

Act reprinted pursuant to the Amendments Incorporation Act,
1937.

INCOME TAX ASSESSMENT ACT,
1936-1941.

With notes of judicial decisions affecting sections of the reprinted Act.



INCOME TAX ASSESSMENT ACT, 1936-1941.

BEING

INCOME TAX ASSESSMENT ACT, 1936, No. 2296 OF 1936

[ASSENTED TO 22ND OCTOBER, 1936.]

AS AMENDED BY

INCOME TAX ASSESSMENT ACT AMENDMENT ACT, 1941, No. 37 OF 1941

[ASSENTED TO 20TH NOVEMBER, 1941.]

An Act to consolidate and amend the law relating to the assessment and collection of tax upon incomes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Income Tax Assessment Act, 1936-1941". Short title.

2. (1) The Acts mentioned in the first schedule are repealed to the extent therein set out. Repeal.

(2) Nothing in this Act shall repeal or affect any enactment relating to taxes upon land except in so far as it applies also to taxes upon income.

3. (1) Such repeal shall not—

Savings.

- I. affect the operation prior to the passing of this Act of any Act hereby repealed :
- II. affect any inquiry, return, assessment, appeal, contract, certificate, notice, determination, adjudication, payment, remission, or extension made, entered into, or given under any of the repealed Acts :
- III. affect any estate, right, title, interest, privilege, power, duty, obligation, liability, or penalty created, acquired, accrued, accruing, exercisable, incurred, imposed, or liable to be imposed by or under any of the said repealed Acts :

- iv. affect any proclamation, act, proceeding, matter, or thing made or done, under or in pursuance of, any of the repealed Acts :
- v. except so far as in this section provided, alter any legal or other proceeding commenced before or after the passing of this Act and relating to any of the matters or things mentioned in this subsection.
- (2) Notwithstanding such repeal, and without limiting the generality of subsection (1)—
- (a) any assessment which should have been made under the repealed Acts but was not so made, may be made and all proceedings may be taken thereon, and all other consequences shall ensue thereon, as if the repealed Acts were still in force :
- (b) any assessment made under the repealed Acts and any assessment made under paragraph (a) may be reopened, altered, amended, or otherwise dealt with and all proceedings may be taken thereon, and all other consequences shall ensue thereon, as if the repealed Acts were still in force.
- (3) Every appointment to an office made under the repealed Acts shall continue to have effect as if it were an appointment to a corresponding office under this Act.
- (4) All regulations which were confirmed by any of the repealed Acts and were in force at the passing of this Act, are hereby confirmed and continued in force, but may be revoked or amended, or added to, by the Governor.
- (5) Any proceeding which at the passing of this Act is pending in any court, or before any other authority, may be proceeded with, heard, and determined, and the decision and any order made therein may be enforced, as if this Act had not been passed.
- (6) All offences committed, and all liabilities, forfeitures, and penalties incurred or imposed, or liable to be imposed, under the repealed Acts, may be tried, punished, inquired into, and enforced, as if this Act had not been passed.
- (7) Wherever in any Act, or any regulation, or any other document or instrument of any kind, any reference is made to any of the repealed Acts, or to any provision of any of those Acts, that reference shall be read and construed as a reference to this Act, or to the corresponding provision of this Act.

(8) The mention of particular matters in this section shall not affect the applicability to this Act of the Acts Interpretation Act, 1915, to the extent that that Act is not inconsistent with any provision of this Act.

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

PART I.—Preliminary ss. 1-5.

PART II.—Administration ss. 6-16.

PART III.—Liability to Taxation ss. 17-154.

DIVISION 1.—General ss. 17-25.

DIVISION 2.—Income ss. 26-59 :

(a) Assessable income—General ss. 23-28.

(b) Trading stock ss. 29-37.

(c) Business carried on partly in and partly outside the State ss. 38-53.

(d) Dividends ss. 54-59.

DIVISION 3.—Deductions ss. 60-96.

DIVISION 4.—Leases ss. 97-104.

DIVISION 5.—Partnerships ss. 105-109.

DIVISION 6.—Trustees ss. 110-117.

DIVISION 7.—Life Assurance Companies ss. 118-124.

DIVISION 8.—Co-operative Societies and Mutual Companies ss. 125-128.

DIVISION 9.—Banks ss. 129-133.

DIVISION 10.—Interest paid by Companies ss. 134-137.

DIVISION 11.—Overseas Ships and Aircraft ss. 138-143. Amended by 37, 1941, s. 3.

DIVISION 12.—South Australian business controlled outside the State s. 144.

DIVISION 13.—Film Business controlled Abroad s. 145.

DIVISION 14.—Insurance with Non-residents ss. 146-153.

PART IV.—Returns and Assessments ss. 154-172.

PART V.—Objections and Appeals ss. 173-185.

PART VI.—Collection and Recovery of Tax ss. 186-220.

DIVISION 1.—General ss. 186-199.

DIVISION 2.—Payment of tax by instalments ss. 200-220.

PART VII.—Penal Provisions and Prosecutions ss. 221-238.

PART VIII.—Miscellaneous ss. 239-255.

Interpreta-
tion.

Com. 27, 1936,
s. 6.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 237.

5. (1) In this Act unless the contrary intention appears—

“agent” includes—

(a) every person who in the State, for or on behalf of any person out of the State holds or has the control, receipt, or disposal of any money belonging to that person; and

(b) every person declared by the Commissioner to be an agent or the sole agent of any person for any of the purposes of this Act:

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

“assessable income” means all the amounts which, under this Act, are included in the assessable income:

“assessment” means the ascertainment of the amount of taxable income and of the income tax payable by the taxpayer:

“a State” means a State of the Commonwealth of Australia:

“Australia” means all the States and territories of the Commonwealth:

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

“Commissioner” means the Commissioner of Taxes:

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

“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 capitalization of profits but does not include a return of paid up capital or a reversionary bonus on a policy of life assurance:

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

“friendly society” means a society duly registered as a friendly society under any law of the Commonwealth or any State or territory:

“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 work done or 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 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—

Of. U.K.
8 & 9 Geo. 5
c. 40, s. 14
(3).

(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, dividends or annuities which are not income of any kind previously specified in this definition :

“income from property” or “income derived from property” means all income not being income from personal exertion :

Of. U.K.
8 & 9 Geo. 5
c. 40, s. 19.

“income tax” means the income tax imposed as such by any Act as assessed under this Act and any additional tax imposed under this Act :

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

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

“mortgage” includes any charge, lien, or encumbrance to secure the repayment of money :

“non-resident” means a person who is not a resident of Australia or, as the case may be, of the State :

“paid” in relation to dividends includes credited or distributed :

Income Tax Assessment Act, 1936-1941.

“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 :

“previous Act” means the Taxation Act, 1884, the Taxation Act, 1915, the Taxation Act, 1927, and all amendments of or additions to any of those Acts in force at the material time :

“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 and the drying, processing, and packing of fruit by the grower thereof :

“relative” means a husband or wife or a relation by blood, marriage or adoption :

“resident of the State” means—

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

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

(ii.) who has been in the State, continuously or intermittently, during more than one-half of the year of income unless the Commissioner is satisfied that his usual place of abode is outside the State and that he does not intend to take up residence in the State ; and

(b) a company which is incorporated in the State, or which, being incorporated elsewhere carries on business in the State and has either its central management and control in the State, or its voting power controlled by shareholders who are residents of the State :

“resident of Australia” means—

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

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

Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. D
misc. r. 2.

(ii.) who has been in Australia, continuously or intermittently, during more than one-half of the year of income unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia ; and

(b) a company which is incorporated in a State or territory of Australia or which being incorporated elsewhere, carries on business in Australia and has either its central management and control in Australia or its voting power controlled by shareholders who are residents of Australia :

“ shareholder ” includes member or stockholder :

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

“ taxpayer ” means a person deriving income :

“ trading stock ” includes —

(a) livestock ; and

(b) anything produced, manufactured, acquired or purchased for purposes of manufacture, sale, or exchange :

“ territory ” means territory under the authority of the Commonwealth including territory governed by the Commonwealth under a mandate :

“ Treasurer ” means the Minister of the Crown for the time being holding the office of Treasurer :

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

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

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

PART I.

“ year of income ” means—

(a) the financial year next preceding the year of tax ; or

(b) the accounting period, if any, adopted under this Act in lieu of that financial year :

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

(2) This Act shall be construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative powers of the State to the intent that if any provision of this Act would but for this section be held to be in excess of those powers it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of those powers.

PART II.

PART II.

ADMINISTRATION.

Commissioner of Taxes.
Com. 27, 1936, s. 8.
Of. U.K. 43 & 44 Vict. c. 19;
8 & 9 Geo. 5 c. 40, Part V.

6. This Act shall be administered by an officer of the Crown to be called the “ Commissioner of Taxes ” who shall be appointed by the Governor.

Other officers.
Com. s. 9 (1).
Of. U.K. 8 & 9 Geo. 5 c. 40, s. 75.

7. The Governor may also appoint such Deputy Commissioners of Taxes, and other officers and employees as he thinks proper for the purpose of the administration of this Act.

Application of Public Service Act.

8. All persons appointed by the Governor under this Act shall be appointed under and be subject to the laws of the State regulating the appointment and control of the public service.

Deputy Commissioner.
Com. ss. 10, 12 (1), 12 (2), 13 (a).

9. (1) Every Deputy Commissioner of Taxes shall under the control of the Commissioner perform such general official duties as the Commissioner requires him to perform.

(2) If through absence, illness or for any other reason the Commissioner is unable to perform the duties of his office, the senior available Deputy Commissioner shall act as Commissioner during the period of such inability, unless the Governor appoints some other person so to act.

The Deputy Commissioner or other person appointed shall during that period have all the powers, duties and functions of the Commissioner under this Act and shall act in his name and on his behalf.

(3) The Commissioner may, by writing under his hand, delegate to a Deputy Commissioner, or any other person, any powers, authorities, duties and functions conferred or imposed upon him by this Act (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.

(4) Any reference in this Act to the Commissioner shall be deemed to include in respect of matters as to which any powers or functions are exercised by a Deputy Commissioner under this Act a reference to that Deputy Commissioner.

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

Annual report,
Com. s. 14 (1),
14 (2).

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

11. (1) The State may arrange with the Commonwealth for the collection by the State of the whole or any part of any tax, contribution or other money payable to the Commonwealth in the State under Commonwealth law.

Arrangement
with Common-
wealth for
collection of
Commonwealth
income tax.
1583, 1923,
s. 4.
Com. s. 15.

(2) Any agreement relating to any such arrangement may make provision for any matters necessary or convenient to be provided for carrying out the arrangement, including the transfer of officers from the public service of the Commonwealth to the public service of the State, and the re-transfer of such officers from the public service of the State to the public service of the Commonwealth, and the rights and obligations of such officers.

Subsec.
(1) amended
by 37, 1941,
s. 4.

(3) Any such provision shall be valid and effectual for all purposes.

(4) Every agreement made under any provisions of the previous Act corresponding to this section shall continue in force in accordance with its terms and conditions.

s. 11. (1) The amendments made to this subsection are deemed to have come into operation on 1st July, 1940. See section 38 (2) of the Income Tax Assessment Act Amendment Act, 1941.

PART II.

Transfer of
Commonwealth
officers.

1583, 1923, s. 5

12. (1) The Governor may appoint to the public service of the State of South Australia all such persons and on such terms and conditions as are necessary in order to give effect to any agreement made or continued in force pursuant to this Part.

(2) Every person appointed shall, so far as any special terms of his appointment are not inconsistent therewith, be subject to the laws of the State regulating the appointment and control of the public service.

Power of
Minister.

Ibid., s. 6.

13. Subject to this Act, the Treasurer may do and execute all such acts, matters, and things as are necessary to carry into effect any agreement made pursuant to this Part.

Commissioner
of Taxes may
hold office
under the Com-
monwealth.

1583, 1923,
s. 7.

Amended by
37, 1941,
s. 5.

14. The Commissioner may hold office under any laws of the Commonwealth relating to the imposition, assessment, and collection of any tax, contribution or other money payable to the Commonwealth, and may have and exercise all the powers, functions, duties, and authorities appertaining to any such office.

Officers to
observe
secrecy.

Com. s. 16.

15. (1) In this section "officer" means a person 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 acquires or has acquired information respecting the affairs of any other person disclosed or obtained under this or a previous Act.

(2) Subject to this section no person who is or has been an officer shall, either directly or indirectly, except in the performance of any duty as an officer, make a record of or communicate to any person any such information acquired by him.

(3) No person who is or has been an officer shall 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 or the previous Act.

Of. U.K.
8 & 9 Geo. 5
c. 40, ss. 114-
117.

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

s. 14. The amendments made to this section are deemed to have come into operation on 1st July, 1940. See section 38 (2) of the Income Tax Assessment Act Amendment Act, 1941.

- (a) any person performing in pursuance of any appointment or employment by the Commonwealth or by any State any duty arising under any Act relating to land or income tax for the purpose of enabling that person to carry out any such duty :
- (b) any board exercising any function in relation to income tax under any law of the Commonwealth or any State :
- (c) the officer or authority administering any Act of any State relating to stamp duties, or succession duties, if that officer or authority is authorised by law to afford similar information to the Commissioner :
- (d) the Commonwealth Commissioner of Pensions or the Commonwealth Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions :
- (e) the Commonwealth Commissioner for maternity allowances for the purposes of the administration of any law relating to maternity allowances.

(5) Any person to whom information is communicated under the last preceding subsection 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 (2) and (3) of this section as if he were an officer.

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

(7) Any person who contravenes this section shall be guilty of an offence punishable summarily, and liable to a fine not exceeding two hundred and fifty pounds or imprisonment for twelve months.

1^r. (1) Nothing in this Act shall prevent the Auditor-General or any officer of his department from inspecting, examining, and auditing in the course of his duties under the Acts relating to the audit of public accounts, any books, accounts, or documents in the office of the Commissioner, except the returns of income furnished by taxpayers, and the files relating to assessments.

Provision as to
Auditor-
General.

(2) Neither the Auditor-General nor any officer of his department shall disclose any matter which comes to his knowledge in the course of inspecting, examining, or auditing any books, accounts, or documents in the office of the Commissioner, except for the purpose of carrying into effect the provisions of the Acts relating to the audit of public accounts.

(3) The Auditor-General shall not in any report intended or likely to be presented to Parliament communicate any information as to the income of, or the tax assessed against or paid by any taxpayer referred to by name.

PART III.

PART III.

LIABILITY TO TAXATION.

DIVISION 1.

DIVISION I.—GENERAL.

Income tax.

Com. 27 1936,
s. 17.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 1.

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

Accounting period.

Com. s. 18 (1).
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 2;
16 & 17
Geo. 5 c. 22,
s. 34.

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

Continuance of accounting periods previously adopted.

Com. s. 18 (2).
Cf. U.K.
16 & 17
Geo. 5 c. 22,
s. 34.

19. Where the Commissioner has, for the purposes of assessment for the last financial year to which the previous Act applied, accepted from any person returns for any period of twelve months ending on some date other than the thirtieth day of June, that person shall be deemed to have adopted a corresponding accounting period under this section.

PART III.
DIVISION 1.

- 20.** Income shall be deemed to have been derived by a person although it is not actually paid over to him but is reinvested, accumulated, capitalised, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on his behalf or as he directs.
- 21.** For all the purposes of this Act income wherever derived, and any expenses wherever incurred, shall be expressed in terms of Australian currency.
- 22.** 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.
- 23.** 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.
- 24.** The following income shall be exempt from income tax :—
- (a) the official salary of—
- (i) the Governor of the State ;
 - (ii) the representative in the State of the government of another country ;
 - (iii) a foreign consul ;
 - (iv) a trade commissioner of any part of the British Empire other than Australia ;
 - (v) a member of the staff of any such representative, foreign consul or trade commissioner if the member is domiciled in the country represented by the representative, foreign consul or commissioner and is temporarily resident in the State by direction of the government of the country

Money credited, reinvested, &c., to be income.
Com. s. 19.

Income to be expressed in Australian currency.
Com. s. 20.

Where consideration not in cash.
Com. s. 21.

Income arising from past transactions.
Com. s. 22.

Exemptions.
Com. s. 23.
Of. U.K.
8 & 9 Geo. 5
c. 40, Sch. E.

Of. U.K.
13 & 14
Geo. 5 c. 14,
s. 19.

s. 20. *DAVIDSON v. COMMISSIONER OF TAXES* (1917) A.C. 542; 86 L.J.P.C. 148; 117 L.T. 389; 33 T.L.R. 441. Held that income was taxable, although it had been used for paying off debentures and deposits and for creating a reserved fund by way of writing off amounts for depreciation.

