

No. , 1935.

A BILL

To provide for the assessment and collection of a tax on incomes; and for purposes connected therewith.

[MR. SPOONER ;—12 *December*, 1935, A.M.]

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, 1935."

10 2. (1) The Income Tax (Management) Act, 1912, as amended by subsequent Acts, shall, subject to the amendment made therein by section twenty-nine of the Income Tax

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PRELIMINARY.

Tax (Management) Act, 1928, continue in force for all 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. 5

(2) The Income Tax (Management) Act, 1928, as amended by subsequent Acts, shall continue in force for all purposes in connection with income tax payable in respect of the income which has been derived prior to the year ended on the thirtieth day of June, one thousand nine hundred and thirty-six, or prior to such other period as may be or may have been accepted by the Commissioner in lieu of that year, other than the income referred to in subsection one of this section. 10 15

Existing regulations.

3. (1) All existing rules, regulations and forms made or prescribed under the Income Tax (Management) Act, 1928, as amended by subsequent Acts, or continuing in force by virtue of such Acts 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. 20

Notices and returns as to income derived during year ended 30th June, 1936.

(2) All notices given and returns made during the year one thousand nine hundred and thirty-six under the Income Tax (Management) Act, 1928, as amended by subsequent Acts, in respect of income derived during the year ended on the thirtieth day of June, one thousand nine hundred and thirty-six, 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 derived during such year, under this Act) be deemed to have been made or given also under this Act. 25 30 35

Division into Parts and Divisions.

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

PART I.—PRELIMINARY—ss. 1-5.

PART II.—ADMINISTRATION—ss. 6-9.

PART

PART III.—LIABILITY TO TAXATION—ss.10–200.

DIVISION 1.—*General*—ss. 10–17.

DIVISION 2.—*Income*—ss. 18–56.

5 SUBDIVISION A. *Assessable income generally*—
 ss. 18–20.

 SUBDIVISION B. *Trading stock*—ss. 21–30.

 SUBDIVISION C.—*Business carried on partly in
 and partly out of the State*—ss. 31–51.

 SUBDIVISION D.—*Dividends*—ss. 52–56.

10 DIVISION 3.—*Deductions*—ss. 57–92.

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 DIVISION 5.—*Casual profits*—ss. 104–116.

 DIVISION 6.—*Partnerships*—ss. 117–120.

 DIVISION 7.—*Trustees*—ss. 121–129.

15 DIVISION 8.—*Assessment of income of husband and
 wife*—ss. 130–134.

 DIVISION 9.—*Private companies*—ss. 135–146.

 DIVISION 10.—*Companies consisting of same share-
 holders*—ss. 147–149.

20 DIVISION 11.—*Banks*—ss. 150–153.

 DIVISION 12.—*Life assurance companies*—ss. 154–
 161.

 DIVISION 13.—*Co-operative and mutual companies*
 —ss. 162–167.

25 DIVISION 14.—*Interest paid by companies*—ss.
 168–173.

 DIVISION 15.—*Oversea ships*—ss. 174–180.

 DIVISION 16.—*Businesses with a foreign relation-
 ship*—ss. 181–183.

30 DIVISION 17.—*Insurance with non-residents of
 Australia*—ss. 184–191.

 DIVISION 18.—*Averaging of incomes of primary
 producers*—ss. 192–200.

PART IV.—RETURNS AND ASSESSMENTS—ss. 201–217.

35 PART V.—OBJECTIONS AND APPEALS—ss. 218–252.

PART

PART I.
PRELIM-
INARY.

PART VI.—COLLECTION AND RECOVERY OF TAX—SS.
253-269.

PART VII.—PENAL PROVISIONS AND PROSECUTIONS—
SS. 270-287.

PART VIII.—MISCELLANEOUS—SS. 288-304. **5**

Definitions.

5. In this Act, unless the contrary intention appears—
“A State” means a State of the Commonwealth of
Australia.

“Agent” includes—

(a) every person who in this State for or **10**
on behalf of any person out of this State
holds or has the control, receipt or dis-
posal of any money belonging to that
person; and

(b) every person declared by the Commis- **15**
sioner to be an agent or the sole agent of
any person for any of the purposes of this
Act.

“Allowable deduction” means a deduction allowable
under this Act. **20**

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

“Assessment” means the ascertainment of the
amount of taxable income and of the tax pay- **25**
able thereon.

“Assistant Commissioner” means Assistant Com-
missioner of Taxation.

“Australia” includes the whole of the Common-
wealth of Australia. **30**

“Business” includes any profession, trade, employ-
ment, vocation or calling, but does not include
occupation as an employee.

“Commissioner” means the Commissioner of Taxa-
tion. **35**

“Company”

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

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INARY.

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

10 “Exempt income” means income which is exempt from income tax.

15 “Foreign company” means a company not being a New South Wales company.

20 “Friendly society” means a society duly registered as a friendly society under any Act of the Commonwealth or of a State or under any law in force in a territory being part of the Commonwealth.

25 “Income from personal exertion” or “income derived from personal exertion” means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired

acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include—

- (a) interest unless the taxpayer's principal business consists of the lending of money, or unless the interest is received in respect of a trade debt; or
- (b) rents or dividends.

“Income from property” or “income derived from property” means all income not being income from personal exertion. 10

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

“Liquidator” means the person who whether or not appointed as liquidator is the person required by law to carry out the winding-up of a company. 15

“Live stock” does not include animals used as beasts of burden or working beasts in a business other than a business of primary production. 20

“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. 25

“Net income” means the amount remaining after deducting from the assessable income all allowable deductions except the statutory exemption provided for in section ninety-one of this Act. 30

“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 any Act of the Parliament of New South Wales, wherever its head office or principal place of business may be. 35

“Non-resident” means a person who is not a resident.

“Paid”

- “Paid” in relation to dividends includes credited or distributed.
- 5 “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.
- 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, or the Income Tax (Management) Act, 1928, as amended by subsequent Acts.
- 15 “Previous Act” means the Income Tax (Management) Act, 1928, and when considered in relation to any time means that Act, or if it has been amended, that Act as amended as in force at that time.
- 20 “Previous Acts” means all Acts passed prior to the commencement of this Act relating to the assessment and collection of income tax in this State; and when any such Act is considered in relation to any time, means such Act, or if it has been amended, such Act as amended as in force at that time.
- 25 “Primary production” means production resulting directly from the cultivation of land or the maintenance of animals, poultry or bees for the purpose of selling them or their bodily produce including natural increase and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.
- 30 “Relative” means a husband or wife or a relation by blood, marriage or adoption.
- 35 “Resident” means—
- (a) a person, other than a company, whose usual or principal place of abode is in this State and includes any such person who is a public officer of the Commonwealth or of
- 40 this State and who is absent from this State

in

in the performance of his duty, and the wife of such public officer absent from this State with him; and

- (b) a company which is incorporated in this State or which, not being incorporated in this State, carries on business in this State and has either its central management and control in this State, or its voting power controlled by shareholders who are residents of this State. 5 10

“Shareholder” includes member or stockholder.

“Taxable income” means the amount remaining after deducting from the assessable income all allowable deductions.

“Taxpayer” means a person deriving income. 15

“The Court” means the Supreme Court.

“This Act” includes the regulations in force thereunder.

“This State” means the State of New South Wales.

“Trading stock” includes anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange and also includes live stock. 20

“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— 25

(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. 30 35

“Year

Income Tax (Management).

“Year of income” means—

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PRELIM-
INARY.

- 5 (a) the year beginning on the first day of July and ending on the thirtieth day of June during which the income was derived; or
(b) the accounting period, if any, adopted under this Act in lieu of that year.

PART II.

PART II.
ADMINIS-
TRATION.

ADMINISTRATION.

6. (1) For the due administration of this Act and the
10 previous Acts, 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. Commissioner of Taxation. cf. Act No. 35, 1928, s. 5.

15 (2) The Commissioner shall be a permanent head within the meaning of that term as defined in section four of the Public Service Act, 1902, as amended by subsequent Acts.

20 (3) Any reference to the Commissioner of Taxation in the previous Acts, and the rules and regulations thereunder, shall be read and construed as a reference to the Commissioner of Taxation charged with the administration of this Act.

25 (4) The Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint two Assistant Commissioners of Taxation, one of whom may be appointed to act as the deputy of the Commissioner. Assistant Commissioners.

30 (5) The Assistant Commissioners shall, under the control of the Commissioner, perform such general official duties as they are required to perform by this Act or by the Commissioner. Powers of Assistant Commissioners.

35 (6) Such other persons may be appointed under the Public Service Act, 1902, as amended by subsequent Acts, as may be deemed necessary for the carrying out of this Act and the previous Acts. Officers.

(7)

PART II.
ADMINIS-
TRATION.
Acting
Commis-
sioner.

(7) In the event of the absence, incapacity, or suspension of the Commissioner, his powers, authorities, duties, and functions may be exercised and performed during such absence, incapacity, or suspension, by the Assistant Commissioner appointed as deputy of the Commissioner, and in the event of the absence, incapacity, or suspension of both the Commissioner and that Assistant Commissioner, the powers, authorities, duties and functions of the Commissioner may be exercised and performed during the absence, incapacity, or suspension of the Commissioner and that Assistant Commissioner by the other Assistant Commissioner. 5 10

Delegation.

(8) The Commissioner may, by writing under his hand, delegate to an Assistant Commissioner or any other person, any powers, authorities, duties, and functions conferred or imposed upon him by this Act, or the previous Acts, or the rules or regulations 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, authority, duty, or function by the Commissioner. 15 20

(9) A notification in the Gazette that any person has been appointed as Commissioner, Assistant Commissioner, or other person for the purposes of this Act, or the previous Acts, shall be conclusive evidence of such appointment. 25

Authorities
of Assistant
Commis-
sioners.

(10) Where in or under this Act or the previous Acts the exercise or discharge of any power, authority, duty or function by the Commissioner or the operation of any provision of this Act or the previous Acts is dependent upon the opinion, belief, or state of mind of the Commissioner in relation to any matter, that power, authority, duty, or function may be exercised or discharged by the Assistant Commissioner appointed as deputy of the Commissioner when authorised to act by a delegation as aforesaid or during the absence, incapacity, or suspension of the Commissioner, or by the other Assistant Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant 30 35 40

Assistant Commissioner appointed to act as the deputy of the 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 appointed as the deputy of the 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 other Assistant Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant Commissioner appointed to act as the deputy of the Commissioner.

PART II.
ADMINIS-
TRATION.

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

Reports by
Commis-
sioner.
cf. Act
No. 35,
1928, s. 91.

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

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

Officers to
observe
secrecy.
cf. Act
No. 35,
1928, s. 6.

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

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

(4)

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ADMINIS-
TRATION.

(4) Nothing in this section shall be deemed to prohibit the Commissioner, or an Assistant Commissioner, or any person thereto authorised by him, from communicating any information to—

- (a) any person performing, in pursuance of any appointment or employment by this State or by the Commonwealth, any duty arising under any Act administered by the Commissioner of Taxation of the Commonwealth or the Commissioner of Land Tax of the Commonwealth for the purpose of enabling that person to carry out any such duty; 5
- (b) the Commissioner of Income Tax for a State, or the authority administering any Act of a State relating to stamp duties, succession duties, or estate duties, if that authority is authorised by law to afford similar information to the Commissioner or an Assistant Commissioner; or 15
- (c) a Board of Appeal under this Act. 20

(5) Any person to whom information is communicated under subsection four of this section and any person or employee under his control shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under subsections two and three of this section, as if he were an officer. 5

(6) Any officer shall, if and when required by the Commissioner or an Assistant Commissioner to do so, make an oath or declaration in the manner and form prescribed to maintain secrecy in conformity with the provisions of this section. 30

Penalty: *Two hundred and fifty* pounds or imprisonment for twelve months.

9. Nothing in this Act shall affect the operation or continuance of the Income Tax (Commonwealth) Collection Act, 1923. 35

Income
Tax
(Common-
wealth) Collec-
tion Act,
1923, not
affected.
cf. Act No.
35, 1928,
s. 7.

PART III.

PART III.
LIABILITY TO
TAXATION.

LIABILITY TO TAXATION.

DIVISION 1.—General.

10. (1) Subject to this Act income tax at such rates as
5 may be fixed by any Act shall be levied and paid to the
Commissioner upon the taxable income derived by any
person whether a resident or a non-resident during the
year of income ended on the thirtieth day of June, one
thousand nine hundred and thirty-six (or the accounting
10 period, if any, accepted by the Commissioner in lieu of
that year) and for each year of income thereafter.

Income tax.

(2) Where a company is wound up, or an indi-
vidual person dies or ceases to be a taxpayer, in any year,
and the same income of that company or person has,
15 under the provisions of this Act or the previous Acts
been included in more than one assessment of that com-
pany or person, and no adjustment in regard thereto has
previously been made, the Commissioner shall make such
adjustment as is just.

Adjustment
by reason
of
alteration
of year of
income.

20 11. (1) Any person may, with the leave of the Com-
missioner, adopt an accounting period being the twelve
months ending on some date other than the thirtieth day
of June. His accounting period in each succeeding year
shall end on the corresponding date of that year,
25 unless with the leave of the Commissioner some other
date is adopted.

Accounting
period.

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

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

Money
credited
reinvested,
etc., to
be income.

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GENERAL.

Income to
be expressed
in
Australian
currency.

Where con-
sideration
not in cash.

Income
arising
from past
transactions.

Exemp-
tions.

13. For all the purposes of this Act income wherever derived, any expense wherever incurred, the value of any asset wherever situate, and any amount involved in any calculation, shall be expressed in terms of Australian currency and, for this purpose, the rates of exchange to be used shall be respectively the rates at which exchange could have been effected by telegraphic transfer at the dates when the income was derived or the expense was incurred or at which the asset is to be valued or at which the amount is to be ascertained. **5**

14. Where upon any transaction any consideration is paid or given otherwise than in cash, the money value of that consideration shall for the purposes of this Act be deemed to have been paid or given. **10**

15. Where any income is received in the year of income as a result of a transaction entered into prior to the commencement of this Act, and that income would have been assessable income under the previous Act if that Act had continued in force and had applied to the assessment of the income derived in the year of income, that income shall be assessable under this Act notwithstanding that the transaction was entered into prior to that commencement. **15**

16. The following income shall be exempt from income tax:— **25**

- (a) the official salary of any person being—
- (i) the Governor-General or the Governor of this State;
 - (ii) the representative in Australia of the government of another country; **30**
 - (iii) a foreign consul;
 - (iv) a trade commissioner of any part of the British Empire other than Australia;
 - (v) a member of the staff of any such representative, foreign consul or trade commissioner if the member is domiciled in the country represented by the representative, foreign consul or commissioner and is temporarily resident in this State by direction of the government of the **35**
country **40**

- 5 country so represented for the purpose of performing his official duties, and if the official salary of officials (if any) of the Government of this State temporarily resident for similar purposes in the country so represented is exempted from income tax by that country; or
- 10 (vi) an officer of the government of any country outside Australia which is part of the British Empire, who is temporarily in this State to render service on behalf of that country or the Commonwealth or this State in accordance with any arrangement between the governments of that
- 15 country and of the Commonwealth or of this State, if the salaries of officers of the Government of this State temporarily in that country for similar purposes in accordance with a similar arrangement
- 20 are exempted from income tax by that country;
- (b) the remuneration paid by the Government of the Commonwealth or of this State to a person who is not a resident of Australia for expert advice to that Government or as a member of a Royal Commission;
- 25 (c) income derived—
- 30 (i) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting Australia in that capacity for the purpose of engaging in contests in Australia in that sport or
- 35 game;
- (ii) by any club or association in any other part of the British Empire as its share of the proceeds of cricket, football, or similar matches played in Australia by a team controlled by that club or association
- 40 visiting

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- visiting Australia from that part of the British Empire, and recognised by the authority controlling that class of match in Australia as being representative of that part of the British Empire; **5**
- (iii) by the representative of any government, visiting Australia on behalf of that government, or by any member of the entourage of that representative, in his official capacity as such representative or member; **10**
- (iv) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes, by any person visiting Australia in that capacity for the purpose of attending international or Empire conferences or for the purpose of carrying on investigation or research for such society or association; **15**
- (v) in the capacity of representative of the press outside Australia by any person visiting Australia in that capacity for the purpose of reporting the proceedings relating to any matters referred to in subparagraphs (i), (ii), (iii), and (iv) of this paragraph; and **20**
- (vi) by any person visiting Australia, from an occupation carried on by him while in Australia, if in the opinion of the Treasurer that visit and occupation are primarily and principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia; **30**
- (d) the revenue of a municipal corporation or other local governing body or of a public authority; **35**
- (e) the income of a religious, scientific, charitable or public educational institution;
- (f)

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TAXATION.
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- 5 (f) the income of a trade union and the income of an association of employers or employees registered under any Act of the Commonwealth or of a State, or under any law in force in a territory being part of the Commonwealth, relating to the settlement of industrial disputes;
- 10 (g) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, and being a friendly society, or a society or association established for musical purposes, or for the encouragement of music, art, science or literature;
- 15 (h) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia;
- 20 (i) the income of the Rural Bank of New South Wales;
- (j) the incomes of the following funds, provided that the particular fund is being applied for the purpose for which it was established—
- 25 (i) a provident, benefit or superannuation fund established for the benefit of employees;
- (ii) a fund established by will or instrument of trust for public charitable purposes; and
- 30 (iii) a fund established for the purpose of enabling scientific research to be conducted by or in conjunction with a public university or public hospital;
- 35 (k) interest on bonds, debentures, stock or other securities issued by the Government of New South Wales or the Government of the Commonwealth of Australia and interest on bonds, debentures, stock or other securities issued by
- 40 the Rural Bank of New South Wales prior to the
- B

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the commencement of this Act where such interest was exempt under the previous Act, or issued by that bank after the commencement of this Act where, with the approval of the Governor, such interest has been declared to be free of State income tax: 5

Provided that this paragraph shall not extend to interest on any bonds, debentures, stock or other securities in cases where by this Act, or any Act of the Parliament of the Commonwealth 10 or of this State, such interest is made liable to the payment of income tax;

- (l) pensions paid under the Australian Soldiers' Repatriation Act, 1920-1934, of the Parliament of the Commonwealth; 15
- (m) the income received by way of periodical payments in the nature of alimony or maintenance by a woman from her husband or former husband provided that for the purpose of making such payments the husband, or former husband, 20 has not divested himself of any income-producing assets or diverted from himself income upon which he would otherwise have been liable to tax;
- (n) the income of a Starr-Bowkett building society; 25
- (o) the income derived by a resident of any territory or island in the Pacific Ocean other than New Zealand, which is governed, controlled or held under mandate by the Government of any part of the British Empire, or by a condominium 30 in which any part of the British Empire is concerned, from the sale in this State by or on behalf of that person of produce of the territory or island of which he is a resident;
- (p) the income derived prior to the first day of July, 35 one thousand nine hundred and thirty-nine, by a person from the working of a mining property in Australia or in the Territory of New Guinea principally for the purpose of obtaining gold, or gold and copper, provided that in this case 40 the

the value of the output of gold is not less than forty per centum of the total value of the output of the mine;

5 (q) income derived by a bona fide prospector from the sale, transfer or assignment by him of his rights to mine for gold in a particular area in Australia or in the territory of New Guinea.

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

15 (r) interest on money loaned in this State to the following extent—

20 (i) in the case of a non-resident—the whole of the interest on money so loaned where the money is secured by the mortgage of property and the whole of the property is out of this State but in Australia;

25 (ii) in the case of a non-resident—a proportionate part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State but in Australia;

30 (iii) in the case of a resident—the whole of the interest on money so loaned where the money is secured by the mortgage of property and the whole of the property is out of this State but in Australia and income tax (other than Commonwealth income tax) has been paid in any place outside this State on that interest by such resident;

35 (iv) in the case of a resident—a proportionate part of the interest on money so loaned
40 where

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where the money is secured by the mortgage of property and part of the property is out of this State but in Australia and income tax (other than Commonwealth income tax) has been paid in any place 5 outside this State on that proportionate part by such resident;

- (s) interest on money loaned out of this State to the following extent—
- (i) in the case of a non-resident—a proportionate 10 part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State;
 - (ii) in the case of a resident—a proportionate 15 part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State and income tax (other than Commonwealth income tax) has been 20 paid in any place outside this State on that proportionate part by such resident;
- (t) income derived by a resident from sources out of this State not being—
- (i) income deemed by or under this Act to 25 be derived in this State;
 - (ii) income derived from sources outside this State which by any provision of this Act applicable to income so derived is expressly included in the assessable income. 30

Limitation
of
exemption.

