

INCOME TAX (MANAGEMENT) ACT.

Act No. 35, 1928.

George V,
No. 35, 1928.

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

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

PART I.

PRELIMINARY.

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

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

3.

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

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

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

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

Ibid. s. 3 (3).

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

Definitions.

C'wth Act, 1922-1927, s. 4.

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

N.S.W. Act, 1912, No. 11, s. 4.

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

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

“Assessment” means the ascertainment of the amount of any taxable income, and also means the ascertainment of the amount of tax imposed thereon.

“Assistant Commissioner” means the Assistant Commissioner of Taxation.

“Business”

- “Business” includes any profession, trade, employment, vocation or calling.
- “Commissioner” means the Commissioner of Taxation.
- “Company” includes all bodies or associations, corporate or unincorporate, but does not include partnerships.
- “Co-operative Society” means a co-operative society registered under the Co-operation Acts, 1923–1928.
- “Dividend” includes profit and bonus and bonus share, whether declared or dealt with by the company issuing the bonus share as capital or not, except to the extent to which a bonus share represents a writing-up or revaluation of assets without disposal thereof, or the capitalization of profits derived from the sale of capital assets, if such profits were not liable to income tax under this or the previous Act.
- “Foreign Company” means a company, not being a New South Wales company.
- “Income” means income derived or deemed to be derived directly or indirectly from any source in the State or in respect of which tax is otherwise expressly made payable under this Act and includes interest upon money secured by the mortgage of any property in the State.
- “Income derived from personal exertion” means income consisting of earnings, salaries, wages, commission, fees, bonuses, pensions, superannuation allowances, retiring allowances, and gratuities, allowances received in the capacity of employee, and the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, and any income from any property where the income forms part of the emoluments of any office or employment of profit held by the individual, but does not include interest, unless the taxpayer’s principal business consists of the lending of money or unless the interest is received in respect of a trade debt, and does not include rents and dividends.

“Income

- “Income derived from property” means all income not being income derived from personal exertion.
- “Income tax” means the income tax imposed as such by any Act as assessed under this Act.
- “Income year” means the year beginning on the first day of July and ending on the thirtieth day of June (or such other period as may be accepted by the Commissioner) during which the income in question was derived.
- “Lease” includes sublease.
- “Liquidator” includes the person who whether or not appointed as liquidator is the person required by law to carry out the winding-up of a company.
- “Mortgage” includes any charge, lien, or encumbrance to secure the repayment of money.
- “Mutual life assurance company” means a life assurance company none of the divisible profits of which are payable to persons other than policy-holders.
- “Net income” means the assessable income less all deductions allowable under this Act except the statutory deductions allowed under subsection three of section nineteen.
- “New South Wales Company” means a company of which the head office or the principal place of business is in New South Wales; or a company incorporated under the Companies Act, 1899, or any other Act of the Parliament of New South Wales, wherever its head office or principal place of business may be.
- “Non-resident person” means a person whose usual or principal place of abode is not in the State.
- “Partnership” means an association of persons carrying on business as partners or in receipt of income jointly, but does not include a company.
- “Person” includes a company.
- “Prescribed” means prescribed by this Act or by any rules or regulations made or in force under this Act, or the Income Tax (Management) Act, 1912, as amended by subsequent Acts.

“Previous

- “ Previous Act ” means the Income Tax (Management) Act, 1912, as amended by subsequent Acts.
- “ Resident person ” means a person whose usual or principal place of abode is in the State, and includes a public officer of the State who is absent in the performance of his duty, or the wife of such officer absent from the State with him.
- “ Tax ” means income tax.
- “ Taxable income ” means the amount of assessable income remaining after all the deductions allowed by this Act have been made.
- “ Taxpayer ” means every person or company deriving income whether on his own behalf or on behalf of another.
- “ the Court ” means the Court of Review.
- “ the State ” means the State of New South Wales.
- “ this Act ” or “ the previous Act ” include the regulations in force thereunder.
- “ Trustee ” in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a court, or by operation of law, includes—
- (a) an executor or administrator, guardian, committee, receiver, or liquidator; and
 - (b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control, or management of the income of a person under any legal or other disability.