WALLAROO AND MOONTA MINING AND SMELTING COMPANY LIMITED v. COMMISSIONER OF TAXES (1914) S.A.L.R. 207. Affirmed by *DAVIDSON v. COMMISSIONER OF TAXES* (S.A.) (1917) A.C. 542; 86 L.J.P.C. 148; 117 L.T. 389; 33 T.L.R. 441. Held that a company was taxable on profits carried to a reserved fund by way of writing off amounts for depreciation, and on profits otherwise capitalised.

so represented for the purpose of performing his official duties, and if the official salary of officials (if any) of the Government of the State temporarily resident for similar purposes in the country so represented is exempted from income tax by that country ; or

- (vi.) an officer of the government of any part of the British Empire other than Australia, who is temporarily in the State to render service on behalf of that country or the Commonwealth or a State in accordance with any arrangement between the governments of that country and of the Commonwealth or of a State, if the salaries of officers of the government of the State temporarily in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country ;
- (b) the remuneration paid by the Government of the Commonwealth or of a State to a non-resident of Australia for expert advice to that government or as a member of a Royal Commission ;
- (c) income derived—
 - (i.) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting the State in that capacity for the purpose of engaging in contests in the State in that sport or game ;
 - (ii.) by any club or association in any other part of the British Empire as its share of the proceeds of cricket, football or similar matches played in the State by a team controlled by that club or association visiting the State from that part of the British Empire, and recognised by the authority controlling that class of match in the State as being representative of that part of the British Empire ;
 - (iii.) by the representative of any government, visiting the State on behalf of that government, or by any member of the entourage of that representative, in his official capacity as such representative or member ;
 - (iv.) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes, by any person visiting the State in that capacity for

the purpose of attending international or Empire conferences or for the purpose of carrying on investigation or research for such society or association ;

- (v.) by a person domiciled outside Australia and visiting the State in the capacity of a representative of the press outside Australia for the purpose of reporting the proceedings relating to any matters referred to in the preceding sub-paragraphs of this paragraph ; and
- (vi.) by any person visiting the State from an occupation carried on by him while in the State, 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 ;
- (vii.) as directors' fees or salary by a non-resident during a visit to Australia during which he acts as a director, manager, or other administrative officer of a manufacturing, mercantile, or mining business, or of a business of primary production, if the visit of the non-resident to Australia does not exceed six months, and the remuneration is not an allowable deduction in any assessment under this Act of the person paying it ;
- (d) the revenue of a municipal corporation or other local governing body or public authority constituted under any Act of the Commonwealth or the State ;
- (e) the income of a religious, scientific, charitable or public educational institution ;
- (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 a State relating to the settlement of industrial disputes ;
- (g) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof : Provided that this paragraph shall not affect any provision of the Friendly Societies Acts, 1919 to 1925, or any other provision of this Act providing expressly for the taxation of income of any particular class ;
- (h) the income of a savings bank conducted exclusively for the benefit of depositors ;

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 37 ;
11 & 12
Geo. 5 c. 32,
s. 30.

Ibid., s. 39
(2).

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 39
(1).

Ibid., s. 39
(3).

PART III.
DIVISION 1.

(i) the incomes of the following funds, provided that the particular fund is being applied for the purpose for which it was established—

Cf. U.K.
11 & 12
Geo. 5 c. 32,
s. 32.

(i.) a provident, benefit, or superannuation fund established for the benefit of employees ;

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 37.

(ii.) a fund established by will or instrument of trust for public charitable purposes ; and

(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 ;

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 46 ;
9 & 10 Geo. 5
c. 32, s. 25.

(j) interest on bonds, debentures, stock, or other securities of the Commonwealth or the State issued for the purpose of Commonwealth or State Loans, where that interest has been declared by the prospectus to be free from State income tax ;

Substituted by
37, 1941,
s. 6 (a).
Cf. U.K.,
9 & 10 Geo. 5,
c. 32, s. 16.

(k) pensions, attendants' allowances, detention allowances and payments of a like nature paid under the Australian Soldiers' Repatriation Act, 1920-1940, or under the Seamen's War Pensions and Allowances Act, 1940 ;

Inserted by
37, 1941,
s. 6 (a).

(ka) payments by way of endowment under the Child Endowment Act, 1941 ;

(l) the income received by way of periodical payments in the nature of alimony or maintenance, by a woman from her husband or former husband : Provided that for the purpose of making such payments the husband or former husband has not divested himself of any income producing assets or diverted from himself income upon which he would otherwise have been liable to tax ;

Amended by
37, 1941,
s. 6 (b).

(m) the income derived by a person from the working of a mining property in the State principally for the purpose of obtaining gold or copper ;

(n) income derived by a *bona fide* prospector from the sale, transfer or assignment by him of his rights to mine for gold in the State ;

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

s. 24. (k), (ka), (m). The amendments made to paragraphs (k) and (m) and paragraph (ka) of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

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 ;

(o) income derived by a non-resident from sources wholly out of the State ;

(p) the income of—

(i.) any fund or association maintained by a religious institution ; or

(ii.) any company the whole of the shares of which are held by or on behalf of a religious institution,

where the fund or association is maintained, or the company was formed and is carried on, for the sole purpose of insuring property belonging to the religious institution, and where the profits arising from the fund, or derived by the association or company, are devoted to that sole purpose or to the purposes of the religious institution.

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 37
(c).

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

Limitation of
exemption.
Com. s. 24.

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

DIVISION 2.—INCOME.

DIVISION 2.

(a) Assessable Income.—General.

26. The assessable income of a taxpayer shall include—

(a) where the taxpayer is a resident of the State, the gross income derived by him directly or indirectly from all sources in the State and dividends from any

Gross income
from certain
sources.

Com. s. 25.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 14;
1st Sch.,
Sch. D.

s. 26. In *re* IVANHOE SOUTH GOLD-MINING COMPANY, 13th May, 1896, S.A. *Register* (newspr.); R. & McG. 299. Held that a company formed in South Australia was not liable to pay income tax on the proceeds of the sale in London of its property in

company, whether incorporated in the State or not, and whether paid out of income derived from sources in or outside the State; and

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

27. The assessable income of a taxpayer shall include:—

- (a) interest (except interest paid outside Australia to a non-resident of Australia on debentures issued outside Australia by a company) on money secured by mortgage of any property to the following extent:—

- (i.) Where the whole of the property is in the State—the whole of that interest;
- (ii.) Where some of the property is in and some out of the State—the whole of that interest if the taxpayer is a resident of the State and income tax (other than Commonwealth income tax) is not paid out of the State on any part of that interest, and, in any other case, a proportionate part of that interest; and
- (iii.) Where the whole of the property is out of the State but in Australia—none of that interest:

- (b) where the taxpayer is a resident of the State 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:

Certain items of assessable income.

Com. ss. 25 (2), 26.
Cf. U.K. 8 & 9 Geo. 5 c. 40, 1st Sch., Sch. D, Cases III., IV., V.

s. 26. Western Australia. Such proceeds are not income accruing in or derived from (contd.) South Australia.

CHITTLEBOROUGH v. COMMISSIONER OF TAXES (1901) S.A.L.R. 24; R. & McG. 302. Held that, where a company distributed part of its profits among customers in proportion to their purchases from the company, the part so distributed was taxable as income of the company.

CHAPLIN v. COMMISSIONER OF TAXES FOR SOUTH AUSTRALIA (1911) 12 C.L.R. 375; R. & McG. 303; 17 A.L.R. 422; 4 Austn. Digest 81. The Commonwealth may make the salaries of Commonwealth officers subject to taxation by the States, and has effectively done so by the Commonwealth Salaries Act, 1907.

McLACHLAN v. COMMISSIONER OF TAXES; RYMILL v. COMMISSIONER OF TAXES (1912) S.A.L.R. 138; R. & McG. 307. Held (under the Taxation Act Amendment Act, 1908) that profits made on the realisation of fixed capital were not income.

SHIELDS v. COMMISSIONER OF TAXES (1912) S.A.L.R. 175. Held that premiums received by a company on the issue of new shares were not income within the meaning of section 6 of the Taxation Act Amendment Act, 1908.

BARRIER WHARF LIMITED v. COMMISSIONER OF TAXES (1919) S.A.L.R. 262; R. & McG. 312. Where the Commonwealth acquired and paid for the wharf property of a wharf company, held that the compensation, as it included nothing for goodwill, was not taxable. (The law as to taxation of goodwill has now been altered.)

NEWCASTLE COMPANY LIMITED v. THE COMMISSIONER OF TAXES (1933) S.A.S.R. 300. Amounts paid by a lessee to his lessor in respect of land tax on the demised premises held part of the taxable income of the lessor.

- (c) 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 :
- (d) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust :
- (e) 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 or the previous Act :
- (f) 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 company which under any provision of this Act is deemed to be a dividend paid to the recipient :

- (g) 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 the last preceding paragraph, or which under any provision of this Act is deemed to be a dividend paid to the recipient :
- (h) any bonus, other than a reversionary bonus on a policy of life assurance :
- (i) any amount received by way of insurance or indemnity for or in respect of any loss—

Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. D.

s. 27. (g) COMMISSIONER OF TAXES v. JOSS (1910) S.A.L.R. 100; R. & McG. 305. Held (under the Taxation Act Amendment Act, 1904, and Taxation Act Amendment Act, 1908) that rations and quarters provided by an employer for an employee were not a gratuity bonus or premium under the Act of 1904, or an allowance under the Act of 1908. [*Seemle*, the law is different under section 27 (g).]

Income Tax Assessment Act, 1936-1941.

- (i.) of trading stock which would have been taken into account in computing taxable income ; or
- (ii.) of profit or income which would have been assessable income,
- if the loss had not occurred, and any amount so received for or in respect of any loss or outgoing which is an allowable deduction :
- (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 the State, and such bounty or subsidy shall be deemed to be part of the proceeds of that business :
- (l) any fee or commission received for procuring a loan of money :
- (m) the amount or value of any consideration received in connexion 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 :
- (n) the salary, wages, or remuneration derived whilst temporarily engaged on duties outside the State, by a taxpayer who ordinarily resides in the State where the duties outside the State are performed in connection with an office or employment, or profession, or calling, the duties of which are principally performed in the State :

Amended by
37, 1941, s. 7.

Provided that where the taxpayer has paid income tax other than Commonwealth income tax in any place outside the State 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 tax so paid or to the proportion of the tax payable under this Act which is attributable to that salary, wages, or other remuneration, whichever is the less :

In this paragraph " duties " includes work and services :

- (o) any sum received by the taxpayer in the year of income as a refund of an amount which has been

s. 27. (n) The amendments made to paragraph (n) of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

previously paid by the taxpayer and has been allowed or is allowable to him as a deduction under this or the previous Act.

(2) For the purposes of this section "income tax" means any tax upon income by whatever name that tax may be called.

27a. A pension received by a resident of the State for or in respect of or in relation to any past employment or service, irrespective of the source from which the pension is received, shall be deemed to be derived by him from a source in the State and shall be included in his assessable income to the following extent—

Pensions.
Inserted by
37, 1941, s. 8.

- (a) if the whole of the employment or service was given or rendered in Australia—the full amount of the pension ;
- (b) if part of the employment or service was given or rendered in Australia—a part of the pension being a sum which bears the same ratio to the full amount of the pension as the period of the employment or service given or rendered in Australia bears to the whole period of the employment or service.

27b. Where the taxpayer is employed on a ship engaged in trading or going between places in Australia, or between Australia and territories under the authority of the Commonwealth, New Zealand, or the islands of the Pacific Ocean, and the usual place of abode of the taxpayer, when not on the ship, is in the State, the whole of the salary, wages, or remuneration derived by the taxpayer from such employment shall be deemed to be derived by him from a source in the State and shall be included in his assessable income.

Remuneration of persons on Australian ships.
Inserted by
37, 1941, s. 8.

27c. Where any person has paid, in any place outside the State, income tax (other than Commonwealth income tax) in respect of the whole or part of the amount which by virtue of section 27a or 27b is included in the assessable income, he shall be entitled to a rebate in his assessment of an amount

Rebates of tax under two preceding sections.
Inserted by
37, 1941,
s. 8.

- s. 27a. The provisions of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.
- s. 27b. The provisions of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.
- s. 27c. The provisions of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

PART III.
DIVISION 2.

equal either to the tax so paid, or to the proportion of the tax payable under this Act which is attributable to that amount, whichever is the less.

Interest on loans raised in Australia by Governments outside Australia.
Com. s. 27.

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

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

(b) *Trading Stock.*

Trading stock to be taken into account.
Com. s. 28.

29. (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,

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

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

Value at beginning of year of income.
Com. s. 29.

30. 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.

Reconciliation when Commonwealth and State values differ.
Com. s. 30.

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

s. 29. *TERRY v. COMMISSIONER OF TAXES* (1921) S.A.S.R. 81; R. & McG. 313. Held under the Taxation Act, 1915 (the relevant provisions of which differ from the Income Tax Assessment Act, 1936) that profit on the sale of sheep kept solely for production of wool was not taxable.

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.

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

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

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

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

Value at end of year of income.
Com. s. 31.

33. 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. 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:

Valuation of livestock at end of year of income.
Com. s. 32.

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 livestock, he may with the leave of the Commissioner adopt that other value.

34. 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.

Changes in basis of valuation of livestock.
Com. s. 33.

PART III.
DIVISION 2.Cost price of
natural
increase.

Com. 34.

35. (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) 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.

(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.

Disposal of
assets of a
business.
Com. s. 36.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. D,
Cases I., II.,
Rule 9.
Subsec. (1)
amended by
37, 1941, s. 9.

36. (1) Subject to this section where the whole or any part of the assets of a business carried on by a taxpayer is disposed of by sale or otherwise howsoever, whether for the purpose of putting an end to the business or any part thereof or not, and the assets disposed of include any property being trading stock, standing or growing crops or crop-stools, or standing or growing timber, being trees which have been planted for sale, 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.

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

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

the value of any live stock included in the sale, being natural increase bred by him which was on hand at the beginning of that first year, and which was, in the opinion of the Commissioner, ordinarily used by him in that business for breeding purposes, shall not be included in his assessable

s. 36. (1) The amendments made to subsection (1) of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

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.

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

(a) the market value of the property or livestock on the day of the disposal ; or

(b) 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.

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

Devolution of
assets on death.
Com. s. 37.
Subsec. (1)
amended by
37, 1941,
s. 10.

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

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

s. 37. The amendments made to subsection (1) of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

PART III.
DIVISION 2.*(c) Business carried on partly in and partly out of the State.*Goods deemed
to be sold in
the State.

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

Goods deemed
to be sold out
of the State.

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

Instru-
mentality.

40. 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.

Income from
sales in and
out of State.
Inserted by
37, 1941,
s. 11.

40a. Except as otherwise provided in this Division—

(a) where goods are sold in the State by any person, the whole of the profit arising from the sale shall be deemed to be income derived in the State ;

(b) where goods are sold out of the 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 the State.

Sales by
manufacturers.
Com. s. 38.

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

Sales by
merchants.
Com. s. 39.

42. Where goods are imported into the State from a place outside Australia by a person not being the manufacturer of the goods, and are either before or after importation sold by him or on his behalf in the State, the profit deemed to be derived in the State from the sale shall be ascertained by

s. 40a. The provisions of this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

deducting from the sale price of the goods their purchase-price and the expenses incurred in transporting them to and selling them in the State.

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

Determination
by Commis-
sioner.
Com. s. 40.

44. Where goods manufactured out of the State but in Australia are sold in the State by the manufacturer, one third of the profit arising from the manufacture and sale shall be deemed to be income derived in the State.

Sales in the
State by a
manufacturer.

45. Where goods manufactured in the State are sold out of the 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 the State.

Sales out of
the State by a
manufacturer.

46. Where goods are sold in the State in the course of a business carried on out of the 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 the State.

Sales in the
State by a
merchant.
Amended by
37, 1941,
s. 12.

47. Where goods are sold out of the State but in Australia in the course of a business carried on in the 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 the State.

Sales out of
the State by
a merchant.
Amended by
37, 1941,
s. 12.

48. Notwithstanding anything contained in this Division, the following provisions shall in the cases therein mentioned apply to the profits 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 :—

Sales of
primary
produce.

(a) Where the goods are produced in the State and are sold whether by or on behalf of a person carrying on the business of which the goods are the produce, the profits shall be deemed to be income derived in the State :

- s. 46. The amendments made to this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.
- s. 47. The amendments made to this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

- (b) Where the goods are produced out of the State and are sold by or on behalf of a person carrying on the business of which the goods are the produce, the profits shall be deemed to be income derived out of the State.

Ascertainment
of profits.

49. The amount of any profit referred to in this 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 the State.

Assessable
income to
include
certain
profits.
Com. s. 43
(1) and (2).

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

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

Apportionment
of loss.

51. Where in the year of income a taxpayer incurs a loss in a business or transaction of such a nature that if it had yielded a profit the whole or part of that profit would under this Division have been included in his assessable income the whole or a corresponding part of that loss shall be an allowable deduction.

Determination
of questions
of doubt.
Com. s. 42.
Amended by
37, 1941,
s. 13.

52. Where in any case not specified in this Division a question arises for any reason whatever, whether the whole or any part, and, if a part, what part of any income or profit whether derived from sales or from transactions of any other kind is derived in the State, the question shall be determined in accordance with the regulations, or if there is no regulation applying to the case, by the Commissioner in such manner as he deems just.

Special
provision as to
treatment of
ores.

53. (1) Where any metals or minerals are imported into the State and are treated in the State and the products of the treatment are sold by the person who treated them that person

s. 52. The amendments made to this section apply to all assessments for the year of tax beginning on 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

shall be deemed to have derived from such treatment and sale a taxable income equal to ten pounds for every one hundred pounds of the actual cost to that person of that treatment.

(2) That cost shall include a fair and reasonable charge for all lands, buildings, and machinery used or employed by the owner in and about such treatment.

