collection Act, 1923.

PART III.

LIABILITY TO TAXATION.

8. (1) Subject to the provisions of this Act, income Incidence tax at such rates as may be fixed by any Act shall be of tax.

5 paid to the Commissioner in respect of the taxable 1912, No. 11, income derived by any person during every income year s. 9.

C'wth Act, 1922-1927,

(2) The first assessment of income tax under this s. 13. Act shall be in respect of the income of the year ended 10 on the thirtieth day of June, one thousand nine hundred and twenty-eight, or such other period as may be accepted by the Commissioner in lieu thereof, and subsequent assessments shall be in respect of the income for each succeeding income year.

15 (3) Where a company is wound up, or an Adjustment individual person dies or ceases to be a taxpayer, in any by reason of year, and such company or person has under the year of inprovisions of the previous Act been assessed on the No. 27, 1918, income of the whole or part of any year a second time, s. 5.

20 and no adjustment in regard to such second assessment has previously been made, the Commissioner may make such adjustment as he considers just.

(4) Income shall be deemed to have been derived Money by any person within the meaning of this Act, although credited reinvested, &c., 25 it has not actually been paid over to him, but has been to be income. credited in account or reinvested or accumulated or N.S.W. Act, capitalised or carried to any reserve, sinking fund, or s. 4. insurance fund howsoever designated, or otherwise Cwth Act, become payable to him or been dealt with in his name 1922-1927, s. 19.

(5) In any case in which the whole of the income Continuance in respect of a transaction which occurred during an assessment of income year prior to the income year which ended on the whole of inthirtieth day of June, one thousand nine hundred and transactions.

35 twenty-eight, was not liable to assessment prior to such last-mentioned year, the Commissioner may assess the same for the same income year or years and in the same manner in which and as it would have been assessable had the previous Act continued to apply.

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(3)

Income Tax (Management).

(6) Income shall for the purpose of this Act in-Fixed clude interest on fixed deposits effected in the Territory deposits in of the Seat of Government of the Commonwealth by Capital persons resident in the State or by New South Wales Territory. 5 companies or by any other company carrying on business in the State and effecting such deposit in connection with or as an operation of its business so carried on. 9. (1) Where the income of a taxpayer (other than Income of a company) is derived wholly or in part from any individuals from agricultural, dairying, or pastoral pursuit carried on tural, dairyby the taxpayer, the following provisions shall be ing, or applied to so much of the taxable income as is derived pursuits. from any such pursuits:-1912, No. 11, (a) In assessments of tax payable upon income s. 94. 15 derived in each income year subject to assessment under this Act, the rate to be applied to 1133 the taxable income so derived in the income year shall be calculated under the Act by 70007 which the rates of income tax are declared as 7000 20 if the taxable income so derived by the taxpayer were an amount equal to the average of es but 02 the taxable income so derived by the taxpayer THE PLU in the years (in this section called "average years") beginning with and including the first average year and ending with and including the income year. 25 1 1 2 (b) The first average year shall be the fourth year before the income year, except in the cases in which the subsequent provisions of this section 30 provide for the first average year being a later year. An income year, subject to assessment mi: 08 under the previous Act, shall be capable of being taken as a first or subsequent average (c) Where the taxable income so derived of the 35 taxpayer for the year which would otherwise 35 ****** be the first average year was greater than his taxable income so derived of the next suc-

ceeding year, the first average year shall be the

first year, subsequent to the first-mentioned

year

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Income Tax (Management).

year in which the taxable income so derived of the taxpayer was less than his taxable income so derived in the next subsequent year:

Provided that this paragraph shall not apply to the assessment of a taxpayer who has been assessed for any previous year at an average rate determined under this section or section

10 Any year in which the taxpayer was not carrying on any such pursuit shall not be counted as a first average year, but any year in which the deductions allowable in his assessment to a taxpayer carrying on any such - pursuit left no taxable income derived therefrom shall be capable of being an average year, and if an average year, shall be taken into account in ascertaining the average taxable income derived from any such pursuit. In such a case the excess of allowable deductions over income in any average year shall be taken into account in calculating the average, but only to the extent to which such excess of deductions is greater than the net income, if any, of the taxpayer derived in that year otherwise than from any such pursuit.

> (e) Where there are not at least two average years for the purpose of calculating the rate under the foregoing provisions of this section, the frate of tax to be applied in any year to the taxable income of a taxpayer shall be the rate applicable in that year under the Act by which the rates of in ome tax are declared to

a taxable income of that amount.

(2) Where such a taxpayer derives taxable income Rate of tax on 35 otherwise than from any such agricultural, dairying, or other income pastoral pursuit, the rate of tax on such other taxable viduals. income shall be the rate which would be applicable to a total taxable income equal to an amount arrived at by adding to such other taxable income the average income 40 (if any), or if paragraph (e) of subsection one applies, the actual taxable income from any such agricultural, 1) }, (3)dairying, or pastoral pursuit.

(3) For the purposes of this section, a business	
which consists principally of buying and selling live	N.S.W. Act,
which consists principally of buying and selling live stock shall not be deemed to be the carrying on an agri-	1912, No. 11, s. 9.
cultural, dairying, or pastoral pursuit.	
5 10. (1) The following incomes, revenues, and funds	Exemptions.
shall be exempt from income tax—	N.S.W. Act,

(a) the salary of the Governor of New South Wales; 1912, No. 11

- (b) the official salaries of foreign consuls and the C'wth Act, trade commissioners of any part of the British ss. 14, 54 (4) Dominions;
- (c) the revenues of municipal corporations or of local or public authorities;

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- (d) the incomes of mutual life assurance companies not being income from investments or income from rent, or income assessable under section twelve:
 - (e) the profits of the Government Savings Bank;
 - (f) the incomes of societies registered under the Friendly Societies Act, 1912;
- 20 (g) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or the State relating to the settlement of industrial disputes;
 - (h) the income of any ecclesiastical, charitable, or educational institution of a public character, whether supported wholly or partly by grants from the Consolidated Revenue or not:
- (i) 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 purpose for which it was established;
 - (j) the incomes of Starr-Bowkett building societies;
 - (k) the income of any society or association not carried on for the purpose of profit or gain to the individual members thereof, established for the purpose of promoting the development of the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing, or industrial resources of Australia:

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- (1) 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 purpose of profit or gain to the individual members thereof;
- (m) the income of any other company, society, or association which does not derive profit or gain out of transactions with persons other than their members, and which does not carry on business for purposes of profit or gain except as regards any income from investments or income from rent or income assessable under section twelve;
- (n) pensions paid by the Government of the Commonwealth under the Australian Soldiers' Repatriation Act, 1920–1921;
- (o) the remuneration paid by the Government of the Commonwealth or of a State to a person residing outside Australia for expert advice to that Government or as a member of a Royal Commission;
 - (p) the incomes of persons derived in their capacity of—
 - (i) representatives of an association or club established in any country for the control of any outdoor athletic sport or game in that country visiting Australia for the purpose of engaging in contests in Australia;
 - (ii) representatives of any Government visiting Australia in an official capacity, and members of the entourage of any such representative;
 - (iii) representatives of any society or association established for educational, scientific, religious or philanthropic purposes visiting Australia for the purpose of attending international or empire conferences or for the purpose of carrying on investigation or research for such society or association;

(iv)

	Theome Law (Miningement).	
5	 (iv) representatives of the press outside Australia visiting Australia for the purpose of reporting the proceedings relating to any of the matters referred to in (i), (ii), and (iii); or (v) visitors to Australia whose visit, in the opinion of the Colonial Treasurer, is 	Ğ
10	primarily or principally directed to assisting the Commonwealth Government	r
10	or development of Australia; (q) the income derived by a resident of any territory or island in the Pacific Ocean which is governed, controlled, or held under mandate	1.0
15	by the Government of any part of the Pritish	ā t
20	which he is a resident provided that the	100
25	unnocossary dolay	T
30	Wales or the Government of the Common	ř.
35	Parliament of the Commonwealth or the State, interest on any such security is made liable to the payment of income tax. (2) The exemptions in this section shall not—Declaration	ns
40	(i) extend to the salaries, wages, allowances, or as to exemptions pensions of persons employed by any such C'wth Act, corporation, company, authority, union, 1922-1927, society,	14.

society, institution, or person specified therein, although the same may be paid wholly or in part out of the income, revenues, or funds so exempt; or (ii) exempt any such corporation, company, 5 3 authority, union, society, institution, or person, from furnishing any returns or information which may be required by the Commissioner; (iti) exempt any person from including in his 10 returns such information as may be prescribed 1)1 or as may be required by the Commissioner; 11. The assessable income of any person shall (with-what out in any way limiting the meaning of the words) assessable income 15 include includes. (a) profits derived from any trade or business and C'wth Act, converted into stock-in-trade or added to the s. 16.1 capital of or in any way invested in the trade or business: Provided that for the purpose of computing 20 (12 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 or end of the income year shall be taken into 25 63 account. For the purposes of this paragraph "value" means-(i) in the case of trading stock (not being live stock) the actual cost price or market 30 selling value of each article of trading 08 stock or the price at which each article of trading stock can be replaced, at the option of the person in respect of each 35 article: Provided that the value adopted in relation to any article of trading stock as the Co Co value of that article as at the end of the income year in which the income was derived (including for the purposes of 40 this proviso the last year of income under the

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the previous Act) shall for the purposes of the assessment of the person's income derived in the next income year be deemed to be the value of that article as at the commencement of that next income year.

- (ii) in the case of live stock (not being live stock used as beasts of burden or as working beasts) the value per head which the person with the consent of the Commissioner adopted for the purposes of his return as the value at the end of the last year of income under the previous Act or where by reason of there being no such return, or for any other reason there is no such value, then such value per head as any person adopts with the approval of the Commissioner, or in default of agreement between such person and the Commissioner, then such value per head as is in the opinion of the Commissioner just and reasonable. The value per head so fixed as herein mentioned, shall be adopted for the beginning and end of every income year to which this Act applies, unless and until altered with the consent of the Commissioner.
- (b) in the case of a member or shareholder (other than a company) of—
 - (i) a company which derives income from a source in the State; or
 - (ii) a company which is a shareholder in a company which derives income or dividends from a source in the State,
 all dividends (but not including a reversionary bonus issued on a policy of life assurance) credited, paid, or distributed to the member or shareholder from any profit derived from

any source by the company:

Provided

	Income Tax (Management).
	Provided that—
5	(i) where a company derives income from a First provisor source in the State, and from a source outside the State, a taxpayer shall be taxable on so much of the dividend as bears to the whole dividend the same proportion that the profits derived by the company from a source in the State bear to the total profits of the company; and
10	 (ii) if a company, which has derived income c'wth Act, from the bonds, debentures, stock, or 1922-1927, other securities mentioned in paragraph (r) of subsection one of section ten, pays in any year any portion of that income in
15	dividends to its shareholders, the exemption under that paragraph shall (so long as it continues to apply) extend to the proportion of the dividend for that year which has been paid out of such income.
20	Provided further that any such member or second proshareholder shall be entitled to a rebate in his viso. assessment of the lesser of the two following amounts:— (i) the sum which bears the same proportion <i>Ibid</i> .
25	to the tax payable by him on his income s. 20 (4) (b). derived from property as the amount of his income from dividends which is included in his taxable income derived from property bears to his total taxable income
30	derived from property; or (ii) the proportion of the tax paid by the company (under this Act or the previous Act or any Act repealed by the previous
35	Act) attributable to the dividends included in the taxable income of the taxpayer. For the purposes of this proviso, in arriving at the amount of dividends included in a taxpayer's taxable income, deductions allowable
40	under subsections two and three of section nineteen

nineteen shall be treated as deductible in the first place from the income, if any, other than that from dividends.

- (c) beneficial interests in income derived under any will, settlement, deed of gift, or instrument of trust;
- (d) money derived by way of royalty or bonus, and premiums, fines or foregifts or consideration in the nature of premiums, fines or foregifts demanded and given in connection with leasehold estates;

(e) money received as an annuity;

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- (f) the amount or value of any consideration demanded and given in connection with a right to remove standing timber from land less the amount, if any, by which the value of the land is or will be diminished by the removal of the timber;
- (g) amounts expended by a lessee under an obligation in an agreement in writing (not exceeding the sum, if any, specified in the agreement) with the landlord to the extent to which the landlord's interest in the property is increased in value, and for which the tenant has no right to reimbursement by the landlord:

Provided that amounts so expended whether before or after the commencement of this Act shall be apportioned over the period of the tenancy unexpired at the date of such expenditure and returned by the landlord as income accordingly.