PART II.

ADMINISTRATION.

5. (1) For the due administration of this Act and the previous Act, the Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a Commissioner of Taxation, who may sue and be sued by that name. Commissioner of Taxation. N.S.W. Act, 1912, No. 11, s. 5.

(2) All references to the Commissioner of Taxation in the previous Act, and the rules and regulations in force thereunder, shall be read and understood as referring to the Commissioner of Taxation appointed under this Act.

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

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

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

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

(6)

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

Authorities of
Assistant
Commissioner
and Acting
Commis-
sioner.

C'wth Act,
1922-1927,
s. 7 (2).

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

Secrecy.

N.S.W. Act,
1912, No. 11,
s. 6.

C'wth Act,
1922-1927,
s. 12.

6. (1) Every Commissioner, Assistant Commissioner, and Acting Commissioner and other person appointed to act in the administration of this Act shall, before acting in the execution of his office, take and subscribe before a justice of the peace such oath of fidelity and secrecy as may be prescribed.

(2) Every such person who without lawful excuse makes a record of or reveals any matter or thing which has come to his knowledge in his official capacity shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

(3) If any such person acts in the execution of his office before he has taken the prescribed oath, he shall be liable to a penalty of not less than ten and not more than one hundred pounds.

(4)

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

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

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

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

Income Tax
(Cwth)
Collection
Act, 1923,
not affected.

PART III.

LIABILITY TO TAXATION.

Incidence
of tax.
N.S.W. Act,
1912, No. 11,
s. 9.
C'wth Act,
1922-1927,
s. 13.

8. (1) Subject to the provisions of this Act, income tax at such rates as may be fixed by any Act shall be paid to the Commissioner in respect of the taxable income derived by any person during every income year to which this Act applies.

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

Adjustment
by reason of
alteration of
year of in-
come by Act
No. 27, 1918,
s. 5.

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

Money
credited re-
invested, &c.,
to be income.
N.S.W. Act,
1912, No. 11,
s. 4.
C'wth Act,
1922-1927,
s. 19.

(4) Income shall be deemed to have been derived by any person within the meaning of this Act, although it has not actually been paid over to him, but has been credited in account or reinvested or accumulated or capitalised or carried to any reserve, sinking fund, or insurance fund howsoever designated, or otherwise dealt with on his behalf or as he directs.

Continuance
of liability to
assessment of
whole of in-
come of past
transactions.

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

Fixed
deposits in
Federal
Capital
Territory.

(6) Income shall for the purpose of this Act include interest on fixed deposits effected in the Territory of the Seat of Government of the Commonwealth by persons

persons resident in the State or by New South Wales companies or by any other company carrying on business in the State and effecting such deposit in connection with or as an operation of its business so carried on.

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

Income of individuals from agricultural, dairy, ing, or pastoral pursuits.

N.S.W. Act, 1912, No. 11, s. 9A.

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

Provided that this paragraph shall not apply to the assessment of a taxpayer who has been assessed

assessed for any previous year at an average rate determined under this section or section 9A of the previous Act.

- (d) Any year in which the taxpayer was not carrying on any such pursuit shall not be counted as a first average year, but any year in which the deductions allowable in his assessment to a taxpayer carrying on any such pursuit left no taxable income derived therefrom shall be capable of being an average year, and if an average year, shall be taken into account in ascertaining the average taxable income derived from any such pursuit. In such a case the excess of allowable deductions over income in any average year shall be taken into account in calculating the average, but only to the extent to which such excess of deductions is greater than the net income, if any, of the taxpayer derived in that year otherwise than from any such pursuit.
- (e) Where there are not at least two average years for the purpose of calculating the rate under the foregoing provisions of this section, the rate of tax to be applied in any year to the taxable income of a taxpayer shall be the rate applicable in that year under the Act by which the rates of income tax are declared to a taxable income of that amount.