17. (1) Where any income is exempt from income tax the exemption shall be limited to the specified or original recipient of the income, and shall not extend to persons receiving payments from that recipient although the payments may be made wholly or in part 35 out of that income.

(2)

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

PART III.
LIABILITY TO
TAXATION.
DIVISION 1.
GENERAL.

DIVISION 2.—Income.

SUBDIVISION A. Assessable income generally.

18. The assessable income of a taxpayer shall include—

Gross income from certain sources.

- (a) where the taxpayer is a resident—the gross income derived directly or indirectly from all sources whether in or out of this State, and
 - (b) where the taxpayer is a non-resident—the gross income derived directly or indirectly from all sources in this State,
- which is not exempt income.

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

Certain items of assessable income.

- (a) interest on money loaned in this State including money so loaned upon the security of a mortgage of property which is wholly or in part in this State;
 - (b) interest on money loaned out of this State upon the security of a mortgage of property which is wholly or in part in this State;
 - (c) interest on money loaned out of this State and not secured by the mortgage of any property in this State if derived by a resident and if income tax (other than Commonwealth income tax) has not been paid in any place outside this State on that interest by such resident;
 - (d) interest on money lodged or in respect of debts situated in the Territory for the Seat of Government of the Commonwealth and income arising from other investments in that Territory if the taxpayer deriving that interest or income is a resident;
- (e)

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INCOME.

- (e) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme; 5
- (f) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust;
- (g) the amount of any annuity, excluding in the case of an annuity which has been purchased that part of the annuity which represents the purchase price to the extent to which that price has not been allowed or is not allowable as a deduction in assessments for income tax under this Act or the previous Acts; 10 15
- (h) five per centum of the capital amount of any allowance, gratuity or compensation where that amount is paid in a lump sum in consequence of retirement from or the termination of any office or employment, and whether so paid voluntarily, by agreement, or by compulsion of law: Provided that this paragraph shall not apply in respect of any amount paid or credited by a private company which, under any provision of this Act, is deemed to be a dividend paid to the recipient; 20 25
- (i) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of or for or in relation directly or indirectly to any employment of or services rendered by him, whether so allowed, given or granted in money, goods, land, meals, sustenance, the use of premises or quarters or otherwise: Provided that this paragraph shall not apply to any allowance, gratuity or compensation which is included in paragraph (h) of this subsection or which, under any provision of this Act, is deemed to be a dividend paid to the recipient; 30 35 40

(j)

- (j) any amount received as or by way of royalty;
- (k) any bounty or subsidy to the extent to which it is received in or in relation to the carrying on of a business in this State;
- 5 (l) the amount of any fee or commission received for procuring a loan of money;
- (m) any amount received as or by way of bonus other than a reversionary bonus on a policy of life assurance;
- 10 (n) any amount received by way of insurance or indemnity for or in respect of any loss—
- (i) of trading stock which would have been taken into account in computing taxable income; or
- 15 (ii) of profit or income which would have been assessable income,
- if the loss had not occurred and any amount so received for or in respect of any loss or outgoing which is an allowable deduction;
- 20 (o) the amount or value of any consideration received 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;
- 25 (p) the amount of salary, wages or remuneration derived whilst temporarily engaged on duties out of this State by a taxpayer who ordinarily resides in this State:

30 Provided that where the taxpayer has paid in any place outside this State, income tax (other than Commonwealth income tax) in respect of the whole or part of that salary, wages or remuneration, he shall be entitled to a rebate in his assessment of an amount equal either to the

35 tax so paid or to the proportion of the tax payable under this Act which is attributable to that salary, wages or remuneration, whichever is the less; and

(q)

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(g) the amount of any pension or superannuation allowance received by a resident in respect of or for or in relation directly or indirectly to any past employment or service rendered by him irrespective of the source from which the pension or superannuation allowance is received, if the whole or part of that employment or service was given or rendered in Australia: **5**

Provided that where a taxpayer has paid in any place outside this State, income tax (other than Commonwealth income tax) in respect of the whole or part of that pension or superannuation allowance, he shall be entitled to a rebate in his assessment of an amount equal either to the tax so paid, or to the proportion of the tax payable under this Act, which is attributable to that pension or superannuation allowance, whichever is the less. **15**

(2) For the purposes of this section and of paragraphs (r) and (s) of section sixteen of this Act "income tax" means such tax imposed as income tax as in the opinion of the Commissioner is reasonably comparable in its nature to the tax assessed under this Act. **20**

Interest on loans raised in this State by Governments outside Australia.

20. (1) The interest on loans raised in this State after the thirty-first day of December, one thousand nine hundred and twenty-three, by the Government of any country or dominion out of Australia or by any authority constituted by or under any law of any such country or dominion and received directly or indirectly by a resident shall be included in his assessable income. **25**

(2) For the purposes of this section a loan shall be deemed to have been raised in this State if subscriptions to the loan were invited in this State by public advertisement, by the issue of a prospectus or otherwise. **30**

SUBDIVISION B. *Trading stock.*

35

Trading stock to be taken into account.

21. (1) Where a taxpayer carries on any business, the value, ascertained under this Subdivision, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income. **40**

(2)

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LIABILITY TO
TAXATION.
DIVISION 2.
INCOME.

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

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

10 22. The value of live stock and of each article of other trading stock to be taken into account at the beginning of the year of income shall be its value as ascertained under this or the previous Act at the end of the year immediately preceding the year of income. Value at beginning of year of income.

15 23. (1) Where the value of live stock at the beginning of the year of income as ascertained for the purpose of assessment of income tax under the law of the Commonwealth differs from its corresponding value as ascertained under section twenty-two of this Act, and it appears to the Commissioner that if those values were equal Where Commonwealth and State values differ. the corresponding values would remain equal in subsequent years, the taxpayer may, subject to this section, take his live stock into account at the beginning of the year of income at a value equal to its corresponding value under the law of the Commonwealth.

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

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

(4)

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LIABILITY TO
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INCOME.

(4) The amounts referred to in subsections two and three of this section, and the years in respect of which they are to be taken into account, shall be such amounts and years as are agreed upon by the taxpayer and the Commissioner.

5

Unless and until those amounts and years are so agreed upon this section shall not apply to the assessments of that taxpayer.

Value at
end of
year of
income.

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

10

Value of
live stock
at end of
year of
income.

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

15

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

20

Changes in
basis of
valuation of
live stock.

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

25

Cost price
of natural
increase.

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

- (a) where the cost price of natural increase of that class has been previously taken into account under this Act by the taxpayer—the cost price per head at which natural increase of that class was last taken into account unless, with the leave of the Commissioner, the taxpayer selects another cost price; and
- (b),

30

35

40

5 (b) where the cost price of natural increase of that class has not been previously taken into account under this Act by the taxpayer—the cost price selected by him within the limits prescribed in respect of live stock of that class.

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INCOME.

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

10 28. (1) Where under the previous Act a taxpayer elected to omit from the account of his stock-in-trade the value of natural increase of his live stock, the value of the natural increase omitted in pursuance of that election and on hand at the beginning of the first year to the
15 income of which this Act applies, shall be taken into account as trading stock on hand at the beginning of that year.

Omission
of natural
increase
under pre-
vious Act.

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

20 (a) where the taxpayer had exercised under the Commonwealth Income Tax (Assessment) Act, 1922-1934, an option to value live stock at market selling price—the market selling price as at the beginning of the year;

25 (b) where the taxpayer had exercised under that Act an option to value live stock at cost price—a value per head selected by the taxpayer within the limits prescribed as cost price for natural increase under that Act, by regulations in force
30 immediately preceding the commencement of the Commonwealth Income Tax Assessment Act, 1935, or where he does not so select within the time and in the manner prescribed—the lower of those prescribed limits.

35 (3) The value per head ascertained as the cost price of natural increase under paragraph (b) of subsection two of this section shall, unless altered with the leave of the Commissioner, apply also to natural increase
40 of all subsequent years.

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LIABILITY TO
TAXATION.DIVISION 2.
INCOME.Disposal
of assets
of a
business.

29. (1) Subject to this section, where the whole or any part of the assets of a business carried on by a taxpayer is disposed of by sale or otherwise howsoever, whether for the purpose of putting an end to the business or any part thereof or not, and the assets disposed of include any property being trading stock, standing or growing crops or crop-stools, the value of that property shall be included in his assessable income, and any person acquiring that property shall be deemed to have purchased it at the amount of that value. 5 10

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

- (a) for the purpose of putting an end to that business; or 15
- (b) in consequence of the acquisition or resumption of land, used by him for that business, under the provisions of any law of this State or of the Commonwealth which contains provisions for the compulsory acquisition or resumption of land, 20

the value of any live stock included in the sale, being natural increase bred by him which was on hand at the beginning of that first year and which was in the opinion of the Commissioner ordinarily used by him in that business for breeding purposes, shall not be included in his assessable income, and no deduction shall be allowed to him in respect of any such live stock, and no such live stock shall be taken into account in computing his taxable income. 25 30

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

- (a) the price specified in any contract of sale or arrangement as the price at which it was disposed of; or 35
- (b) if a price is not so specified in any such contract or arrangement—
 - (i) the market value of the property or live stock on the day of the disposal; or 40
 - (ii)

(ii) if in the opinion of the Commissioner there is insufficient evidence of the market value on that day—the value which in his opinion is fair and reasonable.

5 (4) For the purposes of this section “sale” includes a change of ownership of or the distribution of the assets of a business owing to—

(a) the dissolution of a partnership; or

10 (b) a variation of the members constituting a partnership:

Provided that if the parties at the time having capacity so to do unanimously agree and give notice of their agreement to the Commissioner at the time and in the manner prescribed the property or live stock may be
15 valued at the amount which would have been included in respect of that property or live stock if no change or distribution had taken place and the new owners of the assets shall be deemed to have purchased them at that value.

20 **30.** (1) Where the assets of a business carried on by a taxpayer devolve by reason of his death, and those assets include any property being trading stock, stand-
ing or growing crops or crop stools, the value of that property shall, subject to this Act, be included in the
25 assessable income derived by the deceased up to the date of his death and the person upon whom the property devolves shall be deemed to have purchased it at that value.

Devolution
on death.

(2) For the purpose of subsection one of this
30 section the value of the property so to be included shall be the amount which would have been included in respect of that property in the assessable income of the deceased person under section twenty-nine of this Act, if he had not died but had disposed of the property
35 on the day of his death for the purpose of putting an end to the whole of the business carried on by him and without any price being specified in any contract or arrangement:

40 Provided that if the trustee of the estate of the deceased and the beneficiaries (if any) who are liable to be assessed in respect of the income of the business or of

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a share in that income unanimously so agree and give notice of their agreement to the Commissioner at the time and in the manner prescribed, that value shall be the value, if any, at which that property would have been taken into account at the date of the death of the deceased person if he had not died, but an assessment had been made in respect of the income derived by him up to that date. 5

SUBDIVISION C. *Business carried on partly in and partly out of the State.* 10

Definitions.

31. In this Subdivision—

“Goods” includes wares, merchandise and any substance, product or commodity.

“Net revenue” means the amount remaining after deducting from the total income (except interest which is exempt under paragraph (k) of section sixteen) all losses and outgoings incurred in the production of that income which would have been allowable deductions if that income had been assessable income. 15 20

Goods deemed to be sold in this State.

32. Where a person sells goods by means of anything done by himself when in this State, or by means of an agent or representative in this State, and those goods are in this State or are to be brought into this State for the purpose or in pursuance or in consequence of such sale he shall be deemed to have sold them in this State. 25

Goods deemed to be sold out of this State.

33. Where a person sells goods by means of anything done by himself when out of this State, or by means of an agent or representative out of this State, and those goods are out of this State or are to be taken out of this State for the purpose or in pursuance or in consequence of such sale, he shall be deemed to have sold them out of this State. 30

Instrumentality.

34. A sale is deemed to be made by means of a person or of something done when such person or thing done is instrumental in bringing about the sale. 35

35.

- 35.** Except as provided in this Subdivision—
- (a) where goods are sold in this State by any person the whole of the profit arising from the sale shall be deemed to be income derived in this State;
- (b) where goods are sold out of this State but in Australia by any person the whole of the profit arising from the sale shall be deemed to be income derived out of this State.
- 36.** Where goods manufactured or partly manufactured out of Australia are sold in this State by the manufacturer of the goods, and the Commissioner is satisfied that the profit arising from the sale is liable to income tax in the country of manufacture, he shall allow a rebate as follows:—
- (a) where the goods are wholly manufactured out of Australia—a rebate of one-half of the tax payable under this Act on the profit; or
- (b) where the goods are partly manufactured out of Australia—a rebate of an amount determined by the Commissioner not exceeding one-half of the tax payable under this Act on the profit.
- 37.** Where goods manufactured out of this State but in Australia are sold in this State by the manufacturer, one-third of the profit arising from the manufacture and sale shall be deemed to be income derived in this State.
- 38.** Where goods manufactured in this State are sold out of this State but in Australia by the manufacturer, two-thirds of the profit arising from the manufacture and sale shall be deemed to be income derived in this State.
- 39.** Where goods are sold in this State in the course of a business carried on out of this State but in Australia by a person not being the manufacturer of the goods, one-half of the profit arising from the sale shall be deemed to be income derived in this State.
- 40.** Where goods are sold out of this State but in Australia in the course of a business carried on in this State by a person not being the manufacturer of the goods, one-half of the profit arising from the sale shall be deemed to be income derived in this State.

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LIABILITY TO
TAXATION.

DIVISION 2.
INCOME.

Sales of
goods in and
out of this
State.

Sales in this
State of
goods manu-
factured out
of Australia.

Sales in
this State of
goods manu-
factured in
another State.

Sales out
of this
State of
goods manu-
factured in
this State.

Sales in this
State by a
merchant
carrying on
business
out of this
State.

Sales out
of this
State by a
merchant
carrying on
business in
this State.

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LIABILITY TO
TAXATION.
DIVISION 2.
INCOME.
Sales of
primary
produce
and coal in
Australia.

41. Notwithstanding anything contained in this Sub-division, the following provisions shall in the cases therein mentioned apply to the profit derived from the sale anywhere in Australia of goods which are the produce of a business of primary production or of coal-mining carried on in Australia:—

- (a) where the goods are produced in this State and are sold by or on behalf of a person carrying on the business of which the goods are the produce, the profit shall be deemed to be income derived in this State; 5
- (b) where the goods are produced out of this State and are sold by or on behalf of a person carrying on the business of which the goods are the produce, the profit shall be deemed to be income derived out of this State. 10 15

Ascertain-
ment of
profits.

42. The amount of any profit referred to in this Sub-division shall be ascertained by adding to the proceeds of sale any bounty or subsidy received in respect of the goods sold, and deducting therefrom all losses and outgoings incurred in deriving the profit which would have been allowable deductions in respect of those proceeds if those proceeds had been included in the assessable income of the person deriving the profit, and those losses and outgoings had been wholly incurred in this State. 20 25

Assessable
income and
deductions.

43. The assessable income of a taxpayer shall include any profit or net income derived in the year of income by him which under the provisions of this Subdivision is deemed to be derived in this State, and no amount which is taken into account under section forty-two of this Act in ascertaining the amount of any profit derived by him shall be an allowable deduction. 30

Exclusion
of mining.

44. Sections thirty-two to forty-three (both inclusive) of this Act shall not apply for the purpose of determining the income derived or deemed to be derived from a source in or out of this State by any person from the carrying on of a business of mining (other than coal mining). 35

Source of
income derived
from the export
of goods
manufactured
or produced
in this State.

45. Where goods are exported from and sold out of Australia and—

- (a) by reason of the manufacture, extraction from the earth, winning, production or purchase of such goods in this State; or 40
- (b)

- (b) by reason of successive steps of extraction, win-
ning, production, or manufacture in and out of
this State; or
(c) by reason of the making of contracts out of
Australia;

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INCOME.

5 or for any other reason whatever the source of any profit
is not exclusively in this State, the part of the profit
deemed to be derived from a source in this State and the
part of the profit deemed to be derived from a source
10 out of this State shall be determined in accordance with
the regulations, or, if there are no regulations applying
to the case, shall be determined by the Commissioner.

15 **46.** Where in any of the circumstances referred to in
section forty-five of this Act part of the profit is deemed
to be derived from a source out of Australia such part
shall if derived by a resident be included in his assessable
income unless the Commissioner is satisfied that income
tax has been paid in the country of sale in respect of
that part of the profit.

Profit on
goods,
sold out of
Australia
and not
taxed in
country of
sale.

20 **47.** (1) Where a person carries on business (other
than a business to which Division 11, Division 12 or
Division 15 of this Part applies) in and out of this State
and the net income derived in this State is not kept
separate and apart from net income derived out of this
25 State that person shall furnish the Commissioner with a
return setting out a true statement of the part of the net
revenue which can be definitely shown as having been
derived in this State.

Income of
person
carrying on
business in
and out of
this State.

30 (2) There shall, in the statement, be added to the
part of the net revenue definitely ascertainable as having
been derived in this State a part of the profit upon the
sale of any goods (determined in accordance with the
preceding provisions of this Subdivision) not so
ascertainable.

35 There shall also be added an appropriate part of the
net revenue derived otherwise than from the sale of
goods which cannot be definitely allocated to sources in
or out of this State.

40 (3) The return shall set out particulars of any
apportionments and shall be accompanied by a full and
complete

PART III.
LIABILITY TO
TAXATION.DIVISION 2.
INCOME.Allocation
or appor-
tionment of
income
where
source not
definitely
ascertain-
able.

complete statement of income and expenditure and assets and liabilities in connection with the business in and out of this State.

48. (1) The Commissioner may, subject to such alterations as he considers necessary, accept the statement referred to in section forty-seven of this Act or may, without limitation of any of his powers under this Act, allocate to a source in or out of this State any part of the net revenue which, in his opinion, can be so allocated. 5

Any part of the net revenue derived from sales shall be apportioned between sources in and out of this State in accordance with the preceding provisions of this Subdivision and the balance may be apportioned between sources in and out of this State according to the remaining income in this State as compared with the remaining income from all sources. 10 15

The part of the net revenue allocated or apportioned to a source in this State shall be deemed to be net income derived from a source in this State.

(2) Notwithstanding anything contained in this section, the Commissioner may apportion the net revenue between sources in and out of this State upon the basis of the assets used in this State in the production of assessable income as compared with the total assets employed in the production of the net revenue. 20 25

Income
assessable
under more
than one
section.

49. Where, in the opinion of the Commissioner, it is difficult or impracticable to determine whether income is assessable under one section or under another section of this Act, or where, in the opinion of the Commissioner, the income is assessable under more than one section of this Act, he may at his option assess the income under the provisions of the section or sections which is or are the most appropriate to the circumstances of the case. 30

Determina-
tion by
Commis-
sioner.

50. Where the net income cannot to the satisfaction of the Commissioner be ascertained under the preceding provisions of this Subdivision it shall be deemed to be such amount of the assessable income as the Commissioner determines. 35

Apportion-
ment of loss.

51. Any loss incurred by the taxpayer in the year of income under any of the circumstances provided in this Subdivision 40

Subdivision to the extent to which the profit or net revenue (if any) would have been included in his assessable income shall be an allowable deduction.

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LIABILITY TO
TAXATION.
DIVISION 2.
INCOME.

SUBDIVISION D. *Dividends.*

5 **52.** (1) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) shall, subject to this Subdivision—

Inclusion of
dividends in
assessable
income.

(a) if he is a resident—include all dividends paid to him by the company; and

10 (b) if he is a non-resident—include dividends paid to him by the company out of profits derived by it from sources in this State.

(2) Where a company derives income from sources in this State, and from sources out of this State, a dividend shall be deemed to be paid out of profits derived by the company from sources in this State to the extent of so much of the dividend as bears to the whole dividend the same proportion as the profits derived by the company from sources in this State bear to the total profits of the company.