(3) In this section—

“metals or minerals” means ores or concentrates containing any of the following metals namely, lead, silver, gold, copper or zinc, and slags and residues from any such ores or concentrates; and

“treatment” includes treating, processing, altering, or otherwise rendering more marketable or saleable.

(d) *Dividends.*

54. (1) Subject to this section the assessable income of a shareholder in a company (whether the company is a resident of the State or not) shall, if the shareholder is a resident of the State, include dividends paid to him by the company out of profits derived by it from any source.

Dividends.
Com. s. 44.

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

(a) paid after the commencement of the first year of income to which this Act applies wholly and exclusively out of one or more of the following:—

(i.) profits arising from the sale or compulsory resumption for public purposes of assets not acquired for the purpose of resale at a profit; or

(ii.) profits arising from the re-valuation of assets not acquired for the purpose of resale at a profit or from the issue of shares at a premium, if the dividends paid from such profits are satisfied by the issue of shares of the company declaring the dividend; or

(iii.) undistributed income accumulated before the commencement of the Taxation Act 1935, if the dividends are paid in the form of shares not later than the thirty-first day of December nineteen hundred and thirty-six; or

s. 54. (2) The amendments made to paragraph (b) of subsection (2) of this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

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Amended by
37, 1941,
s. 14.

- (b) paid to the extent to which they are paid out of exempt income derived by a company from the working of a mining property in the State.

Rebate on
dividends.
Com. s. 46.
Of. U.K.
21 & 22
Geo. 5 c. 28,
s. 7.

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

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

whichever is the less.

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

(3) No rebate shall be allowed under this section in respect of any sum received by a shareholder in a co-operative or mutual society as a rebate, or as interest or dividends on shares in that society.

Distributions
by liquidator.
Com. s. 47.

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 applied to replace a loss of paid up capital, shall for the purposes of this Act be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

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

Loans to
shareholders.
Com. s. 108.

57. (1) If any amounts are advanced or any assets distributed by a company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of, or for the individual benefit of, any of its shareholders, so much, if any, of those advances loans or payment as in the opinion of the Commissioner represents distributions of income shall for all purposes of this Act be deemed to be dividends paid by the company to those shareholders of profits derived by it.

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

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

Payments to
shareholders
and directors.
Com. s. 109.

- (a) remuneration for services rendered by any person being a shareholder or director of the company or being a relative of any such shareholder or director ; or
- (b) an allowance, gratuity or compensation in consequence of the retirement of that person from any office or employment held by him in that company or upon the termination of any such office or employment,

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

59. (1) Sections 57 and 58 of this Act shall apply only to a company which is under the control of not more than seven persons and which is not a company in which the public are substantially interested or a subsidiary of a public company.

Application of
previous
sections.

(2) For the purposes of this section—

- (a) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power, have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year of income beneficially held by, the public (not including a private company) and any such shares have in the course of that year been quoted in the official list of a stock exchange :
- (b) a company shall be deemed to be a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company

is in the hands of one or more companies in which the public are substantially interested :

- (c) a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons :
- (d) persons in partnership and persons interested in the estate of a deceased person or in property held in trust shall respectively be deemed to be a single person.

DIVISION 3.

DIVISION 3.—DEDUCTIONS.

Allowable deductions.

Com. s. 48.
Of. U.K.
8 & 9 Geo. 5
c. 40, ss. 5,
209; 1st Sch.,
Sch. D.

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

Successive deductions.

Com. s. 49.

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

Deductions in case of composite incomes.

Com. s. 50.

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

Substituted by 37, 1941, s. 15.

- (a) Where a deduction or part of a deduction relates directly to income from dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively from income from dividends, from income from property other than dividends, and from income from personal exertion :

s. 62. The amendments made to this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

(b) Where a deduction or part of a deduction relates directly to the income from property other than dividends (whether of the year of income or of a previous year of income) the deduction or part of the deduction, as the case requires, shall be made successively from income from property other than dividends, from income from dividends, and from income from personal exertion; and

Substituted by
37, 1941,
s. 15.

(c) In all other cases, the deduction or part of the deduction shall be made successively from income from personal exertion, from income from property other than dividends, and from income from dividends.

Substituted by
37, 1941,
s. 15.

63. (1) All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are reasonably 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.

Losses and
outgoings.
Com. s. 51.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 34;
16 & 17
Geo. 5 c. 22,
ss. 33, 35;
22 & 23
Geo. 5 c. 25,
s. 19.

(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.

64. Head office expenses of a company deriving income from sources in and outside of the State shall not be an allowable deduction beyond an amount which bears the same proportion to the total head office expenses as the assessable income of the company derived in the State bears to the total income of the company, wherever derived, or beyond an amount to be fixed by the Commissioner.

Head office
expenses.

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

Loss on
property
acquired for
profit making.
Com. s. 52.

s. 63. HANNAN v. COMMISSIONER OF TAXES (1923) S.A.S.R. 434; R. & McG. 315. A compulsory contribution by a public servant to a Public Service superannuation fund is not deductible as an expense incurred in earning the income.

COMMISSIONER OF TAXES (S.A.) v. ROBERTSON (1930) 44 C.L.R. 230; 4 A.L.J. 201; 1 A.T.D. 67. Affirming ROBERTSON v. THE COMMISSIONER OF TAXES (1928) S.A.S.R. 313; R. & McG. (1928-1930) 325. Held (under the repealed Acts) that losses or outgoings of capital do not include outgoings of circulating capital nor cost of replacing buildings or replacing implements, utensils or articles useless from wear and tear. Meaning of "useless" discussed.

PART III.
DIVISION 3.

Repairs.

Com. s. 53.
OF U.K.
8 & 9 Geo. 5
c. 40, Sch. D,
Cases I., II.
Rule 3 (d);
13 & 14
Geo. 5 c. 14,
s. 28;
22 & 23
Geo. 5, c. 25,
s. 18.

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

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

Depreciation.

Com. s. 54.
OF U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. D,
Cases I., II.,
Rule 6.

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

(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.

Basis of
depreciation.

Com. s. 55.

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

Calculation
of depreciation.

Com. s. 56.

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

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

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

(3) Where any property has been bought by the taxpayer no amount paid by him which has been allowed or is allowable

s. 66. COMMISSIONER OF TAXES (S.A.) v. ROBERTSON (1930) 44 C.L.R. 230; 4 A.L.J. 201; 1 A.T.D. 67. Affirming ROBERTSON v. THE COMMISSIONER OF TAXES (1928) S.A.S.R. 313; R. & McG. (1928-1930) 325. Explanation of expression (in repealed Acts) "implements, utensils and articles employed for the purposes of the trade." Held that lift-doors, steel-scoops, bicycles, a billing machine, belting, motor cars, horses and other similar chattels were implements, utensils or articles within the meaning of the repealed Acts.

under this or the previous Act as a deduction to him from the assessable income of any year otherwise than on account of depreciation, shall be deemed to be part of the cost of the property.

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

Alteration of
method of
calculation.
Com. s. 57

71. (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 the Commonwealth Acts relating to Income Tax, and the Commissioner is satisfied that if those values were equal, the corresponding values in each subsequent year would remain equal, the Commissioner may allow in lieu of the depreciation otherwise allowable an amount of depreciation calculated as if the depreciated value at the beginning of the year of income under the Commonwealth Acts had been substituted for the depreciated value at that time under this Act.

Reconciliation
of depreciation
under Com-
monwealth and
State Acts.
Com. s. 58.

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

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

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

Disposal, loss,
or destruction
of depreciated
property.
Com. s. 59.
Cf. U.K.
8 & 9 Geo. 5
c. 40, Sch. D,
Cases I., II.,
Rules 6, 7.

(2) If that consideration exceeds that depreciated value the excess, to the extent of the sum of the amounts allowed and allowable in assessments for income tax under this Act and any previous Act in respect of depreciation, shall be included in his assessable income of that year.

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

- (i.) in the case of a sale of the property—the sale price less the expenses of the sale of that property :
- (ii.) 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 :
- (iii.) in the case where the property is sold with other assets and no separate value is allocated to such property—the amount determined by the Commissioner :
- (iv.) in the case where property is disposed of otherwise than by sale—the value, if any, at the date of disposal.

Acquisition of
depreciated
property.
Com. s. 60.

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

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

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

Property used
partly for
producing
assessable
income.
Com. s. 61.

74. Where the use of any property by the taxpayer has been only partly for the purpose of producing assessable income, only such part of the deduction otherwise allowable under any section of this Act in respect of that property as in the opinion of the Commissioner is proper shall be an allowable deduction.

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

Definition of depreciated value.
Com. s. 62.

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

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

Bad debts.
Com. s. 63.
Of. U.K.
8 & 9 Geo. 5
c. 40, Sch. D,
Cases I., II.,
Rule 3 (i).

and no other bad debts shall be allowable deductions.

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

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

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

Commission.
Com. s. 64.

78. (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* incurred in the production of assessable income.

Payments to and maintenance of relatives.
Com. s. 65.
Of. U.K.
8 & 9 Geo. 5
c. 40, Sch. D,
Cases I., II.,
Rule 3 (b).

(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.

PART III.
DIVISION 3.

Contributions
to pension
funds.
Com. s. 66.
Of. U.K.
12 & 13
Geo. 5 c. 17,
s. 81.

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

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

Inserted by
37, 1941,
s. 16.

(2) Where a taxpayer who has been allowed a deduction under subsection (1) of this section in respect of any sum set aside or paid as or to such a fund, receives from that fund any payment, asset, or other benefit which has a money value, his assessable income shall include that payment or the money value of that asset or benefit.

Expenses of
borrowing.
Com. s. 67.

80. 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 :

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 in which the money was borrowed shall be deemed to be the period for which the money was borrowed.

Expenses of
preparing lease
or agreement.
Com. s. 68.

81. (1) 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.

(2) Expenditure incurred by the taxpayer in the year of income for the preparation and stamping of a partnership, sharefarming, or other agreement relating to any operations or business carried on for the purpose of producing assessable income shall be an allowable deduction.

Timber
felled on
acquired land.
Com. s. 69.

82. 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.

s. 79. (2) The provisions of this subsection apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

PART III.
DIVISION 3.

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

Timber felled under right.
Com. s. 70.

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

Losses by embezzlement, etc.
Com. s. 71.

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

Rates and taxes.
Com. s. 72 (1).
Cf. U.K. 8 & 9 Geo. 5 c. 40, 1st Sch., Sch. A, No. V.
Subsec. (1) amended by 37, 1941, s. 17 (a).

(2) Sums payable by the taxpayer in the year of income for sales tax and pay-roll tax under the laws of the Commonwealth to the extent to which such sums are payable in connection with the earning of assessable income shall be allowable deductions.

Subsec. (2) substituted by 37, 1941, s. 17 (b).

(3) Except as provided in subsections (1) and (2) of this section sums payable by the taxpayer for any tax shall not be allowable deductions.

Inserted by 37, 1941, s. 17 (b).

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

Subscriptions to associations.
Com. s. 73.

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

(a) ten pounds ten shillings;

s. 85. The amendments made to this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

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

(3) Any periodical subscription to which the foregoing provisions of this section do not apply, paid by the taxpayer in the year of income in respect of his membership of any trade, business, or professional association, shall be an allowable deduction: Provided that the total deduction allowable under this subsection in respect of subscriptions to any one association in that year shall not exceed ten pounds ten shillings.

Expense of
Member of
Parliament.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. E,
Rules 9, 10.

87. The sum of one hundred pounds in respect of the travelling and incidental expenses incurred in the year of income by a taxpayer in the capacity of member of the Parliament of the Commonwealth or of a State where he was such a member for the whole of the year of income and a proportionate part of that sum where he was such a member for part only of the year of income shall be an allowable deduction.

Election
expenses of
members of
Parliament.
om. s. 74.

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

(2) When a deduction has been allowed or is allowable under the last preceding subsection 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.

Contributions
to pension
funds not
otherwise
provided for.
Com. s. 78.
Cf. U.K.
11 & 12
Geo. 5 c. 32,
s. 32;
12 & 13
Geo. 5 c. 17,
s. 31.

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

(a) Sums which are not otherwise allowable deductions and which are set apart or paid by the taxpayer in the year of income as a fund or a payment to

a fund to provide individual personal benefits, pensions, or retiring allowances for employees who are residents of the State and are engaged in his or any business or class of business, or dependents of such employees, if the rights of the employees or dependents to receive the benefits, pensions, or retiring allowances are fully secured ; and

- (b) 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 dependents of employees where such persons are residents of the State 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.

(2) Where a taxpayer who has been allowed a deduction under paragraph (a) of subsection (1) of this section in respect of any sum set aside or paid as or to such a fund receives from that fund any payment, asset or other benefit which has a money value, his assessable income shall include that payment or the money value of that asset or benefit.

Inserted by
37, 1941,
s. 18.

89a. (1) Where a loss is incurred in the year of income by a taxpayer in carrying on in the State a business the income from which, if any, would be exempt income (which business is, in this section, called "the exempt business") that loss shall be an allowable deduction.

Loss in
earning
exempt
income.
Inserted by
37, 1941,
s. 18.

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

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

s. 89. (2) The provisions of this subsection apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

s. 89a. The provisions of this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

PART III.
DIVISION 3.Concessional
deductions.

Com. s. 79.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. D,
Cases I., II.,
Rule 3 (b);
10 & 11
Geo. 5 c. 18,
ss. 18-22.
Amended by
37, 1941,
s. 20 (a).

90. (1) The following amounts (in this Act called "the concessional deductions") shall be allowable deductions in cases where the taxpayer is a resident of Australia :

- (a) Where during the year of income the taxpayer is a married person and the spouse of the taxpayer is a resident of Australia and is wholly maintained by the taxpayer, the sum of thirty pounds :
- (b) Where during the year of income the taxpayer is a widower and wholly or mainly maintains one or more children resident in Australia and under sixteen years of age, the sum of thirty pounds in addition to any allowance under this section for children maintained by him :
- (b1) Where during the year of income the taxpayer is a widower, not having any child under sixteen years of age, and is the occupier of residential premises, in which one or more of his children reside with him, the sum of thirty pounds :
- (c) Where during the year of income the taxpayer wholly maintains any children resident in Australia and under sixteen years of age, the sum of thirty pounds for each child so maintained :
- (d) Where during the year of income the taxpayer partially maintains any children resident in Australia and under sixteen years of age, that part of thirty pounds for each child so maintained which the Commissioner thinks reasonable in the circumstances :
- (e) Where during the year of income the taxpayer wholly or mainly maintains any parent resident in Australia, or any brother or sister resident in Australia and under sixteen years of age, the sum of thirty pounds for each such parent, brother or sister :
- (f) Payments not exceeding fifty pounds in the aggregate made by the taxpayer during the year of income, to any legally qualified medical practitioner, registered dentist, nurse, chemist, or public or private hospital in respect of any illness of or operation upon or dental treatment to the taxpayer, the spouse of the taxpayer, or any child, parent, brother or sister of the taxpayer if the spouse or child, parent, brother or sister is a resident of Australia, or to any person or institution in respect of any therapeutic treatment administered by direction of any legally

Inserted by
37, 1941,
s. 20 (b).

qualified medical practitioner, to the taxpayer or the spouse, parent, brother or sister or any child of the taxpayer :

- (g) Payments not exceeding ten pounds made by the taxpayer in the year of income to a friendly society for lodge fees :
- (h) Payments 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 any of his children 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 :

Provided that the total amounts allowed as a deduction under this paragraph and paragraph (f) shall not exceed fifty pounds.

(2) The spouse of a taxpayer shall be deemed to be wholly maintained by the taxpayer if the separate net income derived from all sources by the spouse in the year of income does not exceed fifty pounds and the taxpayer contributes to the maintenance of the spouse, and not otherwise.

(3) Where any of the circumstances entitling a taxpayer to a deduction under any provision of subsection (1) of this section except paragraph (f), (g) or (h) thereof exists for part only of the year of income the deduction allowable under this section shall be that part of thirty pounds which the Commissioner deems reasonable in the circumstances.

(4) Where in any case not falling within paragraph (a), (b), (c), (d) or (e) of subsection (1) of this section the taxpayer during the year of income or any part thereof wholly or mainly maintains any relative, and satisfies the Commissioner by information submitted in writing that any special circumstances exist which render it equitable to allow the taxpayer a similar deduction to that which would be allowable if the case fell within any of those paragraphs, the Commissioner shall allow such a deduction to that taxpayer.

If a request made by a taxpayer for a deduction under this subsection is refused by the Commissioner, the taxpayer may require the Commissioner to refer the request to the Taxpayers Relief Board constituted under Part VIII. of this Act, and the Commissioner shall refer the request accordingly. The Board shall make such decision on the request as it thinks proper and that decision shall be final.

(5) Where the assessment is made in respect of the income of a deceased person from the first of July preceding his death up to his death, there shall be deducted from the net amount of the income payments made by the personal representatives of the deceased person which, if made by the deceased person in his lifetime, would have been deductible under paragraph (f) or (h) of subsection (1).

Subsecs. (6) to (8) repealed by 37, 1941, s. 20 (c).

* * * * *

Losses of previous years. Com. s. 80. Cf. U.K. 8 & 9 Geo. 5 c. 40, s. 34; 16 & 17 Geo. 5 c. 22, s. 22.