- (h) the annual rental value to him of premises or quarters provided rent free by his employer;
- (i) five per centum of the capital amount of a retiring allowance or gratuity (not being an amount paid to a director of a company) paid in a lump sum;
- (j) all allowances, gratuities (except retiring allowances or gratuities paid in lump sums otherwise than to a director of a company), bonuses

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 employ-5 ment or service of such person to the amount of the value of such allowances, gratuities, bonuses and premiums respectively; (k) the proceeds derived from the sale (whether compulsory or otherwise and whether for the 10 purpose of putting an end to a business or otherwise) of— (a) the whole or part of the trading stock of any business; (b) any standing crop; and 15 (c) all live-stock forming part of the assets of any business (except beasts of burden and working beasts): Provided that where any trading stock, C'wth Act, standing crop or live-stock is sold with other 1922-1925, 17 (2). 20 assets the consideration for the sale which is attributable to the trading stock, standing crop or live-stock, shall be determined by the Commissioner, and the amount so determined shall be deemed to be the price paid by the 25 purchaser for the trading stock, standing crop, or live-stock as the case may be; (1) interest credited or paid to or otherwise derived by any depositor or debenture holder of a company, and amounts derived by any member 30 or shareholder in a company from the sale of rights to take up shares or debentures in a company; (m) money or consideration derived from the granting of an option of purchase of any 35 property; (n) the amount of the consideration for the transfer, assignment, cancellation, or surrender of a lease, less the deductions provided for in paragraphs (a), (b) and (c) of subsection one of 40 section twelve, or where the lease was acquired

prior to the first day of July, one thousand nine

hundred

hundred and twenty-three the total of the amounts of the depreciation in respect of the lease allowed to the vendor under this and the previous Act, whichever is the lesser sum.

of any real or personal property situated in the State are on sale of property are not liable to be returned as assessable income under the income. preceding section or any other provision of this Act, (See N.S.W. the net profit or gain, if any, arising from such sale Act, 1912, No. 11, s. 4.) and be deemed to be assessable income of the vendor, if such real or personal property was acquired by him after the thirtieth day of June, one thousand nine

after the thirtieth day of June, one thousand nine hundred and twenty-three, and during the income year or the nine income years next prior thereto.

The amount of such net profit or gain shall be arrived at in the following manner, namely, by deducting from

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(a) the expenses of sale;

(b) the cost of the property to the vendor (less any amount in respect of depreciation which was allowable as a deduction from his assessable income under this or the previous Act); and

(c) any other expenses proved to the satisfaction of the Commissioner to have been incurred in connection with the acquisition and holding of any such property, and which were not allowable as a deduction from the income of any previous year.

For the purposes of this paragraph the labour of the vendor and his family shall be deemed to be an expense to the extent to which it is represented in permanent improvements on the property at the time of the sale:

Provided that any loss (ascertained in the same First proviso.

35 manner) incurred during the income year on the sale during such year of any property coming within this subsection shall be allowed as a deduction in arriving at the net profits or gains from sales of property coming within this subsection, but shall not be allowed as a 40 deduction from income derived from any other source:

Provided

Provided that any similar loss incurred during the second two preceding income years, but not prior to the first proviso. income year to which this Act applies, shall also be allowed as a deduction to the extent to which they are 5 not set off against any similar profit in the year in which they are incurred or the succeeding year:

Provided that this section shall not apply to-

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- (i) the sale by any person during the period from the first day of July, one thousand nine hundred and twenty-eight, to the date of the passing of this Act of any estate or interest in land within the State including a lease of such land and including the goodwill of any business carried on on the land if such property was acquired by such person before first day of July, one thousand nine hundred and twenty-four;
 - (ii) the sale by any person of shares in any company bought by him prior to the first day of July, one thousand nine hundred and twenty-five, or to the sale by any person of such shares during the period from the first day of July, one thousand nine hundred and twenty-eight, to the date of the passing of this Act if such shares were bought by him prior to the first day of July, one thousand nine hundred and twenty-six;
 - (iii) the sale by any person of any other personal property bought by him prior to the first day of July, one thousand nine hundred and twenty-seven, or to the sale by any person of any such property during the period from the first day of July, one thousand nine hundred and twenty-eight, to the date of the passing of this Act, if such property were bought by him prior to the first day of July, one thousand nine hundred and twenty-eight.

- (2) For the purpose of this section—
- (i) the cost to the vendor under subsection one (b) Subsec. (2). of property sold which has been acquired by the vendor as a beneficiary or as a trustee in the 5 estate of a deceased person shall be deemed to be the value (if any) of such property fixed for the purpose of assessment of death duties in the estate of such deceased person, and where no value has been so fixed for death 10 duties, shall be deemed the market value as at the date of death of the deceased person, and the date on which such property was purchased or acquired by such deceased person shall be taken to be the date on which such beneficiary or trustee acquired such property; and 15
 - (ii) in any other case the cost to the vendor under subsection one (b) of property sold which has been acquired by the vendor otherwise than by purchase shall be deemed to be the market value as at the date of its acquisition by the predecessor in title of such vendor and such date shall be taken to be the date upon which the vendor acquired such property;
- (iii) in cases under paragraph (i) of this subsection Commonwealth Estate Duty and State Probate Duty borne by the vendor in respect of the property sold shall be deemed to be expenses under subsection (i) (c).

- (3) Where the payment of the purchase price Subsec. (3).

 30 extends over a period of years so much of the consideration as would be profit if the sale were for eash shall be treated as apportioned among the income years over which the payments of the purchase price extend and the amount of profit so apportioned to each year shall be

 35 deemed to be derived by the taxpayer in that year:
- (4) Nothing in this section shall apply to the Subsec. (4). sale by a taxpayer of premises owned and solely used by him as his principal place of abode during the income year and the four years next prior thereto: Provided 40 that if the taxpayer sells his place of abode within six months

months after vacating the same as his principal place of abode and the sale otherwise comes within this subsection he shall be deemed to occupy such place of abode as his principal place of abode at the time of sale or to the sale in the income year by the taxpayer of personal property (other than shares and securities) of an aggregate value not exceeding two hundred pounds.

(5) "Sale" for the purposes of this section "Sale." includes an exchange of property and any statutory

10 resumption.

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13. Subject to the provisions of this Act, if in Consideration respect of any transaction to which this Act applies to be valued. the whole or part of any consideration is paid or given otherwise than by cash, the money value of such 15 consideration shall be stated by the taxpayer in his return, and if the value so stated is not accepted by the Commissioner he shall assess the same.

14. (1) Subject to subsection two of this section, Interest on the interest accruing on loans raised in New South loans raised in N.S.W. by 20 Wales after the thirty-first day of December, one thou-countries sand nine hundred and twenty-three, by the Government Common of any country or dominion outside the Commonwealth, wealth or by any authority constituted by or under any law of C'wth Taxation of any such country or dominion, shall be subject to income Loans Act. 25 tax in the same manner as if it were income derived 1922, s. 5.

(2) Subsection one of this section shall not apply in relation to any interest unless either—

(a) the interest is received directly or indirectly
by a resident person or by a New South Wales
company or by any other company carrying on
business in the State in connection with or as an
operation of its business so carried on; or

(b) such interest is otherwise liable to income tax under this Act.

(3) For the purpose of this section a loan shall be deemed to have been raised in New South Wales if subscriptions to the loan were invited in New South Wales by public advertisement, or by the issue of a 40 prospectus, or otherwise.

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15. Notwithstanding anything contained in any Interest on Act, the interest on any loan raised after the date of State loans. he coming into operation of this section, by the States countries or by any authority constituted by or under any State Act, 1923, 5 law, shall be subject to income tax and for that purpose shall be deemed to be part of the income of the respective persons to whom the interest is payable.

This section shall come into operation on a date to be fixed by the Governor by proclamation published in

10 the Gazette.

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16. For the purpose of the last two preceding sec-What tions, "loan" includes a conversion loan and a loan raised includes. for the redemption or repayment of an existing loan.

17. In addition to any other income tax payable by Company taxable on 15 it, a company shall also pay income tax interest paid

(a) at such rate as may be fixed by the Income by it. Tax Act by which the rates of income tax are 1922-1927, declared on the interest paid or credited by the s. 20. company to any non-resident person or foreign

company on money raised by debentures of the company and used in the State, or on money lodged at interest in the State with the company; and

(b) on interest paid or credited in respect of deben-25 tures payable to bearer issued in the State or to secure money used in the State 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 30 the taxable income of an individual:

18. For the purposes of the preceding section— Deductions (a) a company shall be entitled to deduct and and refund

retain for the use of the company from the purposes of amount payable to any of the persons referred s. 17. to in paragraph (a) of such section such amount Ibid. as is necessary to pay the tax which becomes due in respect of that amount:

(b) 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

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the same proportion to the amount paid by the company under paragraph (b) of such section as the interest payable to that person bears to the total interest payable in respect of those debentures;

- (c) where a company pays tax under such section on any interest, and any person includes that interest in his return, and is liable to pay income tax thereon, the amount of tax paid by the company in respect of that interest shall be deducted from the total tax payable by the person;
- (d) where the Commissioner is satisfied that the holder of debentures payable to bearer is a person who is not liable to pay income tax, the Commissioner shall refund to the person entitled thereto the amount of tax paid by the company in respect of the debentures of that person.
- 20 **19.** In calculating the taxable income of a taxpayer General there shall, subject to this Act, be deducted from the deductions. total assessable income derived by the taxpayer the N.S.W. Act, following deductions:—

 s. 16.
 - (1) (a) All losses and outgoings (including commis-C'wth Act, sion, discount, travelling expenses, interest s. 23. and expenses and not being in the nature of losses and outgoings of capital) actually incurred in New South Wales in gaining or producing the assessable income:

Provided that to ascertain the amount First proviso.

of such interest, if a taxpayer has paid interest during any income year, and has derived in that year any income which is not liable to income tax under this Act, the interest allowable as a deduction from the assessable income of such taxpayer may, if the Commissioner thinks fit, be computed at a sum which bears the same proportion to the total interest resides the release the

the total interest paid as the value at the end of the income year of the assets which were

	Income Tax (Management).
5	were used in deriving the assessable income of such taxpayer bears to the value of his total assets at the end of such year: Provided further that the Commissioner second may allow as a deduction, losses and ex-proviso.
	penses incurred by the taxpayer outside the State during the income year exclusively in the production of the taxable income. (b) Rates and taxes (except income tax) imposed
10	by Acts of the Parliament of New South Wales or by any authority constituted by or under any such Act, and land tax levied in respect of land situated in the State under any Act of the Parliament of
15	the Commonwealth if such rates, taxes, and land tax were actually paid by a taxpayer during the income year, and were incurred in the production of his assessable income: Provided that when a taxpayer receives
20	a refund of the whole or any part of any rates or taxes allowed as a deduction under this or the previous Act, the amount of the refund shall be returned as income in the income year in which the refund is
25	received. (c) Sums expended by the taxpayer during the income year for repairs to or on that part of any property occupied for the purpose of producing the assessable income, or from
3 0	which the assessable income is derived, and for the repair of machinery, implements, and plant used by the taxpayer for the purpose of producing the assessable income; (d) The sum actually expended by the taxpayer
35	during the income year for food and for rent of quarters provided for an employee who is employed exclusively in a business of the taxpayer yielding assessable income: Provided that, if the taxpayer is unable
40	to state the sum actually expended on such food, such sum may be deducted as the Commissioner thinks just. (e)

(e) Retiring allowances and pensions paid to employees and former employees in respect of past services in the taxpayer's business and so much of the assessable income as 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:

Provided that—

(i) a deduction shall not be allowed under this paragraph (e) unless the Commissioner is satisfied that the fund has been established or the payment has been made in such a manner that the rights of the employees to receive the benefits, pensions, or retiring allowances have been fully secured;

(ii) if the Commissioner is satisfied that any part of the assessable income of any person (whether an employer of labour or not) has been so set aside or paid by that person to provide individual personal benefits, pensions, or retiring allowances to employees in any business or class of business, the person setting aside or paying the sum shall be entitled to deduct it

(f) Expenses incurred in relation to the obtaining of an award or agreement under any Act of the Commonwealth or of the State relating to employees engaged in the taxpayer's business.