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

25 (a) if the shareholder is a company, except for the purposes of section ninety of this Act and of Division 9 of this Part; or

30 (b) if the shareholder is a non-resident but is a resident of Australia if, under the laws of the State in which he resides he is liable to income tax (being income tax imposed as such and which, in the opinion of the Commissioner, is reasonably comparable in its nature to the tax assessed under this Act) on dividends.

53. The assessable income of a shareholder shall not include dividends received from a company that does not carry on business in, or derive income from sources in Australia, or dividends paid on or after the first day of January,

Exclusion of
certain divi-
dends from
assessable
income.

PART III.
LIABILITY TO
TAXATION.
DIVISION 2.
INCOME.

January, one thousand nine hundred and thirty-six, wholly and exclusively out of one or more of the following:—

- (a) income derived from sources outside Australia, not being income which under this Act is or has been, wholly or partly assessable income of the company; 5
- (b) profits arising from the sale or compulsory re-
sumption for public purposes of assets if the
company was not liable to tax in respect of those
profits under this or the previous Acts; 10
- (c) profits arising from the revaluation of assets
not acquired for the purpose of resale at a
profit or from the issue of shares at a premium,
if the dividends paid from such profits are satis-
fied by the issue of shares of the company
declaring the dividend; 15
- (d) interest which is exempt under paragraph (k)
of section sixteen or interest exempted under
paragraph (r) of subsection one of section ten
of the previous Act; 20
- (e) income upon which tax has been assessed and
paid under the provisions of Division 9 of this
Part or section thirty-one of the previous Act;
or 25
- (f) exempt income derived by a company from the
working of a gold mining property in Australia
or in the territory of New Guinea where such
dividends are paid before the first day of July,
one thousand nine hundred and thirty-nine. 30

Further
provision
for ex-
clusion of
dividends.

54. The assessable income of a shareholder shall not include dividends paid before the first day of January, one thousand nine hundred and thirty-six, out of one or more of the incomes, profits or interests referred to in section fifty-three of this Act except to the extent to which those dividends would have been included in the assessable income of the shareholder if the assessment had been made under the previous Act, 35

55.

55. (1) A shareholder shall be entitled to a rebate in his assessment of the amount obtained by applying to that part of the dividends which is included in his taxable income a rate equivalent to the rate of tax payable by companies for the year of income:

PART III.
LIABILITY TO
TAXATION.
DIVISION 2.
INCOME.
Rebate on
dividends.

Provided that such rebate shall not exceed an amount equal to the difference between—

- (a) the amount of tax for which the shareholder would be liable if the dividends included in his assessment were income from property other than dividends; and
- (b) the amount of tax for which the shareholder would be liable if dividends were excluded from his assessable income.

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

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

Distribu-
tions by
liquidator.

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

DIVISION 3.—Deductions.

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

Allowable
deductions.

58. Where by this Act it is provided that any deduction shall be made successively from two or more classes of income the deduction shall be set off against the income

Successive
deductions.

of

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TIONS.

Deductions
in case of
composite
incomes.

of the first of those classes; and if it exceeds the income of that class the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.

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

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

Losses and
outgoings.

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

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

Head
office
expenses.

61. Head office expenses of a company deriving income from sources in and out of this State shall not be an allowable deduction beyond an amount which bears the same proportion to the total head office expenses as the assessable

assessable income derived by the company in this State bears to the total income of the company wherever derived, or beyond an amount to be fixed by the Commissioner.

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TIONS.

- 5 **62.** Any loss incurred by the taxpayer in the year of
income from the sale of any property acquired by him
for the purpose of profit-making by sale, or from the
carrying on or carrying out of any undertaking or
10 or scheme would, under paragraph (e) of subsection one
of section nineteen of this Act have been included in his
assessable income, shall be an allowable deduction.

Loss on
property
acquired
for profit-
making.

- 15 **63.** (1) Expenditure incurred by the taxpayer in the
year of income for repairs, not being expenditure of a
capital nature, to any premises, or part of premises,
plant, machinery, implements, utensils, rolling stock or
articles held, occupied or used by him for the purpose of
producing assessable income, or in carrying on a business
for that purpose, shall be an allowable deduction.

Repairs.

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

- 25 **64.** (1) Depreciation during the year of income of any
property, being plant or articles owned by a taxpayer
and used by him during that year for the purpose of pro-
ducing assessable income, and of any property being
plant or articles owned by the taxpayer which has been
installed ready for use for that purpose and is during that
year held in reserve by him shall, subject to this Act, be
30 an allowable deduction.

Deprecia-
tion.

(2) In this section "plant" includes animals used
as beasts of burden or working beasts in a business other
than a business of primary production, and machinery,
implements, utensils and rolling stock.

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

Basis of de-
preciation.

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TIONS.Calculation
of depre-
ciation.Alteration
of method
of calcu-
lating
depreciation.Deprecia-
tion under
Common-
wealth and
State Acts.

66. (1) Subject to this section, the depreciation allow-
able under this Act in respect of any unit of property
shall be—

- (a) the percentage fixed under section sixty-five of
this Act or under the previous Act, of the depre- 5
ciated value of that unit at the beginning of the
year of income; or
- (b) at the option of the taxpayer (to be exercised
within the time in the manner and subject to the
conditions prescribed), the percentage so fixed 10
of the cost of that unit.

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

67. Where depreciation has been allowed to a taxpayer, 15
whether under this or the previous Act, in respect of any
year prior to the year of income, the method of calculat-
ing the depreciation to be allowed to him in respect of the
year of income shall, unless altered with the leave of the
Commissioner, or in the exercise of the option referred to 20
in section sixty-six of this Act, be the same as that
applied in the last preceding calculation.

68. (1) Where the depreciated value under this Act
of any property at the beginning of the year of income
is higher than its depreciated value at that time under 25
the Commonwealth Act relating to Income Tax, and the
Commissioner is satisfied that if those values were equal,
the corresponding values in each subsequent year would
remain equal, the Commissioner may allow in lieu of the
depreciation otherwise allowable an amount of deprecia- 30
tion calculated as if the depreciated value at the begin-
ning of the year of income under the Commonwealth Act
had been substituted for the depreciated value at that
time under this Act.

(2) Where subsection one of this section is 35
applied in any assessment a further amount of deprecia-
tion shall also be an allowable deduction in that assess-
ment, being an amount determined by the Commissioner
which shall not be less than one-tenth part of the differ-
ence between those depreciated values at the beginning of 40
the year to the assessment of the income of which this
section

section is first applied, provided that the further amount shall not in any case exceed the amount required to make the depreciated values of the property under this and the Commonwealth Act equal.

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TIONS.

5 (3) Where depreciation has been allowed under this section in respect of any property in any assessment of a taxpayer, depreciation shall be allowed under this section in all future assessments of that taxpayer in which depreciation in respect of that property is allow-
10 able until the depreciated values under this Act and the Commonwealth Act are equal.

15 **69.** (1) Where any property of a taxpayer in respect of which depreciation has been allowed or is allowable under this or the previous Acts, is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction shall be an allowable deduction.

Disposal,
loss, or
destruction
of depreci-
ated
property.

20 (2) If that consideration exceeds that depreciated value, the excess shall be included in his assessable income of that year.

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

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

(4) Notwithstanding anything contained in this Act where a calculation under this section is based upon
40 the consideration receivable and for any reason the whole
or

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TIONS.

Acquisition
of depre-
ciated
property.

or any part of that consideration is not received by the taxpayer the Commissioner may, at any time, amend the assessment on the basis of the consideration received.

70. (1) Where either before or after the commencement of this Act, a person has acquired any property in respect of which depreciation has been allowed or is allowable under this or the previous Act, he shall not be entitled to any greater deduction for depreciation than that which would have been allowed to the person from whom the property was acquired if that person had retained it: 5

Provided that where under section sixty-nine of this Act or under paragraph (1) of subsection one of section nineteen of the previous Act an amount is included in the assessable income of the person selling the property, the person acquiring the property shall be allowed depreciation calculated on the amount paid by him for the property. 15

(2) This section shall not apply where the Commissioner is of the opinion that the circumstances are such that depreciation based on the actual consideration given should be allowed unless the person who acquired the property was a company in which the transferrer 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. 20 25

Property
used partly
for produc-
ing assess-
able income.

71. Where the use of any property by the taxpayer has been only partly for the purpose of producing assessable income only such part of the deductions otherwise allowable under section sixty-four or section sixty-nine of this Act in respect of that property as in the opinion of the Commissioner is proper shall be an allowable deduction. 30 35

Definition of
depreciated
value.

72. (1) In this Division "depreciated value" of any unit of property at any time means—

- (a) where depreciation has been allowed, or is allowable under this Act, or the previous Acts in respect of that unit in assessments for any periods 40

periods prior to that time—the cost of the property less the amount of all depreciation so allowed or allowable, and

5 (b) where depreciation has not been allowed or is not so allowable—the cost of the property.

(2) Where there has been a change of ownership and the owner for the time being of the property is by virtue of section seventy of this Act not entitled to depreciation on the amount paid by him for the property, the
10 depreciated value shall be calculated by taking as a basis the cost price of the property to the first owner, and deducting therefrom all amounts which have been allowed as depreciation under this Act or the previous Acts to the owner for the time being and prior owners
15 of the property.

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

(a) have been brought to account by the taxpayer as assessable income of any year; or
20 (b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business; and no other bad debts, shall be allowable deductions.

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

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

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

75.

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TIONS.

Bad debts.

Commission.

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TIONS.

Payments
to relatives.

75. (1) Subject to this section payments becoming due in the year of income by a taxpayer to a relative shall be allowable deductions only to the extent to which, in the opinion of the Commissioner, they are reasonable in amount and bona fide made in the production of assessable income. 5

(2) Expenditure incurred, and payments becoming due, by the taxpayer in the year of income in or for the maintenance of his wife or of any member of his family under the age of sixteen years, shall not, whether or not the expenditure was incurred in the production of assessable income be an allowable deduction. 10

Contribu-
tions to
pension
funds.

76. So much of any sum set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions, or retiring allowances for his employees as is proportionate to the extent to which those employees are engaged in producing assessable income of the taxpayer, shall be an allowable deduction where— 15

- (a) the taxpayer is under a legal obligation to set apart or pay that sum; and 20
- (b) the rights of the employees to receive the benefits, pensions or retiring allowances are fully secured.

Expenses of
borrowing.

77. So much of the expenditure incurred by the taxpayer in borrowing money used by him for the purpose of producing assessable income as bears to the whole of that expenditure the same proportion as that part of the period for which the money was borrowed which is in the year of income bears to the whole of that period shall be an allowable deduction: 25 30

Provided that, if the period for which the money was borrowed is not fixed or exceeds five years, the period of five years from the date on which the money was borrowed shall be deemed to be the period for which the money was borrowed. 35

Expenses of
preparing
lease.

78. Expenditure incurred by the taxpayer in the year of income for the preparation, registration and stamping of a lease of property to be held by him for the purpose of producing assessable income shall be an allowable deduction. 40

79.

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

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TIONS.

Timber
felled upon
acquired
land.

80. So much of the amount paid for a right to fell timber for sale as is attributable to the timber felled during the year of income shall be an allowable deduc-
10 tion.

Timber
felled under
right.

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

Loss by
embezzle-
ment.

82. (1) Sums paid by the taxpayer in the year of income for rates or for State or Federal land tax, shall, to the extent to which they are charged or levied in respect of property held by him for the purpose of pro-
20 ducing assessable income, be allowable deductions.

Rates and
taxes.

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

83. Any periodical subscription, not otherwise an allowable deduction, paid by the taxpayer in the year of income in respect of his membership of a bona fide
30 industrial union of employers or employees, trade or professional association, whether corporate or unincorporate, or agricultural society approved by the Commissioner, shall to an extent not exceeding ten pounds ten shillings to any one union, association or society in the
35 year of income, be an allowable deduction.

Subscrip-
tions to
associa-
tions.

84. The sum of one hundred pounds in respect of travelling and incidental expenses incurred in the year of income by a taxpayer in the capacity of a New South Wales member of the Parliament of the Commonwealth
40 or of a member of the Legislative Assembly of New South Wales shall be an allowable deduction.

Expenses of
members of
Parliament.

85.

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TIONS.
Election
expenses of
members of
Parliament.

85. (1) Expenditure incurred in the year of income by the taxpayer in being elected as a member of the Parliament of the Commonwealth or of the Legislative Assembly of New South Wales or if the taxpayer was a retiring member at the time of the election the expenditure incurred in the year of income by him in seeking to be re-elected shall be an allowable deduction. 5

(2) When a deduction has been allowed or is allowable under subsection one of this section in respect of any expenditure and that expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organization the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount. 10

Grassing
grazing
lands, etc.

86. Expenditure incurred by the taxpayer in grassing grazing lands, in suckering, in eradicating seedlings, noxious plants and noxious weeds, or in the destruction of noxious animals on lands owned, held or occupied by the taxpayer for the purpose of producing his assessable income shall be an allowable deduction. 15 20

Expenditure
on mining
operations.

87. Expenditure incurred during the year of income by any taxpayer carrying on mining operations in this State (other than coal mining or quarrying) for labour and materials employed in sinking shafts in a producing mine, and in the course of extending the area of operations shall be an allowable deduction. 25

Gifts and
contribu-
tions.

88. (1) The following shall, to an extent in the aggregate not exceeding the amount of income remaining after deducting from the assessable income all other allowable deductions except the deduction of losses of previous years and of the statutory exemption, be allowable deductions— 30

(a) gifts of the value of one pound and upwards made by the taxpayer in the year of income to any of the following funds, authorities or institutions in this State:— 35

(i) a public hospital;

(ii) a public benevolent institution;

(iii)

- 5 (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions in this State, or for the establishment of such hospitals or institutions or for the relief of persons in this State who are in necessitous circumstances;
- 10 (iv) a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants, where the gift is for such research;
- 15 (v) a public university, public library, public museum, or public art gallery;
- (vi) a residential educational institution affiliated under statutory provisions with the Sydney University or a public educational institution not carried on for the profit of individuals;
- 20 (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial in this State relating to the war which commenced on the fourth day of August, one thousand nine hundred and fourteen; and
- 25 (viii) an institution or public fund for the benefit of persons who are returned soldiers within the meaning of Part III of the Australian Soldiers' Repatriation Act, 1920-1934, of the Parliament of the Commonwealth;
- 30 (b) sums which are not otherwise allowable deductions and which are set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions or retiring allowances for employees who are residents and are engaged in his or any business or class of business, or dependants of such employees, if the rights of the employees or dependants to receive the benefits, pensions or retiring allowances are fully secured;
- 35
- 40

(c)

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TIONS.

(c) sums which are not otherwise allowable deductions and which are paid by the taxpayer during the year of income as retiring allowances or pensions to persons who are or have been employees or dependants of employees, where such persons are residents, to the extent to which in the opinion of the Commissioner those sums are paid bona fide in consideration of the past services of the employees in any business of the taxpayer. 5
10

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

- (a) unless it was purchased by the taxpayer within twelve months immediately preceding the making of the gift; or 15
(b) to an extent greater than the sum paid by him for the gift.

Conces-
sional
deductions.

89. (1) The following amounts (in this Act called "the concessional deductions") shall be allowable deductions where the taxpayer is domiciled in this State— 20

- (a) the sum of fifty pounds in respect of one relative, and one relative only, but this deduction shall not be allowed—
- (i) where the relative is not a resident of Australia; or 25
(ii) where during the year of income the relative derived a net amount of income from all sources in excess of one hundred pounds; or
(iii) where the taxpayer is not the principal support of the relative; or 30
(iv) where the taxpayer has not during the year of income expended at least fifty pounds towards the maintenance of the relative, unless the relative is his or her spouse. Any payments made to the relative 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; 35
40
(v) (v) 40

- (v) where the relative is a child in respect of whom the taxpayer is allowed a deduction under paragraph (b) of this subsection;
- 5 (b) the sum of fifty pounds in respect of each child who is a resident of Australia and is under the age of sixteen years at the beginning of the year of income and is wholly maintained by the taxpayer:
- 10 Provided that where a child is born during the year of income, or attains the age of sixteen years during the year or is wholly maintained by the taxpayer during part only of the year, or is only partially maintained by him during the whole or part of the year, the deduction allow-
- 15 able shall be such part of that sum as in the opinion of the Commissioner is reasonable in the circumstances;
- 20 (c) payments not exceeding fifty pounds in the aggregate made by the taxpayer in the year of income to any legally qualified medical practitioner, nurse or chemist, or public or private hospital, in respect of any illness of or operation upon the taxpayer or his spouse or
- 25 any of his children under the age of twenty-one years if the spouse or child is a resident of Australia;
- 30 (d) payments not exceeding twenty pounds in the aggregate made by the taxpayer in the year of income for funeral and burial or cremation expenses arising out of the death of his spouse, or of any of his children under the age of twenty-
- 35 one years, if the spouse or child was at the time of death a resident of Australia,—to the extent to which those expenses are not recouped to him by any society or association; and
- (e) payments made by the taxpayer in the year of income, not exceeding in the aggregate one hundred pounds, and being—
- 40 (i) premiums or sums for insurance on the life of the taxpayer or of his spouse or children,
- D

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TIONS.

children, or for a deferred annuity or other like provision for his spouse or children; or

- (ii) payments to superannuation, sustentation, widows' or orphans' funds, or to any friendly society, for the personal benefit of the taxpayer or of his spouse or children. 5

(2) Notwithstanding anything contained in subsection one of this section or in paragraph (b) of section ninety-one of this Act, where a taxpayer, who is domiciled in another State of the Commonwealth, does not, by reason of the insufficiency of his income in that State, receive the full benefit of the concessional deductions and statutory exemption allowable under the law of that State, the Commissioner may allow either the whole or such part of the deductions allowable under this section or under paragraph (a) of section ninety-one of this Act as in his opinion is just having regard to the taxpayer's income in this State as compared with his total income. 10 15 20

Where this subsection is applied the deduction under paragraph (b) of section ninety-one of this Act shall not be an allowable deduction.

Losses of
previous
years.

90. (1) For the purposes of this section, a loss shall be deemed to be incurred in any year when the allowable deductions (other than the concessional deductions and the deduction allowable under this section) from the assessable income of that year exceed the sum of that income and the net exempt income of that year, and the amount of the loss shall be deemed to be the amount of such excess. 25 30

(2) So much of the losses incurred by a taxpayer in any of the three years next preceding the year of income as has not been allowed as a deduction from his income of any of those years shall be allowable as a deduction in accordance with the following provisions:— 35

- (a) where he has not in the year of income derived exempt income, the deduction shall be made from the assessable income;

(b)

- (b) where he has in that year derived exempt income, the deduction shall be made successively from the net exempt income and from the assessable income;
- 5 (c) where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred.

(3) Nothing in this section shall apply to or in
10 respect of any loss incurred by a taxpayer prior to the year ended on the thirtieth day of June, one thousand nine hundred and thirty-four, or the accounting period accepted by the Commissioner under the previous Act in lieu of that year.

15 (4) In this section "net exempt income" means the amount by which the exempt income of the taxpayer derived from sources in this State (other than interest on Commonwealth loans) exceeds the expenses (not being expenses of a capital nature) incurred in deriving that
20 income.

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

91. The following amount (in this Act called "the
30 statutory exemption") shall be an allowable deduction— **Statutory exemption.**

- (a) in the case of a person (other than a company) domiciled in this State—
- 35 (i) the sum of two hundred and fifty pounds, less one pound for every eight pounds by which the income exceeds two hundred and fifty pounds; or
- (ii) where the income does not exceed two hundred and fifty pounds, the amount of the income;

(b)

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TIONS.

(b) in the case of a person (other than a company) not domiciled in this State, except as provided in subsection two of section eighty-nine of this Act—

- (i) the sum of fifty pounds, less one pound 5 for every eight pounds by which the income exceeds fifty pounds; or
- (ii) where the income does not exceed fifty pounds, the amount of the income.

In this section "income" means the residue after 10 deducting from the assessable income all other allowable deductions.

Double
deductions.