91. (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.

(2) Subject to subsection (5) 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 :—

- (a) Where he has not in the year of income derived exempt income, the deduction shall be made from the assessable income :
- (b) Where he has in that year derived exempt income, the deduction shall be made successively from the net exempt income and from the assessable income :
- (c) Where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred.

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

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

(5) No loss incurred before the beginning of the year of income preceding the first year of income to which this Act applies shall be allowable as a deduction under this section.

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

Statutory exemption.
Com. s. 81.

- (a) The sum of one hundred pounds, less one pound for every nine pounds by which the income exceeds one hundred pounds; or
- (b) Where the income does not exceed one hundred pounds, the amount of the income.

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

(2) Where the taxpayer is a widow with one or more children under the age of sixteen years at the commencement of the year of income wholly maintained by her the deduction allowable under this section shall be two hundred pounds.

(3) Where the taxpayer, whether a company or a natural person, is a trustee the deduction allowable under this section shall be that which would be allowable if the income were directly received by the person beneficially entitled thereto, and if there is no person presently entitled thereto the deduction shall be that provided for in subsection (1) of this section.

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

93. Where any income is assessed under this Act in respect of a period less than twelve months, a part only of the concessional deductions and statutory exemption allowable in respect of a full year of income shall be allowed to the taxpayer, and that part shall bear the same ratio to the full concessional deductions or statutory exemption, as the number of weeks in respect of which the income is assessed bears to fifty-two. For the purpose of this section any part of a week shall be regarded as a full week.

Abatement of concessional deductions and statutory exemption.

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

Double deductions.
Com.

PART III.
DIVISION 3.

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

Previous deductions.

95. Where any loss, outgoing, or expense has been allowed as a deduction under any previous Act the same loss, outgoing, or expense shall not be allowed as a deduction under this Act.

Duty of Commissioner as to deductions.

96. Where it is apparent to the Commissioner from information supplied by the taxpayer that the taxpayer is entitled to any deduction, although that deduction has not been claimed by the taxpayer, the Commissioner shall notwithstanding the failure on the part of the taxpayer to claim the deduction allow that deduction when assessing the amount of tax payable by the taxpayer.

DIVISION 4.

DIVISION 4.—LEASES.

Definitions.
Com. s. 83.

97. (1) In this Division—

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

“lessor” when used in relation to any time, means the person at that time entitled to the reversion :

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

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

“term of the lease” means the length of time which the lease has to run from the date when the premium is

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

(2) Where a lease is sold together with other assets, the amount of the consideration attributable to the lease shall, subject to subsection (3) of section 36 and subsection (3) of section 72, be—

Inserted by
37, 1941,
s. 21.

- (a) where a separate amount is allocated to the lease in any contract of sale or arrangement and the Commissioner is satisfied that that separate amount is fair and reasonable—the amount so allocated ; or
- (b) where no separate amount is so allocated or the Commissioner is not satisfied that the amount allocated is fair and reasonable—the amount determined by the Commissioner.

98. The assessable income of a taxpayer shall include in addition to rent any premium received by him in the year of income, and any consideration so received for or in connexion with his assent to any grant or assignment of a lease.

Premiums
included in
assessable
income.
Com. s. 84.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. A,
No. II., 6.

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

Deductions.
Com. s. 85 (1)
and (3).

- (a) the premium is received for or in connexion with the assignment or surrender of a lease, or for or in connexion with the goodwill or a licence attached to or connected with land the subject of a lease assigned or surrendered, and the taxpayer has paid any amount—
 - (i.) to acquire that lease or the goodwill or licence attached to or connected with that land ; or
 - (ii.) where the lease assigned or surrendered is a lease of land—in effecting improvements on that land ; or
- (b) the taxpayer has paid any amount for the surrender to him of a lease, goodwill or licence for the purpose of granting or assigning the lease, goodwill or licence for or in connexion with which the premium was derived,

s. 97. (2) The provisions of this subsection apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

and the whole or any portion of that amount has not been allowed or is not allowable as a deduction in assessments for income tax under any other provisions of this Act or under any previous Act, the amount which bears the same proportion to the amount which has not been so allowed as the premium included in his assessable income bears to the total of the premiums received or to be received by him for the grant, assignment, surrender, goodwill or licence in respect of which the premium was so included, shall be an allowable deduction.

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

Deductions
upon succession
to property
subject to lease
Com. s. 85 (2).

100. Where any premium is included in the assessable income of a taxpayer in respect of property to which he has succeeded upon the death of another person, the taxpayer shall be entitled to the deduction to which that other person would have been entitled, under this section, if he had lived and the premium had been included in his assessable income and there had been allowed or were allowable as deductions in assessments for income tax, under any other provisions of this or any previous Act 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.

Rate of tax
where premium
received.
Com. s. 86f

101. (1) Where a premium which exceeds the sum of the allowable deductions directly relating thereto, and which is received in respect of a lease the term of which 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.

s. 101. The amendments made to this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. *See* section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

(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 would be applicable to the amount which would have been his taxable income if his assessable income had included the 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, and no other part of those premiums or of any deductions relating thereto had been taken into account.

(3) Where the taxable income is not more than the net premium, or the sum of the net premiums if two or more such premiums are so included, the rate of tax shall be—

Amended by
37, 1941,
s. 22 (a).

(a) where there is only one of those premiums, 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

(b) where there are two or more 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 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 where the taxpayer is a company, unless in, respect of the premium, the company is assessable as a trustee or where the premium or premiums for the lease is or are payable in each of three or more years of the lease.

Amended by
37, 1941,
s. 22 (b).

102. (1) Where improvements not subject to tenant rights have been made upon any land by any person as consideration for the grant to him of a lease of that land or by the lessee of the land who is required to make them under the provisions of the lease or who made them with the written consent of the lessor, the following provisions shall apply:—

Value of improvements included in assessable income of lessor.
Com. s. 87.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. A,
Rule No. 4,
11.

(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 :

Provided that where in the year of income two or more persons have been lessors for successive periods the instalments shall be included in the assessable income of the last of those lessors.

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

(2) This section shall not apply where the agreement under which the improvements were made as consideration for the grant of a lease was entered into before the commencement of this Act or where the lessee is required to make the improvements under the terms of a lease entered into before such commencement, or where the improvements are made in pursuance of a consent given before such commencement, or in any of the cases specified in subsection (3) of the next succeeding section.

Deductions to
lessee.
Com. s. 88.

103. (1) Where a taxpayer has paid any premium in respect of land, premises or machinery used for the purpose of producing assessable income, and in the year of income—

- (a) he is the lessee of the land, premises or machinery ; or
- (b) in the case of a premium paid for the surrender of the lease, he would have been the lessee had the lease been transferred to him and he had not been entitled to the reversion,

a proportionate part of the amount of that premium, arrived at by distributing that amount proportionately over the period of the lease unexpired at the date when the premium was paid, shall be an allowable deduction.

(2) Where a taxpayer, who in the year of income is a lessee of land used for the purpose of producing assessable income has, either before or after the commencement of the lease, incurred expenditure in making improvements not subject to tenant rights on that land, and such improvements—

- (a) have, under an agreement entered into after the commencement of this Act, been made as consideration for the grant to him of that lease ;

- (b) are improvements which he was required to make under the provisions of that lease ; or
- (c) have been made with the written consent of the lessor given after the commencement of this Act,

a proportionate part of the amount of that expenditure arrived at by distributing that amount proportionately over the period of the lease unexpired at the date when the expenditure was incurred, shall be an allowable deduction. In calculating the deduction under this subsection, expenditure in excess of the amount, if any, specified in the agreement for the lease, or in the lease, or in the lessor's consent, shall not be taken into account.

(3) The provisions of the last preceding subsection shall not apply in any case—

- (a) where the lease is a lease of land to a company from an individual or from a company to an individual, and the individual directly or indirectly controls the voting power of the company ; or
- (b) where the Commissioner is of the opinion that in consequence of the terms and conditions of the lease or of any other circumstances the lessor is in substantial control of the operations of the lessee, or the lessee is in substantial control of the operations of the lessor.

(4) Where any taxpayer succeeds to any lease or share therein upon the death of any person who has paid such premium or expended such money, he shall be entitled to the same deduction, or part thereof proportionate to his share in the lease, as that person would have been entitled to under this section had he lived.

104. This Division shall not apply in respect of any lease from the Crown of Crown Lands occupied for agricultural, horticultural, viticultural, or pastoral purposes : Provided that where any person has before the commencement of this Act paid or agreed to pay any amount for the assignment or transfer of any such lease from the Crown he shall be entitled to a deduction, in respect of each year of income which is comprised in the period of the lease unexpired at the time of the assignment or transfer and during which he is the lessee of the same land, of an amount obtained by dividing the amount paid or agreed to be paid for the assignment or transfer by the number of years of the unexpired period of the lease at the time of that assignment or transfer.

Application of
Division.
Com. s. 89.

PART III.
DIVISION 5.

DIVISION 5.—PARTNERSHIPS.

Definitions.

Com. s. 90.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 20;
Sch. D, Cases
I., II., Rule
10.

105. 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 the losses of previous years :

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

Partnerships.

Com. s. 91.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. D,
Cases I., II.,
Rule 10.

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

Income of partner.

Com. s. 92.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 20.

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

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

Options of partners in respect of live stock.

Com. s. 93.

108. (1) In calculating the net income of a partnership or a partnership loss for the purpose of assessing any partner's share, the partnership shall be deemed to have exercised or failed to exercise all options and rights to select a value for live stock under this Act in the same manner as the partner has in fact exercised or failed to exercise those options and rights and the partnership shall not, as a partnership, be entitled to exercise any such option or right.

(2) The fact that a taxpayer has entered into a partnership, or that any variation has taken place in the membership of any partnership of which the taxpayer is a member, shall not—

(a) affect any option or any right to select a value for live stock previously exercised by him under this Act ; or

(b) confer upon him any right to alter any such option or value without leave of the Commissioner.

(3) Where, in respect of a partnership formed before the commencement of this Act, a basis of valuation of live stock of the partnership had, before that commencement, been accepted by the Commissioner for the purposes of the previous Act, nothing in this section shall be deemed to vary, or require the variation of, that basis of valuation until there is an alteration in the membership of that partnership.

109. (1) Where a partnership is so constituted or controlled or its operations are so conducted, that any partner has not the real and effective control and disposal of his share of the net income of the partnership, the Commissioner may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one—

Partner not
in receipt
and control
of share.
Com. s. 94.
Subsec. (1)
amended by
37, 1941,
s. 23.

(a) had been received by the partner who has the real and effective control of that share; or (as the case may be)

(b) had been divided between such other partners as have the real and effective control of that share in proportion to the extent to which, in the opinion of the Commissioner, they respectively have the real and effective control of that share,

and had been added to and included in his or their assessable income; and he or they shall pay tax accordingly.

(2) For the purposes of this section but without limiting its application a partner shall be deemed not to have the real or effective control and disposal of any money received by him which is applied to meet the private or domestic obligations of any other partner.

109a. (1) Where a taxpayer carries on business in partnership with a relative or relatives (with or without other persons) 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 subsection (3) of this section, be added to and be deemed to be part of the share of the taxpayer.

Family
partnerships.
Inserted by
37, 1941,
s. 24.

(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 at the net income of the partnership.

s. 109. The amendments made to this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

s. 109a. The provisions of this section apply to all assessments for the year of tax beginning 1st July, 1941, and for all subsequent years of tax. See section 38 (1) of the Income Tax Assessment Act Amendment Act, 1941.

(3) Where any such relative has introduced capital into the partnership (not being capital derived directly or indirectly from, or through the instrumentality of, the taxpayer) and has been actively engaged in the production of the assessable income of the business during the major portion of the year of income, an amount ascertained in accordance with subsection (4) of this section shall, if such relative has the real and effective control of that amount, be included in the assessable income of such relative and shall not be added to the share of the taxpayer.

(4) The amount referred to in subsection (3) of this section shall be such part of the sum of the shares of the taxpayer and of such relative in the income of the partnership as bears to that sum the same proportion as the amount of capital introduced into the partnership by such relative (not being capital derived directly or indirectly from or through the instrumentality of the taxpayer) bears to the total amount of capital introduced into the partnership by the taxpayer and such relative.

DIVISION 6.

DIVISION 6.—TRUSTEES.

Net income of
trust estate.
Com. s. 95.
Cf. U.K.
8 & 9 Geo. 5
c. 40, ss. 103,
207.

110. 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.
Com. s. 96.

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

Beneficiary not
under any
disability.
Com. s. 97.

112. (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 has been taken into account in calculating the net income of the trust estate.

113. 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.

Beneficiary
under
disability.
Com. s. 98.

114. 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 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 deductions other than the statutory exemption.

Where no
person
presently
entitled.
Com. s. 99.

115. (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.
Com. s. 100.

(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.

116. 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.

Discretionary
trusts.
Com. s. 101.

116a. (1) Where, in any 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 and which would have been assessable income in the hands of the deceased person if it had been received by him during his lifetime, that

Income
received by
trustees of
estates of
deceased
persons.
Inserted by
37, 1941,
s. 25.

s. 116a. THE COMMISSIONER OF TAXES (SOUTH AUSTRALIA) v. THE EXECUTOR TRUSTEE AND AGENCY COMPANY OF SOUTH AUSTRALIA LIMITED (1938) 63 C.L.R. 108; 12 A.L.J. 407 affirming IN RE CARDEN (1938) S.A.S.R. 175. Where a medical practitioner returned as his gross income from his practice actual receipts in each year, omitting book debts, held that, after his death, upon the assumption that the deceased should have been taxed upon his earnings, section 84 of the Taxation Act, 1927, did not operate of its own force or by the reason of the application of section 42 or 43 of that Act to authorize the inclusion of unpaid fees earned before the end of the last taxing year before his death in an assessment upon the executor in respect of the period from the end of that year to the death of the deceased. Section 116a was enacted since this decision.

The provisions of section 116a apply to all assessments for the year of tax beginning 1st July, 1942, and for all subsequent years of tax. See section 38 (5) of the Income Tax Assessment Act Amendment Act, 1941.

amount shall be included in the assessable income of that year of the trust estate and the trustee shall be liable as trustee to pay tax upon that amount.

(2) Where, in the opinion of the Commissioner the amount so included includes an amount which accrued due to the deceased person prior to the year of income and the tax payable under this section exceeds the tax which would have been payable if the income had been received on its due date he shall make such adjustment as is just.

Time as at which tax on certain income of deceased taxpayer to be assessed.

Inserted by 37, 1941, s. 25.

116b. Where a trustee is assessed in respect of the whole or any part of the taxable income derived by a deceased taxpayer during the whole or part of either or both of the following periods, namely, the last complete year of income before the death of the taxpayer, and the period between the end of that year of income and the death of the taxpayer, the rate of tax payable by the trustee on that taxable income, shall be the rate of tax which would have been payable on that taxable income if an assessment in respect thereof had been made against the taxpayer on the date of his death.

Revocable trusts and trusts for minors.
Com. s. 102.

117. (1) Where, before or after the commencement of this Act, a person has created a trust in respect of any income or income-producing assets, and has a power whenever exercisable to revoke or alter the trusts so as to acquire a beneficial interest in the income derived during the year of income, or the assets producing that income or any part of that income or those assets, the Commissioner may assess the income of that person as if he had received, in addition to any other income derived by him, so much of the net income of the trust estate as is attributable to that beneficial interest, and he shall be liable to pay tax on the income so assessed.

(2) Where this section has been applied to any income of a trust estate or part thereof, no beneficiary or trustee, other than a beneficiary or trustee who is also the creator of the trust, shall be liable to pay tax on that income.

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

(4) Any income tax which by virtue of this section is chargeable on and is paid by the person creating the trust, or by whom the disposition was made, may be recovered by him from any trustee or other person to whom the income is payable by virtue or in consequence of the trust or disposition.

(5) In this section—

“child” includes step-child and adopted child ; and

“disposition” includes any settlement, trust, covenant, agreement, or arrangement.

DIVISION 7.—LIFE ASSURANCE COMPANIES.

DIVISION 7.

118. In this Division—

Definitions.

“company” means a company which carries on the business of life assurance in the State :

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 23,
1st Sch., Sch.
D. Cases I.
II., Rule 15;
13 & 14
Geo. 5, c. 14,
s. 16.

“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 :

“investment income” means all interest, rents, and other income from property (except exempt interest, interest on overdue premiums and dividends) derived from sources in and out of the State.

119. 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.

Premiums, &c.,
not assessable
income.
Com. s. 111.

120. Expenditure exclusively incurred by a company in gaining those premiums or considerations shall not be an allowable deduction.

Deductions not
allowable.
Com. s. 112.

s. 119. AUSTRALIAN MUTUAL PROVIDENT SOCIETY v. COMMISSIONER OF TAXES (1907) S.A.L.R. 88; R. & McG. 304. Held (under section 9 of The Taxation Act, 1884) as follows:—

- (1) That the surplus arising from the premium income of a life insurance company in relation to its mutual business was merely part of the participating policy-holders' own money returned to them and was not income of the company.
- (2) That the profits arising from the non-mutual life insurance business of the company were liable to income tax.
- (3) That no deduction could be made from the gross income of the company for expenses incurred in earning the non-taxable surplus arising from the mutual business of the company.
- (4) Interest on loans made to members on the security of their policies was liable to income tax.
- (5) Interest on premiums in arrear did not constitute an addition to the income of the company and was not taxable.