(g) A proportionate part of the amount paid by the taxpayer as a procuration fee or bonus in connection with money borrowed and used by him in the production of assessable income arrived at by distributing the amount so paid over the period for which the money was borrowed.

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(h)	Sums paid to any bona fide industrial union
	of employers or employees, trade or profes-
	sional association, or agricultural society
	approved by the Commissioner but not
	exceeding ten guineas to each respectively.

(i) Sums expended by the taxpayer on suckering or eradicating seedlings, noxious plants and noxious weeds, and for the destruction of noxious animals on lands owned, held or occupied by the taxpayer for the purpose of his business.

(j) The proportionate yearly sum which in the opinion of the Commissioner represents the purchase price or consideration for any annuity purchased by him.

(k) Bad debts proved to be such to the satisfaction of the Commissioner and to have been incurred in and actually written off by the taxpayer in the income year, but the Commissioner may allow a deduction for bad debts claimed in respect of any year if he is satisfied that the debts were not incurred more than six years prior to the commencement of the income year, and that the taxpayer has in any previous year included those debts as assessable income in his return:

Provided that all amounts at any time received on account of any such bad debts or of any bad debts allowed as a deduction under the previous Act shall be returned as income in the income year in which the same were received.

(l) Such sum as the Commissioner may think just and reasonable as representing the diminution in value, by reason of wear and tear during the income year of any machinery, implements, and plant (including furniture) owned and used by the taxpayer for the purpose of producing the assessable income:

Provided

Provided that the following conditions shall apply in relation to the deduction under this paragraph—

- (i) where a deduction has been allowed under paragraph (c) of this subsection, the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;
- (ii) 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 income 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 under this paragraph (1). If the sale price exceeds that depreciated value the amount of the excess shall be returned as income in the income year in which the sale was effected.

"Depreciated value" shall mean the cost price of the property to the taxpayer, or where condition (iii) hereof applies, the cost price to the first owner, less the total of the amounts of depreciation allowed under this or the previous Act or any Act repealed by the previous Act, in respect of the property to the taxpayer or to the taxpayer and the prior owner, as the case may be.

If no separate value is allocated to any property to which this paragraph applies when sold with other assets,

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or if such property is disposed of otherwise than by sale, the Commissioner shall determine the amount which shall for the purposes of this condition of this paragraph be deemed to be the selling price of that property;

(iii) where any property in respect of which a deduction is allowable under this paragraph has been acquired (either before or after the commencement of this Act) from one person by another person, the person who acquired 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, unless the surplus over depreciated value has been returned as income by the vendor in pursuance of condition (ii) of this paragraph.

If 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:

Provided that the Commissioner shall not exercise such discretion where the person who acquired the property was a company in which the transferror was at or about the date of the transfer substantially interested as a shareholder or was a company the shareholding interests in which were at or about the date of the transfer in substantially the same hands as those of the company from which it was acquired; (iv)

(iv) no deduction under this paragraph (l) shall be allowable in respect of any property where the amount already allowed for depreciation under this Act or the previous Act or any Act repealed by the previous Act equals the value on which depreciation is allowable under this paragraph.

(m) A proportionate part of-

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(1) the amount paid by any taxpayer (being the lessee under a lease or the transferee or assignee of a lease) as a premium, fine, or foregift or consideration in the nature of a premium, fine, or foregift for a lease or a renewal of a lease, or as an amount for the assignment or transfer of a lease of land, premises, or machinery used for the production of income, arrived at by distributing the amount so paid proportionately over the unexpired period of the lease at the date the amount was so paid;

(2) the amount paid for a right to remove standing timber from land (not including an amount paid in connection with the purchase of a freehold or leasehold estate in land) which in the opinion of the Commissioner is the part of the amount paid for such right attributable to the timber removed and sold during the income

year:

Provided that—

(i) the taxpayer proves to the satisfaction of the Commissioner that he has paid such an amount;

(ii) the deduction under sub-paragraph
(1) of this paragraph shall not be
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the Commonwealth or the State or any authority of the State, being a perpetual lease without re-valuation or a lease with a right of purchase;

- (iii) where in the case of an assignment or transfer (either before or after the commencement of this Act) of a lease, or of a right to remove standing timber from land, the amount received has not been returned as income by the assignor or transferror of the lease or right and the person who acquired the lease or right was a company in which the assignor or transferror was at or about the date of the assignment or transfer substantially interested as a shareholder, or was a company the shareholding interests in which were at or about the date of such assignment or transfer in substantially the same hands as those of the company from which it was acquired, no deduction shall be allowed beyond the sum (if any) to which the assignor or transferror was entitled. In any case to which this clause (iii) of this proviso is applied the assignor or transferor shall not be assessable under this Act in respect of the amount received on such assignment or transfer.
- (n) A proportion of the sum necessary to recoup amounts expended under an agreement in writing, on improvements on land by a lessee who has no tenant rights in the improvements, arrived at by distributing the amount expended (not exceeding the sum agreed upon) proportionately over the unexpired period of the lease at the date the improvements were effected:

Provided

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Provided that this paragraph shall not apply in any case where there is a lease of land (granted either before or after the commencement of this Act) to a company from any individual who at or about the date of such agreement directly or indirectly controls or controlled the voting power of the company, or in any other case in which the Commissioner is of opinion that, in consequence of the terms and conditions of the lease or of any other circumstances the lessor was at or about such date in substantial control of the operations of the lessee. In any case to which this proviso is applied, the landlord shall not be assessable under paragraph (g) of section eleven. (o) The expenditure actually incurred during the income year by any taxpayer carrying on mining operations (other than coal mining or quarrying) in the State for labour and materials employed in sinking subsidiary shafts in a producing mine and in the course of extending the area of operations. (p) The sum of one hundred pounds in respect of the annual allowance of members of the Legislative Assembly of New South Wales or of New South Wales' members of the Parliament of the Commonwealth. (q) Gifts of ten shillings and upwards made out of the assessable income derived during the year in which the gifts are made to public charitable institutions in the State, to the Sydney University, or to colleges affiliated therewith, if the gifts are verified to the satisfaction of the Commissioner.

For the purpose of this subparagraph—

"Affiliated college" means a residential educational institution

13—C affiliated

affiliated under a statutory provision with the Sydney University. "Gift" means a gift in the form of 5 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. "Public charitable institution" means 10 a public hospital, a public benevolent institution, the trustees of the Australian Museum, the trustees of the Public Library of New South Wales, the trustees 15 of the National Art Gallery, the National Library referred to in the National Library Act, 1924, a public educational institution, 20 an institution for the benefit of returned soldiers, and includes a public fund established and maintained for the purpose of providing money for such institu-25 tions, or for the relief of persons in necessitous circumstances. (r) Such amount as the Commissioner considers just and reasonable (not exceeding fifty pounds for each child) as representing the cost to a taxpayer for food, quarters and 30 other expenses in respect of children who are over the age of sixteen years and under twenty-one years of age at the beginning of the income year and who are wholly or partly employed by him in his business, 35 and to whom no payments are made for wages. (s) Sums expended in boring for water by a taxpayer carrying on a pastoral business, if such operations are unsuccessful, but not 40 including the cost of plant or of material

which may be used elsewhere.

	(2) In the case of a resident person— Deductions allowed to
	(a) every premium or sum paid by the tax-residents. payer during the income year for the N.S.W. Act, insurance of the taxpayer's own life or s. 16 (1), (b)
5	that of the wife, husband or children of (c), (d). the taxpaver or for a deferred annuity C'wth Act,
	or other like provision for the husband, s. 23 (1), (e) wife or children of such taxpayer, or in (g), (k), (o). respect of any fidelity guarantee or bond
10	which such taxpayer is required to provide for 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
15	aggregate, or for any premium or sum paid in respect of any insurance, annuity, or other provision effected outside Australia.
	(b) payments not exceeding one hundred
20	pounds in the aggregate made for the personal benefit of the taxpayer or his wife or children during the income year by a taxpayer who is in receipt of salary, wages, allowances, stipends or annuity, or whose taxable income does not exceed
25	eight hundred pounds, to superannuation, sustentation widows' or orphans' fund established in Australia, or any society duly registered under any Friendly Societies Act of the Commonwealth or
30	State; (c) (i) the amount of fifty pounds in respect
85	of each child who is wholly maintained by the taxpayer and who is under the age of sixteen years at the beginning of the income year.
	Where the child is not wholly maintained by the taxpayer for the whole of the income year, or where the child is but partially maintained by the taxpayer

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taxpayer either for the whole or part of the income year, or where the child so wholly or partially maintained attains the age of sixteen years during the income year, such proportionate part of fifty pounds as the Commissioner shall decide as fair and equitable in the circumstances: (ii) the amount of fifty pounds in respect of the wife of a taxpayer who is not separated from her husband either under an order of a court of competent jurisdiction or a separation agreement, or who, if so separated, is wholly maintained by him; (iii) an amount not exceeding fifty pounds for sums actually expended in respect of dependants of an unmarried taxpayer, who are wholly maintained by him. A dependant means a relative by blood, marriage or adoption. Any payments to the dependant which, in the opinion of the Commissioner, are for board and lodging of or other services to the taxpayer shall be excluded in calculating such expenditure: Provided that a person whose income during the income year exceeds the sum of one hundred pounds, or in respect of whom a deduction is allowed to any taxpayer under subparagraphs (i) or (ii) of this paragraph shall not be deemed to be a dependant; (d) such sum as is paid by the taxpayer to— (i) any legally qualified medical practitioner, public or private hospital, nurse or chemist in respect of any illness of or operation upon the taxpayer or the wife, husband or any of the children (under the age of twenty-one years) of the taxpayer; and to

(ii)

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(ii) any undertaker for funeral and burial expenses arising out of the death of the wife or husband of the taxpayer or of any of his children under the age of twenty-one years.

The deductions mentioned in subparagraphs (i) and (ii) of this paragraph are to be allowed only when the taxable income of the taxpayer does not exceed six hundred pounds, and in no case shall a deduction be allowed under subparagraph (ii) exceeding the sum of twenty pounds; and

- (e) expenses actually incurred by a taxpayer in educating his children under eighteen years of age (not exceeding fifty pounds for each child during the income year).
- (3) (a) In the case of a resident person (other than Deduction to a company) the sum of two hundred and individual resident.

 fifty pounds less the sum of one pound for N.S.W. Act, every eight pounds by which the net in-1912, No. 11 come exceeds two hundred and fifty s. 16 (1), (a).

 Cwth Act, pounds;

 1922-1927,

 (b) In the case of a non-resident person (other s. 24 (1).
- (b) In the case of a non-resident person (other than a company) the sum of fifty pounds less the sum of one pound for every eight pounds by which the net income exceeds fifty pounds.

20. (1) The deductions in paragraph (q) of sub-parts of income 30 section one, and in subsection two and in subsection deductions are three of section nineteen shall be made in the first place N.S.W. Act, from income derived from personal exertion.

1912, No. 11 s. 16 (2).

(2) The other deductions provided in subsection one of section nineteen shall be made in the first place 35 from income derived from personal exertion unless such loss, outgoing or expense was incurred in the production of income derived from property, in which case such deduction shall be made in the first place from income derived from property.