Rate of tax on
other income
of such indi-
viduals.

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

Exclusion.
N.S.W. Act,
1912, No. 11,
s. 9.

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

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

- (a) the salary of the Governor of New South Wales;
- (b) the official salaries of foreign consuls and the trade commissioners of any part of the British Dominions ;
- (c) the revenues of municipal corporations or of local or public authorities ;
- (d) the incomes of mutual life assurance companies not being income from investments or income from rent, or income assessable under section twelve ;
- (e) the profits of the Government Savings Bank ;
- (f) the incomes of societies registered under the Friendly Societies Act, 1912 ;
- (g) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or the State relating to the settlement of industrial disputes ;
- (h) the income of any ecclesiastical, charitable, or educational institution of a public character, whether supported wholly or partly by grants from the Consolidated Revenue or not ;
- (i) the income of a fund established by any will or instrument of trust for public charitable purposes if the Commissioner is satisfied that the particular fund is being applied to the purpose for which it was established ;
- (j) the incomes of Starr-Bowkett building societies ;
- (k) the income of any society or association not carried on for the purpose of profit or gain to the individual members thereof, established for the purpose of promoting the development of the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing, or industrial resources of Australia ;
- (l) the income of any society or association established for musical purposes, or for the encouragement of music, art, science, or literature, and not carried on for the purpose of profit or gain to the individual members thereof ;

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Exemptions.

N.S.W. Act,
1912, No. 11,
s. 10.

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

(m)

- (m) the income of any other company, society, or association which does not derive profit or gain out of transactions with persons other than their members, and which does not carry on business for purposes of profit or gain except as regards any income from investments or income from rent or income assessable under section twelve;
 - (n) pensions paid by the Government of the Commonwealth under the Australian Soldiers' Repatriation Act, 1920-1921;
 - (o) the remuneration paid by the Government of the Commonwealth or of a State to a person residing outside Australia for expert advice to that Government or as a member of a Royal Commission;
 - (p) the incomes of persons derived in their capacity of—
 - (i) representatives of an association or club established in any country for the control of any outdoor athletic sport or game in that country visiting Australia for the purpose of engaging in contests in Australia;
 - (ii) representatives of any Government visiting Australia in an official capacity, and members of the entourage of any such representative;
 - (iii) representatives of any society or association established for educational, scientific, religious or philanthropic purposes visiting Australia for the purpose of attending international or empire conferences or for the purpose of carrying on investigation or research for such society or association;
 - (iv) representatives of the press outside Australia visiting Australia for the purpose of reporting the proceedings relating to any of the matters referred to in (i), (ii), and (iii); or
- (v)

- (v) visitors to Australia whose visit, in the opinion of the Colonial Treasurer, is primarily or principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia;
- (q) the income derived by a resident of any territory or island in the Pacific Ocean which is governed, controlled, or held under mandate by the Government of any part of the British Empire or by a condominium in which any part of the British Empire is concerned, from the sale in the State by or on behalf of that person of produce of the territory or island of which he is a resident, provided that the purchase of the produce in the State is made for the purpose of export for sale outside Australia and that the Commissioner is satisfied that the produce has been exported without unnecessary delay.
- (r) interest from bonds, debentures, stock and other securities issued by the Government of New South Wales, the Commissioners of the Government Savings Bank of New South Wales or the Government of the Commonwealth of Australia;

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

- (2) The exemptions in this section shall not—
- (i) extend to the salaries, wages, allowances, or pensions of persons employed by any such corporation, company, authority, union, society, institution, or person specified therein, although the same may be paid wholly or in part out of the income, revenues, or funds so exempt; or
- (ii) exempt any such corporation, company, authority, union, society, institution, or person, from

Declarations
as to
exemptions.
Cwth Act,
1922-1927,
s. 15.

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from furnishing any returns or information which may be required by the Commissioner; or

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

What assessable income includes.

11. The assessable income of any person shall (without in any way limiting the meaning of the words) include—

C'wth Act, 1922-1927, s. 16.