PART III.
DIVISION 7.Net invest-
ment income.Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 33.

121. (1) The net investment income of a company shall be its investment income less—

- (a) the sum of the management expenses of the life assurance business of the company ; and
- (b) 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 :

Provided that in calculating the net investment income, no deduction shall be allowed for any expenditure referred to in section 120, or for any payment of income tax or of any tax assessed upon income.

Net
Australian
investment
income.

122. The net Australian investment income of a company shall be so much of the net investment income of the company as bears to the net investment income the same proportion as the liabilities of the company under life assurance policies held by Australian policy holders bears to the liabilities of the company under all life assurance policies of the company.

Assessable
income.

123. (1) Except where subsection (2) of this section applies 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 South Australian policy holders of the company bears to the total amount assured under all life assurance policies of the company.

(2) Where, at the end of the year of income, at least seventy-five per centum of the liabilities of a company under policies of life assurance is in respect of policies held by policy holders out of Australia, the assessable income of the company shall include so much of the net Australian investment income of the company as bears to that investment income the same proportion as the total amount assured under life assurance policies held by South Australian policy holders of the company bears to the total amount assured under life assurance policies held by Australian policy holders of the company.

(3) 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.

PART III.
DIVISION 7.
When liabilities
exceed assets.
Com. s. 116.

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

DIVISION 8.—CO-OPERATIVE SOCIETIES AND MUTUAL COMPANIES.

DIVISION 8.

125. (1) In this Division—

Interpretation.
Com. ss. 117,
118.

“co-operative society” means a company—

- (a) which has no share capital or the rules of which limit the number of shares therein which may be held by or by and on behalf of any one member, and prohibit the quotation of the shares for sale or purchase on any stock exchange or in any other public manner whatever :
- (b) which is established for the purpose of carrying on any business having as its primary object or objects any one or more of the following :—
 - (i.) the acquisition of commodities or animals for disposal or distribution among its members :
 - (ii.) the acquisition of commodities or animals from its members for disposal or distribution :
 - (iii.) the storage, marketing, packing, or processing of commodities of its members :
 - (iv.) the rendering of services to its members :
 - (v.) the obtaining of funds from its members for the purpose of making loans to its members to enable them to acquire land or buildings to be used for the purpose of residence, or of residence and business.

(2) If in any year of income one-tenth or more in value of the transactions of a society in that part of its business, the carrying on of which part constitutes, in the Commissioner's opinion, the primary object of the society, are transacted with or on behalf of persons who are not members of the society, that society shall in that year be deemed not to be a co-operative society.

126. The assessable income of a co-operative society shall include all sums received by it, whether from members or other persons, for the storage, marketing, packing or processing of

Sums received
to be taxed.
Com. s. 119.

PART III.
DIVISION 8.

commodities, or for the rendering of services, or in payment for commodities or animals or land sold, whether on account of the company or on account of its members.

Deductions
allowable to
co-operative
society.

Com. s. 120.

127. (1) So much of the assessable income of a co-operative society as—

(a) is distributed among its members as rebates or bonuses based on business done by the members with the society :

(b) is distributed among its members as interest or dividends on shares,

shall be allowable deductions.

(2) No such rebate or bonus based on purchases made by a member from the society shall be included in his assessable income except where the price of those purchases is allowable as a deduction in ascertaining his taxable income in any year.

Mutual
insurance
associations.
Com. s. 121.

128. Every association of persons formed for the purpose of insuring those persons against loss, damage, or risk of any kind in respect of property shall, for the purposes of this Act, be deemed to be a company carrying on the business of insurance and the assessable income of any such company shall include all premiums derived by the company, whether from its shareholders or not, other than premiums received in respect of policies of life assurance or considerations received in respect of annuities granted.

DIVISION 9.

DIVISION 9.—BANKS.

Definitions.

129. (1) In this Division—

“ average value ” in relation to any assets in or out of Australia means the average value of those assets for the year of income ascertained in the manner provided by section 60AD of the Commonwealth Bank Act, 1911-1932, as in force at the commencement of this Act for the preparation of the quarterly abstracts furnished by banks in accordance with that section : Provided that this definition shall not be held to bind the Commissioner as to the value of any assets at any time if in his opinion formed before or after the assessment the State is prejudicially affected by the value adopted for such assets :

“ bank ” means a company which carries on in the State the business of banking as its principal business ; but does not include a company of the assets of

s. 127. COMMISSIONER OF TAXES V. THOMPSON, 24th August, 1897. Held (under The Taxation Act, 1884) that profit or surplus paid, returned, or credited to members of a co-operative society in respect of goods purchased by them from the society was not taxable.

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, 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 :

“ gross income from all sources ” means the gross income derived from sources in and out of the State, but does not include discount derived from and upon the issue of Commonwealth Treasury Bills or interest derived from exempt assets :

“ non-exempt assets ” means assets other than exempt assets :

“ sale when used in relation to a security ” includes a sale after a foreclosure :

“ specific exempt assets ” means exempt assets purchased with money which was specifically drawn for that purpose from the shareholders' own funds, being only funds no part of which was or may have been borrowed money.

(2) For the purposes of this division—

(a) interest accrued at the date of the sale of an exempt asset 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 asset :

(b) 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 :

(c) the value of any asset wherever situate and any amount involved in any calculation shall, subject to section 133 of this Act, be expressed in terms of Australian currency, and for this purpose the rates of exchange to be used shall be the rates at which exchange could have been effected by telegraphic transfer at the date at which the asset is to be valued or at which the amount is to be ascertained :

(d) underwriting commission or brokerage on the issue of so much of a loan underwritten by a bank as is

taken up by it pursuant to an underwriting agreement shall be deemed to be a reduction of the cost of the loan so taken up:

- (e) underwriting commission or brokerage on the issue of so much of a loan underwritten by a bank as is not so taken up by it shall be deemed to be income of the year in which the loan is issued.

Net income
from all sources.

130. (1) The net income of a bank from all sources shall be its gross income from all sources less the deductions allowable under subsection (2) of this section.

(2) The deductions allowable from the gross income from all sources shall be—

- (a) the deductions which would be allowable deductions if the gross income from all sources were derived from a source in the State except interest paid or payable and except the deductions allowable under section 86; and

- (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; and

- (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 over that year 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.

(3) Notwithstanding section 63 of this Act the expenditure (other than interest) incurred in relation to the gaining or production of income derived from exempt assets shall be an allowable deduction.

Income
derived by
bank.

131. (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 the State bears to the average value over that year of its non-exempt assets in and out of the State.

(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.

(3) From the amount included under this section in the assessable income of a bank there shall be deducted any amounts which are allowable deductions under section 86.

132. (1) The last two preceding sections shall commence on the publication in the *Gazette* of a proclamation by the Governor that in his opinion the Parliaments of three States other than South Australia have passed similar provisions to those sections.

Assessment on
basis of actual
income.

(2) In the proclamation made by the Governor under subsection (1) of this section the Governor shall declare the year of income as from the commencement of which the last two preceding sections shall be deemed to have come into force.

(3) Upon those sections coming into operation, they shall not apply in any case where—

(a) a bank has elected in the prescribed manner that those sections shall not apply with respect to the assessment of its income; and

(b) the Commissioner is satisfied that the laws of three States other than South Australia enable a similar election to be made, and is further satisfied that in all the other States of Australia in which the bank derives income and the laws of which enable a similar election to be made, the bank has made that election.

(4) Subject to subsection (6) of this section an election made under subsection (3) of this section within the period of six months after the end of a year of income shall apply to that year of income and subsequent years, and an election made after that period shall apply to the year of income in which it is made and subsequent years: Provided that an election made within six months after the date of publication of the proclamation shall apply to the year of income as from the commencement of which the said sections first came into force.

Amended by
37, 1941,
s. 26.

s. 132. This section is deemed to have come into force as from 1st July, 1935, or the first day of the accounting period adopted under the Act in lieu of the year of tax commencing on 1st July, 1935: Proclamation, *Gazette* 18th February, 1937, p. 334.

The amendments made to subsections (4) and (6) of this section are deemed to have come into operation on 22nd October, 1936. See section 38 (4) of the Income Tax Act Assessment Act, 1941.

(5) With respect to the years of income prior to the first year of income to which the last two preceding sections apply and with respect to years of income to which those sections do not apply by reason of an election as aforesaid and of the Commissioner's being satisfied as aforesaid, the following provisions shall apply:—

- (a) the allowable deduction in respect of interest payable by the bank for the year of income shall be 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 in the State bears to the average value over that year of its total assets except specific exempt assets;
- (b) notwithstanding section 63 of this Act the expenditure (other than interest) incurred in relation to the gaining or production of income derived from exempt assets shall be an allowable deduction;
- (c) for the purpose of determining the deduction for head office expenses the expression "total income" in section 64 of this Act shall not include income derived from exempt assets;
- (d) outgoings incurred in the State in relation to funds employed out of the State shall be an allowable deduction, and outgoings incurred out of the State in relation to funds employed in the State shall not be an allowable deduction. For the purposes of this paragraph "outgoings" does not include interest or head office expenses.

Amended by
37, 1941,
s. 26.

(6) Except with previous written consent of the Commissioner, a bank shall not withdraw an election made under subsection (3) of this section.

Conversion of
ex-Australian
funds.

133. (1) Except for the valuing of assets for the purposes of subsection (1) of section 131 of this Act, and notwithstanding sections 29, 30, and 32, of this Act, a bank, if it elects in the prescribed manner to do so, may convert its funds out of Australia at the rates and in the manner specified in this section.

(2) The conversion of such funds at the beginning of the year of income shall be made at the rate or respective rates adopted for the purpose of assessment under this or the previous Act at the end of the year immediately preceding the year of income.

(3) The conversion of such funds at the end of the year of income shall be made—

- (a) in respect of so much of those funds as does not exceed the amount of the funds at the beginning of the year of income, at the rate or respective rates applied at that date pursuant to subsection (2) of this section ; and
- (b) in respect of the balance, if any, at the rate or respective rates arrived at by averaging separately the value of the whole of the funds of each country out of Australia acquired during the year of income, according to the respective rates at which exchange could have been effected by telegraphic transfer at the respective dates of acquisition of those funds.

(4) In respect of transactions in exchange by a bank to which the preceding provisions of this section apply, and which elects in the prescribed manner to come under this subsection the order in which any funds of the bank in a country out of Australia shall be deemed to have been disposed of shall be the order arrived at by treating funds in such country acquired as such in any year of income as having been disposed of before funds in such country acquired as such in an earlier year of income.

DIVISION 10.—INTEREST PAID BY COMPANIES.

DIVISION 10.

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

Interest paid
by a company
to a non-
resident.
Com. s. 125.

- (a) on money secured by debentures of the company and used in the State, or used in acquiring assets for use or disposal in the State ; or
- (b) on money lodged at interest in the 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 at the rate declared by the Parliament—

- I. where the person to whom the interest is paid or credited is a company income tax upon that interest :
- II. where the person to whom the interest is paid or credited is not a company income tax upon so much of that interest paid or credited in the year of income as exceeds one hundred pounds.

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

(3) Where a company establishes, to the satisfaction of the Commissioner, that a person can enforce payment, without any deduction under this section, of interest on any such money secured by debentures, or on money lodged at interest with it, this section shall not apply in respect of the interest paid or credited to that person.

(4) This section shall not apply to interest paid or credited to a company which is carrying on business in the 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 this section shall so apply.

Interest paid
by a company
on bearer
debentures.
Com. s. 126.

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

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

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

Rebate of tax
paid by
company.
Com. s. 127

136. (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.

(2) Where that person 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.

PART III.
DIVISION 10.

137. Where in any financial year interest is paid by a company in respect of which it is liable under this Division to pay income tax, the rate of tax payable by the company in respect of the interest shall be the rate which would have been payable by the company in respect of that interest if an assessment had been made in respect thereof at the date when the interest was paid.

Tax on interest.
Com. s. 128.

DIVISION 11.—OVERSEAS SHIPS AND AIRCRAFT.

DIVISION 11.

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

Heading amended by 37, 1941, s. 27.
Taxable income of shipowner or charterer.
Com. s. 129.
Amended by 37, 1941, s. 28.

138a. For the purposes of this Division the amount paid in respect of the carriage of any passengers, livestock, mails, or goods shall be the amount remaining after deducting from the gross amount of such freight, the amount of any rebate, discount or other like sum allowed by the owner or charterer of the ship as a deduction from the freight.

Calculation of amount of freight.
Inserted by 37, 1941, s. 29.

139. The master of the ship or aircraft, or the agent or other representative in the 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.
Com. s. 130.
Amended by 37, 1941, s. 30.

140. 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.

Determination by Commissioner.
Com. s.131.

141. 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.

Assessment of tax.
Com. s. 132.

142. (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.
Com. s. 133.

Heading to Division 11.—The amendment made to this heading is deemed to have come into operation on 22nd October, 1936. See section 38 (4) of the Income Tax Act Assessment Act, 1941.

- s. 138. The amendments made to this section are deemed to have come into operation on 22nd October, 1936. See section 38 (4) of the Income Tax Act Assessment Act, 1941.
- s. 138a. The provisions of this section are deemed to have come into operation on 22nd October, 1936. See section 38 (4) of the Income Tax Act Assessment Act, 1941.
- s. 139. The amendments made to this section are deemed to have come into operation on 22nd October, 1936. See section 38 (4) of the Income Tax Act Assessment Act, 1941.

PART III.
DIVISION 11.

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

Notice of
assessment.
Com. s. 134.

143. 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.

DIVISION 12.—SOUTH AUSTRALIAN BUSINESS CONTROLLED OUTSIDE THE STATE.

South
Australian
business
controlled
outside the
State.
Com. s. 136.

144. Where any business carried on in the State—

(a) is controlled principally by non-residents of the State ;
or

(b) is carried on by a company a majority of the shares in which is held by or on behalf of non-residents of the State ; or

(c) is carried on by a company which holds or on behalf of which other persons hold a majority of the shares in a company, which is a non-resident of the State,

and it appears to the Commissioner that the business produces either no taxable income or less than the taxable income which might be expected to arise from that business, the person carrying on the business in the State shall, notwithstanding any other provision of this Act, be liable to pay income tax on a taxable income of such amount of the total receipts (whether cash or credit) of the business as the Commissioner determines.

DIVISION 13.

DIVISION 13.—FILM BUSINESS CONTROLLED ABROAD.

Film business
controlled
abroad.

145. Where—

(a) any person (in this section called “the resident taxpayer”) carries on in the State the business of distributing, exhibiting, or exploiting motion picture films or advertising matter for use in connection with such films, or of leasing such films or matter to other persons, or of licensing other persons to exhibit or display such films or matter ; and

(b) that business is wholly or mainly controlled or carried on by—

(i.) a non-resident of the State ; or

(ii.) a company the majority of the shares in which are held by or on behalf of non-residents of the State ; or

(iii.) a company which holds or on behalf of which other persons hold a majority of the shares in a company which is a non-resident of the State,

(which non-resident or company controlling or carrying on the business is hereinafter referred to as "the non-resident"); and

(c) in pursuance of any contract or arrangement any amount which would, apart from this section, be an allowable deduction has been paid or is payable by the resident taxpayer to the non-resident,

the Commissioner in determining the taxable income of the resident taxpayer—

(a) may allow in lieu of the amount so paid or payable a deduction of eighty-five per centum of that amount ;

(b) alternatively, may assess the taxable income derived by the resident taxpayer from the business at an amount equal to ten per centum of total receipts (whether cash or credit) of the resident taxpayer from the business :

Provided that where the resident taxpayer has supplied information which satisfies the Commissioner as to the amount of the total profit derived by the resident taxpayer and the non-resident from the business, the Commissioner shall review the assessment and assess the taxable income of the resident taxpayer from the business at an amount equal to one half of that total profit, but in no case less than the amount at which the taxable income of the resident taxpayer from the business would be assessed under the other provisions of this Act.

DIVISION 14.—INSURANCE WITH NON-RESIDENTS.

DIVISION 14.

146. In this Division—

Definitions.
Com. s. 141.

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

“insured event” means an event upon the happening of which the liability under an insurance contract arises :

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

“insured property” means the property the subject of an insurance contract made or given by an insurer :

“insurer” means any non-resident of Australia who undertakes liability under an insurance contract.

Income derived
by non-resident
insurers.
Com. s. 142.

147. (1) Where an insured person, whether a resident or non-resident of the State, 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 the State or the insured event is one which can happen only in the 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 the State, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

(2) Where an insured person who is a resident has entered into an insurance contract with an insurer, and an agent or representative in the 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 the State and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

Taxable income
of non-resident
insurer.
Com. s. 143.

148. 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 :

Provided that where the actual profit or loss derived or made by the insurer in respect of such premiums is established to the satisfaction of the Commissioner, the taxable income of the insurer in respect thereof, or the amount of the loss so made by him shall, subject to this Act, be calculated by reference to receipts and expenditure taken into account in calculating that profit or loss.

Liability of
agents of
insurer.
Com. s. 144.

149. The insured person and any person in the 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.

PART III.
DIVISION 14.
Deduction of
premiums.
Com. s. 145.

150. 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.