(3)

- (3) When the provisions of section nine are resorted to, the deductions in paragraphs (p) and (q) of subsection one and in subsections two and three of section nineteen shall be made in the first place from income other than that derived from agricultural, dairying, or pastoral pursuits.
- (4) If the income of the class from which the deduction is in the first place to be made does not amount to the sum to be deducted, the difference shall 10 be deducted from the other class or classes.
 - 21. A deduction shall not in any case be made in Matters not respect of any of the following matters:—

 allowed as deductions.
 - (a) the cost incurred in the maintenance of the tax- C'wth Act, payer, his family or establishment, other than section nineteen of this Act; N.S.W. Act
 - (b) domestic or private expenses, other than as \$\frac{1912}{\text{s. 16}}\$ (1) (e) specified in subsection two of section nineteen; \$\frac{(iid)}{\text{s. 16}}\$ (3)
 - (c) income carried to any reserve fund, or capitalized in any way;
- 20 (d) money not wholly or exclusively laid out or expended for the production of the assessable income;

- (e) rent, or value of, or cost of repairs to any premises or part of premises not usually occupied for the purpose of producing assessable income;
 - (f) any bad debts, except as provided for in paragraph (k) of subsection one of section nineteen of this Act;
- 30 (g) any loss not connected with or arising out of the production of assessable income, except as specified in sections twelve and twenty-two;
- (h) investment, expenditure, loss or withdrawal of capital; money used or intended to be used as capital; capital used in the improvement of premises occupied for the purpose of any business, or used in the production of income; interest which might have been made on such capital

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capital or money if laid out at interest—except as specifically allowed by subsection one of section nineteen;

(i) interest, except as provided in paragraph (a) of subsection one of section nineteen of this Act;

- (j) any wastage or depreciation of any lease or in respect of any loss occasioned by the expiration of any lease, except as provided in paragraph (m) of subsection one of section nineteen of this Act;
- (k) any payment of income tax or of any other rates or taxes not allowed as a deduction by paragraph (b) of subsection one of section nineteen.
- (l) any expenses which have been incurred in deriving income which is exempt from income tax:
- (m) any sum as a bonus or fee, salary, commission or allowance paid or credited to a director of a company or to a member of the family of a director of a company in excess of what the Commissioner considers a reasonable amount; but such excess shall be treated as dividends from a company in the hands of the recipients. This paragraph shall apply only to companies to which section thirty-one may be applied;
- (n) head office expenses of a company beyond an amount which bears the same proportion to the total head office expenses as the revenue derived by the company in the State bears to the total revenue or beyond such an amount in excess thereof as may be fixed by the Commissioner;
 - (o) any sum paid by a taxpayer to a relative by blood, marriage, or adoption, in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business and for services rendered;

(p)

(p) any sum paid or payable by a company to any member or shareholder in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business or for services rendered. This paragraph shall apply only to companies to which section thirty-one may be applied;

(q) any loss or expense which is recoverable under any contract of insurance or indemnity.

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sources:

Provided that the loss shall be deducted in the first

place from the income returnable under paragraph (b) of section eleven, if any, but if that income does not 20 amount to the loss to be deducted, the difference shall be deducted from his income from personal exertion, if any, in the same year, and if this income does not amount to such difference, the balance shall be deducted from his other income from property, if any, in the 25 same year:

Provided, further, that if the loss results from the carrying on of any agricultural, dairying or pastoral pursuit as defined in section nine, it shall be deducted in the first place from any other income from any such 30 pursuit during that year, and if this income does not amount to such loss, the balance shall be deducted from the income from other sources in the order set out in the first proviso to this subsection.

(2) If the taxpayer did not derive any assessable 35 income from other sources in that year or if the loss exceeds the net assessable income derived by him from other sources, the loss or the excess of the loss over such net assessable income, as the case may be, shall be carried forward into his subsequent yearly returns, but 40 not exceeding two years subsequent to the year in which the loss occurs. In this subsection "net assessable

income "

income" means net income as defined in section four of this Act, but not including any deduction allowable under this section.

- (3) The loss or the excess of the loss which is 5 carried forward under the provisions of subsection two hereof shall be deducted from the assessable income of the year into which it is carried forward in the order provided in the provisos to subsection one hereof.
- (4) Where any taxpayer who is entitled to a 10 deduction under subsection two hereof is a taxpayer to whom section nine of this Act applies, then the amount of the loss carried forward under subsection two hereof shall not be taken into account under paragraph (d) of subsection one of section nine in ascertaining the excess 15 of allowable deductions for the year in which the loss was incurred.
 - (5) Nothing in this section shall apply with respect to any loss incurred by a taxpayer prior to the first income year to which this Act applies.
- 20 23. In the case of any company (other than a Co-operative co-operative society) which entirely or mainly either societies and purchases from or sells to its own members or shareholders, or of a mutual building, investment or insurance company (other than a co-operative society or 25 a life assurance company), the following provisions shall apply:—

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- (1) The assessable income of any such company shall include—
 - (a) all sums received from members in payment of interest or premiums of insurance or for commodities supplied or for animals or land sold to them or received in respect of commodities, animals or land sold by the company whether on its own account or on account of its members; and
 - (b) contributions levied on its suppliers based on the quantity or value of commodities, animals or land supplied, which in the opinion of the Commissioner are in effect a reduction

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reduction in the amounts paid to suppliers for commodities, animals or land so supplied:

Provided that when any such contributions so levied are included in the income of such company, they shall not be included in the assessable income of the suppliers.

(2) In arriving at the taxable income of any such company, there shall be deducted, in addition to any other deductions allowed by this Act, the amount distributed, within nine months after the close of the income year, among its members or shareholders, based on purchases or payments of interest or premiums of insurance by members or shareholders or on sales by members or shareholders to the company:

Provided that where any such company makes sales to persons other than members or shareholders, only so much of the amount distributed as bears to the total amount distributed the same proportion as the amount of the sales to the shareholders or members bears to the total amount of the sales by the company, shall be allowed as a deduction.

(3) No deduction shall in any case be allowed in respect of the amount distributed among the members or shareholders as interest in respect of, or as dividends on, shares.

(4) The taxable income of a co-operative society shall be assessed subject to section sixty-three of the Co-operation Acts, 1923–1928, or any amendment thereof or any enactment substituted therefor.

25. (1) When a foreign company or non-resident Carriers by person carries passengers, live-stock, mails, or goods ship. shipped in the State, either as owner or charterer of any C'wth Act, vessel, such company or person shall by itself or himself s. 27. or by the master or its or his agent in the State, within N.S.W. Act, 1919. No. 11.

40 the prescribed time or when the Commissioner may s. 19 (14). require, make a return of the full amount payable to

it or to him, whether such amount is payable in the State or beyond the State, in respect of the carriage of

such passengers, live-stock, mails or goods.

Such company, person or master or other agent shall 5 be assessed thereon in respect of income directly or indirectly derived from a source within the State, and the taxable income shall, if such taxable income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed at an amount equal to 10 seven and one half pounds for every one hundred pounds so payable as aforesaid.

- (2) Where no return is made under this section by such person or company, or by the master or other such agent, the Commissioner may determine the amount 15 payable to such person or company in respect of the carriage of passengers, live-stock, mails and goods, and may assess the tax payable on seven and one half pounds per centum of that amount, and the master shall be assessed thereon and shall be liable to pay the tax 20 assessed.
- (3) Where a return is made as required by this section, and an assessment in respect of that return is made on the master or other agent, and the tax is not paid as required by or under this Act, the master shall 25 be liable to pay the tax so assessed.
- (4) Wherever an assessment is made upon the master or wherever the master becomes otherwise liable to pay the tax assessed, the Commissioner shall give notice of such assessment or liability to the master, and such 30 master shall thereupon pay the tax prior to the clearance of the ship, and subject to any law of the Commonwealth, the Collector of Customs shall have power to detain the ship until such payment is made.
- 25. (1) When any person in the State (herein termed Agents selling 35 "the agent") on behalf of a principal resident or carry- State for noning on business out of the State or on behalf of a foreign resident. company, sells or disposes, or is instrumental in selling See N.S.W. or disposing of any property for the principal, whether No. 11, s. 18. such property is in the State or is by the contract to be Hughes v. 40 brought into the State, and whether the contract is made 9 C.L. R 289.

by the agent in the State or by or on behalf of the principal out of the State, and whether the moneys arising therefrom are paid to or received by the principal directly or otherwise, the moneys arising therefrom shall

5 be deemed to be income derived by the principal from a business carried on by him in the State, and the taxable income derived therefrom by the principal shall, if such income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed on an 10 amount of taxable income equal to five pounds for

every one hundred pounds of the amount for which such property has been sold or disposed of.

(2) Such agent shall as regards such income be subject to the provisions and entitled to the benefits

15 relating to agents contained in this Act.

(3) The method of assessment provided by this section shall not apply to the proceeds of the sale in the State by an agent on behalf of a person resident in any other State of the Commonwealth of any agricultural or 20 orchard produce, wool or live-stock produced in such other State.

26. (1) The taxable income of a mutual life Life assurance company, carrying on business in the State, assurance shall be arrived at by taking as a basis all assessable companies see C'wth 25 income from investments, including income from rents Act, 1922-derived from a source in the State, and deducting therefrom the expenses arrived at under subsection two hereof. S.A. Act, 1927, No. To the amount so ascertained there shall be added any 1,787, s. 30. taxable income assessable under the provisions of section 30 twelve.

(2) The amount allowable as a deduction on account of the expenses of a mutual life assurance company shall be such amount as bears to the total expenses (both in and outside the State) incurred by the company

35 in the general management of the business, not including expenditure exclusively incurred in gaining or producing the premium income of the company, the same proportion as the assessable income from investments, including income from rents, bears to the total income

10 of the company from its investments (wherever derived) including income from rents.

"Expenses"

"Expenses" in this subsection shall not include any payment of income tax or any other deduction which is prohibited under provisions

of section twenty-one of this Act.

5 "Total income from investments (wherever derived)" shall not, so long as the exemption provided in section ten continues, include any interest derived from any bonds, debentures, stock, or other securities referred to in para-10 graph (r) of subsection one of section ten.

(3) The taxable income (other than taxable income assessed under the provisions of section twelve) of a mutual life assurance company shall not be assessed at an amount less than an amount which

15 bears the same proportion to the amount which would be assessed as the taxable income of such a company if all its income from investments, including income from rents, were treated as derived from a source in the State, as the amount assured under policies held by New

20 South Wales policy-holders at the end of the income year bears to the total of the amount assured under policies held by all its policy-holders at the end of such income year.

(4) In the case of a company (other than a 25 mutual life assurance company) carrying on the business of life assurance in the State the taxable amount of income from life assurance business shall be determined on a similar basis to that herein provided in the case of a mutual life assurance company.

30 (5) In the case of any company to which this section applies, and which also carries on a business other than life assurance, the investments and expenses to be taken into account shall be the investments and expenses in respect of its life assurance business, and 35 the taxable income of such other business shall be added to the taxable income of the life assurance business.

(6) No assessment shall be made on any company (including a mutual life assurance company) in respect of its life assurance business unless the company derives 40 a profit and surplus from such business. In ascertaining such profit and surplus, all rents, interest and other profits

profits and earnings in respect of or in relation to such business (whether derived in or outside the State) including interest chargeable by the company on overdue premiums shall be included, but no deduction shall be 5 made in respect of any of the matters prohibited to be deducted by section twenty-one of this Act.

27. In the case of any person carrying on business Income of (other than a business to which sections twenty-four and person carrying on busitwenty-six apply) both in and outside the State the ness in and 10 income derived from sources in the State shall be deter-outside the State. mined as follows:-

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(a) Where the taxable income derived from 1912, No. 11, sources in the State is capable of being kept s. 19 (2). separate and apart from income derived from sources outside the State the taxable income derived from sources in the State shall be the actual amount of taxable income so derived.

(b) In all other cases the person liable to make the return shall furnish the Commissioner with a return showing a true estimate of the amount of the net income which has been derived from sources in the State. In making such estimate there shall be added to the income definitely ascertainable as being derived in the State a proper proportion of the income which cannot be definitely allocated to sources in or outside the State. The return shall set out the method by which any such apportionment has been ascertained, and shall be accompanied by a full and complete statement of all income and expenditure and assets and liabilities in connection with the business both inside and outside the State. The Commissioner may accept such estimate or may without limitation of his powers under section forty-two or any other section of this Act assess the taxable income derived from sources in the State by ascertaining in accordance with this Act the total taxable income which would have been derived from the business if the income from sources both in and outside the

State

State were derived from sources in the State and apportioning such total taxable income as between sources in and outside the State in proportion to either—

- (i) the sales in the State as compared with the total sales, or if there are no sales both in and outside the State, the revenue derived from sources in the State as compared with the total revenue; or
- (ii) the assets used in the State in connection with the production of taxable income as compared with the total assets employed in the production of the total taxable income referred to:

Provided that if in the case of any nonresident person, or in the case of a foreign company, the Commissioner is satisfied that the information necessary to determine the income arising from sources in the State cannot be obtained or is not satisfied that the return discloses the true state of affairs (without limiting any other powers possessed by him under this Act), he may assess the taxable income of that person or company at a sum equal to seven and one half pounds in every one hundred pounds of the total sales made in the State, or, if there are no sales in the State, at a sum equal to seven and one half pounds for every one hundred pounds of the total revenue derived in the State, and such person or company shall be liable to pay income tax thereon.