92. (1) Where in respect of any amount a deduction would but for this section be allowable under more than one provision of this Act, and whether it would be so 15 allowable from the assessable income of the same or different years, the deduction shall be allowable only under that provision which, in the opinion of the Commissioner, is most appropriate.

(2) Where the profit arising from the sale of any 20 property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, and any expenditure incurred by him in connection with that property is an allowable deduc- 25 tion under this Act or has been allowed or is allowable as a deduction in assessments under the previous Acts, that expenditure shall not be deducted in ascertaining the amount of the profit or loss.

DIVISION 4.—Leases.

Definitions.

93. In this Division— 30

"Lease," when used in relation to a premium, means the lease granted, assigned or surrendered, or where the premium is for or in connection with any goodwill or license means the lease of the land to which such goodwill or license is attached 35 or connected.

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

"Net

“Net premium” means the amount ascertained by deducting from a premium the allowable deductions directly relating thereto.

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5 “Premium” means any consideration in the nature
of a premium, fine, or foregift payable to any
person for or in connection with the grant or
assignment by him of a lease, or any considera-
10 tion for or in connection with the surrender of
a lease, or for or in connection with any goodwill
or license attached to or connected with land
a lease of which is granted, assigned or surren-
dered; and where any of the foregoing
15 considerations is payable in more than one
amount each such amount shall be deemed to be
a premium.

20 “Term of the lease” means the length of time which
the lease has to run from the date when the
premium is received, and in the case where the
premium is received for or in connection with
the surrender of a lease, the length of time which
the lease would have had to run at the date
of such receipt if it had not been surrendered:

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

94. (1) The assessable income of a taxpayer shall include, in addition to rent, any amount received by him in the year of income being—

Premiums
included in
assessable
income.

- 30 (a) a premium for or in connection with the grant of
a lease; or
(b) the net premium for or in connection with the
assignment or surrender of a lease; or
(c) consideration for or in connection with his assent
to any grant or assignment of a lease.

35 (2) Where a lease (other than a lease of premises
in respect of which a publican’s license or an Australian
wine license is for the time being in force) assigned or
surrendered was acquired by the taxpayer before the sixth
year

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year prior to the year of income in which the lease is assigned or surrendered the amount of net premium (or if in respect of the transaction there are more net premiums than one,—the sum of the net premiums) to be included as assessable income shall not be greater than the total of the amounts of deductions allowed to the taxpayer under this Act and the previous Acts in respect of the lease. 5

Deductions
from con-
sideration
for assign-
ment or
surrender
of a lease
or on grant
of sub-lease.

95. (1) Where the whole of the consideration for the assignment or surrender of a lease is received in the year of income the allowable deductions in ascertaining the net premium shall be the sum of— 10

(a) the amount paid by the taxpayer for the lease less all amounts which, under this Act and the previous Acts, were allowable as deductions in respect of the amount so paid; 15

(b) any other expenditure by the taxpayer, including interest on borrowed money, incurred in connection with the acquisition, improving and holding of the lease, which was not allowable as a deduction from the assessable income of the taxpayer under this Act or the previous Acts. 20

(2) Where part only of that consideration is received in the year of income the allowable deductions shall be the amount which bears to that sum the same proportion as that part bears to the whole of that consideration. 25

(3) Where any premium is paid to a taxpayer for or in connection with the grant by him of a sub-lease, or for or in connection with the goodwill or license attached to or connected with land the subject of a sub-lease so granted, and is included in the assessable income of the taxpayer of the year of income, and he has paid any amount to acquire the lease of the premises the subject of the sub-lease or the goodwill or license, so much of the total deductions to which he would but for this section be entitled in respect of that amount during the period for which that sub-lease is granted as bears to those deductions the same proportion as the premium included in his assessable income bears to the total of the premiums 30 35

5 premiums received or to be received by him for the grant of that sub-lease or for the goodwill or license shall be an allowable deduction, and he shall not during that period be entitled to any further deduction in respect of that amount otherwise than under this section.

PART III.
LIABILITY TO
TAXATION.
DIVISION 4.
LEASES.

10 **96.** Where any premium is included in the assessable income of a taxpayer in respect of the grant of a sub-lease out of or the assignment or surrender of a lease to which he has succeeded upon the death of another person, the taxpayer shall be entitled to the deduction to which that other person would have been entitled under section ninety-five of this Act if he had lived and the premiums had been included in his assessable income and there had been allowed or were allowable as deductions in assessments for income tax, under any other provisions of this Act or under the previous Acts, the same deductions as have been so allowed or are so allowable to the taxpayer in addition to any deductions that in fact have been or are so allowed or allowable to that other person.

Deductions
where lease
devolves
on death.

25 **97.** (1) Where a premium which exceeds the sum of the allowable deductions directly relating thereto, and in respect of which the term of the lease is not less than twenty-five complete months, is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall be ascertained in accordance with this section.

Rate of
tax where
lease
granted.

In this subsection "premium" means a premium for or in connection with the grant of a lease.

30 (2) Where the taxable income exceeds the net premium, or the sum of the net premiums, if there are more than one of the premiums so included, the rate of tax shall be the rate which is applicable to a taxable income equal to the amount obtained by deducting the net premium or the sum of the net premiums, as the case may be, from the taxable income and adding to the result the amount or amounts ascertained by dividing each of the net premiums by one-twenty-fourth of the number of complete months in the term of the lease.

(3)

PART III.
LIABILITY TO
TAXATION.
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LEASES.

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

(a) where there is only one of those premiums— 5
the rate which would be applicable to a taxable income equal to the amount ascertained by dividing the actual taxable income by one-twenty-fourth of the number of complete months in the term of the lease; and 10

(b) where there are more than one of those premiums—the rate which would be applicable to a taxable income equal to the sum of the amounts ascertained by apportioning the actual taxable income among the net premiums in proportion 15
to their amounts, and dividing the amount so apportioned to each net premium by one-twenty-fourth of the number of complete months in the term of the lease.

(4) This section shall not apply in any case— 20

(a) where the taxpayer is a company, except where, in respect of the premium, it is assessable as a trustee; or

(b) where the provisions of section one hundred and ten of this Act or of Division 18 of this Part are 25
applied in the assessment of the taxpayer.

Rate of tax where lease is assigned or surrendered.

98. Where the net premium received for or in connection with the assignment or surrender of a lease is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall be ascer- 30
tained in accordance with section one hundred and ten of this Act as if the net premium were a casual profit under that section.

Value of improvements included in assessable income.

99. (1) Where, either before or after the commencement of this Act, improvements not subject to tenant 35
rights have been made on leased land by a lessee which
he

he is required to make under the terms of the lease or which are made with the written consent of the lessor, the following provisions shall apply:—

- 5 (a) There shall be included in the lessor's assessable income of the year in which the improvements have been made, and of each year thereafter until and including the year in which the lease expires, an instalment of the estimated value to the lessor of such improvements as at the expiration of the lease. The instalments shall be equal in amount, and shall be such that, if received at the commencement of each of those years, they would, with interest at the rate prescribed, accumulate to a sum equal to the estimated value:

10
15 Provided that where in the year of income a person is the lessor for part only of a year, a proportionate part of the instalment shall be included in his assessable income.

- 20 (b) Where in the opinion of the Commissioner the instalment cannot be satisfactorily determined, the value of the improvements at the expiration of the lease shall be included in the lessor's assessable income of the year in which the lease expires.

25 (2) This section shall not apply in any of the cases specified in subsection two of section one hundred and one of this Act.

30 **100.** (1) Where a taxpayer has paid any premium, and the lease is a lease of premises or machinery used for the purpose of producing assessable income—

Deductions to lessee in respect of payments for lease.

- 35 (a) if he was entitled to the lease during the whole of the year of income, or in the case of a premium paid for the surrender of a lease, if he would have been so entitled had the lease been transferred to him and he had not been entitled to the reversion,—the amount ascertained by dividing the amount of the premium by the number of years of the period of the lease unexpired when such payment was made; and

40 (b)

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LIABILITY TO
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LEASES.

- (b) if he was entitled to the lease during part only of the year of income, or in the case of a premium paid for the surrender of a lease, if he would have been so entitled had the lease been transferred to him and he had not been entitled to the reversion,—a proportionate part of the amount so ascertained, 5

shall be an allowable deduction.

(2) In any case where a company (in this subsection referred to as the "taxpayer company") is a taxpayer who has paid a premium in respect of the assignment to it of a lease of premises or machinery used for the purpose of producing assessable income, and where the assignor of the lease was, at or about the date of the assignment substantially interested as a shareholder in the taxpayer company, or was a company the shareholding interests in which were, at or about the date of the assignment in substantially the same hands as those of the taxpayer company, the following provisions shall have effect— 10
15
20

- (a) Where, under this Act or the previous Acts, the assignor was liable to include in his assessable income the whole of the net premium for the assignment by him of the lease to the taxpayer company, then— 25
- (i) if the taxpayer company was entitled to the lease during the whole of the year of income,—the amount ascertained by dividing the amount of the premium by the number of years of the period of the lease unexpired when such payment of premium was made; and 30
- (ii) if the taxpayer company was entitled to the lease during part only of the year of income,—a proportionate part of the amount so ascertained, 35

shall be an allowable deduction.

- (b) Where the lease was acquired by the assignor before the sixth year prior to the year of income

5 in which it was assigned to the taxpayer com-
pany, and the assignor was, either under this
Act or the previous Act, liable to include in his
assessable income a part only of the net pre-
mium for the assignment by him of the lease
to the taxpayer company this section shall not
be construed as entitling the taxpayer company
to an allowable deduction in respect of the pre-
mium greater than the amount, if any, ascer-
tained by dividing the amount of any premium
10 paid by the assignor for the lease by the number
of years of the period of the lease unexpired
when such payment of premium by the taxpayer
company was made.

15 (c) In any case not provided for by paragraph (a)
or paragraph (b) of this subsection this section
shall not be construed as entitling the taxpayer
company to an allowable deduction in respect
of the premium greater than the amount, if
20 any, of the deduction to which the assignor
would have been entitled in respect of any pre-
mium paid by him for the lease if he had not
assigned the lease.

25 **101.** (1) Where, either before or after the commence-
ment of this Act, a taxpayer has expended money in
making on leased land used for the purpose of producing
assessable income improvements which are not subject
to tenant rights, and which he was required to make
under the terms of the lease, or which he has made with
30 the written consent of the lessor—

Deductions
to lessee
in respect of
improve-
ments on
leased land.

35 (a) if he was entitled to the lease during the whole
of the year of income,—the amount ascertained
by dividing the amount of such expenditure, not
exceeding the amount which under the terms of
the lease he was required to expend, or which
he expended with that consent, by the number
of years of the period of the lease unexpired
when the money was expended; and

40 (b) if he was entitled to the lease during part only
of the year of income,—a proportionate part of
the amount so ascertained,

shall be an allowable deduction.

(2)

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LIABILITY TO
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LEASES.

(2) This section shall not apply—

- (a) where the lease is a lease of land (granted either before or after the commencement of this Act) to a company from an individual or from a company to an individual and the individual directly or indirectly controls or controlled the voting power of the company; **5**
- (b) where the lessor is a trustee of the land for the lessee, or the lessee is a trustee of the land for the lessor; or **10**
- (c) where the Commissioner is of the opinion that in consequence of the terms and conditions of the lease or of any other circumstances the lessor was at or about the date of the lease or consent (as the case may be) in substantial control of the operations of the lessee. **15**

Deductions to taxpayer succeeding to lease.

102. Where a taxpayer succeeds to any lease or share therein upon the death of another person who has paid a premium or expended money in making improvements referred to in section one hundred and one of this Act, he shall be entitled to the same deduction, or part thereof proportionate to his share in the lease, as that person would have been entitled to under either section one hundred or section one hundred and one of this Act had he lived. **20**

25

Division not to apply to certain leases.

103. This Division shall not apply to any lease from the Commonwealth or this State or any authority of this State being a perpetual lease without revaluation or a lease with a right of purchase.

DIVISION 5.—*Casual profits.*

30

Definitions.

104. In this Division—

“Bought” includes the acquisition of shares by the issue thereof, an exchange or reversion of property and the acquisition of goodwill. **35**

“Casual profit” means the net profit arising from the sale of property.

“Casual

“Casual loss” means the net loss incurred upon the sale of property.

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PROFITS.

5 “Real property” means any estate or interest in land, including a lease of land and the goodwill of any business carried on on the land, but does not include any premises owned and solely used by the taxpayer before the sale as his principal place of abode for any period of or exceeding four years.

10 “Sale” includes an exchange of property or a statutory resumption.

15 **105.** (1) Where the proceeds of the sale in the year of income by a taxpayer of any real property situated in this State are not included in his assessable income under any other provision of this Act, and the real property was bought by the taxpayer in the year of income or in any of the six years next preceding that year, his assessable income shall include the casual profit, if any, arising from the sale.

Profits
from sale
of real
property.

20 (2) For the purposes of this section where the real property sold was bought by the taxpayer from the Crown, and prior to the purchase was held by him under a lease from the Crown with a right of purchase, he shall be deemed to have bought the land on the date on which
25 he acquired the lease from the Crown.

30 **106.** (1) Where the proceeds of sale in the year of income by a taxpayer of any property other than real property are not included in his assessable income under any other provision of this Act, and the sale was effected in this State, and the property was bought by the taxpayer in the year of income or in any of the two years next preceding that year, his assessable income shall include the casual profit, if any, arising from the sale.

Profits
from sale
of personal
property.

35 (2) This section shall not apply to the sale of any property (other than shares or securities) where the aggregate value of the property sold in the year of income does not exceed two hundred pounds.

(3)

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PROFITS.

(3) Where a taxpayer sells shares and has available for delivery in satisfaction of the sale shares bought by him on different dates he shall, for the purposes of this section, have the option of electing from his holding at the time of the sale, irrespective of the shares delivered, the particular shares deemed to have been sold. 5

Amount of
casual
profit.

107. The amount of the casual profit to be included in the assessable income under this Division shall be calculated by deducting from the sale price or amount realised by the sale the following amounts:— 10

- (a) the expenses of sale;
- (b) the cost of the property to the taxpayer (less all amounts in respect of that cost or of depreciation of the property which have been allowed or are allowable as deductions in the assessments under this Act and the previous Acts of the taxable income of the taxpayer; 15
- (c) any other expenses (including interest on borrowed money) incurred in connection with the acquisition, improving or holding of the property, which have not been allowed and are not allowable as deductions in the assessments under this Act or the previous Acts of the taxable income of the taxpayer; and 25
- (d) any casual loss allowable in accordance with section one hundred and eleven of this Act. 25

Amount of
casual loss.

108. The amount of a casual loss shall be calculated by deducting the sale price or amount realised by the sale of property from the amounts set out in paragraphs (a), (b) and (c) of section one hundred and seven of this Act. 30

Sales on
terms.

109. Where in the case of any sale coming under this Division the payment of the purchase price extends over a period of years the following provisions shall have effect:— 35

- (a) the amount of the casual profit which would have been derived if the sale had been for cash shall be ascertained, and there shall be included as a casual profit in the assessable income of each 40

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LIABILITY TO
TAXATION.
DIVISION 5.
CASUAL
PROFITS.

5 each year of income in which a payment is received, so much of that amount as bears to that amount the same proportion as the payments received in that year bear to the total purchase price;

10 (b) the amount of the casual loss which would have been incurred if the sale had been for cash shall be ascertained and so much of that amount as bears to that amount the same proportion as the payments received in any year of income bear to the total purchase price shall be the casual loss attributable to that year of income.

15 The casual loss attributable to a year of income shall be an allowable deduction to the extent provided in section one hundred and eleven of this Act.

20 **110.** (1) Where a casual profit arising from the sale of property which had been held for not less than twenty-five complete months is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall be ascertained in accordance with this section.

Rate of tax where casual profit included in assessable income.

25 (2) Where the taxable income exceeds the casual profit, or the sum of the casual profits, if there are more than one of the casual profits so included, the rate of tax shall be the rate which is applicable to a taxable income equal to the amount obtained by deducting that casual profit or that sum, as the case may be, from the taxable income and adding to the result the amount or 30 amounts ascertained by dividing each casual profit by one-twenty-fourth of the number of complete months during which the property had been held.

35 (3) Where the taxable income is less than the casual profit or the sum of the casual profits if there are more than one casual profit so included, the rate of tax shall be—

40 (a) where there is only one of those casual profits—the rate which would be applicable to a taxable income equal to the amount ascertained by dividing the actual taxable income by one-twenty-fourth of the number of complete months during which the property had been held; and

(b)

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PROFITS.

(b) where there are more than one of those casual profits—the rate which would be applicable to a taxable income equal to the sum of the amounts ascertained by apportioning the actual taxable income among the casual profits in proportion to their amounts, and dividing the amounts so apportioned to each casual profit by one-twenty-fourth of the number of complete months during which the property had been held. 5
10

(4) Where the rate of tax to be applied to the taxable income of a taxpayer is ascertained in accordance with this section and the taxable income includes the whole or part of a net premium for or in connection with the grant of a lease the part only of the net premium which would be included in the taxable income for the purpose of ascertaining the rate of tax if section ninety-seven of this Act applied shall be included in the taxable income for the purpose of fixing the rate of tax in accordance with this section. 15
20

(5) This section shall not apply in any case—

- (a) where the taxpayer is a company except where in respect of a premium or casual profit it is assessable as a trustee; or
(b) where the provisions of Division 18 of this Part are applied in the assessment of the taxpayer. 25

(6) For the purposes of this section “casual profit” includes a net premium assessable under Division 4 of this Part, where that net premium is received for the assignment or surrender of a lease but does not include income assessable under section one hundred and twelve of this Act. 30

Deduction
of casual
losses.

111. (1) Any casual loss incurred by a taxpayer in the year of income or in any of the three years next preceding that year shall, to the extent to which it has not been allowed or is not allowable as a deduction in the assessments of the taxable income derived by the taxpayer in any year prior to the year of income, be an allowable deduction in arriving at the amount of casual profits to be included in the assessable income of the taxpayer. 35
40
(2)

(2) Where a deduction is allowable under paragraph (d) of section one hundred and seven of this Act in respect of two or more casual losses they shall be taken into account in the order in which they were incurred.

PART III.
LIABILITY TO
TAXATION.
DIVISION 5.
CASUAL
PROFITS.

(3) Nothing in this section shall apply with respect to any loss incurred by a taxpayer prior to the year ended on the thirtieth day of June, one thousand nine hundred and thirty-four, or the accounting period accepted by the Commissioner under the previous Act in lieu of that year.

112. The assessable income of a taxpayer shall include—

Assessable
income to
include
amounts
from sale
of rights
and from
granting
of option.

(a) any amount derived by a shareholder in a company from the sale in this State of rights to take up shares or debentures in a company;

(b) any consideration received at any time for the granting of an option to purchase or lease any property where the term of the option expires in the year of income and the option has not been exercised.

113. (1) Where a calculation of the amount of a casual profit or casual loss is based upon the consideration receivable and, for any reason, the whole or any part of that consideration is not received, the Commissioner may at any time amend the assessment on the basis of the consideration received.

Where full
amount of
considera-
tion for
sale of
property not
received.

(2) For the purpose of ascertaining the amount of casual profit or casual loss where a property has reverted to the vendor, that property shall be brought to account at its market value on the date of reversion and for the purpose of applying the provisions of this Division to any subsequent sale shall be deemed to have been bought by the vendor at that value on that date.

114. 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 casual profit, if any, arising from the sale shall be included in the assessable income of the vendor if the casual profit from that sale would have been assessable income of the first-mentioned person under this Division had he continued to hold the property and made the sale.

Gifts by
purchaser.

The

PART III.
LIABILITY TO
TAXATION
DIVISION 5.
CASUAL
PROFITS.

Sale of
shares of
private
company.

The amount of casual profit shall be calculated in accordance with section one hundred and seven of this Act as if the vendor had purchased and held the property from the date of purchase by the first-mentioned person until the date of sale.

115. Where a person who has bought real property assures it or causes it to be assured to a private company 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 that company the casual profit, if any, arising from the sale shall be deemed to be assessable income of that person under section one hundred and five of this Act, if, had he continued to hold that real property and had he sold that real property at the time when he sold the shares, the casual profit on such sale of the real property would have been deemed to be assessable income of such person under section one hundred and five of this Act.