151. Every person who has paid any such premium to a non-resident of Australia shall furnish with his return for the year of income in respect of which the payment was made, particulars as to the name and address of the insurer and the amount paid to him.

Information as
to premiums
paid.

152. 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 financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

Rate in special
circumstances.
Com. s. 147.

153. Notwithstanding any other provision of this Act, where a person carrying on the business of insurance (other than life assurance) in the State re-insures the whole or part of any risk with another person carrying on a similar business, but not in Australia—

Re-insurance
with non-
residents.
Cf. Com.
s. 148.
Substituted
by 37, 1941,
s. 31.

- (a) the premiums paid or credited in respect of any such re-insurance shall not be an allowable deduction to the person carrying on the business of insurance in the State, or included in the assessable income of the person carrying on the business of insurance out of Australia; and
- (b) the income of the person carrying on the business of insurance in the State shall not include sums recovered from the person carrying on business out of Australia in respect of a loss on any risk so re-insured.

s. 153. The provisions of this section as amended are deemed to have come into operation on 22nd October, 1936. See section 38 (3) of the Income Tax Act Assessment Act, 1941.

PART IV.

PART IV.

RETURNS AND ASSESSMENTS.

Annual returns.
Com. 27, 1936,
s. 161.
Of. U.K.
8 & 9 Geo. 5
c. 40, ss. 27,
98, 100.

154. (1) Every person shall, if required by the Commissioner by notice published in the *Gazette*, furnish to the Commissioner in the form fixed by the Commissioner, 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 in any capacity during the year of income, and of any 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 unless he is required by the Commissioner to do so.

Of. U.K.
8 & 9 Geo. 5
c. 40, s. 101.

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

Further
returns.

Com. s. 162.
Of. U.K.
8 & 9 Geo. 5
c. 40, ss. 7
(2), 27 (5);
109;
17 & 18
Geo. 5 c. 10,
s. 43.

155. (1) Every person shall, if required by the Commissioner, whether before or after the expiration of the year of income, furnish to the Commissioner, in the manner and within the time required by him, a return, or a further or fuller return, of the income or any part of the income derived by him in any period, and in any capacity, and whether a return has or has not previously been furnished by him for the same period.

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

Special returns.
Com. s. 163.

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

Returns
deemed to be
duly made.
Com. s. 164.

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

Certificate of
sources of
information.

158. (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

s. 154. *TERRY v. COMMISSIONER OF TAXES* (1921) S.A.S.R. 81; R. & McG. 313. Held that statements made by the taxpayer in the prescribed form of return did not, in the absence of evidence that the Commissioner had been prejudiced, estop the taxpayer from proving facts inconsistent with those statements.

shall sign a certificate (in this Act called an agent's certificate) setting out such information as to the sources available for the compilation of the return as is prescribed.

(2) The certificate shall be in such of the forms fixed by the Commissioner as is applicable to the person signing it, and shall be indorsed on or annexed to the return.

159. Every person carrying on business who does not furnish with his return an agent's certificate shall furnish particulars in the form fixed by the Commissioner, indorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.

Certificate of sources of information.
Com. s. 165 (2).

160. 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.

Assessments.
Com. s. 166.
Cf. U.K.
8 & 9 Geo. 5
c. 40, ss. 110,
113.

161. If—

- (a) any person makes default in furnishing a return ; or
- (b) the Commissioner is not satisfied with the return furnished by any person ; or
- (c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income,

Default assessments.
Com. s. 167.
Cf. U.K.
8 & 9 Geo. 5
c. 40, ss. 7
(5), 125,
126.

the Commissioner may make an assessment of the amount upon which in his judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of the last preceding section.

162. (1) The Commissioner may at any time during any year of income, 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.

Special assessments.
Com. s. 168.

(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.

163. Whenever any person temporarily exercising any calling in the State will in the opinion of the Commissioner leave the State before income tax will be payable by him in the ordinary course, income tax shall be calculated and payable by him daily while he is in the State, and the Commissioner may from time to time assess that tax for each day, or include the tax for any number of days in one assessment.

Assessments where taxpayer temporarily in the State.
Cf. Com. s. 213.

PART IV.

When taxpayer about to leave the State.

Cf. Com. s. 205.

164. (1) Whenever the Commissioner has reason to believe that a taxpayer is about to leave the State he may—

- (a) forthwith require that taxpayer to furnish a return of income for any previous years of income for which returns have not already been furnished by the taxpayer, and a return of income for the period from the first day of the current year of income to the date of the taxpayer's proposed departure :
- (b) forthwith make assessments on any return so furnished :
- (c) make an assessment in default of such returns or without requiring any return.

(2) Upon the making of any such assessment the tax upon the assessment shall be payable forthwith.

Amendment of assessments.

Com. s. 170.

Cf. U.K.

43 & 44 Vict.

c. 19, s. 52;

8 & 9 Geo. 5

c. 40, ss. 7

(7), 126,

130.

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

(2) Where a taxpayer has not made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and the Commissioner is of opinion that there has been an avoidance of tax, the Commissioner may—

- (a) where he is of opinion that the avoidance of tax is due to fraud or evasion—at any time; and
- (b) in any other case—within six years from the date upon which the tax became due and payable under the assessment,

amend the assessment by making such alterations therein or additions thereto as he thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of tax, as the case may be.

(3) Where a taxpayer has made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and an assessment is made after that disclosure, no amendment of the assessment increasing the

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 41;
13 & 14
Geo. 5 c. 14,
ss. 24, 29, 30.

s. 165. COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS LTD. v. COMMISSIONER OF TAXES (S.A.) (1926) 38 C.L.R. 289; R. & McG. 318. Affirming R. v. COMMISSIONER OF TAXES, ETC. *Ex parte* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS LIMITED (1926) S.A.S.R. 168; R. & McG. 316. Held that section 70 of the Taxation Act, 1915, which provided that "it shall be lawful for the Commissioner in any case, whether notice of appeal has been given or not, to alter or reduce any assessment and to order a refund of any excess of tax that has been paid in respect thereof," conferred no right on the taxpayer which could be enforced by mandamus.

THE COMMISSIONER OF TAXES (SOUTH AUSTRALIA) v. THE EXECUTOR TRUSTEE AND AGENCY COMPANY OF SOUTH AUSTRALIA LIMITED (1938) 63 C.L.R. 108; 12 A.L.J. 407, affirming IN RE CARDEN (1938) S.A.S.R. 175. As to the powers of the Commissioner under the Taxation Act, 1927, to amend assessments.

liability of the taxpayer in any particular shall be made except to correct an error in calculation or a mistake of fact; and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.

(4) No amendment effecting a reduction in the liability of a taxpayer under an assessment shall be made except to correct an error in calculation or mistake of fact, and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.

(5) Where an assessment has, under this section, been amended in any particular, the Commissioner may, within three years from the date upon which the tax became due and payable under the amended assessment make, in or in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the taxpayer under the assessment as is just.

(6) Where an application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment, and the taxpayer has supplied to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application, the Commissioner shall, if the circumstances warrant him in doing so, amend the assessment when he decides that application notwithstanding that that period has elapsed.

(7) Nothing contained in this section shall prevent the amendment at any time 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 appeal or review.

(8) Where—

(a) any provision of this Act is expressly made to depend in any particular upon a determination or opinion or judgment of the Commissioner; and

(b) any assessment is affected in any particular by that determination, opinion, or judgment,

then, if after making the assessment it appears to the Commissioner that the determination, opinion, or judgment under that provision was erroneous, he may correct it and amend the assessment accordingly in the same circumstances as he could under this section amend an assessment by reason of a mistake of fact.

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

Where no notice of assessment served.

Com. s. 171.

166. (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, sent by registered post to the Commissioner, request the Commissioner to make an assessment.

(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.

Refund of tax overpaid.

Com. s. 172.

Cf. U.K.

8 & 9 Geo. 5

c. 40, s. 16.

167. Where by reason of any amendment the amount for which the taxpayer is liable, is reduced, the Commissioner shall refund or credit to the taxpayer any amount paid by him in excess of the reduced amount.

Amended assessment to be an assessment.

Com. s. 173.

Notice of assessment.

Com. s. 174.

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

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

Validity of assessment.

Com. s. 175.

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

Judicial notice of signatures.

Com. s. 176.

171. 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 has been or is the Commissioner or a Deputy Commissioner, if that signature is on any official document.

PART IV.

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

Evidence.
Com. s. 177.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 18.

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

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

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

PART V.

PART V.

OBJECTIONS AND APPEALS.

173. A taxpayer dissatisfied with any assessment under this Act may, within sixty days after service of the notice of assessment, post to or lodge with the Commissioner an objection in writing against the assessment, stating fully and in detail the grounds on which he relies:

Objections.
Com. 27, 1936,
s. 185.
Cf. U.K.
8 & 9 Geo. 5
c. 40, Part
VII.

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

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

Decision of
Commissioner
Com. s. 186.

PART V.

Appeal.
Com. s. 187.
Gf. U.K.
8 & 9 Geo. 5
c. 40, s. 136.

175. A taxpayer dissatisfied with the decision of the Commissioner may, within sixty days after such service, by writing request the Commissioner to treat his objection as an appeal and to forward it either to the Local Court of Adelaide of Full Jurisdiction, or at the option of the taxpayer to the Local Court of Full Jurisdiction nearest to the taxpayer's residence.

Notice to refer.
Com. s. 189.

176. If within sixty days after receiving the request, the Commissioner does not forward the objection to the court, the taxpayer may at any time thereafter give him notice in writing to do so, and the Commissioner shall within sixty days after receiving the notice forward the objection to the court accordingly:

Provided that if within sixty days after receiving the request, the Commissioner requires the taxpayer in writing to furnish information relating to the decision or objection, the Commissioner shall not be bound to forward the objection to the Court until the expiration of sixty days after receipt by him of that information.

Institution
of appeal.

177. When the Commissioner forwards the objection to a Local Court, he shall forthwith give notice that he has done so to the taxpayer, and the taxpayer shall be deemed to have thereupon duly instituted an appeal to that court against the decision of the Commissioner.

Setting down
of appeal.

178. (1) The appellant shall—

- (a) set down the appeal for hearing at a sitting of the Local Court, to be held within sixty days from the expiration of the time allowed for appealing; and
- (b) give notice of the setting down to the Commissioner at least fourteen days before the hearing.

(2) Any appeal which has not been set down for hearing within the time prescribed by this section shall be deemed to have been withdrawn, and no Court shall have jurisdiction to determine that appeal.

Grounds of
objection and
burden of
proof.
Com. s. 190.

179. Upon every appeal—

- (a) the taxpayer shall be limited to the grounds stated in his objection: Provided that the Court may, if it thinks proper, allow the taxpayer on such conditions, if any, as the Court imposes, to amend the grounds of his objection;

s. 178. R. v. HOWELL; *Ex parte* A. & E. LE MESSURIER LIMITED (1928) S.A.S.R. 97; R. & McG. (1928-1930) 324. *Semble*, the Clerk of the Local Court must receive notices handed in to him after his office is closed to the public for the day.

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

180. If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with by the Local Court on appeal.

Reduced assessments.
Com. s. 191.

181. On the hearing of the appeal the Commissioner or a Deputy Commissioner may appear in person, or by solicitor or counsel or by any officer of the Taxation Department, and the taxpayer may appear in person, or by his solicitor, counsel, or any other person authorised by him.

Representation of parties on appeal.

182. On the appeal the Local Court may—

- (a) hear evidence concerning the matter in dispute :
- (b) accept any document forwarded or produced by the Commissioner to the court as *prima facie* evidence of any transaction or matter therein recorded :
- (c) review any determination made or decision given by the Commissioner under this Act and substitute any determination or decision which the court thinks should be made or given :
- (d) make any order confirming, reducing, increasing, or varying the assessment and any order as to the costs of the appeal which the court deems just.

Powers of Local Court on appeal.
Cf. U.K. 8 & 9 Geo. 5 c. 40, s. 142

183. (1) A Local Court, upon the hearing of the appeal, may, on the application of either party, state a special case for the opinion of the Supreme Court.

Special case may be stated.
1200, 1915, s. 82.
Cf. U.K. 8 & 9 Geo. 5 c. 40, s. 149.

(2) The Supreme Court shall hear and decide that special case according to its practice on questions of law reserved by Local Courts, and shall make such order as to costs as appears just.

(3) The decision of the Supreme Court shall be certified to and binding on the Local Court.

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

Pending appeal not to delay payment of tax.
Com. s. 201.
Cf. U.K. 16 & 17 Geo. 5 c. 22, s. 25.

s. 182. COMMISSIONER OF TAXES v. ROONEY (1936) S.A.S.R. 289. There is no right of appeal to the Supreme Court from the decision of a Local Court on an appeal under Part V.

s. 183. WALLAROO AND MOONTA MINING AND SMELTING CO., LTD. v. COMMISSIONER OF TAXES (No. 2) (1914) S.A.L.R. 388. An appeal lies as of right to the Judicial Committee of the Privy Council from a decision of the Supreme Court on a case stated, where the amount involved is £500 or more.

PART V.

Adjustment of
tax after
appeal.

Com. s. 202.
Cf. U.K.
16 & 17
Geo. 5 c. 22,
s. 25, proviso
II.

185. If the assessment is altered on the appeal, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

PART VI.

PART VI.

COLLECTION AND RECOVERY OF TAX.

DIVISION I.—GENERAL.

Cf. U.K.
8 & 9 Geo. 5
c. 40, Part
VIII.

DIVISION 1.

When tax
payable.

Com. 27 of
1936, s. 204.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 157.

186. (1) Subject to the provisions of this Part, any income tax assessed shall be due and payable by the person liable to pay the tax thirty days after the service of a notice of assessment.

(2) Where a date is specified in the notice as the date upon which the tax is to be due and payable, that date shall be deemed to be the date upon which it is due and payable unless the contrary is proved.

Taxpayer
leaving the
State.

Com. s. 205.

187. Where the Commissioner has reason to believe that a person liable to pay tax may leave the State before the expiration of such thirty days, the tax shall be due and payable on such date as the Commissioner notifies to that person.

Extension of
time and
payment by
instalments.

Com. s. 206.

188. (1) The Commissioner may in any case grant such extension of time for payment, or permit payment to be made by such instalments and within such time as he considers the circumstances warrant; and in such case the tax shall be due and payable accordingly.

(2) Any such extension shall be subject to any condition imposed by the Commissioner.

Penalty for
unpaid tax.

Com. s. 207.

189. (1) If any income tax remains unpaid after the time when it becomes due and payable, additional tax shall be due and payable at the rate of ten per centum per annum on the amount unpaid, computed from that time:

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

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

190. Any income tax when it becomes due and payable shall be a debt due to the King on behalf of the State, and payable to the Commissioner.

Tax a debt to the King.
Com. s. 208.

191. Any income 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.
Com. s. 209.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 169;
14 & 15
Geo. 5 c. 21,
s. 30.

192. (1) Where the Commissioner has reason to believe that any person establishing or carrying on business in the State intends to carry on that business for a limited period only, or where the Commissioner for any other reason thinks it proper to do so, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived by that person.

Temporary business.
Com. s. 213
Cf. U.K.
8 & 9 Geo. 5
c. 40, Sch. D,
Misc. Rules
2, 5.

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

Penalty: Not less than two pounds nor more than one hundred pounds.

193. If a taxpayer—

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

Substituted service.
Com. s. 214.

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 process or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in the State.

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

- (a) who is liquidator of any company which is being wound up; or
- (b) who is receiver for any debenture holders, and has taken possession of any assets of a company; or
- (c) who is agent for a non-resident of the State and has been required by his principal to wind up the business or realise the assets of his principal,

Liquidators, etc.
Com. s. 215.
Cf. U.K.
8 & 9 Geo. 5
c. 40, General
Rules to Schs.
A-E, r. 15.

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 after receipt of the notice notify to the trustee the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company or principal, as the case may be.

(3) The trustee—

(a) shall not without the leave of the Commissioner part with any of the assets of the company or principal until he has been so notified;

(b) shall set aside out of the assets available for the payment of the tax assets to the value of the amount so notified, or the whole of the assets so available, if they are of less than that value; and

(c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.

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

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

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

(6) Upon the winding-up of any company, the Commissioner may, if all other creditors of that company whose debts rank in priority to the costs, charges and expenses incurred by the liquidator agree to do likewise, permit all such costs, charges, and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator, including the remuneration of the liquidator, to be paid out of the assets of the company in priority to any tax payable by the company.

Inserted by
37, 1941,
s. 32.

195. The following provisions shall apply in any case where, whether intentionally or not, a taxpayer escapes full taxation in his lifetime by reason of not having duly made full complete and accurate returns :—

- (a) The Commissioner shall have the same powers and remedies against the trustee 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 trustee shall make such returns as the Commissioner requires for the purpose of an accurate assessment :
- (c) The trustee 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 trustee shall be a first charge on all the taxpayer's estate in his hands.

196. (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 him up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the trustee of that person's estate as he would have had against that person, if he were alive.

Provision for
payment of
tax by
trustees of
deceased
person.
Com. s. 217.
Of. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Gen.
Rules to Schs.
A-B, Rule 18.

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

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

197. (1) Where, in respect of the estate of any deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death, and tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner may make an assessment of the amount of tax payable in respect of that income.