28. (1) Whenever-

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- (a) by reason of the manufacture, extraction from Apportionthe earth, winning, production or purchase of ment of income derived any goods, substance, product, or commodity in within and the State and their sale outside the State; or State from
 - (b) by reason of successive steps of extraction, factures, &c. winning, production, or manufacture in and outside the State; or

- (c) by reason of the making of contracts in the State and their performance outside the State, or vice versa; or
- (d) for any other like reason
- 5 the source of any income is not exclusively in the State, that income shall be apportioned between its source in the State and its source outside the State, as prescribed See N.S.W. by regulations, or if there is no regulation applying to Act, 1912, No. 11, s. 32 the case in such manner as shall be determined by the (1)(d).

 10 Commissioner.
- (2) Provided that where in the opinion of the Commissioner it is difficult or impracticable to determine whether income is assessable under this section or under some other section or sections of this Act, or where in 15 the opinion of the Commissioner such income is
- 15 the opinion of the Commissioner such income is assessable both under this section and under some other section or sections of this Act, the Commissioner may at his option assess such income under the provisions of the section which is in his opinion the most 20 appropriate to the circumstances of the case.
 - 29. (1) Notwithstanding any other provision in this Taxation Act, when any business which is carried on in the State where local business (other than a business to which sections twenty-four controlled abroad. and twenty-six apply)—

 C'wth Act.
- 25 (a) is controlled principally by non-resident persons 1922-1927, s. 28.

 or a foreign company; or Imperial A
 - (b) is carried on by a company, a majority of the shares in which are held by or on behalf of—Rules 7 to 9.
 - (i) a foreign company; or

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- (ii) another company which carries on business outside the State; or
- (iii) persons who hold a majority of the shares in a company such as is referred to in subparagraphs (i) and (ii); or
- (c) is carried on by a New South Wales company which holds, or on behalf of which other persons hold, a majority of the shares in a foreign company or a company carrying on business outside the State,

and

and it appears to the Commissioner that on account of these circumstances, or on account of any other circum-5 stances, the course of the business can be so arranged. and is so arranged, 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 or company carrying on the business in the

10 State 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. If in his opinion, upon information subsequently obtained, the circumstances so

15 warrant, the Commissioner may vary such percentage either by way of increase or reduction, and the assessment shall be adjusted accordingly.

(2) Section 18A of the Income Tax (Manage-Repeal of ment) Act, 1912, as inserted by section five of the . 18A. 20 Income Tax (Management) Amendment Act, 1925, is N.S.W. Act, 1912, No. 11. hereby repealed, and such repeal shall be retrospective from the date of the commencement of such section.

(3) This section shall be applied retrospectively to the income of the years of income ended on the 25 thirtieth day of June, one thousand nine hundred and twenty-five, the thirtieth day of June, one thousand nine hundred and twenty-six, and the thirtieth day of June, one thousand nine hundred and twenty-seven, as far as regards any company engaged during those years 30 in the transactions mentioned in the said section 18A,

or in the business of distributing motion picture films. (4) For the purposes of this section and section thirty, shares held by or in the names of persons who are relatives by blood, marriage, or adoption, may be 35 treated by the Commissioner as if they were held by any one of such persons.

30. (1) Any two or more companies which consist Companies substantially of the same shareholders may, if the consisting of substantially Commissioner considers fit, be deemed to be a single the same 40 company, and in such case shall be jointly assessed and shareholders. liable accordingly.

(2) Two companies shall be deemed to consist 1910-1927, substantially of the same shareholders if not less than

C'wth Land

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three-

three-fourths of the paid-up capital of one of them is held by or on behalf of persons who hold three-fourths of the paid up capital of the other. Shares in one company held by or on behalf of another company shall 5 for this purpose be deemed to be held by shareholders of the last mentioned company.

31. With a view to preventing the avoidance of Where a of income of a company it is hereby associated a full company has of income of a company, it is hereby enacted as follows :- ably distri-

(a) Where a company has not within nine months buted its taxable after the close of any income year distributed income. to its members or shareholders (in such manner C'wth Act, as to render the amount distributed liable to .. 21. be included by them as assessable income in their returns) at least two-thirds of its taxable income of such income year, the Commissioner shall determine whether a sum or a further sum (not exceeding the excess of two-thirds of the taxable income of the company over the amounts, if any, distributed by it to its members or shareholders) could reasonably have been

such taxable income:

Provided that in the case of a company to which this section applies, which, in the opinion of the Commissioner is a holding company, this paragraph shall be read as if, in place of the words "at least two-thirds" there were substituted the words "the whole," and as if the words "of two-thirds" were omitted.

distributed by the company to them out of

(b) The Commissioner shall assess the tax and the additional tax, if any, which would have been payable by the members or shareholders if the sum or the further sum determined by the Commissioner in accordance with subsection one of this section had been distributed to the members or shareholders who would have been entitled to receive it in proportion to their interests in the paid-up capital of the company.

(c) The company shall pay to the Commissioner the amount of the tax and additional tax assessed under paragraph (b). (d)

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- (d) The provisions contained in the Schedule to this Act shall have effect as to the companies to which this section shall apply, the computation of the taxable income of a company 5 for the purposes of this section, the basis on which a determination may be made by the Commissioner, the basis on which the tax or the additional tax payable by the members or shareholders shall be assessed, and otherwise 10 for the purpose of carrying into effect, and in connection with, this section.
 - 32. (1) Subject to the following provisions of this Income of section the income derived by a husband and wife husband and who are not separated either under an order of a court separated.

15 of competent jurisdiction or under a separation agreement shall be assessed for, and liable to income tax as if it were income derived by one person, whose residence shall be deemed to be the residence of the husband unless apart from the provisions of this section such

20 husband would not be liable to pay income tax, in which case the residence shall be deemed to be that of the wife.

(2) The husband and the wife shall each be assessed and shall be liable in respect of his or her 25 proportion of the total income tax so assessed.

(3) The amount of such income tax for which each party shall be liable shall be ascertained by dividing the total income tax assessed under subsection one hereof in proportion to the respective amounts of such income

30 which, if the husband and the wife were single persons, would be assessed as their net income respectively: Provided that for this purpose in ascertaining such amounts no deductions shall be made under the pro-

visions of subsection two of section nineteen.

35 (4) If, during any income year, both parties are resident persons and the net income of either party is less than one hundred and fifty pounds, in making an assessment under the preceding provisions of this section the amount of the deduction ascertained under the pro-

40 visions of paragraph (a) of subsection three of section nineteen shall be increased by the amount of such net

income: Provided

Provided that if the net income of each of such parties exceeds one hundred and fifty pounds, there shall in making any such assessment be substituted for the amount of two hundred and fifty pounds, wherever 5 appearing in paragraph (a) of subsection three of section nineteen, the amount of four hundred pounds.

- (5) Subsection one of this section shall not apply to—
- (a) the income of a wife arising from property which has not been derived directly or indirectly from her husband, or arising from property not being a conversion or investment of property so derived;
- (b) the earnings, pension, superannuation or retiring allowances of a wife other than earnings in or in connection with—

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(i) any business carried on by her husband or by her and her husband and in either case with or without any other person;

(ii) any business carried on by her which was substantially established by her husband;

(iii) any business carried on by a company to which the provisions of section thirtyone may be applied and in which her husband is a substantial shareholder or in which she is a substantial shareholder by virtue of shares derived by her directly or indirectly from her husband.

30 (6) (a) The wife shall be assessed for and liable to income tax in respect of her income excepted from the operation of subsection one by subsection five.

(b) Any deductions under subsection two of section nineteen to which the wife may be entitled\$5 shall be made in the first place from such income, and the excess, if any, shall be deducted from her other income.

(c) The deduction otherwise allowable under subsection three of section nineteen from the income of 40 the wife referred to in paragraph (a) of this subsection shall

shall be reduced by the amount by which the deduction under the said subsection three is increased by the operation of subsection four of this section.

(7) If in any case to which subsection one of 5 this section would otherwise apply during any income year—

(a) a husband and wife are divorced; or

(b) a husband and wife have separated either under an order of a court of competent jurisdiction or under a separation agreement; or

(c) either husband or wife dies, the husband and wife or the personal representatives as the case may be shall each be separately assessed and liable to income tax in respect of income derived by 15 each of them during the whole of the income year.

(8) Nothing in this section shall relieve either a husband or a wife from his or her liability to furnish a

separate return of income.

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33. A partnership shall be liable to furnish a return Partners.

20 in respect of the income of the partnership but shall C'wth Act not, except as provided in this section, be liable to pay 1922-1927, any tax, but each partner shall, subject to section Qld. thirty-two, be assessed in his individual capacity in 15 Geo. V., respect of—

15 (iii) (iii).

(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 subsections two and three of section nineteen, and under subsection three of section twenty-two, together with;

(b) any other income derived by him separately; and

35 (c) his individual interests in the income derived by any other partnership:

Provided that if any person is carrying on business in partnership—

business in partnership—

(i) with his wife and any of his relatives by blood, marriage, or adoption, who is under the age of twenty-one years, or

(ii)

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- (ii) with any such relative, and whether in either case any other person is also a partner, the individual interest of such relative in the income of the partnership shall for the purposes of this Act be deemed to be the individual interest of such first-mentioned person in addition to his other individual interest, and he shall be allowed to deduct such amount as the Commissioner considers reasonable and as is actually paid to any such relative for services actually performed by him in the business.
- (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 deductions under subsections two and three of section nineteen, and under subsection three of section twenty-two, together with—
- (b) any other income derived by him separately; and
 - (c) his individual interests in the income derived from any other source.
- (2) A trustee shall be separately assessed and liable to pay income tax in respect of that part of the 35 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 deductions under subsections two and three of section nineteen and under subsection three of section twenty-two; and

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(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.

10 (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 subsection two 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.

25 (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

30 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.

35 (5) Notwithstanding anything contained in this section the Governor may make regulations applying the provisions of section twenty-two, either in whole or in part, with such additions, modifications, and limitations as he thinks fit to trustees carrying on a business and

40 to incomes of beneficiaries derived from their interests in such business.

35. Notwithstanding anything in the preceding Income under section or elsewhere contained in this Act, any income a disposition which by virtue or in consequence of any disposition person applic. made, directly or indirectly, by any person, either before able to the 5 or after the commencement of this Act, is payable to, unmarried or accumulated, or applicable for the benefit of a child child of such of that person, shall, if and so long as the child is a See Imp. Act, minor and unmarried, be deemed for the purposes of this 12 and 13 Act, to be the income of the person, if living, by whom $_{s.\ 20}^{\text{Geo. V, c. 17}}$, 10 the disposition was made:

Provided that any income tax which by virtue of this subsection is chargeable on and is paid by the person by whom the disposition was made, may be recovered by that person from any trustee or other person to whom 15 the income is payable by virtue or in consequence of the disposition.

36. For the purpose of section thirty-five—

Definitions

- (i) the expression "child" includes a step-child purpose of or adopted child; and
- (ii) the expression "disposition" includes any 20 trust, covenant, agreement, or arrangement.

37. The rates of income tax on the taxable incomes Graduated of companies may be fixed (either as regards the whole rates of tax on or part of the taxable income, and either as regards all companies.

25 companies or any class or classes of companies) on such graduated scale as may be fixed by the Income Tax Act declaring the rates of income tax.

PART IV.

RETURNS AND ASSESSMENTS.

- 38. (1) For the purpose of assessment and levy of Persons to income tax, every person shall, when called upon by the furnish returns.