The amount of casual profit arising from that sale shall be calculated in accordance with this Division as if the real property had not been assured but had been sold by that person.

Exchange
of property.

116. (1) Where there is an exchange of property, the value of the property at the time of the exchange shall be deemed to be the price paid or received for that property. Where consideration is given in addition to the property exchanged that consideration shall be added to the value of the property for the purpose of ascertaining the price paid or received.

Purchase
price when
amount
paid for
an option.

(2) Where any property is bought in the exercise of an option of purchase any consideration paid or given to the vendor for the option shall be deemed to be part of the purchase price.

DIVISION 6.—Partnerships.

Definitions.

117. In this Division—

“Net income” in relation to a partnership means the assessable income of the partnership calculated as if the partnership were a taxpayer, less all allowable deductions except the concessional deductions, the statutory exemption, and losses of previous years.

“Partnership

5 "Partnership loss" means the excess, if any, of the allowable deductions, except the concessional deductions, the statutory exemption and losses of previous years, over the assessable income of a partnership calculated as if the partnership were a taxpayer.

PART III.
LIABILITY TO
TAXATION.
DIVISION 6.
PARTNER-
SHIPS.

118. A partnership shall furnish a return of the income of the partnership, but shall not be liable to pay tax thereon.

Partnership
liable to
furnish
return.

10 119. (1) The assessable income of a partner shall include his individual interest in the net income of the partnership of the year of income, and his individual interest in a partnership loss incurred in the year of income shall be an allowable deduction.

Income of
partner.

15 (2) The exempt income of a partner shall include his individual interest in the exempt income of the partnership of the year of income.

20 120. (1) Where a taxpayer carries on business in partnership with a relative or relatives and whether or not any other person is a partner, the share in the income of the partnership of a relative who is a minor and unmarried, or is the spouse of the taxpayer, shall, for the purposes of this Act, and subject to the provisions of subsection three of this section, be added to and be

Shares of
relatives.

25 deemed to be part of the share of the taxpayer.

(2) Any amount which has been paid to any such relative for services performed by him in the business and is, in the opinion of the Commissioner, just and reasonable shall be an allowable deduction in arriving

30 at the net income of the partnership.

(3) This section shall not be applied where the partnership was entered into prior to the thirteenth day of September, one thousand nine hundred and fifteen, or where the Commissioner is of opinion that the partnership was not entered into with a view to avoiding or evading liability to tax under this Act or the previous Acts.

DIVISION

PART III.
LIABILITY TO
TAXATION.DIVISION 7.
TRUSTEES.Net income
of trust
estate.

DIVISION 7.—Trustees.

121. In this Division “the net income of a trust estate” means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of that income, less all allowable deductions—

(a) except the concessional deductions, and the statutory exemption; and

(b) except also in respect of any beneficiary who has no beneficial interest in the corpus of the trust estate or in respect of any life tenant, the deduction of such of the losses of previous years as are required to be met out of corpus.

Trustees.

122. Except as provided in this Act a trustee shall not be liable as trustee to pay income tax upon the income of the trust estate.

Beneficiary
not under
any dis-
ability.

123. (1) Where any beneficiary is presently entitled to a share of the income of a trust estate and is not under any legal disability, his assessable income shall include that share of the net income of the trust estate.

(2) The exempt income of any such beneficiary shall include his individual interest in the exempt income of the trust estate, except to the extent to which that exempt income is taken into account in calculating the net income of the trust estate.

Beneficiary
under
disability.

124. Where any beneficiary is presently entitled to a share of the income of a trust estate but is under a legal disability, the trustee shall be assessed and liable to pay tax in respect of that share of the net income of the trust estate as if it were the income of an individual, and were not subject to any deduction other than the concessional deductions which would have been allowable to the beneficiary if he had been assessed in respect of that share, and the statutory exemption.

Where no
person
presently
entitled.

125. (1) Where there is no beneficiary presently entitled to any part of the income of a trust estate, or where there is a part of that income to which no beneficiary is so entitled, the trustee shall be assessed and liable to pay tax on the net income of the trust estate,

or

or on that part of that net income as the case may be, as if it were the income of an individual, and were not subject to any deduction other than the statutory exemption.

PART III.
LIABILITY TO
TAXATION.
DIVISION 7.
TRUSTEES.

(2) Where the net income or a part of the net income of a deceased estate which is assessable to a trustee under the preceding subsection includes income upon which a presumptive beneficiary, being a living person, would be assessed if he were presently entitled to his share of that income the trustee shall be separately assessed in respect of that share as if it were the income of an individual and were not subject to any deductions. The amount of tax assessed to a trustee under this subsection shall not be less than the amount which would be payable on that share of the income by the presumptive beneficiary if he were presently entitled to that share.

126. (1) The assessable income of any beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall include his individual interest in the net income of the trust estate or estates.

Beneficiary
under dis-
ability
deriving
income from
other
sources.

(2) There shall be deducted from the income tax assessed against such beneficiary the tax paid or payable by any trustee in respect of that beneficiary's interest in the net income of the trust estate.

127. For the purpose of this Division, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.

Discretion-
ary trusts.

128. Where in the year of income, the trustee of the estate of a deceased person receives any amount which is in the nature of corpus in the hands of the trustee, but which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that amount shall be included in the assessable income of that year of the trust estate.

Income of
deceased
received
after death.

129. (1) Where a person has created a trust in respect of any income or income-producing assets and he has a power whenever exercisable to revoke or alter the trust

Revocable
trusts and
dispositions
to minors.

PART III.
LIABILITY TO
TAXATION.
DIVISION 7.
TRUSTEES.

so as to acquire a beneficial interest in the income derived during the year of income or the assets producing that income or any part of that income or of those assets, the net income of the trust estate, or part thereof attributable to that beneficial interest, as the case may be, shall, if the Commissioner so determines, be deemed to be income of that person, if living. 5

(2) Where by virtue or in consequence of any disposition made, directly or indirectly, by any person, either before or after the commencement of this Act, any income is payable to or accumulated, or applicable for the benefit of a child of that person, such income shall, if and so long as the child is a minor and unmarried, be deemed for the purposes of this Act, to be the income of the person, if living, by whom the disposition was made. 10 15

(3) Any income tax which by virtue of this section is chargeable on and is paid by the person creating the trust or 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 creation of the trust or of the disposition. 20

Definitions.

(4) For the purposes of this section—

- (a) the expression "child" includes a step-child or adopted child; and 25
(b) the expression "disposition" includes any trust, covenant, agreement, or arrangement.

DIVISION 8.—*Assessment of income of husband and wife.*

Definitions.

130. In this Division—

"Post-nuptial 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. 30 35

"The income derived from a post-nuptial settlement" includes the income from property substituted for the property settled or being a conversion thereof. 40

131. Where the net amount of income derived by a taxpayer under a post-nuptial settlement made by his or her spouse after the thirteenth day of September, one thousand nine hundred and fifteen, exceeds one hundred and thirty-three of this Act, be deemed to be assessable income of the spouse.

PART III.
LIABILITY TO
TAXATION.

DIVISION 8.
ASSESSMENT
OF INCOME
OF HUSBAND
AND WIFE.

Post-nuptial
settlements.

132. Where a private company—

Payments
by private
company.

5 (a) in which a taxpayer is a substantial shareholder; or

10 (b) in which the spouse of a taxpayer is a substantial shareholder by virtue of shares comprised in a post-nuptial settlement made by the taxpayer after the thirteenth day of September, one thousand nine hundred and fifteen,

15 pays or credits to the spouse of that taxpayer any sum as a bonus, fee, salary, commission or allowance in excess of what the Commissioner decides is a reasonable amount, the excess shall, subject to section one hundred and
20 thirty-three of this Act, be deemed to be assessable income of the taxpayer.

133. Where in the opinion of the Commissioner, the post-nuptial settlement referred to in section one hundred and thirty-one of this Act or the payment referred to in
25 section one hundred and thirty-two of this Act was not made with a view to avoiding or evading liability to tax under this Act or the previous Acts on the part of the spouse or the taxpayer as the case may be the provisions of those sections shall not apply.

Certain
sections
not to
apply in
certain
cases.

30 134. (1) Where section one hundred and thirty-one of this Act applies, the Commissioner may recover from the taxpayer in receipt of the income referred to in that section a sum which bears to the total tax payable by the spouse assessed under the said section the same proportion as that income bears to the total income included
35 in the assessment of the spouse.

Recovery
of tax.

(2) Where section one hundred and thirty-two of this Act applies, the Commissioner may recover from the spouse in receipt of the excess payments referred to
40 in that section a sum which bears to the total tax payable

by.

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LIABILITY TO
TAXATION.
DIVISION 8.
ASSESSMENT
OF INCOME
OF HUSBAND
AND WIFE.

by the taxpayer assessed under the said section the same proportion as that excess bears to the total income included in the assessment of the taxpayer.

(3) This section shall apply only where the Commissioner is of opinion that it is impracticable to recover from the spouse or the taxpayer, as the case may be, the tax assessed. 5

DIVISION 9.—*Private companies.*

Definitions. **135.** (1) In this Division, unless the contrary intention appears— 10

“Additional tax” includes in the case of a shareholder who is non-taxable the amount of tax which would have been payable by him if a distribution had been made.

“Distributable income” means the amount obtained by deducting from the taxable income of a company— 15

(a) any outgoings of the company not allowed as deductions in arriving at its taxable income, except— 20

(i) outgoings of a capital nature; and

(ii) any tax paid under any enactment either of this State or of any place outside this State which levies a tax upon income; 25

(b) all taxes payable in respect of the company's income of the year of income, except private company tax and tax payable by a private company under any enactment of any place outside this State, which tax is, in the opinion of the Commissioner, reasonably comparable in its nature to the tax assessed under this Division; 30 35

(c)

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LIABILITY TO
TAXATION.
DIVISION 9.
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COMPANIES.

(b) where no dividends have been so paid, the amount which would have been a sufficient distribution.

(2) For the purposes of this Division—

- (a) a company shall be deemed to be a company 5
in which the public are substantially inter-
ested 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 10
than twenty-five per centum of the voting
power, have been allotted unconditionally
to, or acquired unconditionally by, and are
at the end of the year of income bene-
ficially held by, the public (not including a 15
private company) and any such shares have
in the course of that year been quoted in the
official list of a Stock Exchange;
- (b) a company shall be deemed to be a sub-
sidiary of a public company if, by reason of 20
the beneficial ownership of the shares, the
control of the company is in the hands of
one or more companies none of which is a
private company;
- (c) a company shall be deemed to be under the 25
control of any persons where the major
portion of the voting power or the majority
of the shares is held by those persons or is
held by those persons and nominees of those
persons or where the control is, by any 30
other means whatever, in the hands of those
persons;
- (d) persons in partnership and persons inter-
ested in the estate of a deceased person or
in property held in trust shall respectively 35
be deemed to be a single person.

Purpose of
Division.
cf. Act No. 35,
1928, s. 31.
12 and 13 Geo.
V, ch. 17, s. 21.

136. The provisions of this Division are enacted with a view to preventing the avoidance of the payment of income tax through the withholding from distribution of income of a company.

40

PART III.
LIABILITY TO
TAXATION.
DIVISION 9.
PRIVATE
COMPANIES.

Determination
by Commis-
sioner where
distribution by
private com-
pany not
reasonable.

137. (1) Where a private company has not before the expiration of nine months after the close of the year of income made a sufficient distribution of its income of that year the Commissioner may determine whether
5 the whole or part of the undistributed amount could reasonably have been distributed by the company to its shareholders out of its taxable income.

(2) Where an order has been made or a resolution passed for the winding up of a private company, and
10 such order was made or such resolution was passed before the expiration of nine months after the close of the year of income, and such company has not before the date of such order or resolution made a sufficient distribution of its income of that year, the Commissioner may deter-
15 mine whether the whole or part of the undistributed amount could reasonably have been distributed by the company to its shareholders out of taxable income.

(3) When, during any year of income, an order has been made or a resolution passed for the winding up
20 of a private company, the Commissioner may determine what would constitute a sufficient distribution of its income for that portion of the year of income ending on the date of the order or resolution, and may also deter-
25 mine whether the whole or part of any undistributed amount could reasonably have been distributed by the company to its shareholders out of its taxable income if such order had not been made or such resolution passed.

(4) Where the Commissioner determines that
30 the whole or part of the undistributed amount could reasonably have been distributed by a private company he shall (not later than three years after the making of the determination) assess the additional tax which would have been payable by each of the shareholders if the
35 company had paid such whole or part as a dividend to the shareholders who would have been entitled to receive it in proportion to their interests in the paid-up capital of the company and the company shall be liable to pay as private company tax the sum of the taxes so assessed.

Assessment
of additional
tax.

138. (1) Where in relation to any private company
40 the Commissioner has, pursuant to section one hundred and thirty-seven of this Act, determined that the whole or
part

Interposition
of companies,
trustees and
partnerships.

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COMPANIES.

part of the undistributed amount could reasonably have been distributed, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of the sum so determined if there had been successive distributions of the relative parts of that sum to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may also, in addition to any other tax to which the company is liable under this Division, assess the additional tax, if any, which would in that event have been payable by that person; and the private company shall be liable to pay as private company tax the sum of the taxes so assessed. 5 10

(2) If any company so interposed between the private company and that person is not incorporated in this State, and the Commissioner is unable to ascertain the identity of that person, or the part of the sum which he would have received, the Commissioner may assess the additional tax, if any, which would have been payable if the company so interposed had only one shareholder; and the private company shall be liable to pay as private company tax the tax so assessed. 15 20

Excess distribution in previous years.

139. (1) Where the total amount of dividends paid by a private company out of its distributable income of the four years next preceding the year of income exceeds the aggregate of the smallest amounts that would have been a sufficient distribution in each of those years, the excess shall, for the purpose of calculating the undistributed amount, be deemed to be a dividend paid out of the distributable income of the year of income. 25 30

(2) For the purpose of calculating the excess—

- (a) any part of the company's distributable income of that period upon which it has paid or is liable to pay private company tax, or tax under section thirty-one of the previous Act, shall be deemed to be a dividend paid by the company during that period; and 35
- (b) any dividend or part of a dividend paid out of that part of the company's distributable income shall be deemed not to be a dividend. 40

140.

140. (1) The Commissioner in addition to any other facts which he may consider in exercising the powers conferred upon him by section one hundred and thirty-seven of this Act may have regard to the development of businesses and industries and shall take into consideration the fact of the retention by the company of distributable income for the following purposes:—

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COMPANIES.
Facts to be
taken into
considera-
tion in
making de-
termination.

(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 considered certain to arise during subsequent years.

(2) Notwithstanding anything contained in subsection one of this section where a company carrying on an agricultural or pastoral pursuit elects within the time and in the manner prescribed that paragraph (b) of that subsection shall not apply in respect of the income from such pursuit, that paragraph shall not apply, 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 distributable income derived by the company from the carrying on of the agricultural or pastoral pursuit.

Election by
agricultural
and pastoral
companies.

Where a company makes an election under this subsection that election shall continue to apply to determinations under section one hundred and thirty-seven of this Act for subsequent years unless and until altered with the leave of the Commissioner.

141. Without restricting the meaning of the expression "outgoings of a capital nature" in this Division, any sum such as is hereinafter described shall not be deducted from the taxable income of a private company in ascertaining its distributable income and shall be regarded as income which could reasonably have been distributed—

Outgoings
of a capital
nature not
deductible.

(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 purchase of its business, undertaking or property; or
(ii)

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(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 5

(iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property; 10

Arrange-
ments for
avoidance
of tax.

(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 tax: 15

Proviso.

Provided that this section shall not apply in respect of any company unless it appears to the Commissioner, not only that income of the company has been or is to be expended or applied for one or more of the purposes mentioned in this section, but also that the company has not in fact made a sufficient distribution. 20 25

Period in
which deter-
mination
may be
made.

142. Except as provided in section one hundred and forty-three of this Act, a determination under section one hundred and thirty-seven of this Act 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. 30

Determina-
tion or fur-
ther deter-
mination in
certain cir-
cumstances.

143. Where the Commissioner is of opinion that—

(a) the amount of undistributed income which could reasonably have been distributed by the company to its shareholders is less than the amount determined by him under section one hundred and thirty-seven of this Act; or 35

(b) the company has withheld information or has furnished incorrect or misleading information for

for the purpose of avoiding tax in an ordinary assessment or private company tax under this Division,

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PRIVATE
COMPANIES.

he may either before or after the time allowed under section one hundred and forty-two of this Act for making his determination, make a determination or a further determination, and thereupon the provisions of this Division shall apply to the whole or part of the undistributed amount specified in that determination or further determination as if it were the whole or part of the undistributed amount mentioned in section one hundred and thirty-seven of this Act.

144. The following provisions shall apply for the purpose of calculating the additional tax which would have been payable by the shareholders:—

Calcu-
lation of
additional
tax.

- (a) the dividend apportioned to a shareholder shall be deemed to have been paid to him during such year of income as the Commissioner determines, having regard to the dates on which distributions of income, if any, have ordinarily been made by the company. That year shall be a year not later than that corresponding to the year of income of the company succeeding that in which the undistributed amount was derived;
- (b) in the case of a company with a small paid-up capital if the Commissioner is of opinion that the company is so constituted or controlled that the shareholders holding a majority of the shares have not the real and effective control of the company, the private company tax payable by the company upon the undistributed amount or part thereof which the Commissioner determines could reasonably have been distributed shall be assessed as if the shareholders would have been liable to tax upon that amount or part at a rate of tax equal to that fixed for every pound of taxable income from property in excess of the sum of five thousand five hundred pounds.

Private
company
with small
paid-up
capital.

PART III.
LIABILITY TO
TAXATION.DIVISION 9.
PRIVATE
COMPANIES.Loans to or
payment on
behalf of
shareholders.

145. (1) If any amount is advanced or any asset is distributed by a private company to any shareholder of the company by way of advance or loan or any payment is made by the company on behalf of, or for the individual benefit of, any shareholder of the company, so much, if any, of the advance loan or payment as in the opinion of the Commissioner represents a distribution of income shall for all purposes of this Act be deemed to be a dividend paid by the company to the shareholder. 5

(2) Where the amount of any advance, loan or payment is deemed, under subsection one of this section, to be a dividend paid by a company to a shareholder, and in any year subsequent to that in which the dividend is so deemed to be paid, the company sets off any dividend, distributed by it in that subsequent year, in satisfaction in whole or in part of the amount of that advance, loan or payment that dividend shall, to the extent to which it is so set off, be deemed not to be a dividend for any purpose of this Act. 15

Payments to
shareholders
and
directors.

146. So much of any sum paid or credited by a private company and being or purporting to be— 20

(a) remuneration for services rendered by any person being a shareholder or director of the company or being a relative of any such shareholder or director; or 25

(b) an allowance, gratuity or compensation in consequence of the retirement of that person from any office or employment held by him in that company or upon the termination of any such office or employment, 30

as exceeds an amount which, in the opinion of the Commissioner, is reasonable, shall not be an allowable deduction, and the excess shall, for all the purposes of this Act, be deemed to be a dividend paid out of profits derived by it to the recipient and received by him as a shareholder of the company. 35

DIVISION 10.—*Companies consisting of same shareholders.*Companies
consisting
of same
shareholders.

147. Where the shares in one company are held by another company or where two or more companies consist of the same shareholders and the shares in each of those companies 40

companies are held by those shareholders in substantially the same proportions, the Commissioner may assess the aggregate taxable income of those companies as if it were derived by one company. Shares in one company held
 5 by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last-mentioned company.

PART III.
 LIABILITY TO
 TAXATION.
 DIVISION 10.
 COMPANIES
 CONSISTING
 OF SAME
 SHARE-
 HOLDERS.

148. Each of the companies referred to in section one hundred and forty-seven of this Act shall be assessed
 10 upon its share, if any, of the aggregate taxable income at the rate of tax applicable to the aggregate taxable income.

Method of
 assessing.

149. This Division shall not apply to allow a deduction to a company for any loss incurred by another com-
 15 pany to the extent to which that loss would if added to the accumulated losses (if any) of that other company exceed the amount invested by the first-mentioned company or by its shareholders in the capital of, or by way of advance to, that other company.