Where no
administration.
Com. s. 220.
Of. U.K.
8 & 9 Geo. 5
c. 40, s. 6.

(2) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State.

(3) Any person claiming an interest in the estate of the taxpayer, may, within sixty days of the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the taxpayer.

(4) Subject to any amendment of the assessment by the Commissioner, or on appeal, the published notice of the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(5) The Commissioner may issue an order in the prescribed form authorising any member of the police force or any other person named therein, to levy the amount of tax assessed with costs, by distress and sale of any property of the deceased.

(6) Upon the issue of any such order the member or person so authorised shall have power to levy that amount accordingly in the prescribed manner.

(7) Notwithstanding anything contained in the last three preceding subsections, if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by a person, that person may, within sixty days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if that person were the taxpayer.

Collection of
tax from person
owing money
to taxpayer.
Com. s. 218.

Subsec. (1)
amended by
37, 1941,
s. 33 (a).

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

- (a) any person by whom any money is due or accruing or may become due to a taxpayer ; or
- (b) any person who holds or may subsequently hold money for or on account of a taxpayer ; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer ; or

(d) any person having authority from some other person to pay money to a taxpayer,

to pay to the Commissioner, either forthwith upon the money becoming due or being held, or at or within a time specified in the notice (not being a time before the money becomes due or is held)—

(i.) so much of the money 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, or the whole of the money when it is equal to or less than that amount ; or

(ii.) such amount as is specified in the notice out of each of any payments which the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act has been paid,

and may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

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

Penalty : Fifty pounds.

* * * * *

Subsec. (3)
repealed by
37, 1941,
s. 33 (b).

(4) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of such payment.

(5) Where a person to whom a notice has been forwarded under this section establishes to the satisfaction of the Commissioner that the taxpayer can in the courts of any country outside the State enforce payment against him, without any deduction, of the money mentioned in subsection (1) of this section, the Commissioner may release that person from the obligation to comply with the notice.

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

(7) In this section—

“ tax ” includes as well as additional tax, any fine, judgment debt and costs in respect of any tax :

PART VI.
DIVISION 1.

“person” includes company, partnership, Minister of the Crown for the Commonwealth or a State, Commonwealth or State officer, and any public authority (corporate or unincorporate) of the Commonwealth or a State.

Consolidation
of assessment.
Com. s. 219.

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

DIVISION 2.

DIVISION 2.—PAYMENT OF INCOME TAX BY INSTALMENTS.

Interpretation.
Cf. U.K.
8 & 9 Geo. 5
c. 40, ss. 181,
160.

200. In this Division, unless the context otherwise requires—

“employee” means any person who receives, or is entitled to receive, any salary or wages :

“employer” includes every person who pays, or is liable to pay, any salary or wages :

“salary or wages” means salary, wages, commission, fee, allowance, or other payment in the nature of salary or wages paid, whether at piece-work rates or otherwise, to any employee, as such, and includes—

(a) any allowance paid to a member of Parliament :

(b) salary or wages paid out of the General Revenue of the State :

(c) payments under any contract which is wholly or substantially for the labour of the person to whom the payments are made ; or

(d) payments by way of commission to an insurance or time-payment canvasser or collector ;
or

(e) payments by a company by way of remuneration to a director of the company ; or

(f) payments by way of superannuation pension or retiring allowance :

Amended by
37, 1941,
s. 34 (a).

Amended by
37, 1941,
s. 34 (b).

“ tax payable by an (or the) employee ” means any tax due and payable by the employee, or which in the Commissioner’s opinion will become payable by the employee under any assessment made or to be made on any return which he has lodged or has been required to lodge, or under any assessment made or to be made in default of any such return.

201. (1) Where an employee is entitled to receive salary or wages from an employer in respect of any week or part thereof amounting in all to thirty-seven shillings or more, the employer shall at the time of payment deduct from such salary or wages the following amounts :—

Duty of employer to make deductions from wages.

(a) If the employer has not received from the Commissioner a written notice under this section requiring him to deduct any other amount, the sum of one shilling for every pound paid to the employee, and one shilling for every fractional part of a pound so paid exceeding ten shillings :

(b) in any other case the amount notified to the employer by the Commissioner.

(2) Where salary or wages for any week or part of a week are paid in two or more separate sums, all sums so paid shall for the purpose of computing the amount of deduction under this section be treated as one sum, and the deduction may be made at the option of the employer either wholly from any one of those sums or in part from each of two or more of those sums.

(3) Where an employee receives, in addition to salary or wages, meals, sustenance, the use of premises or quarters, or any of them, from his employer as part consideration for his services, the employee shall, for the purpose only of computing the deduction under this section, be deemed to have received as salary or wages, in addition to any money actually paid, the sum fixed by regulation, for each week during which meals, sustenance, or the use of premises or quarters, is received.

(4) If any employer fails to make any deduction required by this section to be made, he shall be guilty of an offence and liable to a penalty not exceeding twenty pounds, and shall be liable to pay to the Commissioner any amounts omitted to be deducted.

The Commissioner may recover those amounts from the employer by action in any court of competent jurisdiction, or the court may in proceedings for any offence under this section order payment of those amounts.

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DIVISION 2.

If the Commissioner recovers any such amounts he shall retain them as payment of any income tax payable by the employee.

The employer may recover from the employee any amounts which he had paid to the Commissioner as omitted deductions under this subsection.

(5) If the Commissioner is of opinion that the deduction at the rate mentioned in subsection (1) from the wages or salary of any employee is insufficient to pay any tax payable by that employee, he may notify the employer in writing that a larger amount shall be deducted from the salary or wages of the employee.

Duty to make deductions before rates of tax declared.

202. Deductions from salary or wages shall be made under or pursuant to this Division notwithstanding that the rates of tax have not been declared for the financial year in which the deductions are to be made.

Duty of employer to issue stamps.

203. (1) At the time of paying to any employee any salary or wages from which a deduction under this Part is made, the employer shall deliver to the employee adhesive tax stamps denoting the amount deducted.

(2) Forthwith after receiving from his employer any stamps in accordance with this Division every employee shall securely affix them to a clear space on a page of the book which he is required to provide and keep under this Division, but shall not affix any stamp to one side of a page if any stamp has already been affixed to the other side of that page.

(3) Every employee who has received any stamps from his employer under this section shall forthwith after affixing them in the said book write in ink on every such stamp his name or initials and the date of payment.

(4) Any person guilty of any failure to observe any provision of this section shall be guilty of an offence, and liable to a penalty not exceeding twenty pounds.

Identification marks.

204. An employer with the authority of the Commissioner may deliver to his employees tax stamps marked in such manner as the Commissioner approves.

Duty of employee to keep stamp book.

205. (1) Every employee from whose salary or wages a deduction under this Division is required to be made shall provide and keep a book of convenient size and shape for the purpose of having the stamps issued to him by his

employer under this Part affixed therein, and if he fails to do so shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

(2) Any employee who when required to do so by the Commissioner, or any officer authorised in writing by the Commissioner, without reasonable excuse refuses or fails within a reasonable time after such requirement to produce such book with stamps affixed to the pages thereof as required by this Division, shall be guilty of an offence, and liable to a penalty not exceeding ten pounds.

206. Any person who—

- (a) fraudulently removes or causes to be removed from any book, any tax stamps affixed therein, or affixes a stamp so removed to any other book ; or
- (b) utters any tax stamp, which has to his knowledge been fraudulently removed from any book—

Removal of
tax stamps
from books.

shall be guilty of an offence and for every such offence be liable to a penalty of not more than one hundred pounds.

207. (1) Any employee from whose salary or wages deductions have been made under this Division may, subject to the regulations, at any time produce to the Commissioner the book containing the stamps issued to him under this Division, and the Commissioner shall thereupon cancel the said stamps.

Application of
moneys
deducted.

(2) The Commissioner may apply the amount represented by the face value of those stamps in payment or part payment of any tax payable by the employee, and that amount shall be deemed to have been paid by the employee in satisfaction or part satisfaction of that tax and not otherwise.

(3) If, however, there is no tax payable by the employee, or if the face value of the stamps produced by the employee exceeds the amount of such tax, the Commissioner shall, without any further or other authority than this Act, refund to the employee the face value of the stamps, or, as the case may be, the amount by which the face value of the stamps exceeds the amount of such tax.

(4) Where an employee satisfies the Taxation Relief Board established under Part VIII. of this Act, that any tax stamps issued to him by his employer have been destroyed, the Commissioner may apply the face value of those stamps, or make a refund in respect of those stamps in accordance with the provisions of this section as if the stamps had been produced to the Commissioner and cancelled by him.

208. (1) If arrangements satisfactory to the Commissioner are made between any employer and any of his employees whereby for the purpose of paying the tax due or to become due by those employees, those employees will suffer periodical deductions from their salary or wages, the Commissioner may in writing notify the employer that stamps in respect of the salary or wages of those employees need not be delivered or affixed under this Division during the period mentioned in the notice.

(2) Thereafter the employer shall make deductions in accordance with those arrangements from the salary or wages of those employees during the said period.

(3) The amount of any deductions made by an employer under this section shall be deemed to be money paid by the employee from whose salary or wages those deductions were made, to the Commissioner for the purpose of paying tax due or to become due by that employee, and the Commissioner shall, notwithstanding that the employer does not pay the money to him, give that employee credit for all amounts so deducted.

(4) The amount of any deductions so made or purporting to have been so made shall be a debt due to the Crown, and shall be paid to the Commissioner by the employer at such times as the Commissioner appoints.

(5) If any employer fails to pay any such amount to the Commissioner within seven days of the time appointed by the Commissioner he shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

(6) The Commissioner may cancel a notice under this section at any time, and thereafter the duties of the employer and the employee under this Division shall be the same as if a notice had not been given.

(7) If the amount so deducted from the salary or wages of any such employee during any year of tax exceeds the amount of tax payable by the employee the Commissioner shall without any further or other authority than this Division refund to such employee the excess amount, and if the Commissioner is satisfied that there is no tax payable by the employee the Commissioner shall, without further or other authority than this Division, refund to the employee the amount so deducted.

(8) If the amount so deducted from the salary or wages of any employee during any year of tax up to the fifteenth day of June of that year is insufficient to pay the tax payable by the employee, the balance of that tax shall be due and payable on that date.

209. (1) Except where arrangements are made under the last preceding section this Division shall apply to all employees of the State, and the permanent head of the department in which any such employee works shall be deemed to be his employer within the meaning of this Division.

(2) If any person receives salary or wages out of the General Revenue of the State, but is not employed in any department, the Treasurer shall be deemed to be the employer.

210. This Division shall not be binding on the Commonwealth nor any employee thereof unless the Governor-General of the Commonwealth consents to the Commonwealth's being bound. If he so consents this Division shall be binding on the Commonwealth to the extent to which and in the manner in which the Governor-General agrees to be bound, and on employees of the Commonwealth to the extent necessary to give effect to the agreement.

Application to
Commonwealth

211. (1) The Commissioner may issue to any employee a certificate that no deductions from his wages or salary need be made during any period specified in the certificate: Provided that, where it is subsequently ascertained that there is or will be tax payable by the employee, the Commissioner may, by notice to the employee, cancel the certificate.

Certificate of
payment.

(2) During the said period no employer to whom the said certificate is exhibited shall make any deductions under this Division from the wages or salary of that employee.

(3) If any person—

- (a) alters any certificate issued as aforesaid or exhibits to any employer any certificate so altered; or
- (b) without lawful excuse has in his possession any colourable imitation of a certificate issued as aforesaid; or
- (c) falsely pretends to be the person named in any certificate or causes any employer to refrain from making deductions from his salary or wages by the production of any document other than a certificate issued to himself and for the time being in force; or
- (d) presents any document under the hand of the Commissioner for the purpose of obtaining credit with respect to or a refund of the value of tax stamps which have been delivered in respect of the salary or wages of some person other than the person named in such document,

he shall be guilty of an offence, and liable to a penalty not exceeding fifty pounds.

Fraudulently
obtaining
refunds.

212. Any person who—

- (a) endeavours to obtain for his own advantage or benefit credit with respect to or a refund of the value of tax stamps, which have been delivered in respect of the salary or wages of some person other than himself ; or
- (b) presents any document under the hand of the Commissioner and pretends to be the person named therein for the purpose of obtaining credit with respect to or a refund of the value of tax stamps,

shall be guilty of an offence, and liable to a penalty of not less than two pounds, and not more than one hundred pounds, or to imprisonment for a term of not more than twelve months.

Payment of
tax where
deduction
insufficient.

213. If the deductions made under this Division from the wages or salary of any employee up to the last day in May in any financial year are insufficient to pay the tax payable by that employee the balance of the said tax if it has not previously become due and payable, shall be due and payable fourteen days thereafter and if not then paid shall bear interest as provided by this Act.

Payment of
other income
tax by
instalments.

214. (1) Any taxpayer not being an employee may at any time before the thirtieth day of November in any year, make arrangements with the Commissioner for the payment by instalments of tax due or becoming due by the taxpayer in respect of income of the preceding year of income.

(2) Notwithstanding any other provision of this Act, in any case where arrangements are made as aforesaid and the taxpayer duly pays the instalments thereunder, the tax payable by the taxpayer shall be paid in such instalments, and if any balance of the tax payable by the taxpayer is unpaid on the fifteenth day of June next after the making of the arrangements, that balance shall be payable on that date, and if not then paid shall bear additional tax as provided by this Act.

Purchase of
stamps by
taxpayers
other than
employees.

Inserted by
37, 1941,
s. 35.

214a. Any taxpayer, not being an employee, may at any time purchase tax stamps from any person authorised by the Commissioner to sell tax stamps ; and the provisions of this Division shall, in respect of any tax stamps so purchased, apply to that taxpayer as if he were an employee and the tax

stamps so purchased had been delivered to him in accordance with section 203 of this Act.

215. (1) Where an employee is employed by any unincorporated association of persons (other than a firm), the manager or other principal official of the association shall be deemed to be the employer within the meaning of this Division.

Liability where employer is an association or firm.

(2) Where an employee is employed by a firm, each partner shall be deemed to be the employer within the meaning of this Division, and any one of them may be proceeded against for any contravention of this Division in relation to the employee, but not more than one person shall be punished for the same contravention.

216. (1) The Commissioner shall prepare and place on sale sufficient stamps of suitable denominations for the purposes of this Division.

Issue of stamps.

(2) Every such stamp shall bear the words "Tax Stamp" clearly printed thereon.

(3) Sections 108, 109, and 110 of the Stamp Duties Act, 1923, shall apply in relation to all stamps issued under this section.

217. (1) No person (other than a person authorised by the Commissioner to sell tax stamps) shall sell, offer for sale, or otherwise dispose of any such stamps, except by production of them to the Commissioner as provided in this Act; but nothing in this subsection shall be deemed to prohibit the delivery in accordance with this Division of tax stamps by an employer to any of his employees.

Disposal of tax stamps by unauthorised persons.

(2) No person (except an employee in receiving stamps from his employer in accordance with this Division) shall purchase or obtain any tax stamps from any person other than a person authorised by the Commissioner to sell such stamps.

(3) If any person contravenes this section he shall be guilty of an offence, and liable to a fine not exceeding one hundred pounds.

218. (1) The Commissioner or any officer authorised by the Commissioner may require any person to deliver to him tax stamps which are in his possession, and are held by him on behalf of some other person and the Commissioner shall issue his receipt for the stamps which have been so delivered. If any person when so required does not deliver those stamps to the Commissioner or other officer he shall be guilty of an offence, and liable to a penalty not exceeding fifty pounds.

Power of Commissioner to require delivery of stamps held on behalf of another person.

(2) The Commissioner shall allow credit with respect to or (as the case requires) a refund of the value of such stamps upon application by the employee to whom such stamps were delivered by his employer.

(3) Whenever the Commissioner suspects that any tax stamps produced to him have been obtained in contravention of any provision of this Part he may retain those stamps for such period as he thinks fit, and shall not take them in satisfaction of any tax or make any refund in respect of them until he has satisfied himself as to the identity of the person (if any) to whom the stamps were lawfully delivered by an employer.

Regulations.

219. The Governor may make all such regulations as are necessary or convenient for carrying this Division into effect, and any regulations for securing the payment of tax due on any wages or salary by deductions made by the employer from such wages or salary or by instalments payable by the employee.

Joinder of charges under this Division.

220. (1) Charges against the same person for any number of offences against this Division may be joined in one complaint if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.

(2) Where more than one such charge is included in the same complaint, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence the court may, if it thinks fit, inflict one penalty in respect of all the offences of which he is found guilty, but that penalty shall not exceed the sum of the maximum penalties which could be inflicted if penalties were imposed for each offence separately.

Time for commencing prosecutions under this Division.

Inserted by 37, 1941, s. 36.

220a. A prosecution for any offence (whether committed before or after the enactment of this section) against any provision of this Division may be instituted at any time not later than two years after the time of the commission of the offence.

PART VII.

PART VII.

PENAL PROVISIONS AND PROSECUTIONS.

221. In this Part, "taxation prosecution" means a proceeding by the Crown for the recovery of a pecuniary penalty under this Act.

Taxation prosecution.
Com. 27, 1936, s. 222.
Cf. U.K. 43 & 44 Vict. c. 19; 8 & 9 Geo. 5 c. 40, s. 221 (1).