 5 Commissioner by notice published in the Gazette, fur- Cwth Act, nish to the Commissioner in the prescribed manner a 1922-1927, return setting forth a full and complete statement of the N.S.W. Act, income derived by him during any income year to which 1912, No. 11, this Act applies. The Commissioner may in such notice s. 20.
- 10 exempt such classes of persons as he may specify from liability to furnish a return, but such exemption shall not exempt any such person from liability to furnish a return if so required by the Commissioner under the provisions of the next succeeding section:
- 15 Provided that the Commissioner may as and when he thinks fit require returns to be furnished to him before the end of any income year in respect of the income of any part of that year.
- (2) Within the time mentioned in such notice 20 or within such further time as the Commissioner may allow, every person shall deliver in the prescribed manner to the person appointed to receive the same a return in the prescribed form signed by such person setting out the prescribed particulars in respect of all 25 his income during the income year:

Provided that if the taxpayer is absent from the State or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person authorised by him.

30 (3) When the income of any person cannot be conveniently returned as for a year ending on the thirtieth day of June, the Commissioner may accept returns made up to the date of the annual balance of the accounts of that person, and in such case such

35 person shall not be entitled without the consent of the Commissioner to alter the period for which his returns are made.

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39. (1) The Commissioner may at any time require New further any person to furnish a return or a further and fuller and fuller return of income either in respect of the whole or any See C'wth part of income received by such person, whether on Act, 1922-5 his own behalf or as an agent or trustee, and although 1927, s. 33. a return has been previously made by such person for the same period.

- (2) All the provisions of this Act shall extend and apply to any such return or further and fuller 10 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 15 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.

40. Any return purporting to be made or signed by Returns or on behalf of any taxpayer or person shall be deemed deemed to be deemed duly made. 20 to have been duly made and signed by him until the C'wth Act, contrary is proved.

41. From the returns and from any other informa- Assessment. tion in his possession, or from any one or more of Ibid. s. 35. these sources, the Commissioner shall cause assessments 25 to be made for the purpose of ascertaining the taxable income upon which income tax shall be levied.

42. If—

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Default

- (a) any person makes default in furnishing any 1614. s. 36. return; or
- return; or

 N.S.W. Act,

 (b) the Commissioner is not satisfied with the ss. 21, 22.

 N.S.W. Act,

 1912, No. 11,

 22. return made by any person, whether or not he has previously made an assessment in respect of such return; or
- (c) the Commissioner has reason to believe that 35 any person (though he may not have furnished any return or been required to furnish a return) is a taxpayer; or
 - (d) the Commissioner has reason to believe that any person is about to leave the State; or

(e)

(e) any person who is resident out of the State has not, in the opinion of the Commissioner, a fixed and permanent place of business in the State, the Commissioner may cause an assessment or, as the 5 case may be, an amended assessment in respect of the income of the whole or part of an income year to be made of the amount upon which, in his judgment, income tax ought to be levied, and, in addition, in the case of companies, of the amount of capital employed 10 and of taxable income for the purposes of section thirtyseven of this Act, and the person or company so assessed shall be liable to income tax accordingly, excepting so far as he or it establishes on objection that the assessment is excessive.

43. Every taxpayer who has received a notice Particulars of of assessment other than a notice of an assessment made assessment. under section forty-two shall, on request, be informed by N.S.W. Act, the Commissioner of the amount at which the income of s. 23 (5). such taxpayer has been assessed, the amount of the 20 deductions allowed therefrom, and the rate at which tax has been assessed thereon.

44. (1) The Commissioner may at any time cause to Alterations be made all such alterations in or additions to any assess- and additions to any assess- and reinment as he thinks necessary in order to insure its statement of 25 completeness and accuracy, notwithstanding that income assessment. tax may have been paid in respect of income included in C'wth Act, the assessment:

Provided that every alteration or addition which has the effect of imposing any fresh liability, or increasing 30 any existing liability, shall be notified to the taxpayer affected and, unless made with his consent, shall be subject to objection.

(2) The Commissioner may at any time cause any assessment to be rescinded or he may cause any 35 assessment previously rescinded (excepting and in so far as such action was taken in consequence of a decision on an objection or an appeal) to be reinstated, provided that any reinstatement of an assessment shall, unless made with the consent of the taxpayer, be subject to 40 objection.

(3)

(3) When any alteration in an assessment has the effect of reducing the taxpayer's liability, such alteration shall be notified to the taxpayer, and any tax overpaid shall be refunded by the Colonial Treasurer:

Provided that no refund shall be made after three years have elapsed from the date on which the tax was originally due and payable by the taxpayer, unless to the extent to which additional tax may be payable by such taxpayer in consequence of an addition to an 10 assessment for an income year prior to the income year to which the refund is applicable.

Notwithstanding, however, that such period of three years may have elapsed if an application therefor has been made by the taxpayer within the period of three 15 years such refund may be made.

45. The validity of any assessment shall not be validity of affected by reason that any of the provisions of this Act Cwth Act, 1922-1927, 1. 28. have not been complied with.

46. (1) The production of any notice of assessment Copies as 20 or of any document under the hand of the Commis-evidence. sioner, Assistant Commissioner, or Acting Commissioner 16id. s. 39. purporting to be a copy of a notice of assessment shall-

(a) be conclusive evidence of the due making of 25 the assessment; and

> (b) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be prima facie evidence only.

(2) The production of any document under the hand of the Commissioner, Assistant Commissioner, or Acting Commissioner purporting to be a copy of or extract from any return or notice of assessment, shall 35 for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

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(3) Any document purporting to be under the hand of the Commissioner, Assistant Commissioner, or Acting Commissioner shall be received in evidence 40 in all courts without proof of the signature

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47. (1) As soon as conveniently may be after an Notice of assessment is made the Commissioner shall cause notice assessment. in writing of the assessment to be given to the person 1922-1927, liable to pay the income tax.

5 (2) The omission to give any such notice shall N.S.W. Act, not invalidate the assessment.

PART V

OBJECTIONS AND APPEALS.

- 48. (1) A taxpayer who is dissatisfied with the objections.

 10 assessment made by the Commissioner under this Act C'wth Act, may, within sixty days after service by post or other-ses. 50, 51A. wise of the notice of assessment post to or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail all the grounds

 15 on which he relies.
 - (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 20 written notice of his decision on the objection.
- (4) A taxpayer who is dissatisfied with the decision of the Commissioner may, within thirty days after the service of notice by post or otherwise of the decision of the Commissioner, in writing request the 25 Commissioner to treat his objection as an appeal and to forward it to a Court of Review in order that the objection may be heard and determined.
- (5) The Commissioner shall, if the taxpayer's request is accompanied by such fee as may be prescribed, 30 forward the appeal to a Court of Review as requested.
 - (6) A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection.

- (7) If the assessment has been reduced by the Commissioner after considering any objection, the reduced assessment shall be the assessment appealed from.
- (8) It shall not be competent for the taxpayer to take any further objection to the original assessment, nor any objection to any amended assessment unless in such amended assessment a further liability to tax is imposed upon him, and then only with respect to such 10 further liability.
- 49. (1) The fact that an objection or appeal is Pending pending shall not in the meantime interfere with or appeal not to affect the assessment objected to; and income tax may payment. be levied and recovered on the assessment as if no objec-C'wth Act, 1922-1927, s. 52.
- (2) If the assessment is altered on objection or appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded by the Colonial Treasurer, and amounts short-paid shall be 20 recoverable by the Commissioner as arrears.
 - **50.** The Governor may, from time to time, by notice court of in the Gazette, declare that any judge of the District Review. Court shall be a Court of Review within the meaning N.S.W. Act, of this Act, and thereupon every Court of Review con-s. 8.
- 25 stituted as aforesaid shall within such limits and in such cases as the Governor may prescribe in the said notice have jurisdiction to hear and determine appeals from assessments made under this Act, or the previous Act. Until a Court of Review is constituted under this Act
- 30 every Court of Review existing at the date of this Act shall have jurisdiction as aforesaid.
- 51. (1) The Court of Review constituted under this Proceedings
 Act or existing at the date of this Act shall be a Court and powers of
 of Record, and shall hear and determine any appeal Review.

 35 transmitted to it as hereinbefore provided and subject Ibid. ss. 26 to
 to this Act any appeal under the previous Act and may 29, 31, 32.
 alter any assessment appealed against and assess the tax
 and additional tax payable by the taxpayer in respect
 of the assessment appealed against.

- (2) In addition to any other powers conferred upon it by this Act, the court may—
 - (a) fix the time and place for the sittings of the court and adjourn such sittings to another time and place;
 - (b) amend any order of the court;

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- (c) order the Commissioner to pay to the appellant his costs of an appeal from any assessment in respect of which the Commissioner may have acted unreasonably or oppressively towards the appellant;
- (d) order the appellant to pay to the Commissioner any tax or additional tax found to be due, and his costs of any frivolous or vexatious appeal;
- (e) on the application of the appellant exclude from the court during the hearing of an appeal all or any persons other than the parties or their representatives;
- (f) assess any costs payable under any order of the court, or order that such costs be taxed by the taxing officer of the Supreme Court or of any District Court, whereupon such costs shall be taxed by such officer accordingly;
- 25 District Court with reference to the issue of summonses and subpœnas compelling the attendance of witnesses and production of documents, and punishing persons who have disobeyed subpœnas, or who being in court refuse to be sworn in or to give evidence;
 - (h) for cause shown allow further time within which an objection may be made (but in no case shall time be allowed so as to exceed nine months from the date of service of the notice of assessment) notwithstanding that the time for making an objection may have expired;

(i)

- (i) order the Commissioner to cause any judgment N.S.W. Act, obtained by him against the appellant to be 1912, No. 11, amended or vacated to conform to the determination on the appeal.
- (3) Any order of the court for the payment of any tax, additional tax, or costs may be made subject to conditions, and shall have the effect of and shall be deemed to be a judgment of the Supreme Court for the amount of such payment, and judgment for such amount may be entered up in such court by the Commissioner against the appellant, and the said amount may be recovered by process of such court as in pursuance of

such judgment.

- (4) Twenty-one days' notice of the day and 15 place fixed for the hearing of any appeal shall be given by the court to the Commissioner and to the appellant.
 - (5) The Commissioner and the appellant may appear on any appeal by counsel, solicitor, or agent authorised in that behalf.
- shall relate solely to the income the subject of the assessment appealed from, and shall not affect the right of the Commissioner to assess any other income of the appellant.
- 25 (7) An order or decision of the court shall be final and conclusive on all parties except as provided in this section.
- (8) The court shall, if required in writing by any party, within the prescribed time and upon pre30 scribed conditions, or may of its own motion, state and submit a case for decision by the Supreme Court on any question of law arising before the court.
- (9) The Supreme Court, for the purposes of this section, may consist of two judges only, and shall have 35 power to deal with the costs of and incidental to any case submitted under this section as it may think fit.
 - (10) The Governor may by regulations prescribe the rules to be observed in proceedings under this section.

52. (1) Notwithstanding anything contained in Appeals to the proviso to paragraph (k) of section eleven, section Review thirteen, paragraphs (m), (o), and (p) of section twenty- assisted by one and sections twenty-seven, twenty-eight, twenty-assessors. 5 nine and thirty-one, a taxpayer who is dissatisfied with any opinion, decision, determination, or assessment by the Commissioner under any such proviso, paragraph, or section shall, after the assessment has been made, have the same right of objection as is provided in section 10 forty-eight, and also the same right of appeal against any decision of the Commissioner upon any such objection.

(2) For the purpose of any appeal in pursuance of this section the Court of Review shall be assisted by two assessors appointed under this Act, who may advise 15 the court, but shall not adjudicate on the matter before

the court.

(3) The assessors shall be appointed by the Governor, but one of them shall be a public accountant of at least ten years' standing.

(4) The assessors shall be appointed in such manner and shall be paid such allowances and fees as

may be prescribed.

53. (1) The provisions of this part of this Act shall Appeals apply to all assessments which may hereafter be made assessments 25 under the provisions of the previous Act, and also to all under assessments made under such previous Act in respect of previous Act. which the time for lodging an appeal has not elapsed at the commencement of this Act.

(2) Any appeal against any assessment under 30 the previous Act, the hearing of which had not been commenced by the Court of Review as constituted under that Act at the date of the commencement of this Act, shall be treated in the same manner as if it were an objection lodged under the provisions of this 35 Act.

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Income Tax (Management).

PART VI.

COLLECTION AND RECOVERY OF TAX.

54. (1) The income tax shall be due and payable Date of payto the Commissioner on such day as shall be fixed in ment of tax. 5 the notice of assessment.