Losses borne
 by creditors
 not allow-
 able.

20

DIVISION 11.—*Banks.*

150. In this Division—

Definitions.

(a) "Gross income from all sources" means the gross income derived from sources in and out of this State, including the profit, if any,
 25 derived from the sale, conversion or redemption of Government or other securities; but does not include discount or interest derived from exempt assets, or any profit assessable under Division 5 of this Part or which would be assessable under that Division if derived from a source
 30 in this State.

"Bank" means a company which carries on in this State the business of banking as its principal business, but does not include a company of the
 35 assets of which at least seventy-five per centum in value are situate out of Australia.

"Exempt assets" means bonds, debentures, stocks or other securities issued by the Commonwealth,
 F and

PART III.
LIABILITY TO
TAXATION.
DIVISION 11.
BANKS.

and includes any securities issued by a State or by any authority constituted by a law of a State the interest on which is exempted by the law of that State from income tax.

“Non-exempt assets” means property other than exempt assets. 5

“Specific exempt assets” means exempt assets purchased with money which was specifically drawn for that purpose from the shareholders’ funds comprising paid-up capital, premiums on the issue of shares, and undistributed profits. 10

(b) Interest accrued at the date of the sale of a security shall be deemed to be income derived by the vendor, and shall not be taken into account in determining the profit or loss upon the sale of the security. 15

(c) Interest paid or payable by a bank upon money invested in the purchase of a security shall not be taken into account in determining the profit or loss upon the sale, redemption or conversion of the security. 20

(d) Underwriting commission or brokerage on the issue of a loan shall be deemed to be income of the year in which the loan is issued.

Net
income
from all
sources.

151. The net income of a bank from all sources shall be its gross income from all sources less the deductions allowable under section one hundred and fifty-two of this Act. 25

Deductions
allowable.

152. The deductions allowable under this Division shall be— 30

(a) the deductions (except interest paid or payable) which would be allowable deductions if the gross income from all sources were derived from a source in this State;

(b) the sum which bears to the total interest payable by the bank for the year of income the same proportion as the average value over that year of its non-exempt assets bears to the average value over that year of its total assets except specific exempt assets; 35 40

(c)

(c) where the gross income from all sources includes a profit arising from the sale, conversion or redemption of exempt assets except specific exempt assets and Commonwealth Treasury Bills, the sum which bears to the total amount of interest payable by the bank for the year of income the same proportion as the average value of such exempt assets sold, converted or redeemed bears to the average value over that year of its total assets (except specific exempt assets) not exceeding the amount of the profit so included.

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LIABILITY TO
TAXATION.
DIVISION 11.
BANKS.

In this paragraph "average value of such exempt assets" means one fifty-second of the value of such exempt assets sold, converted or redeemed, multiplied by the number of weeks during which they were held in the year of income;

(d) any loss arising from the sale, conversion or redemption of Government or other securities.

153. (1) The assessable income of a bank shall include so much of the net income of the bank from all sources as bears to that net income the same proportion as the average value over the year of income of its non-exempt assets in this State bears to the average value over that year of its non-exempt assets in and out of this State.

Assessable
income of
bank.

(2) Any amount which is included in the gross income from all sources of a bank shall not, except to the extent provided in this Division, be included in the assessable income of the bank, and any deduction which is taken into account in ascertaining the net income from all sources of the bank shall not, except to the extent so provided, be an allowable deduction.

DIVISION 12.—*Life assurance companies.*

154. In this Division—

Definitions.

"Company" means a company to which this Division applies.

"Exempt

PART III.
LIABILITY TO
TAXATION.
DIVISION 12.
LIFE
ASSURANCE
COMPANIES.

“Exempt interest” means the interest on bonds, debentures, stock or other securities of the Commonwealth and includes the interest on any securities issued by a State or by any authority constituted by a law of a State the interest on which is exempted by the law of that State from income tax. 5

“Investment income” means all interest (including interest on overdue premiums), rents and other income from property (except exempt interest, dividends, and any casual profit) derived from sources in and out of this State. 10

Application
of Division.

155. This Division shall apply to any company which carries on the business of life assurance in this State.

Premiums,
etc., not
assessable
income.

156. The assessable income of a company shall not include premiums received in respect of policies of life assurance, or considerations received in respect of annuities granted. 15

Deductions
not allow-
able.

157. (1) Expenditure by a company to the extent to which it is incurred in gaining those premiums or considerations shall not be an allowable deduction. 20

(2) Without limiting the provisions of subsection one of this section the following shall not be allowable deductions—

- (a) any remuneration by way of salary or commission or otherwise to persons engaged principally in or in connection with gaining those premiums or considerations, 25
- (b) any travelling expenses of those persons,
- (c) any medical expenses. 30

Net
investment
income.

158. The net investment income of a company shall be its investment income less the deduction allowable.

Deduction
from
investment
income.

159. (1) The deduction allowable referred to in section one hundred and fifty-eight of this Act shall be—

- (a) the total of the amounts which would be allowable deductions in respect of the investment income if that income were included in the assessable income; 35

or

or at the option of the taxpayer—

- (b) so much of the allowable management expenses as bears to those expenses the same proportion as the investment income bears to the sum of the investment income and the exempt interest.

PART III.
LIABILITY TO
TAXATION.
DIVISION 12.
LIFE
ASSURANCE
COMPANIES.

- (2) For the purposes of this section “allowable management expenses” means the sum of the management expenses of the life assurance business of the company and the amount which would be an allowable deduction in respect of depreciation of property used by the company for the purposes of that business, if that business were wholly carried on in this State but does not include the amounts referred to in subsection two of section one hundred and fifty-seven of this Act.

- 160. (1) The assessable income of a company shall include so much of the net investment income of the company as bears to the net investment income the same proportion as the total amount assured under life assurance policies held by New South Wales policy holders of the company bears to the total amount assured under all life assurance policies of the company.

Assessable
income.

- (2) Any amount which is included in the investment income of the company shall not, except to the extent provided in this Division be included in the assessable income of the company and any deduction which is taken into account in ascertaining the net investment income of the company shall not except to the extent so provided be an allowable deduction.

- 161. When the liabilities of a company at the end of the year of income in respect of its life assurance business exceed the value at that date of the assets of the company applicable to that business, the company shall not be liable to pay income tax in respect of the income derived in that year from that business.

When
liabilities
exceed
assets.

35 DIVISION 13.—*Co-operative and mutual companies.*

- 162. The assessable income of a co-operative company shall include all sums received by it from shareholders for the storage, marketing, packing or processing of commodities or for the rendering of services,

Assessable
income of
co-operative
companies
and the like.

or

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LIABILITY TO
TAXATION.DIVISION 13.
CO-OPERA-
TIVE AND
MUTUAL
COMPANIES.Mutual
insurance
companies.Mutual
building or
investment
company.Rebates on
purchases.Payments
to suppliers
retained to
meet contri-
butions
levied.

or in payment for commodities or animals or land sold whether on account of the company or on account of its shareholders.

163. The assessable income of a mutual insurance company shall include all sums received by it from shareholders in payment of premiums of insurance against loss, damage or risk of any kind other than premiums received in respect of policies of life assurance or considerations received in respect of annuities granted. 5

164. The assessable income of a mutual building or investment company shall include all sums received by it from shareholders in payment of interest or other charges on loans made to the shareholders. 10

165. (1) So much of the assessable income of a co-operative company for any year of income as is before the expiration of nine months after the close of that year distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company shall be an allowable deduction. 15

(2) The assessable income of any such shareholder shall not include any such rebate or bonus which is based on any sum paid by him to the company for any of the purposes referred to in the preceding provisions of this Division except to the extent to which such sum is an allowable deduction in ascertaining his taxable income of any year. 20 25

(3) Where any rebate or bonus referred to in subsection one of this section is based on sales made by the company to its shareholders and the company makes sales to persons other than shareholders only so much of the total amount distributed as rebates or bonuses as bears to the total amount so distributed the same proportion as the amount of the sales to the shareholders bears to the total amount of the sales by the company shall be an allowable deduction. 30 35

166. The part of any sum payable by a co-operative company to its shareholders which is, in effect, offset by contributions levied on the shareholders shall not be an allowable deduction.

Any

Any such part disallowed to the company shall not be included in the assessable income of its shareholders.

PART III.
LIABILITY TO
TAXATION.

167. No deduction shall in any case be allowed in respect of the amount distributed by a co-operative company, a mutual insurance company or a mutual building or investment company among its shareholders as interest in respect of or as dividends on shares.

DIVISION 13.
CO-OPERATIVE AND
MUTUAL
COMPANIES.

Interest
on shares.

DIVISION 14.—Interest paid by companies.

168. (1) Where interest is paid or credited by a company to any person who is a non-resident—

Interest
paid by a
company to
a non-
resident.

(a) on money secured by debentures of the company and used in this State, or used in acquiring assets for use or disposal in this State; or

(b) on money lodged at interest in this State with the company, the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax upon that interest at such rate as may be fixed by any Act.

(2) The company may deduct and retain for its own use so much of the amount payable to that person as is necessary to pay the tax.

(3) This section shall not apply to interest paid or credited to a company which is carrying on business in this State and which has a public officer duly appointed under this Act, unless the Commissioner, by notice in writing to the company paying or crediting the interest, directs that the section shall so apply.

169. (1) Where interest is paid or credited by a company in respect of debentures payable to bearer the names and addresses of the holders of which are not supplied to the Commissioner by the company, the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax upon the total amount so paid or credited in respect of those debentures at the rate of tax which would be applicable if that amount were the taxable income of one individual.

Interest
paid by a
company on
bearer
debentures.

PART III.
LIABILITY TO
TAXATION.
DIVISION 14.
INTEREST
PAID BY
COMPANIES.

(2) The company may deduct and retain for its own use from the amount payable to any person who is a holder of any of those debentures an amount bearing the same proportion to the amount of tax payable by the company under this section as the interest payable to that person bears to the total interest payable in respect of those debentures. 5

(3) Where the Commissioner is satisfied that that person is not liable to furnish a return, he shall refund to him the amount of tax paid by the company in respect of his debentures. 10

Rebate of
tax paid by
company.

170. (1) Where the company pays tax under this Division on any interest, and that interest is included in the assessment of the person to whom it was paid or credited the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person. 15

(2) Where that person is a resident of Australia and is not liable to pay income tax, or the tax paid by the company exceeds the amount of tax payable by that person, the amount of tax paid by the company or, as the case may be, the amount of the excess, shall be refunded to that person. 20

Tax on
interest.

171. Where in any year of income interest is paid by a company in respect of which it is liable under this Division to pay income tax the company shall be liable for income tax on that interest to the extent to which it would have been so liable if an assessment had been made in respect of that interest at the date when it was paid. 25

Limitation
of applica-
tion of
Division.

172. This Division shall not apply in respect of interest paid to a resident of Australia prior to the commencement of this Act. 30

Acquittance
and
discharge.

173. A person from whom an amount has been deducted and retained by a company in accordance with this Division shall not be entitled to make any claim against the company in respect of that amount and to the extent of its liability to tax under this Division on interest paid or credited the company shall be completely acquitted and discharged from all liability in respect of that interest. 35 40

DIVISION

DIVISION 15.—Oversea ships.

PART III.
LIABILITY TO
TAXATION.

DIVISION 15.
OVERSEA
SHIPS.

Taxable
income of
ship-owner
or charterer.

174. Where a ship belonging to or chartered by a person whose principal place of business is out of Australia carries passengers, live stock, mails or goods shipped in this State, five per centum of the amount paid or payable to him in respect of such carriage, whether that amount is payable in or out of this State, shall be deemed to be taxable income derived by him in this State.

175. The master of the ship, or the agent or other representative in this State of the owner or charterer, shall, when called upon by the Commissioner by notice in the Gazette or by any other notice to him, make a return of the amount so paid or payable.

Master or agent
to make return

176. If such return is not made, or if the Commissioner is not satisfied with the return, he may determine the amount so paid or payable.

Determina-
tion by
Commis-
sioner.

177. The master, agent or representative, as agent for the owner or charterer, may be assessed upon the taxable income and shall be liable to pay the tax assessed.

Assess-
ment of
tax.

178. (1) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master shall be liable to pay the tax.

Master
liable to
pay tax.

(2) This section shall not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

179. Where any person is liable to pay tax under this Division, the Commissioner shall give notice to him of the assessment, and he shall forthwith pay the tax.

Notice of
assessment.

180. Subject to any law of the Commonwealth, a collector or officer of customs in this State shall have power to withhold a clearance to the ship until he is satisfied that any tax which has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

Clearance
of ship.

PART III.
LIABILITY TO
TAXATION.DIVISION 16.
BUSINESSES
WITH A
FOREIGN
RELATION-
SHIP.

Definitions.

DIVISION 16.—*Businesses with a foreign relationship.***181.** (1) In this Division—

“Business of the foreign taxpayer” means a business carried on out of this State by a foreign taxpayer and where that taxpayer is a company 5 includes the business carried on by every associated, subsidiary and parent company.

“Business with a foreign relationship” means a business carried on in this State which—

- (a) is controlled principally by non-residents; 10
- (b) is carried on by a company, a majority of the shares in which is held by or on behalf of non-residents; or
- (c) is carried on by a company which holds, or on behalf of which other persons hold, 15 a majority of the shares in a non-resident company.

“Foreign taxpayer” means the non-resident persons controlling a business with a foreign relationship or holding (either directly or by means of 20 the interposition of any other company) a majority of the shares in a company carrying on a business with a foreign relationship.

Shares held
by relatives.

(2) For the purposes of this Division shares held by or in the names of persons who are relatives may be 25 treated by the Commissioner as if they were held by any one of such persons.

Taxable
income of
business
with a
foreign
relationship.

182. Where a business carried on in this State is a business with a foreign relationship and—

- (a) the person carrying on that business pays or 30 credits, or agrees to pay or credit, to a foreign taxpayer any amount which is an allowable deduction to the person so carrying on that business and which, in the opinion of the Commissioner, is in excess of a reasonable amount; 35

or

(b)

5 (b) the person carrying on that business receives or is entitled to receive from a foreign taxpayer any amount which is assessable income to the person so carrying on that business and which in the opinion of the Commissioner is less than a reasonable amount;

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DIVISION 16.
BUSINESSES
WITH A
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RELATION-
SHIP.

10 that person shall, notwithstanding any other provision of this Act, be liable to pay tax on a taxable income of such amount of the total proceeds of the business as the Commissioner determines. If in his opinion, upon information subsequently obtained, the circumstances so warrant, the Commissioner may vary such amount either by way of increase or reduction, and amend the assessment accordingly.

15 **183.** Where an objection is lodged against, or application is made for review of, an assessment under section one hundred and eighty-two of this Act and all the information required by the Commissioner is furnished to him, the reasonable amount referred to in paragraphs (a) and (b) of the said section shall in respect of the matters dealt with in this section be determined as follows:—

Determina-
tion of
allowable
deductions.

25 (a) In respect of interest paid or credited to a foreign taxpayer the reasonable amount shall not exceed the sum which would be an allowable deduction in respect of interest paid or credited in the production of income assessable in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer.

30 (b) In respect of the cost of goods acquired from a foreign taxpayer the reasonable amount shall not exceed the sum which would reduce the profit derived in this State from the sale of the goods to an amount less than the sum which in accordance with Subdivision C of Division 2 of this Part would be deemed to be income derived in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business selling goods in this State. Where this paragraph is resorted to, any rebates

as in 1120ff

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BUSINESSES
WITH A
FOREIGN
RELATION-
SHIP.

rebates of tax allowable under the said Subdivision C under similar circumstances shall be allowed under this Division.

- (c) In respect of any amount (other than the amounts specified in paragraphs (a) and (b) of this section) paid or credited to a foreign taxpayer, the reasonable amount shall not exceed the sum which would be an allowable deduction if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer. The allowable deduction ascertained in accordance with this paragraph may be increased by such amount as in the opinion of the Commissioner would be equivalent to the profit which would be attributable to any operations of manufacture or production carried on out of this State. 5 10 15
- (d) In respect of the sale price of goods sold to a foreign taxpayer the reasonable amount shall not be less than the sum which would reduce the profit derived in this State from the sale of the goods to an amount less than the sum which, in accordance with Subdivision C of Division 2 of this Part, would be deemed to be income derived in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer, and the goods were sold to a person not interested directly or indirectly in the business of the foreign taxpayer. 20 25 30

DIVISION 17.—Insurance with non-residents of Australia.

Definitions.

184. In this Division—

“Insurance contract” means a contract or guarantee whereby liability is undertaken contingent upon the happening of any specified event to pay any money or make good any loss or damage, but does not include a contract of life assurance. 35

“Insured event” means an event upon the happening of which the liability under an insurance contract arises. 40

“Insured 40

“Insured person” means a person with whom any insurance contract is entered into by an insurer.

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LIABILITY TO
TAXATION.

“Insured property” means the property the subject of an insurance contract made or given by an insurer.

DIVISION 17.
INSURANCE
WITH NON-
RESIDENTS
OF AUS-
TRALIA.

“Insurer” means any non-resident not being a resident of Australia who undertakes liability under an insurance contract.

10 **185.** (1) Where an insured person, whether a resident or not, has entered into an insurance contract with an insurer, and the insured property at the time of the making of the contract is situate in this State or the insured event is one which can happen only in this State, the premium paid or payable under the contract shall be included in the assessable income of the insurer and shall be deemed to be derived by him from sources in this State, and, unless the contract was made by a principal office or branch established by the insurer in this State, this Division shall apply to that premium.

Income
derived by
insurers
resident
out of
Australia.

20 (2) Where an insured person who is a resident has entered into an insurance contract with an insurer, and an agent or representative in this State of the insurer was in any way instrumental in inducing the entry of the insured person into that contract, any premium paid or payable under the contract shall, wherever the insured property is situate, or the insured event may happen, be included in the assessable income of the insurer and shall be deemed to be derived by him from sources in this State, and, unless the contract was made by a principal office or branch established by the insurer in this State, this Division shall apply to that premium.

35 **186.** The insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under such contracts, a taxable income equal to ten per centum of the total amount of such premiums:

Taxable
income of
non-resident
insurer.

Provided that where the actual profit or loss derived or made by the insurer in respect of such premiums is established to the satisfaction of the Commissioner, the taxable income of the insurer in respect thereof, or the amount

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LIABILITY TO
TAXATION.DIVISION 17.
INSURANCE
WITH NON-
RESIDENTS
OF AUS-
TRALIA.Liability
of agents
of insurer.Deduction
of premiums.Information
to be
furnished.Rate in
special cir-
cumstances.Re-insurance
with persons
resident out
of Aus-
tralia.

amount of the loss so made by him shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

187. The insured person and any person in this State acting on behalf of the insurer shall be the agents of the insurer, and shall be jointly and severally liable as such for all purposes of this Act. If either of those persons pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed under this Division in respect of that amount, that person shall be personally liable to pay that tax.

188. Notwithstanding any other provision of this Act no such premium shall be an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed in respect of that premium.

189. Every person who has paid any premium due under an insurance contract shall furnish with his return for the year of income in which the payment is made particulars as to the name and address of the insurer and the amount paid to him.

190. Where the insurer satisfies the Commissioner that on account of special circumstances it is necessary that the rate of tax payable by him under this Division should be ascertained at the time when premiums are paid to him, the Commissioner may direct that the tax so payable in respect of premiums paid during any year of income shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

191. Where a person carrying on the business of insurance (other than life assurance) in this State reinsures risks with another person carrying on a similar business, but not in this State—

(a).

- (a) so much of the premiums received on those risks as is credited or paid to such other person; and
 - (b) only so much of the losses on those risks as relates to the risks or part of the risks which have not been so reinsured,
- 5 shall, subject to this Division, be allowable deductions to the person carrying on business in this State.

PART III.
LIABILITY TO
TAXATION.
DIVISION 17.
INSURANCE
WITH NON-
RESIDENTS
OF AUS-
TRALIA.

DIVISION 18.—*Averaging of incomes of primary producers.*

10 **192.** (1) In this Division—

Definition.

“Primary producer” means a person who carries on a business of primary production in this State but does not include a person whose sole business of primary production consists of the buying and selling of live stock.