222. (1) Any person who fails to furnish duly 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.

Failure to furnish returns or information, etc.
Com. s. 223.
Cf. U.K. 8 & 9 Geo. 5 c. 40, s. 107.

Penalty: Not less than two pounds nor more than one hundred pounds.

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

223. Any person who refuses or neglects to attend duly and give evidence when required by the Commissioner or any officer duly authorised by him, or to answer truly and fully any questions put to him, 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.

Refusal to give evidence.
Com. s. 224.

Penalty: Not less than two pounds nor more than one hundred pounds.

224. Upon the conviction of any person for an offence against either of the last two preceding sections, the Court may order him within a time specified in the order to do the act which he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence.

Order to comply with requirement.
Com. s. 225.

Penalty: Not less than five pounds nor more than two hundred pounds.

225. (1) Any taxpayer who fails to furnish duly as and when required by this Act or the regulations, or by the Commissioner, any return or 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.

Additional tax in certain cases.
Com. s. 226.

(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 the prosecution is withdrawn.

False returns
or statements.

Com. s. 227.
Cf. U.K.
8 & 9 Geo. 5
c. 40, ss. 30,
132.

226. (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 by any officer duly authorised by the Commissioner, shall be guilty of an offence.

Penalty—Not less than two pounds, nor 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 which would have been avoided if the return or answer had been accepted as correct.

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

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

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

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

Failure to sign
or false
certificate.
Com. s. 228.

227. (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 or who fails to include in an agent's certificate any information required by the regulations to be so included shall be guilty of an offence.

Penalty—Not less than one pound nor 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.

228. 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, shall be deemed to be guilty of wilful and corrupt perjury, and shall upon conviction upon information in the Supreme Court be liable to imprisonment for a period not exceeding four years.

False
declarations.
Com. s. 229.
Cf. U.K.
8 & 9 Geo. 5,
c. 40, s. 227.

229. (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.

Understating
income.
Com. s. 230.

Penalty—Not less than twenty-five pounds, nor 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.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

230. (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.
Com. s. 231.
Cf. U.K.
8 & 9 Geo. 5,
c. 40, ss. 30,
132, 146.

Penalty—Not less than twenty-five pounds, nor 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 of which he has avoided or attempted to avoid assessment or payment.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

PART VII.

Proceedings
for offence
under
preceding
sections.

Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 221
(2).

231. Proceedings for an offence against either of the last two preceding sections may at the option of the prosecutor be taken either by way of complaint in a court of summary jurisdiction, or on information in the Supreme Court.

Obstructing
officers

Com. s. 232.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 225.

232. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations shall be guilty of an offence.

Penalty—Not less than one pound nor more than fifty pounds.

Summary
proceedings.

Cf. Com. s.
233 (2).

233. Proceedings in respect of offences or to recover penalties under this Act shall except where this Act otherwise provides be heard and determined summarily.

Protection to
witnesses.

Com. s. 242.

234. A witness on behalf of the prosecution in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Place where
offences
committed.

Com. s. 241.

235. Any of the following offences, namely :—

- (a) failure to duly furnish any return or information ;
- (b) making or delivering a return which is false in any particular, or making a false answer ; or
- (c) failure to comply with any requirement,

shall be deemed to have been committed either—

- (i.) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with ; or

- (ii.) at the usual or last-known place of business, or abode of the defendant,

and may be charged as having been committed at either of those places.

Allegation of
prosecutor
sufficient.

Com. s. 243.

236. (1) In any taxation prosecution every allegation of the prosecutor contained in the information, or complaint, shall be *prima facie* evidence of the matter alleged.

(2) This section shall apply to any matter so alleged although—

- (a) evidence in support or rebuttal of the matter alleged or of any other matter is given ; or
- (b) the matter alleged is a mixed question of law and fact, but in that case the allegation shall be *prima facie* evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter so alleged shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) This section shall not apply—

- (a) to an allegation of the intent of the defendant ; or
- (b) in proceedings for an offence instituted by information in the Supreme Court or an offence punishable by imprisonment.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

237. No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the court.

Minimum penalties.
Com. s. 246.
Cf. U.K.
8 & 9 Geo. 5
c. 40, s. 222.

238. The adjudgment or payment of a penalty under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

Penalties not to relieve from tax.
Com. s. 251.

PART VIII.

PART VIII.

MISCELLANEOUS.

239. (1) Every company carrying on business or having an office or place of business in the State or deriving in the State income from property shall at all times be represented in accordance with this section by a public officer 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 :—

Public officer of company.
Com. 27, 1936,
ss. 251, 252.
Cf. U.K.
8 & 9 Geo. 5
c. 40,
s. 106 (1)
proviso.

- (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint

a public officer within three months after the commencement of this Act or after the company commences to carry on business, or opens an office or place of business, in the State, or as the case may be first derives income in the State from property :

- (b) The company shall keep the office of the public officer constantly filled :
- (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and an address for service upon him has been given to the Commissioner :
- (d) If the company fails to appoint duly a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence :
Penalty—Two pounds for every day during which the failure continues :
- (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, and if at any time there is no public officer, then service upon any person acting or appearing to act in the business of the company shall be sufficient :
- (f) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act, and in case of default shall be liable to the same penalties :
- (g) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act, or from any penalty for failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer :
- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company :

(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 :

(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 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 :

(k) Unless the Commissioner otherwise permits, the public officer shall be a resident of the State.

(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.

240. With respect to every agent and with respect also to every trustee, the following provisions shall apply :—

Agents and
trustees.
Com. s. 254
Of. U.K.
8 & 9 Geo. 5
c. 40, s. 161.

(a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon :

(b) He shall in respect of that income make returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other :

(c) If he is a trustee of the estate of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make :

- (d) He is hereby 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 :
- (e) He is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained or should have retained under the last preceding paragraph, but he shall not be otherwise personally liable for the tax :
- (f) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner :
- (g) 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 :
- (h) 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.

Person in receipt or control of money for non-resident
Com. s. 255.

241. (1) With respect to every person having the receipt control or disposal of money belonging to a non-resident or the State who derives income from a source in the State of who is a shareholder, debenture holder, or depositor in a company deriving income from a source in the State, the following provisions shall, subject to this Act, apply :—

- (a) He shall when required by the Commissioner pay the tax due and payable by the non-resident :
- (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 :
- (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 which he has retained or should have retained under the last preceding paragraph, but he shall not be otherwise personally liable for the tax :

- (d) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.

(2) Every person who is liable under any contract to pay money to a non-resident of the State shall be deemed to be a person having the control of money belonging to that 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.

242. (1) Every person who is liable—

- (i.) under any contract entered into in the State prior to the commencement of this Act ; or
- (ii.) under any contract entered into either inside or outside the State after the commencement of this Act,

Person paying royalty to a taxpayer resident outside of Australia.
Com. s. 256.

to pay money as, or by way of, royalty to a non-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 that non-resident whether such royalty became due either before or after the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of income tax due, or which may become due, by the non-resident.

(2) The provisions of the last preceding section shall apply in respect of payments of royalty referred to in this section.

243. Where any income of any person out of Australia is paid into the account of that person with a banker, the Commissioner may by notice in writing to the banker appoint him to be that person's agent in respect of the money so paid so long as the banker is indebted in respect thereof, and thereupon the banker shall accordingly be that person's agent.

Payment of tax by banker.
Com. s. 257.

244. Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the amount paid from that other person as a debt in any court of competent jurisdiction, or may retain or deduct that amount out of any money in his hands belonging or payable to that other person.

Recovery of tax paid on behalf of another person.
Com. s. 258.

245. 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—

Contribution from joint taxpayers.
Com. s. 259.
Cf. U.K.
8 & 9 Geo. 5
c. 40, 1st
Sch., Sch. A.,
No. VIII., 1.

- (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.

246. (1) Every person 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 person who fails to keep the records required by this section shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Contracts to evade tax void.
Com. s. 260.
Cf. U.K.
8 & 9 Geo. 5,
c. 40, s. 132.

247. 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 ; or
- (b) relieving any person from liability to pay any income tax or make any return ; or
- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act ; or
- (d) preventing the operation of this Act in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to any validity which it may have in any other respect or for any other purpose.

Periodical payments in the nature of income.
Com. s. 62.

248. 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.

249. 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 any such purpose may make extracts from or copies of any such books, documents or papers.

Access to
books, &c.
Com. s. 263.

250. (1) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connexion with any department of the Government or by any public authority—

Department to
obtain
information
and evidence.
Com. s. 264.
Of. U.K.
8 & 9 Geo. 5
c. 40, ss. 104,
105 & 144.

(a) to furnish him with such information as he requires ;
and

(b) to attend and give evidence before him or before any officer authorised by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(2) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing and for that purpose he or the officer so authorised by him may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

251. (1) If any taxpayer included in his return of income for the period of twelve months ending on the thirtieth day of June, nineteen hundred and seventeen, any income already included in a previous return furnished by him pursuant to the Taxation Act, 1915, and again paid income tax on such income, or any part thereof, he or his legal personal representative shall be entitled, upon his permanently ceasing to be a taxpayer by death or otherwise, to claim as a deduction from the taxable amount of his income shown in the final return furnished by him or on his behalf pursuant to this Act the amount of taxable income so twice accounted for on which income tax was again paid, and if such last mentioned amount is greater than the taxable amount of income shown in such final return, then the Commissioner shall refund to such taxpayer or his legal personal representative such part of the income tax paid by the taxpayer pursuant to this section as in the opinion of the Commissioner is attributable to the amount of the deficiency.

Deductions and
refunds in
connexion
with income
tax on incomes
for 1916-1917.

1310, 1917,
s. 10 (part).
1337 1918,
s. 11.

(2) In any case where the income of a taxpayer derived from any particular source ceases without the taxpayer ceasing to be a taxpayer, and such income was included by the taxpayer in his return of income for the period of twelve months ending on the thirtieth day of June, nineteen hundred and seventeen, and was also included in a previous return furnished by him pursuant to the Taxation Act, 1915, the Commissioner shall allow the taxpayer to deduct the amount of such income from the taxable amount of his income as shown in the return furnished by the taxpayer pursuant to this Act next after such income ceases, and in any case where a deduction is allowed if the amount allowed to be deducted is greater than the amount of such last-mentioned income then a refund shall be made to the taxpayer by the Commissioner of such part of the income tax paid by the taxpayer pursuant to this section as in the opinion of the Commissioner is attributable to the amount of the deficiency. Such first-mentioned income shall not be taken into account in making the deduction provided for by subsection (1) hereof.

(3) Any taxpayer who considers himself aggrieved by any decision of the Commissioner under this section may object to and appeal against that decision in manner prescribed in Part V. as if the decision were an assessment.

(4) Any claim for a deduction or refund under this section may be made at any time after the taxpayer has permanently ceased to be a taxpayer or, as the case may be, after his income from a particular source has ceased, and for the purpose of granting a taxpayer any such deduction or refund any assessment may be reopened at any time.

Refund of
overpaid taxes.
Cf. U.K.
13 & 14
Geo. 5 c. 14,
s. 30.

252. (1) If the Commissioner is satisfied that an overpayment of any tax has been made, he shall, whether an application for refund is made or not, refund to the taxpayer the sum overpaid, or may set off the whole or any part of that sum against any other tax due by the taxpayer.

(2) This section, without any further appropriation or warrant, shall be sufficient authority for the Commissioner to make any such refund.

Release of
taxpayers
in cases of
hardship.
Cf. Com. s.
265.

253. (1) There shall be a board to be known as the Taxpayers' Relief Board consisting of the Commissioner, a law officer of the Crown, and the Under-Treasurer, or of such substitutes for all or any of them as the Treasurer appoints from time to time. Any such substitute appointed to the board shall hold office during the Treasurer's pleasure.

The Commissioner, if he is personally a member, shall be chairman of the board, and if he is not, the Treasurer shall appoint a member of the board to be chairman.

At all meetings of the board the decision of the majority shall prevail.

(2) In any case where it is shown to the satisfaction of the board that—

(a) a taxpayer has suffered such a loss or is in such circumstances; or

(b) owing to the death of a person, who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the board may release the taxpayer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner shall make such entries in the records of his office as are necessary for that purpose.

(3) Where the amount of the taxpayer's liability is less than twenty pounds, the Commissioner alone may exercise the power of release under this section.

254. (1) In this section "Registrar" means the Registrar of Companies under The Companies Act, 1934.

Registration of
tax agents.

(2) No person other than a barrister or a solicitor, or a person exempted under this section, shall demand, receive, or be entitled to recover or set-off, any fee for or in relation to the preparation of any income tax return for a taxpayer or for or in relation to the transaction of any business on behalf of a taxpayer in income tax matters unless he is registered by the Registrar as a tax agent: Provided that the Registrar may at his discretion exempt any person from this section upon being satisfied that the total income derived by that person as a tax agent during the period of twelve months preceding the date of his application did not exceed twenty pounds per annum, and may grant to that person a certificate of exemption in that behalf which shall have a currency of one year, but may be annually renewed.

s. 254. PEARSON v. REDPATH (1940) S.A.S.R. 116. Where the defendant prepared an income tax return contemporaneously with performing other work for a person and gave a receipt for the fee charged therefor which purported to describe the work performed but contained no reference to the preparation of the return, held that, in the circumstances of the case, the defendant, who was an unexempted person, was properly convicted of an offence against the section..

The amendments made to section 254 came into operation on 20th November, 1941. See section 38 (3) of the Income Tax Assessment Act Amendment Act, 1941.

PART VIII.

Substituted
by 37, 1941,
s. 37.

(3) No person other than a barrister or solicitor or a person registered by the Registrar as a tax agent shall—

(a) hold himself out as a tax agent or as being willing for reward to prepare any income tax return for a taxpayer ;

(b) carry on business as a tax agent.

Inserted by
37, 1941,
s. 37.

(3a) Any person who contravenes subsection (2) or subsection (3) of this section shall be guilty of an offence and liable to a fine not exceeding one hundred pounds.

Inserted by
37, 1941,
s. 37.

(3b) Proceedings for an offence of demanding, receiving or setting-off a fee contrary to this section may be instituted at any time not later than two years after the time of the commission of the offence.

(4) Registration as a tax agent may be obtained on application to the Registrar.

(5) Every applicant for registration as a tax agent shall pay to the Registrar, in aid of the general revenue of the State, a fee of one guinea, and no application shall be considered until the fee is paid.

(6) If the applicant satisfies the Registrar that he is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters, the Registrar shall register him as a tax agent.

(7) Where a partnership carries on the business of tax agents it shall be sufficient if one partner is registered on behalf of the partnership. Where a company carries on the business of tax agents it shall be sufficient if a person appointed in writing by the company is so registered on behalf of the company: Provided that no partnership or company shall be entitled to carry on such business unless all work done by the partnership or company in connexion with that business is done under the supervision or control of a person registered under this section.

(8) Registration as a tax agent shall remain in force until cancelled under this Act.

(9) The Registrar—

(a) may cancel the registration of any tax agent upon proof that the tax agent or his representative has prepared a return which is false in any material particular, or has neglected his principal's business, or has been guilty of misconduct as a tax agent, or if in the opinion of the Registrar he is not a fit or proper person to be or remain registered :

(b) shall cancel the registration of a tax agent upon his death, or his permanently ceasing to carry on business as a tax agent.

(10) If through the neglect of a barrister or solicitor or a registered tax agent a penalty or an additional tax is charged against a taxpayer, the barrister or solicitor or the registered tax agent shall be liable to pay to the taxpayer the amount of that penalty or additional tax, and that amount may be recovered by his principal from him in an action, but this provision shall not be construed so as to exonerate the taxpayer from his liability.

(11) For the purpose of this section the Registrar may by notice in writing require any person—

(a) to furnish him with such information as he requires

(b) to attend and give evidence before the Registrar :

(c) to produce any books, documents, and other papers whatsoever in the custody or under the control of that person in relation to any matter before the Registrar.

The Registrar may take, on oath or affirmation, the evidence of any person who is present before him and may administer an oath or affirmation to any such person binding him to answer truly all questions put to him touching the matter before the Registrar.

(12) Any person who—

(a) in any particular fails to comply with any such notice; or

(b) knowingly furnishes the Registrar with any false information; or

(c) refuses to be sworn or appear when so required by the Registrar; or

(d) refuses to answer any question put to him by the Registrar,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(13) Any person who on oath or affirmation wilfully gives any false evidence before the Registrar shall be guilty of perjury and may be prosecuted and punished for that offence in the Supreme Court.

255. 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 recoverable summarily and not exceeding fifty pounds for any breach of the regulations.

SCHEDULE.

ACTS REPEALED.

Number and Year of Act.	Title of Act.	Extent of Repeal.
No. 1787 of 1927	Taxation Act, 1927	} So far as they apply to income tax.
No. 1830 of 1927	Taxation Amendment Act, 1927	
No. 1875 of 1928	Taxation Act, 1928	
No. 1943 of 1929	Taxation Act, 1929	
No. 1960 of 1930	Taxation Act, 1930	
No. 2007 of 1931	Taxation Act, 1931	
No. 2072 of 1932	Taxation Act, 1932	
No. 2127 of 1933	Taxation Act, 1933	
No. 2176 of 1934	Taxation Act, 1934	
No. 2233 of 1935	Taxation Act, 1935	