1912, No. 11,

(2) Where an assessment is amended in accord- C'wth Act, ance with this Act and additional tax is thereby payable 1922-1927, by the taxpayer, the additional tax shall be due and ss. 54, 56. payable to the Commissioner on such day as shall be 10 fixed in the notice of amended assessment.

(3) If any income tax or additional income tax payable under an assessment made before the thirtyfirst day of July, one thousand nine hundred and twenty-nine, is not paid within thirty days after such 15 tax shall have become due and payable by the taxpayer or within such further time as the Commissioner may allow under the next succeeding section, or if any income tax or additional income tax payable under an

assessment made on or after the thirty-first day of July, 20 one thousand nine hundred and twenty-nine is not paid within sixty days after such tax shall have become due and payable by the taxpayer, or within such further time as the Commissioner may allow under the next succeeding section, the taxpayer shall be

25 liable to pay additional tax of an amount equal to ten per centum upon the amount of the tax unpaid:

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 **30** thereof.

55. The Commissioner may in such cases as he Extension of thinks fit—

and instal-C'wth Act,

1922-1927,

- (a) extend the time for payment as he considers ments. the circumstances warrant, or
- (b) permit the payment of tax to be made by . 55. instalments within such time as he considers the circumstances warrant.

56. Income tax or additional tax due to the Tax a Crown Commissioner under this Act shall be deemed to be a debt. All debt due to the King, and shall be collected and 1912, No. 11, received by the Commissioner on account of and shall s. 7.

5 be paid into the Consolidated Revenue. Any income Cwth Act, 1922-1927, tax unpaid, including any additional tax, may be sued s. 57. for and recovered in any court of competent jurisdiction by the Commissioner:

Provided that a payment of income tax by means of Exchange.

10 a cheque drawn by a taxpayer on a branch of a bank situated in any place in New South Wales where the taxpayer carries on his business need not include

exchange.

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57. If, in any proceedings against a taxpayer for substituded 15 the recovery of income tax or additional tax, the Service.

C'wth Act, 1922-1927,

(a) is absent from Australia and has not to the s. 58. knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia authorised to accept service on behalf of his principal and 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 25 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.

(a) trustee or official assignee in the estate of any agents, and others to give person whose property is being administered notice. under any law of the State or the Common-See C'wth wealth relating to bankruptcy, or who has in Act, 1922-1927, any manner assigned his estate or part thereof ss. 59, 60.
for the benefit of his creditors or any of them;

(b) receiver for any debenture holders and who has taken possession of the assets of a company; or

40 (c) liquidator of any company which is being wound up; or

(d) trustee in the estate of any deceased person; or

(e) an agent for a principal who is a non-resident person and has been required by his principal to wind up the business or to realise the assets of his principal,

shall, subject to the Commonwealth Constitution and any law of the Commonwealth thereunder, give notice in writing to the Commissioner within fourteen days after his becoming such trustee, official assignee,

10 receiver in possession, liquidator, or agent, and shall set aside such sum out of such estate or the property of such company, estate, or principal as appears to the Commissioner to be sufficient to provide for any income tax and additional tax which then is or will thereafter

15 become payable in respect of such estate or by such

company or principal.

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(2) Any person who fails to comply with any of the provisions of this section shall be personally liable for any income tax and additional tax which then is or 20 will thereafter become payable in respect of such estate or by such company or principal, and in addition shall be guilty of an offence and shall be liable to a penalty of not less than one pound nor more than fifty pounds:

Provided that where more persons than one become 25 personally liable for income tax or additional tax such

liability shall be several as well as joint.

59. The following provisions shall apply in any case Where tax where, whether intentionally or not, a taxpayer escapes lifetime. full taxation in his lifetime by reason of not having C'wth Act, 30 duly made full, complete and accurate returns:—

1922-1927,

(1) The Commissioner shall have the same powers and remedies against the trustees of the taxpayer in respect of the taxable income of the taxpayer as he would have had against the taxpayer in his lifetime;

(2) the trustee shall make such returns as the Commissioner requires for the purpose of an accurate assessment;

(3) the assessment shall be at the rates applicable to the income of the income year in which the income was derived, and the amount shall (where

(where the taxpayer's default was intentional) be double the amount of the difference between the income tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the

hands of the trustees;

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(4) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section, and recovering the tax or double tax as in the case of ordinary assessments and taxation.

60. (1) Where at the time of a person's death, Provision for 15 income tax has not been assessed and paid on the whole payment by of the income derived by that person up to the date of tives of his death, the Commissioner shall have the same powers deceased person. and remedies for the assessment and recovery of income C'wth Act, tax from the trustees as he would have had against \$\frac{1922-1927}{s. 62}\$. 20 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 25 furnish a return, the Commissioner may, under section forty-two of this Act, make an assessment of the amount on which, in his judgment, income tax ought to be charged.

61. For the purpose of recovering all moneys due Powers over 30 to him under this Act, the Commissioner shall have property vested, ec., such and the like remedies against all property of any in agent or kind vested in or under the control or management or trustee.

Thid. s. 89 in the possession of any agent or trustee of a taxpayer (h). as he would have if such property were vested in or 35 under the control or management or in the possession of

the taxpayer himself, and in as full and ample a manner.

62. When it appears that several persons are in Consolidation receipt of income for or on behalf of a non-resident of assessment against nonperson or person absent from the State, the Commis-residents. 40 sioner, if it appears to him to be expedient to do so, Qld., 15 Geo. V. may consolidate all or any of the assessments thereof, No. 34, s. 59.

and

and declare any one of such persons to be the agent of such non-resident person or person absent from the State in respect of such consolidated assessment, and require him to pay income tax on the amount thereof, 5 and thereupon such person shall become liable therefor.

63. (1) Every trustee and agent and every other Recovery of person who, under the provisions of this Act, pays any tax paid on income tax for or on behalf of any other person, shall another. be deemed to have been acting under the authority of Cwth Act, the tax payer and of all other payers appeared, and is 1922-1927,

10 the taxpayer and of all other persons concerned, and is ss. 63 and 89. hereby indemnified in respect of such payment, and 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 the same out of any moneys in his

15 hands or that may subsequently come into his hands belonging or payable to that other person

belonging or payable to that other person.

(2) Every trustee, agent, or person who by or under this Act is made liable to pay income tax for or on behalf of any other person is hereby authorised 20 and required to retain from time to time all moneys (whether capital or income) which come to him in his representative capacity or so much thereof as is sufficient to pay the income tax which is or will become

due.
25 He is hereby made personally liable for the income tax if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he parts with any such money, but he shall not be otherwise

personally liable for the tax:

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30 Provided that the Commissioner may, upon application by such agent or trustee or other person, permit disposal of such money or part thereof as he considers necessary.

35 income tax they shall each be liable for the whole of from joint the tax, but any of them who has paid the tax may C'wth Act, recover contribution as follows:—

1922-1927.

1922-1927.

(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

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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 5 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 10 any moneys in his hands belonging or payable to the person liable to contribute.
- 65. (1) The Commissioner may, by notice in writing Commissioner (a copy of which shall be forwarded to the taxpayer to may collect tax from the last place of address known to the Commissioner), person owing 15 require—

taxpayer money.

(a) any person from whom money is due or C'wth Act, accruing or may become due to a taxpayer;

1922-1927, 8. 65.

- (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,
- 25 to pay to him forthwith upon the money becoming due or being held, or within such further time as the Commissioner allows, the money or so much thereof as is sufficient to pay the tax due by the taxpayer, and the penalties and costs, if any, imposed by a court on him 30 in respect of an offence against this Act.

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- (2) Any person who fails to comply with any notice under this section shall be guilty of an offence and liable to a penalty of fifty pounds.
- (3) Where the amount payable by the person 35 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)

(4) Any person making any payment in pursunce 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 penalties 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 10 shall forthwith give notice to the person of the payment.

(6) In this section—

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"Tax" means income tax and includes any additional income tax and judgment debt and costs in respect of income tax and additional income tax

"Person" includes company, partnership, State officer and any public authority or body (corporate or unincorporate) of the State and, subject to the Commonwealth Constitution and any law of the Commonwealth, shall include any Commonwealth officer and any public authority or body (corporate or unincorporate) constituted under any law of the Commonwealth.

fifty-four and of section fifty-five of this Act shall apply of sections to any assessments which may hereafter be made under 65 in connection with the previous Act.

(2) The provisions of section sixty-five of this 30 Act shall be applicable to any tax assessed under the previous Act which, at the date of commencement of this Act, had not been paid, and to any tax which may hereafter be assessed under such previous Act. "Tax" in this subsection means "tax" as defined in

35 the preceding section and also includes all fines, penalties and costs imposed on the taxpayer by and under the previous Act.

PART VII.

PENAL PROVISIONS. **67.** (1) Any person who— Offences. (a) fails or neglects duly to furnish any return C'wth Act, or information or give the security required by s. 66. 5 section eighty-nine or to comply with any other requirement of the Commissioner as and when required by this Act or the regulations in force under this Act, or by the Commissioner; or (b) without just cause shown by him refuses or 10 neglects duly to attend and give evidence when required by the Commissioner or other duly authorised person, or to answer fully and truly any question put to him, or to produce any book or paper required of him by the 15 Commissioner or any such person; or (c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing, 20 shall be guilty of an offence, and shall be liable to a penalty of not less than two pounds nor more than one hundred pounds. (2) A prosecution in respect of an offence against paragraph (a) or (c) of subsection one of this 25 section may be commenced at any time. (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 30 as provided in section seventy of this Act. (4) It shall be a defence to a prosecution for an offence against paragraph (c) of subsection one of this

section if the defendant proves that the false particulars were given or the false statement was made through

35 ignorance or inadvertence.

68. (1) Notwithstanding anything contained in the Additional last preceding section, any person who-

(a) fails or neglects duly to furnish any return or C'wth Act, information as and when required by this Act 1922-1927, or the regulations in force thereunder or by s. 67. 40 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 subsection 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

10 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

or (c) of this subsection 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 tax assessed upon the basis of the return logged, which ever is the greater in addition

20 the return lodged, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-four of this Act:

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, 25 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 the next succeeding section, such action 30 may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

69. Any person who, with intention to defraud, in Understate-any return understates the amount of any income, shall ment of income.

35 be guilty of an offence, and shall be liable to a penalty Cwth Act, of not less than fifty pounds nor more than five 1922-1927, 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 40 been accepted as the correct income.

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- 70. Any person who, by any wilful act, default or Avoiding neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation, shall be guilty of an offence and shall be liable to a penalty of s. 69.

 5 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.
- 71. A prosecution in respect of an offence against time for commencing either of the two last preceding sections may be compressed prosecution.

 10 menced at any time within six years after the commission ("wth Act, 1922-1927, s. 70." N.S.W. Act, 1912. No. 11.

72. Payment of penalties under this Act shall not Penalties not to relieve any person from liability to assessment and pay- Cwth Act, 1922-ment of any tax for which he would otherwise be liable.

- 15 73. Any person who obstructs or hinders any officer obstructing or person acting in the discharge of his duty under this officers. Act or the regulations in force thereunder, shall be *Ibid.* s. 72. guilty of an offence, and shall be liable to a penalty of not less than one pound nor more than fifty pounds.
- 20 **74.** Any person guilty of a breach of this Act for General which no penalty is otherwise provided, shall be liable no. N.S.W. Act, to a penalty not exceeding fifty pounds.
- 75. Any penalty imposed by this Act or by regula-Recovery tions in force thereunder may be recovered in a penalty. 25 summary manner before two or more justices, or a ^{Ibid. s. 39}. stipendiary or police magistrate.
- 76. In any action against an officer or person for Action anything done in pursuance of this Act, or in the against execution of the powers conferred thereby, or by the *Ibid. s.* 40. 30 regulations, the defendant in such action may plead the general issue, and give the special matter in evidence at the trial.
- 77. In any prosecution under this Act an officer or Protection of any person employed in the administration of this Act witness.

 35 shall not be compelled to disclose the fact that he Cwth Act, received any information, or the nature thereof, or the s. 82. name of the person who gave such information, and an officer or any other such person appearing as a witness shall

shall not be compelled to produce any reports made or received by him confidentially in his official capacity, or containing confidential information.

PART VIII.

MISCELLANEOUS.