15

(2) For the purposes of this Division a beneficiary who is presently entitled to a share of the income of a trust estate and who has a beneficial interest in the corpus of that estate shall to the extent of such share

20 be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.

193. The rate of tax payable by a primary producer to whom this Division applies shall be the rate fixed by any Act.

Rate of tax.

25 **194.** In this Division “average income” of a primary producer means the average of his taxable incomes of the years (in this Division called “average years”) beginning with the first average year and ending with the year of income.

Average income.

30 **195.** Subject to this Division the first average year shall be the fourth year before the year of income.

First and subsequent average years.

A year the income of which was subject to assessment under the previous Act shall be capable of being a first or subsequent average year.

35 **196.** (1) For the purpose of making the first calculation of the rate of tax under this Division, the first average year shall be the first year which is otherwise capable of being an average year, and in which there is

First calculation.

PART III.
LIABILITY TO
TAXATION.DIVISION 18.
AVERAGING
OF INCOMES
OF PRIMARY
PRODUCERS.Taxpayer
ceasing to
be primary
producer.Primary
producer
with no
taxable
income.Excess of
allowable
deductions.Application
of Division.

no taxable income or the taxable income is less than that of the next succeeding year. No year prior to that first average year shall in any calculation of the rate of tax be capable of being an average year.

(2) Subject to section one hundred and ninety-seven of this Act this section shall not apply to a primary producer whose income has been or is liable to be assessed at an average rate of tax determined under the provisions of the previous Act. 5

197. If in any year whether under this or the previous Act the taxpayer was not a primary producer the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year. 10

198. Any year in which the taxpayer was a primary producer but had no taxable income shall be capable of being an average year. 15

199. (1) Except as provided in this section any excess of allowable deductions (other than concessional deductions) over the assessable income of a primary producer in any average year shall not be taken into account in calculating the average income. 20

(2) A loss incurred in a first average year shall be taken into account in calculating the average income.

(3) In this section "loss" means a loss within the meaning of section ninety of this Act to the extent to which it has not been deducted in accordance with the provisions of that section. 25

200. This Division shall not apply—

- (a) in any case where there are not at least two average years; or 30
- (b) to the taxable income of a company except income in respect of which it is assessable as a trustee; or
- (c) to the income of a taxpayer in any year in which he is not a primary producer. 35

PART

PART IV.

RETURNS AND ASSESSMENTS.

PART IV.
RETURNS
AND
ASSESS-
MENTS.
Annual
returns.

201. (1) Every person shall, if required by the Com-
missioner by notice published in the Gazette, furnish to
5 the Commissioner in the prescribed manner, within the
time specified in the notice, or such extended time as the
Commissioner may allow, a return signed by him setting
forth a full and complete statement of the total income
derived by him during the year of income, and of any
10 deductions claimed by him:

Provided that the Commissioner may in the notice
exempt from liability to furnish returns such classes
of persons not liable to pay income tax as he thinks fit,
and any person so exempted need not furnish a return
15 unless he is required by the Commissioner to do so.

(2) If the taxpayer is absent from this State or
is unable from physical or mental infirmity to make such
return, the return may be signed and delivered by some
person duly authorised.

202. (1) Every person shall, if required by the Com-
missioner, whether before or after the expiration of the
year of income, furnish to the Commissioner, in the
manner and within the time required by him, a return,
or a further or fuller return, of the income or any part of
25 the income derived by him in any year, whether on his
own behalf or as agent or trustee, and whether a return
has or has not previously been furnished by him for the
same period.

Further
returns, etc.

(2) If no income has been so derived by the
30 person so required to furnish a return, he shall neverthe-
less furnish a return stating that fact.

203. Every person, whether a taxpayer or not, if
required by the Commissioner, shall in the manner and
within the time required by him, furnish any return
35 required by the Commissioner for the purposes of this
Act.

Special
returns.

204. Every return purporting to be made or signed
by or on behalf of any person shall be deemed to have
been duly made by him or with his authority until the
40 contrary is proved.

Returns
deemed to
be duly
made.

G

205.

PART IV.
RETURNS
AND
ASSESS-
MENTS.
Certificate of
source of
information.

205. (1) Any person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner shall sign a certificate (in this Act called an "agent's certificate") in the prescribed form to be endorsed on or annexed to the return setting out the sources of information from which the return was compiled. 5

(2) Every person carrying on business who does not furnish with his return an agent's certificate shall furnish particulars in the prescribed form endorsed on or annexed to the return setting out the sources of information from which the return was compiled. 10

Assess-
ments.

206. From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner shall make an assessment of the amount of the taxable income of any taxpayer, and of the tax payable thereon. 15

Default as-
sessment.

207. If—

- (a) any person makes default in furnishing a return; 20
- or
- (b) the Commissioner is not satisfied with the return furnished by any person; or
- (c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income; 25
- or
- (d) the Commissioner has reason to believe that any person is about to leave this State; or
- (e) any person who is resident out of this State has not, in the opinion of the Commissioner a fixed and permanent place of business in this State, 30

the Commissioner may make an assessment of the amount upon which, in his judgment, income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of section two hundred and six of this Act. 35

Special
assess-
ments.

208. (1) The Commissioner may at any time during any year or after its expiration, make an assessment of the taxable income derived in that year or any part of it by any taxpayer, and of the tax payable thereon. 40

(2)

(2) Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

PART IV.
RETURNS
AND
ASSESS-
MENTS.

209. Where under this Act any person is liable to pay tax, the Commissioner may make an assessment of the amount of such tax.

Assessments
on all per-
sons liable
to tax.

210. (1) The Commissioner may subject to this section amend any assessment by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.

Amendment
of assess-
ments.

(2) An amendment may be made under this section—

(a) where the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance is due to fraud or evasion—at any time;

(b) where the Commissioner is of opinion that there has been an avoidance of tax owing to—

(i) the omission of assessable income from the taxpayer's return; or

(ii) a claim in the taxpayer's return for a deduction of an amount not actually expended; or

(iii) a misdescription in the taxpayer's return of any item of income or expenditure;

and that the avoidance is not due to fraud or evasion—within six years from the date upon which the tax became due and payable under that assessment;

(c) where application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment and within that period or such further period as the Commissioner may allow, the taxpayer has supplied to the Commissioner all information needed by him for the purpose of deciding the application—at any time;

(d)

(d) where, as the result of an amendment to an assessment, fresh liability in respect of any particular is imposed and, within three years from the date upon which the additional tax became due and payable under that amendment or within such 5 further period as the Commissioner may allow, the taxpayer has supplied to the Commissioner all information needed by him for the purpose of deciding the application—at any time but only for the purpose of reducing the assessment 10 by adjustment of that particular; and

(e) in any case not specified in this subsection—within three years from the date upon which the tax became due and payable under that assessment. 15

(3) Nothing contained in this section shall prevent the amendment of any assessment in order to give effect to the decision upon any appeal or its amendment by way of reduction in any particular in pursuance of an objection made by the taxpayer, or pending any 20 appeal.

(4) Notwithstanding anything contained in this section, where the assessment of the taxable income of any year includes an estimated amount of income derived by the taxpayer in that year from an operation or a series 25 of operations the profit or loss on which was not ascertainable at the end of that year owing to the fact that the operation or series of operations extended over more than one or parts of more than one year, the Commissioner may, at any time within three years after 30 ascertaining the total profit or loss actually derived or arising from the operation or series of operations, amend the assessment so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

Where no notice of assessment served.

211. (1) Where a taxpayer has duly furnished to the Commissioner a return of income, and no notice of assessment in respect thereof has been served within twelve months thereafter, he may in writing by registered post request the Commissioner to make an assessment. 35

(2)

(2) If within three months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer any assessment issued thereafter in respect of that income shall be deemed to be an amended assessment and for the purpose of determining whether such amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the three months with a notice of assessment in respect of which income tax was due and payable on that day.

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RETURNS
AND
ASSESS-
MENTS.

212. Where by reason of any amendment the taxpayer's liability is reduced, the Commissioner may refund any tax overpaid.

Refund of
tax over-
paid.

213. Except as otherwise provided every amended assessment shall be an assessment for all the purposes of this Act.

Amended
assessment
to be an
assessment.

214. As soon as conveniently may be after any assessment is made, the Commissioner shall serve notice thereof in writing by post or otherwise upon the person liable to pay the tax.

Notice of
assessment.

215. The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.

Validity of
assessment.

216. All courts and all persons having by law or consent of parties authority to hear, receive, and examine evidence, shall take judicial notice of the signature of every person who is or has been the Commissioner or an Assistant Commissioner, provided such signature is attached or appended to any official document.

Judicial
notice of
signatures.

217. (1) The production of a notice of assessment or of a document under the hand of the Commissioner or an Assistant Commissioner, purporting to be a copy of a notice of assessment shall be conclusive evidence of the due making of the assessment and (except in proceedings on appeal against the assessment) that the amount and all the particulars of the assessment are correct.

Evidence.

(2) The production of a Gazette containing a notice purporting to be issued by the Commissioner shall be conclusive evidence that the notice was so issued.

(3)

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MENTS.

(3) The production of a document under the hand of the Commissioner or an Assistant Commissioner, purporting to be a copy of a document issued by the Commissioner shall be conclusive evidence that the document was so issued. 5

(4) The production of a document under the hand of the Commissioner or an Assistant Commissioner, purporting to be a copy of or extract from any return or notice of assessment shall be evidence of the matter therein set forth to the same extent as the original 10 would be if it were produced.

PART V.

OBJECTIONS AND APPEALS.

Board of
Appeal.

218. In this Part "the Board" means the Board of Appeal appointed to hear and determine appeals from 15 the Commissioner's decision on objections against assessments.

Objections.

219. A taxpayer dissatisfied with any assessment under this Act may, within sixty days after service of the notice of assessment, or within such further time not 20 exceeding twelve months after the date of service as the Commissioner may allow, post to or lodge with the Commissioner an objection in writing against the assessment stating shortly the grounds on which he relies:

Provided that where the assessment is an amended 25 assessment, the taxpayer shall have no further right of objection than he would have had if the amendment had not been made, except to the extent to which by reason of the amendment a fresh liability in respect of any particular is imposed on him or an existing liability in 30 respect of any particular is increased.

220. Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner given in the exercise of a discretion conferred upon him under 5 this Act 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 10 in this Part and also the same right of appeal as is provided in this Part against any decision of the Commissioner upon any such objection, except that such appeal shall be made to the Board only.

PART V.
OBJECTIONS
AND
APPEALS.
Right of
objection
against
exercise of
Commis-
sioner's
discretion.

221. The Commissioner shall consider the objection, 15 and may either disallow it, or allow it either wholly or in part, and shall serve the taxpayer by post or otherwise with written notice of his decision.

Decision of
Commis-
sioner.

222. A taxpayer dissatisfied with the decision may, 20 within sixty days or, with the approval of the Commissioner, within ninety days, after such service, in writing request the Commissioner to treat his objection as an appeal and to forward it to the Board or to the Court in order that the objection may be heard and determined.

Application
for appeal.

223. (1) If the request is accompanied by a fee of one 25 pound, the Commissioner shall forward the appeal in accordance with the request.

Reference
to Board
or Court.

(2) The fee shall be refunded to the taxpayer if his assessment is reduced either by amendment or as a result of the decision of the Board or Court.

30 224. If within sixty days after receiving the request accompanied by the fee of one pound the Commissioner does not forward the appeal, the taxpayer may at any time thereafter give him notice in writing to do so, and the Commissioner shall within sixty days after receiving 35 the notice forward the appeal to the Board or the Court as the case may be.

Notice to
refer.

225. Upon every such appeal—

(a) the taxpayer shall be limited to the grounds stated in his objection unless the Board or Court hearing

Grounds of
objection
and burden
of proof.

PART V.
OBJECTIONS
AND
APPEALS.

hearing the appeal gives leave to add further grounds. In such a case the Commissioner shall have thirty days (after the furnishing by the taxpayer of any information required by the Commissioner in relation to such further grounds) within which to consider the further grounds; 5

(b) the burden of proving that the assessment is excessive shall lie upon the taxpayer.

Reduced assessments. **226.** If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the appeal. 10

Board of Appeal. **227.** For the purpose of reviewing assessments there shall be a Board of Appeal. 15

Constitution of Board. **228.** The Board shall consist of three members who shall be appointed by the Governor. 20
One of the members shall be a representative of the commercial community selected by the Governor from a panel of accountants constituted as prescribed.

One of the members shall in and by the instrument of his appointment be the chairman of the Board.

Appointment of members of Board. **229.** (1) The members of the Board shall be appointed for such period or periods and on such terms and shall be paid such allowances and fees as the Governor may determine or as may be prescribed. 25

(2) The provisions of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to or in respect of the appointment of members of the Board, nor shall the provisions of any such Act apply to any such member during the period in which he holds office as a member of the Board. 30

Decision to be by majority. **230.** At all sittings of the Board the decision of the majority shall prevail.

Interested person not to sit on Board. **231.** No person shall act as a member of the Board in respect of any matter in which he is directly or indirectly interested either personally or as agent or servant or otherwise howsoever. 35

Powers of Board to review Commissioner's decisions. **232.** (1) The Board shall have power to hear and determine such appeals as are referred to it under this Act. 40
(2)

(2) For the purpose of hearing and determining appeals the Board shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act and such assessments, 5 determinations or decisions of the Board and its decisions upon appeal, shall for all purposes (except for the purpose of objections thereto and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner.

PART V.
OBJECTIONS
AND
APPEALS.

10 **233.** (1) The chairman of the Board shall fix the time and place for the hearing of appeals and may adjourn such sittings to another time and place and cause notice to be served upon the Commissioner and the taxpayer of the date and place of the hearing.

Time and
place and
notice of
review.

15 (2) Notice of hearing shall be given at least twenty-one days prior to the date on which the appeal is to be heard.

(3) A notice under this section may be served either personally or by post and if served by post shall 20 be effected by properly addressing and prepaying the notice as a letter and unless the contrary is proved service shall be deemed to have been effected at the time when the letter would have been delivered in the ordinary course of post.

25 **234.** The Board, on the hearing of an appeal may dispense with technical rules of evidence and may receive such evidence as it thinks fit whether receivable in accordance with law in other proceedings or not.

Form of
evidence.

30 **235.** The Board shall take all evidence on oath or affirmation and for that purpose the chairman of the Board shall have power to administer an oath or affirmation.

Evidence.

236. Every party to an appeal before the Board may nominate a person to represent him at the hearing.

Representation
at hearing.

35 **237.** (1) Upon every appeal referred to it the Board shall give a decision in writing and may either confirm, reduce, increase or vary the assessment. Copies of the decision shall be forwarded to the Commissioner and the taxpayer.

Decision of
Board.

(2)

PART V.
OBJECTIONS
AND
APPEALS.

(2) Upon the request of the Commissioner or the taxpayer, made at the hearing, the Board when giving its decision shall state in writing its finding of fact and its reasons in law for the decision.

(3) A decision of the Board shall be final and conclusive and shall be binding on all parties except as provided in this Part of this Act. 5

(4) The decision of the Board shall relate solely to the income the subject of the appeal and shall not affect the right of the Commissioner to assess any other income of the taxpayer. 10

Private
company
determina-
tion not
invalidated.

238. Notwithstanding anything contained in this Act a determination made by the Board under Division 9 of Part III of this Act shall not be invalidated by reason of the fact that it was not made within the time provided in that Division. 15

Board may
not be
sued.

239. No action or suit shall be brought or maintained against any person who is or has been a member of the Board for any nonfeasance or misfeasance in connection with his duties. 20

Appeal from
decision of
Board.

240. (1) The Commissioner or a taxpayer may within thirty days after a decision of the Board appeal to the Court against such decision—

(a) where the decision involves a question of law; or 25

(b) where the decision involves a question of fact and the Board certifies that the amount of tax bona fide in dispute between the taxpayer and the Commissioner exceeds the sum of three hundred pounds. 30

(2) In any appeal to the Court under this section, the Court shall rehear the whole case.

Additional
powers of
Board.

241. In addition to any other powers conferred upon it by this Act, the Board may—

(a) amend any order of the Board; 35

(b)

- (b) on the application of the taxpayer or the Commissioner exclude from the hearing of an appeal all or any persons other than the parties or their representatives;
5. (c) for cause shown allow further time within which—
- 10 (i) an objection may be made (but in no case shall time be allowed so as to exceed twelve months from the date of service of the notice of assessment); or
- 15 (ii) to request the Commissioner to treat an objection as an appeal to the Board or Court (but in no case shall time be allowed so as to exceed ninety days from the date of service of the written notice of the Commissioner's decision);
- 20 notwithstanding that the time for making an objection or for requesting the Commissioner to treat the objection as an appeal may have expired.
242. For the purpose of hearing appeals under this Part of this Act the Court shall consist of a single judge.
243. On the hearing of the appeal the Court may make such order as it thinks fit, and may confirm, reduce, increase, or vary the assessment.
244. An order of the Court shall be final and conclusive and shall be binding on all parties except as provided in this Part of this Act.
245. The costs of the appeal shall be in the discretion of the Court.
246. 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.
247. 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.

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Constitu-
tion of
Court.

Decision of
Court.

Court's
decision
final.

Costs of
appeal.

Court may
state a case.

Hearing by
Full Court.

248.

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OBJECTIONS
AND
APPEALS.Appeals to
Full Court.Change of
Appeal
Tribunal.

248. The Commissioner or a taxpayer may appeal to the Full Court, in its appellate jurisdiction, from any order made under section two hundred and forty-three of this Act.

249. (1) Where a taxpayer, at any time prior to the hearing of an appeal, gives notice in writing to the Commissioner that he desires to have his appeal to the Board determined by the Court in lieu of the Board or by the Board in lieu of the Court, the Commissioner shall thereupon notify the Board or the Court, as the case may be, to that effect and the Board or the Court shall transfer the appeal accordingly. **5**

(2) Where an appeal has been transferred in accordance with this section the notice of the taxpayer shall be deemed to be a withdrawal of his notice of appeal to the Board or the Court, as the case may be, but such notice shall not affect his right of appeal against the decision of the Board as provided in section two hundred and forty of this Act. **10**

Pending
review or
appeal not
to delay
payment
of tax.

250. The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment the subject of the appeal; and tax may be recovered on the assessment as if no appeal were pending. **15**

Adjust-
ment of
tax after
appeal.

251. 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. **20**

Regula-
tions.

252. (1) The Governor may, by regulations, prescribe the rules to be observed in or in relation to proceedings under this Part of this Act before the Board. **25**

(2) Rules of court may be made in relation to proceedings before the Court under this Part. **30**

PART VI.

COLLECTION AND RECOVERY OF TAX.

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AND
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TAX.

253. Income tax shall be due and payable to the Commissioner by the person liable to pay the tax on such day
5 as shall be fixed in the notice of assessment.

When
tax payable.

254. The Commissioner may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he considers the circumstances warrant.

Extension
of time
and pay-
ment by
instalments.

255. (1) If any tax is not paid within thirty days after it becomes due and payable or within such further time as the Commissioner may allow the taxpayer shall be liable to pay additional tax of an amount equal to ten per centum upon the amount of tax unpaid:

Penalty
for unpaid
tax.

15 Provided that the Commissioner may, in any case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(2) Notwithstanding anything contained in this section the Commissioner may sue for recovery of any
20 tax unpaid immediately after the expiry of the time when it becomes due and payable.

256. Any tax due to the Commissioner under this Act shall be deemed to be a debt due to the King, and shall be collected and received by the Commissioner on
25 account of and shall be paid into the Consolidated Revenue.

Income tax
a Crown
debt.

257. Payment of tax by means of 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
30 business need not include exchange.

Exchange.

258. Any tax unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

Recovery of
tax.

35 **259.** Upon the application of any person about to leave Australia, the Commissioner or an Assistant Commissioner may issue a certificate—

Persons
leaving
Australia
to obtain
certificate.

(a) that that person is not liable to pay income tax;
or

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AND
RECOVERY OF
TAX.Authority
to travel
not to issue
without
certificate.

(b) that arrangements have been made to the satisfaction of the Commissioner for the payment of all income tax that is or may become payable by that person.