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78. Every company which derives income shall at Public office all times be represented by a person residing in the of company. State duly appointed by the company or by its duly C'wth Act, authorised agent or attorney, and with respect to every s. 88.

10 such company and person the following provisions shall N.S.W. Act, 1912, No. 11, apply:—

8. 15.

(a) such person shall be called the public officer of the company, and shall, if not already appointed, be appointed within three months after this section comes into force or after the company commences to derive income;

(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 the address for service in the State, has been given to the Commissioner;

(c) if the company fails or neglects duly to appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence and shall be liable to a penalty of 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 in force thereunder, and if at any time there

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) without prejudice to the liability of the company, the public officer shall be liable for the doing of all such things as are required to be done by or on behalf of the company under this Act or the regulations in force thereunder, and in case of default in doing any of such things, shall be liable for all penalties imposed for any breach of the provisions of this Act or such regulations, and the company, as well as such public officer, shall also be liable for such penalties;

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15 (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 excuse 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 or regulation 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:

Provided that every public officer of a company holding that office at the date of passing of this Act for any of the purposes of and duly appointed under the 30 previous Act shall, until such appointment is terminated, be the public officer of that company for all the purposes of this Act, and this Act shall apply to that company and that public officer accordingly.

- 79. With respect to every agent, and with respect Agents and 35 also to every trustee, the following provisions shall apply unless otherwise provided in this Act:—

 C'wth Act, 1922-1927,
- (1) 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

capacity or derived by the principal by virtue of his agency and the payment of income tax thereon.

- (2) 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.
- 10 (2) If he is a personal representative 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.

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- (4) Nothing herein contained shall exempt or discharge any principal or beneficiary from liability to make returns, and pay income tax upon the whole of his taxable income.
- 80. With respect to every person who has the Persons in receipt, control, or disposal of money belonging to a receipt or control of 20 non-resident person who derives income from a source money for in the State, or who is a shareholder, stock-holder, non-resident debenture holder, or depositor in a company deriving 1922-1927, income from a source in the State, the following s 90. provisions shall, subject to this Act, apply:—

25 (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;

(e) he is hereby authorised and required to retain from time to time out of any money which comes to him on behalf of the non-resident person so much as is sufficient to pay the income tax which is or will become due by that person;

(d)

(d) he is hereby made personally liable for the income tax payable by him on behalf of the non-resident person 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 afterwards 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

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.

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81. Where any income of any person outside the Payment of State is paid into the account of that person with a non-banker in the State, the banker shall be deemed to be tax by the person's agent in respect of the money so paid so banker. long as he is indebted in respect thereof, and shall C'wth Act, be subject to the provisions and entitled to the benefits s. 92 relating to agents contained in this Act.

82. (1) A covenant or a stipulation in a mortgage of Covenant by 25 land which has or purports to have the purpose or effect mortgagor to of imposing on the mortgagor the obligation of paying to thid, s. 94. or on behalf of or for the benefit of the mortgagee income tax on the interest to be paid under the mortgage—

(a) if the mortgage was entered into on or before the date of the commencement of this Act—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

40 (b) if the mortgage was entered into after that date—shall be absolutely void.

(2) A mortgage of land which contains a covenant to pay a certain rate of interest but provides that the mortgagee may accept a sum calculated to cover the interest chargeable at a lower rate together 5 with an amount representing the income tax payable thereon shall be deemed to contain a covenant or stipulation imposing on the mortgagor the obligation of paying income tax within the preceding subsection, and shall as regards such covenant or stipulation to pay 10 income tax be subject to such preceding subsection.

83. Every contract, agreement or arrangement made Covenant to or entered into, in writing or verbally, whether before or evade tax. after the commencement of this Act, shall, so far as it 1922-1927, has or purports to have the purpose or effect of in any s. 93.

15 way, directly or indirectly—

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(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

(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.

84. Where under any contract, agreement or Assignment arrangement made or entered into, in writing or of income-producing verbally, either before or after the commencement of asset for this Act, a person assigns, conveys, transfers or disposes periodical of an income-producing asset on terms and conditions payments.

30 which include the payment for the assignment, con- Ibid. s. 93A. veyance, 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,

35 that person shall be assessed to pay income tax upon those periodical payments.

85. The Commissioner, or any officer authorised by Access to him in that behalf, shall at all times have full and free books. access to all buildings, places, books, documents and

40 other papers for any of the purposes of this Act, and for such purposes may make extracts from or copies of any 86. such books, documents and papers.

86. Wherever the Commissioner has reason to Security for believe that any person establishing or carrying on tax. business in the State intends to carry on that business 1922-1927. for a short time only, or intends to leave the State, or s. 54 (5). 5 where the Commissioner for any other reason thinks it proper so to do, 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 10 income tax on the income of such taxpayer. 87. (1) The Commissioner may by notice in writing Department require any person, whether a taxpayer or not-(a) to furnish him with such information as he and evidence.

Ibid. s. 97.

may require; and (b) to attend and give evidence before him or before any officer authorised by him in that behalf concerning his or any other person's income or assessment, or concerning any matter or thing in relation to which the Commissioner considers or suspects such person may be capable of giving information which may assist in the carrying out of this or the previous Act, and may require him to produce all books documents, and other papers whatever in hi custody or under his control relating thereto.

25 (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 authorised by him may administer an oath.

(3) The regulations may prescribe scales of 30 expenses to be allowed to persons required under this section to attend.

88. (1) In any case where it is shown to the satis- Release of faction of a board consisting of the Commissioner, the taxpayer in 35 Auditor-General or his deputy, and a person appointed ship. by the Governor.

C'wth Act,

(a) that a taxpayer liable to pay income tax has \$1922-1927, become bank must see a second bank must be seen as a second (See N.S.W. become bankrupt; or

(b) that a taxpayer has suffered such a loss or is Act, 1912, No. 11, 35.) in such circumstances, or, owing to the death of a person who, if he had lived, would have paid 13—F

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paid tax, the dependants of that person are in such circumstances that the exaction of the full amount of the tax will entail serious hardship,

- 5 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 assessments as are necessary for that purpose.
- 10 (2) The Commissioner shall be chairman of the board, and the decision of the majority shall prevail.
 - 89. (1) In any case in which the board referred to writing off in the last preceding section is satisfied that every tax. reasonable effort has been made to recover income
- 15 tax, or that it is impracticable without undue expense to recover such tax, it may direct the amount thereof to be written off.
- (2) The taxpayer shall not be released from his liability in consequence of any action taken by the board 20 under subsection one hereof, and the Commissioner may at any future time take such action to recover any such income tax as he considers the circumstances warrant.

(3) For the purposes of this section income tax 25 includes any additional income tax, or any costs incurred in attempting to recover such tax.

(4) The provisions of this and the preceding section shall apply to any tax assessed under the previous Act which has not been paid at the date of the 30 commencement of this Act or which may after such date be assessed under the provisions of the previous Act.

90. (1) The Governor may make regulations, not Regulations inconsistent with this Act, prescribing all matters which by this Act are required, or permitted to be prescribed, 35 or which are necessary or convenient to be prescribed for giving effect to this Act, including (but without limiting the foregoing power) the means of determining in all or any particular class of case, the amount of any assessable or taxable income in so far as the method 40 of ascertainment is not herein already provided for.

(2)

(2) The regulations may impose a penalty not exceeding twenty pounds for any breach thereof, and may prescribe maximum and minimum penalties in case of any breach thereof.

(3) The regulations shall—

(a) be published in the Gazette;

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(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

91. (1) The Commissioner shall furnish to the Reports by Colonial Treasurer annually for presentation to Parlia-sioner. ment a report on the working of the Act.

C'wth Act,

(2) In the report the Commissioner shall draw 1922-1927, 25 attention to any breaches or evasions of this Act which have come under his notice.

92. This Act shall be read and construed so as not Construction to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

THE SCHEDULE.

Application of Section Thirty-one in respect of Undistributed Income of a Company.

Section 31 shall apply to any company which is under the control see Imp. Act,
 of not more than seven persons, and which is not a subsidiary company ¹⁷ & 18 Geo. V,
 or a company in which the public are substantially interested.

For the purposes of this paragraph—

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- (i) A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of section 31 apply, or of two or more companies none of which is a company to which those provisions apply.
- (ii) 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 income year beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such income year been quoted on the official list of a stock exchange.
- (iii) A company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons.

The expression "relative" means a husband or wife, ancestor, or lineal descendant, brother or sister.

The expression "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

Persons in partnership and persons interested in the estate of a deceased person or in property held on a trust shall, respectively, be deemed to be a single person.

- 2. For the purposes of section 31, dividends credited, paid or 40 distributed to a company which is a member or shareholder in any other company shall (to the extent to which such dividends would be taxable income if paragraph (b) of section 11 applied to a company) be deemed to be part of the first-mentioned company's taxable income.
- 3. In addition to any other facts which the Commissioner may
 45 consider in exercising the powers conferred upon him by paragraph (a)
 of section 31 the Commissioner shall take into consideration the
 relation

relation between the distributable income of the company and its taxable income, and the fact of the retention by the company of taxable income for the following purposes:—

- (a) To restore unrecouped losses of paid-up capital or of accumulated trading profits which had been invested in the business; and
 - (b) To meet losses which the directors consider were certain to arise during subsequent income years.
- 4. Any sum such as is hereafter described shall, for the purposes of 10 paragraph (a) of section 31, be regarded as income which could reasonably have been distributed by a company among its members or shareholders—

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- (a) any sum expended or applied, or intended to be expended or applied, out of the income of a company—
 - (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking, or property of a substantial character in fact acquired by the company; or
 - (ii) in redemption or repayment of any share or loan, capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or
 - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property;
- (b) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied in pursuance or in consequence of an arrangement which, in the opinion of the Commissioner, was made for the purpose of avoidance or reduction of any liability to income tax.
 - 5. A determination under section 31 shall be made by the Commissioner not later than nine months after the date on which the tax assessed against the company under its ordinary assessment is due and payable.
- 40 6. Where the Commissioner has made a determination under section 31, and—
 - (a) the company satisfies the Commissioner that the sum or further sum which could reasonably have been distributed by the company among the members or shareholders is an amount which is less than the sum or further sum determined by the Commissioner under such section; or

(b) where the Commissioner is satisfied that the company has withheld information or has furnished incorrect or misleading information for the purpose of avoiding tax in an ordinary assessment or under such section,

5 the Commissioner may, either before or after the time limited for making his determination, make a determination or further determination, and thereupon the provisions of section 31 (b) shall apply to the sum or further sum specified in that determination as if it were the sum or further sum mentioned in section 31 (b).

7. The following provisions shall apply for the purpose of calculating the tax or additional tax which would have been payable by the

shareholders :--

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(i) The income apportioned to a member or shareholder shall be deemed to have been received by him on such date as the Commissioner determines to be just, having regard to the dates on which distributions of income, if any, have ordinarily

been made by the company.

(ii) Where a person is a member or shareholder in more than one company to which section 31 has been applied in respect of 20 income of the same year ended on the 30th day of June or of such other period accepted by the Commissioner in lieu of such year ended on the 30th day of June, the tax or additional tax which would have been payable by that member or shareholder shall be calculated as if all such sums had actually 25 been distributed during such income year, and the total amount of tax or additional tax so ascertained shall be divided between the companies in such proportions as are prescribed by regulations, or if there are no regulations as the Commissioner considers just having regard to the amount which such member or shareholder is deemed to have received 30 from each company, and to the rate of tax applicable to the income of each company.

8. Where any person (other than a company, trustee or partnership) C'wth Act, otherwise than as a member or shareholder of the company would (if 1922-27, s. 21) the relevant points of the (2).

35 there had been successive distributions of the relevant parts of the (2). sum or further sum determined by the Commissioner to and by each company, trustee, and partnership interposed between that person and the company in respect of which the determination is made) have received a part of that sum or further sum determined by the

40 Commissioner under paragraph (a) of section 31, the Commissioner may, if he thinks fit, also assess the tax and the additional tax, if any, which would have been payable by that person if those distributions had been made, and such tax and additional tax shall be deemed to be tax and additional tax assessable under paragraph (b) of section 31.

45 9. Any undistributed income which has been assessed and charged to income tax under section 31 shall, when subsequently distributed, be deemed not to form part of the assessable income of the member or shareholder entitled thereto.

(2).