260. (1) Unless and until such certificate has been presented to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship or aircraft by which that person intends to leave Australia at the port or place at which his passage is to be booked, an authority for that person to travel by that ship or aircraft shall not be issued by the owner or charterer or a representative or employee of the owner or charterer. 5

(2) Any person who in contravention of this section issues an authority to any person to travel by the ship or aircraft shall be personally liable to pay the amount of tax, if any, which is or may become due and payable by such person, and shall be guilty of an offence. 15

Penalty: Not less than *fifty* pounds or more than *two hundred* pounds. 20

Certificates
and list of
passengers
to be lodged
by owners
and char-
terers.

261. (1) The owner or charterer, or the representative of the owner or charterer, of every ship or aircraft which takes passengers on board at any port or place shall, on the first working day after the departure of the ship or aircraft from that port or place, lodge all certificates so presented at the office of the Commissioner, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship or aircraft) who travelled on the ship or aircraft. 25

(2) Every owner or charterer, or his representative who fails to comply with this section shall be guilty of an offence. 30

Penalty: Not less than *ten* pounds or more than *one hundred* pounds. 35

Security
for tax.

262. (1) Where the Commissioner has reason to believe that any person establishing or carrying on business in this State intends to carry on that business for a limited period only, or intends to leave this State, or where

where the Commissioner for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of tax on, the income derived by that person.

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TAX.

(2) A person who fails to give security when required to do so under this section shall be guilty of an offence.

10 Penalty: Not less than *two* pounds or more than *one hundred* pounds.

263. If a taxpayer—

Substituted
service.

15 (a) is absent from Australia and has not to the knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia on whom service of process can be effected; or

(b) cannot after reasonable inquiry be found, service of any process in proceedings against him for recovery of income tax may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last-known place of business or abode in Australia.

264. (1) Every person (in this section called “the trustee”)—

Liquidators,
trustees,
agents and
others to
give notice.

25 (a) who is liquidator of any company which is being wound up; or

30 (b) who is a receiver for any debenture-holders, and has taken possession of any assets of a company; or

(c) who is agent for a non-resident and has been required by his principal to wind up the business or realise the assets of his principal,

35 shall, within fourteen days after he has become liquidator, or after he has so taken possession of assets, or after he has been so required by his principal, give notice thereof to the Commissioner.

(2) The Commissioner shall as soon as practicable thereafter notify to the trustee the amount which appears

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TAX.

appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company or principal as the case may be.

(3) The trustee—

- (a) shall not without the leave of the Commissioner 5
part with any of the assets of the company or
principal until he has been so notified by the
Commissioner;
- (b) shall set aside out of the assets available for
the payment of the tax assets to the value of 10
the amount so notified, or the whole of the
assets so available if they are of less than that
value; and
- (c) shall to the extent of the value of the assets
which he is so required to set aside, be liable 15
as trustee to pay the tax.

(4) If the trustee fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under subsection three of this section) he shall to the extent of the value of 20
the assets of which he has taken possession and which
were available at any time for the payment of tax, be
personally liable to pay the tax, and shall be guilty of an
offence.

Penalty: Not less than *one* pound or more than *fifty* 25
pounds.

(5) Where more than one person is the trustee, the obligations and liabilities attaching to the trustee under this section shall attach to those persons jointly.

(6) Nothing in this section shall render a re- 30
ceiver for debenture holders liable for the payment of
any tax payable in respect of income derived by a com-
pany prior to his taking possession of the assets of the
company except to the extent to which the proceeds of the
sale of the secured assets exceed the amount due to the 35
debenture holders.

265. Every person who is trustee in the estate of any deceased person or who is trustee or official assignee in the estate of any person whose property is being administered under the law relating to bankruptcy, or of any person who has in any manner assigned his estate or part thereof for the benefit of his creditors or any of them shall, within fourteen days after he has become trustee or official assignee give notice thereof to the Commissioner. Any trustee who fails to comply with this section shall be guilty of an offence.

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TAX.

Trustee of
estate of
deceased
person or
bankrupt.

Penalty: Not less than *one* pound or more than *fifty* pounds.

266. 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—

Where tax
not paid
during
lifetime.

(a) the Commissioner shall have the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living;

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

(c) the trustees shall be subject to additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living:

Provided that the Commissioner may in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof;

(d) the amount of any tax payable by the trustees shall be a first charge on all the taxpayer's estate in their hands.

267. (1) Where at the time of a person's death tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death,

Payment of
tax by
trustees of
deceased
person.

II

the

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TAX.

the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the trustees of that person's estate as he would have had against that person if that person were alive.

(2) The trustees shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him. 5

(3) Where the trustees are unable or fail to furnish a return, the Commissioner may make an assessment of the amount on which, in his opinion, tax ought to be levied, and the trustees shall be liable to pay tax as if that amount were the taxable income of the deceased. 10

Commis-
sioner may
collect
tax from
person
owing
money to
taxpayer.

268. (1) The Commissioner may, by notice in writing (a copy of which shall be forwarded to the taxpayer at his last place of address known to the Commissioner), require— 15

(a) any person by whom any money is due or accruing or may become due to a taxpayer; or

(b) any person who holds or may subsequently hold money for or on account of a taxpayer; or 20

(c) any person who holds or may subsequently hold money on account of some other person for payment to the 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 amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act. 30

(2) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty: *Fifty pounds.*

(3) Where the amount payable to the taxpayer by the person so notified is less than the amount due by the taxpayer, that person shall pay to the Commissioner in reduction of the amount so due the amount payable by that person to the taxpayer. 35

(4)

(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
5 such payment.

(5) If the Commissioner receives any payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice thereof to that person.

10 (6) In this section—

“Tax” includes any judgment debt and costs in respect of tax.

15 “Person” includes a company or partnership and, for the purpose of recovering tax due by a taxpayer, shall be deemed to include—

(a) the Crown in right of the State of New South Wales and any public authority or body (corporate or unincorporate) of the State; and

20 (b) subject to the Commonwealth Constitution and any law of the Commonwealth, the Commonwealth and any public authority or body (corporate or unincorporate) constituted under any law of the
25 Commonwealth.

269. Where several persons are in receipt of income for or on behalf of a non-resident or a person absent from this State, the Commissioner, if it appears to him to be expedient so to do, may consolidate all or any of the
30 assessments thereof, and declare any one of such persons to be the agent of the non-resident or absent person in respect of the consolidated assessment, and require him to pay tax on the amount thereof, and thereupon the person so declared to be agent shall be liable to pay the
35 tax.

Consolidation of assessments.

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PENAL PRO-
VISIONS AND
PROSECU-
TIONS.

Taxation
prosecution.

Failure to
furnish
returns or
information,
&c.

Refusal to
give
evidence.

Order to
comply with
requirement.

PART VII.

PENAL PROVISIONS AND PROSECUTIONS.

270. In this Part "Taxation prosecution" means a proceeding by the Crown for the recovery of a pecuniary penalty under this Act. 5

271. (1) Any person who fails duly to furnish any return or information or comply with any requirement of the Commissioner as and when required by this Act or the regulations or by the Commissioner shall be guilty of an offence. 10

Penalty: Not less than *two* pounds or more than *one hundred* pounds.

(2) A prosecution for an offence against this section may be commenced at any time.

272. Any person who refuses or neglects duly to attend and give evidence when required by the Commissioner or any officer duly authorised by him, or truly and fully to answer any questions put to him by, or to produce any book or paper required of him by the Commissioner or any such officer, shall, unless just cause or excuse for the refusal or neglect is shown by him, be guilty of an offence. 15 20

Penalty: Not less than *two* pounds or more than *one hundred* pounds.

273. (1) Upon the conviction of any person for an offence against either section two hundred and seventy-one or section two hundred and seventy-two of this Act the court before which he is convicted may order him within a time specified in the order to do the act which he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence. 25 30

Penalty: Not less than *ten* pounds or more than *five hundred* pounds.

(2) An order under this section may be made orally by the court to the defendant, or may be served in the manner prescribed. 35

274.

274. (1) Notwithstanding anything contained in section two hundred and seventy-one, section two hundred and seventy-two, or section two hundred and seventy-three of this Act, any taxpayer who fails duly to furnish as and when required by this Act or the regulations, or by the Commissioner, any return or any information in relation to any matter affecting either his liability to tax or the amount of the tax, shall be liable to pay as additional tax an amount equal to the tax assessable to him or the amount of one pound whichever is the greater.

(2) Any taxpayer who omits from his return any assessable income, or includes in his return as a deduction for expenditure incurred by him an amount in excess of the expenditure actually incurred by him, shall be liable to pay as additional tax an amount equal to double the difference between the tax properly payable by him and the tax that would be payable if it were assessed upon the basis of the return furnished by him, or the amount of one pound whichever is the greater.

(3) The Commissioner may in any case, for reasons which he thinks sufficient, and either before or after making any assessment, remit the additional tax or any part thereof.

(4) If in any case in which a taxpayer is liable to pay additional tax under this section a taxation prosecution is instituted in respect of the same subject matter, the additional tax shall not be payable unless and until the prosecution is withdrawn.

275. (1) Any person who makes or delivers a return which is false in any particular, or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorised by him, shall be guilty of an offence.

Penalty: Not less than *two* pounds or more than *one hundred* pounds, and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the return or answer had been accepted as correct.

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VISIONS AND
PROSECU-
TIONS.

Additional
tax in
certain
cases.

False re-
turns or
statements.

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TIONS.

(2) In any prosecution for an offence under this section of a person who has not previously been convicted of an offence against this Act or against any law of the Commonwealth or of a State relating to income tax it shall be a defence if the defendant proves—

5

(a) that the return or answer to which the prosecution relates was prepared or made by him personally, and

(b) that the false return or false answer was made through ignorance or inadvertence.

10

(3) A prosecution for an offence against this section may be commenced at any time.

Failure to
sign or
false certi-
ficate.

276. (1) Any person required by this Act to sign an agent's certificate who fails to do so or who signs an agent's certificate which is false in any particular shall be guilty of an offence.

15

Penalty: Not less than *one* pound or more than *fifty* pounds.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

20

False
declarations.

277. Any person who, in any declaration made under, or authorised or prescribed by this Act or the regulations, knowingly and wilfully declares to any matter or thing which is false or untrue, shall be deemed to be guilty of wilful and corrupt perjury, and shall upon conviction be liable to imprisonment for a period not exceeding *four* years.

25

Understat-
ing income

278. (1) Any person who or any company on whose behalf the public officer or a director, servant or agent of the company, in any return, knowingly and wilfully understates the amount of any income or makes any misstatement affecting the liability of any person to tax or the amount of tax shall be guilty of an offence.

30

Penalty: Not less than *twenty-five* pounds or more than *five hundred* pounds, and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the statement in the return had been accepted as correct.

35

(2) 40

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PROSECU-
TIONS.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

5 **279.** (1) Any person who or any company on whose behalf the public officer or a director, servant or agent of the company by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation shall be guilty of an offence.

Fraudulent
avoidance of
tax.

10 Penalty: Not less than *twenty-five* pounds or more than *five hundred* pounds, and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that has been avoided or attempted to be avoided.

15 (2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

20 **280.** Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations shall be guilty of an offence.

Obstructing
officers.

Penalty: Not less than *one* pound or more than *fifty* pounds.

25 **281.** A witness on behalf of the Commissioner or an Assistant Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his
30 official capacity or containing confidential information.

Protection
to witnesses.

282. (1) In any taxation prosecution every averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter averred.

Averment of
prosecutor
sufficient.

35 (2) This section shall apply to any matter so averred, although—

(a) evidence in support or rebuttal of the matter averred or of any other matter is given; or

(b).

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TIONS.

(b) the matter averred is a mixed question of law and fact, but in that case the averment shall be prima facie evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section. 5

(4) This section shall not apply to—

- (a) an averment of the intent of the defendant; or 10
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment; or
- (c) any matter relating to the income or deductions in a return if the defendant has kept sufficient records to enable his assessable income and allowable deductions to be readily ascertained. 15

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

Evidence of
authority to
institute
proceedings.

283. (1) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner. 20

(2) The production of a telegram purporting to have been sent by the Commissioner and purporting to authorise an officer to institute any taxation prosecution shall be sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner. 25

Appearance
by Com-
missioner.

284. (1) In any action, prosecution or other proceeding in any court by the Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the State. 30

(2) The appearance of any such officer, and his statement that he appears by authority of the Commissioner shall be sufficient evidence of such authority. 35

285.

285. (1) The penalty pecuniary or other set out—
- (a) at the foot of any section of this Act; or
 - (b) at the foot of any subsection of any section of this Act but not at the foot of the section,
- 5 shall indicate that any contravention of the section or of the subsection respectively, whether by act or omission, shall be an offence against this Act punishable upon summary conviction by a penalty not exceeding the penalty mentioned:
- 10 Provided that where the penalty is expressed to apply to a part only of the section or subsection, it shall apply to that part only.
- (2) The adjudgment or payment of a penalty
- 15 to assessment and payment of any tax for which he would otherwise be liable.
286. Any person guilty of a breach of this Act for which no penalty is otherwise provided, shall be liable to a penalty not exceeding *fifty* pounds.
- 20 287. In any action against an officer or person for anything done in pursuance of this Act, or in the execution of the powers conferred thereby, or by the regulations, the defendant in such action may plead the general issue, and give the special matter in evidence at the trial.

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PENAL PROVISIONS AND PROSECUTIONS.
Penalties.

Penalties not to relieve from tax.

General penalty.

Action against officer.

25

PART VIII.

MISCELLANEOUS.

288. (1) Every company carrying on business in this State or deriving in this State income from property shall at all times, unless exempted by the Commissioner, be
- 30 represented for the purposes of this Act by a public officer being a person residing in this State and duly appointed by the company or by its duly authorised agent or attorney. With respect to every such company and public officer the following provisions shall apply:—
- 35 (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the

Public officer of company.

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LANEOUS.

the commencement of this Act or after the company commences to carry on business or derive income in this State.

- (b) The company shall keep the office of the public officer constantly filled. 5
- (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and an address for service upon him has been given to the Commissioner. 10
- (d) If the company fails to appoint a public officer when and so often as such appointment becomes necessary, it shall be guilty of an offence. Penalty: *Two* pounds for every day during which the failure continues. 15
- (e) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then 20 service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (f) The public officer shall be answerable for the doing of all such things as are required to be 25 done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.
- (g) Everything done by the public officer which he is required to do in his representative capacity 30 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 35 any penalty for failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.
- (h) Any notice given to or requisition made upon the 40 public officer shall be deemed to be given to or made upon the company. (i)

- 5 (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.
- 10 (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon or taken against the company or public officer.

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20 (2) A public officer of a company duly appointed under the previous Act and holding that office at the commencement of this Act shall be deemed to be the public officer of the company duly appointed under this Act.

25 **289.** (1) With respect to every agent and with respect also to every trustee, the following provisions shall apply:—

Agents and
trustees.

- 30 (a) he shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon;
- 35 (b) he shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other;
- 40 (c)

- (c) if he is a trustee of the estate of a deceased person the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) he is hereby authorised and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of the income; 5
- (e) he is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained or should have retained under paragraph (d) of this subsection, but he shall not be otherwise personally liable for the tax; 10 15
- (f) where as one of two or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid; 20
- (g) for the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax. 25
- (2) Nothing contained in subsection one of this section shall exempt or discharge any principal or beneficiary from liability to make returns and pay tax upon the whole of his taxable income. 30

Person in receipt or control of money for non-resident.

290. (1) With respect to every person having the receipt, control or disposal of money belonging to a non-resident, who derives income from a source in this State or who is a shareholder, debenture holder, or depositor in a company deriving income from a source in this State, the following provisions shall, subject to this Act, apply:— 35

- (a) he shall when required by the Commissioner pay the tax due and payable by the non-resident; 40
- (b)

- 5 (b) 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 so much as is sufficient to pay the tax which is or will become due by the non-resident;
- 10 (c) he is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained or should have retained under paragraph (b) of this subsection, but he shall not be otherwise personally liable for the tax.

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15 (2) Every person who is liable under any contract to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and all money due by him under the contract shall be deemed to be money which comes to him on behalf of the non-resident.

20 **291.** (1) Every person who is liable under any contract to pay money as, or by way of, royalty to a non-resident who is not a resident of Australia shall, before making any payment to, or on behalf of, that non-resident, furnish to the Commissioner a statement of the amount of royalty due to the non-resident, whether such royalty became due either before or after the passing of

25 this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

Person pay-
ing royalty
to a tax-
payer
resident
out of
Australia.

30 (2) The provisions of section two hundred and ninety shall apply in respect of payments of royalty referred to in this section.

292. Where any income of any person out of this State is paid into the account of that person with a banker, the banker shall be deemed to be the person's agent in respect of the money so paid so long as he is indebted in

35 respect thereof.

Payment of
tax by
banker.

293. Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the same from that other person as a debt together with the costs of recovery in any court of

competent

Recovery of
tax paid
on behalf
of another
person.

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competent jurisdiction, or may retain or deduct the same out of any money in his hands belonging or payable to that other person.

Contribution from joint taxpayers.

294. Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax in respect of any of the taxable income—

- (a) shall be entitled to receive by way of contribution from any other of such persons a sum bearing the same proportion to the tax as that other person's share of the taxable income bears to the whole taxable income; and
- (b) may recover that sum from that other person in any court of competent jurisdiction; or may retain or deduct that sum out of any money in his hands belonging or payable to that other person.

Records of taxpayer carrying on a business.

295. (1) Every taxpayer carrying on a business shall keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained.

(2) Any taxpayer who fails to keep the records required by this section shall be guilty of an offence.

Penalty: Not less than *one* pound or more than *fifty* pounds.

Contracts to evade tax void.

296. Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) altering the incidence of any income tax;
- (b) relieving any person from liability to pay any income tax or make any return;
- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose.

297.

297. (1) A covenant or a stipulation in a mortgage which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying to or on behalf of or for the benefit of the mortgagee income tax on the interest to be paid under the mortgage—

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Covenant by
mortgagor
to pay tax.

- 5
- 10
- 15
- (a) if the mortgage was entered into on or before the fourteenth day of December, one thousand nine hundred and twenty-eight, 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.

20

25

(2) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this subsection, which has or purports to have the purpose or effect of including in or adding to the interest payable in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

30

35

(3) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee, the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

(4)

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(4) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise) be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise. 5

(5) For the purposes of this section "mortgage" includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted. 15 20

Periodical
payments
in the nature
of income.

298. Where under any contract agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments which, in the opinion of the Commissioner, are either wholly or in part really in the nature of income of that person such of those payments as are derived in the year of income shall to the extent to which they are in that opinion in the nature of income be included in his assessable income. 25 30

Access to
books, &c.

299. 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 that purpose may make extracts from or copies of any such books, documents or papers. 35

300.

300. (1) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connection with any department of a Government or by any public authority—

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Department to obtain information and evidence.

5 (a) to furnish him with such information as he may require; and

10 (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, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

15 (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.

20 301. (1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Auditor-General or his deputy, and a person appointed by the Governor, that—

Release of taxpayers in cases of hardship.

25 (a) a taxpayer has suffered such a loss or is in such circumstances, or

(b) owing to the death of a person who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

30 that the exaction of the full amount of tax will entail serious hardship, the Board may release the taxpayer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.

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

40 (3) The Commissioner may exercise all the powers of the Board under this section and under section three hundred and two of this Act when the amount of tax involved in any one year does not exceed ten pounds.

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(4) For the purposes of this section and of section three hundred and two of this Act tax includes any costs incurred in attempting to recover such tax.

Writing off
tax.

302. (1) In any case where it is shown to the satisfaction of the Board referred to in section three hundred and one of this Act that every reasonable effort has been made to recover tax, or that it is impracticable without undue expense to recover that tax, it may direct the amount thereof to be written off. **5**

(2) The taxpayer shall not be released from his liability in consequence of any action taken by the Board under this section, and the Commissioner may at any future time take such action to recover any such tax as he considers the circumstances warrant. **10**

Regulations.

303. (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, and for prescribing penalties not less than *one* pound or more than *twenty* pounds for any breach of the regulations. **15**

(2) 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; **25**
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. **30**

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sittings 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. **35**

304. This Act shall be read and construed so as not 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
5 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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Construction of Act.

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