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

Provided that for the purpose of computing such profits the value of all live-stock (not being live stock used as beasts of burden or as working beasts) and trading stock (not being live stock) not disposed of at the beginning or end of the income year shall be taken into account.

For the purposes of this paragraph "value" means—

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

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

(ii)

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

Notwithstanding anything contained in this paragraph an owner of live-stock who has made or who may after the passing of this Act make an election under the provisions of paragraph (aa) of section sixteen of the Commonwealth Income Tax Assessment Act, 1922-1928, to omit natural increase from his returns under that Act until disposed of (if the election is operative in any year to which this Act applies) may elect to omit from the account required by this paragraph the value of all natural increase of live-stock owned by him, and born during the income year, and shall not be assessed for income tax in respect of that natural increase except to the extent to which he has disposed of it. The owner of the live-stock shall give notice of his election in writing, in the prescribed form signed by him, and deliver it at the office of the Commissioner

on

on or before the prescribed date. The election specified in any notice given in pursuance of this paragraph shall be irrevocable and shall apply to the assessment of income derived in the income year in respect of which the election is made and to assessments for all subsequent income years. The proceeds from the sale of any live-stock acquired by any person by the natural increase of his stock, which natural increase the person has elected to omit from the account required by this paragraph shall be returned as income in the year in which that natural increase is sold. If any such natural increase is disposed of otherwise than by way of sale, an amount equal to the market value of natural increase so disposed of shall be returned as income in the income year in which the disposal is effected.

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

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

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

First proviso.

Provided that—

- (i) where a company derives income from a source in the State, and from a source outside the State, a taxpayer shall be taxable on so much of the dividend as bears to the whole dividend the same proportion that the profits derived by the company from a source in the State bear to the total profits of the company; and
- (ii)

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- (ii) if a company, which has derived income from the bonds, debentures, stock, or other securities mentioned in paragraph (r) of subsection one of section ten, pays in any year any portion of that income in dividends to its shareholders, the exemption under that paragraph shall (so long as it continues to apply) extend to the proportion of the dividend for that year which has been paid out of such income :

Provided further that notwithstanding any other provision of this Act where a dividend is paid wholly and exclusively out of profits derived from the sale of capital assets, the member or shareholder shall not, if the company was not liable to income tax in respect of such profits under this or a previous Act, be liable to tax on that dividend : Second proviso.

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

- (i) the sum which bears the same proportion to the tax payable by him on his income derived from property as the amount of his income from dividends which is included in his taxable income derived from property bears to his total taxable income derived from property ; or C'wth Act, 1922-1927, s. 20 (4) (b).
- (ii) the proportion of the tax paid by the company (under this Act or the previous Act or any Act repealed by the previous Act) attributable to the dividends included in the taxable income of the taxpayer.

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

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Fourth
proviso.

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

- (ia) the amount of the tax that would be assessed on the income of the taxpayer, including the dividends, as if they were not dividends, but were other income from property exceeds—
 - (iia) the amount obtained by adding to the proportion of the tax paid by the company mentioned in subparagraph (ii) of the second proviso of this paragraph (b) the tax that would be assessed on the taxpayer's income, excluding the dividends.
- (c) beneficial interests in income derived under any will, settlement, deed of gift, or instrument of trust;
- (d) money derived by way of royalty or bonus, and premiums, fines or foregifts or consideration in the nature of premiums, fines or foregifts demanded and given in connection with leasehold estates (including the goodwill of any business carried on on the land);
- (e) money received as an annuity;
- (f) the amount or value of any consideration demanded and given in connection with a right to remove standing timber from land less the amount, if any, by which the value of the land is or will be diminished by the removal of the timber;
- (g) amounts expended by a lessee under an obligation in an agreement in writing (not exceeding the sum, if any, specified in the agreement) with the landlord to the extent to which the landlord's interest in the property is increased in value, and for which the tenant has no right to reimbursement by the landlord:

Provided

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

- (h) the annual rental value to him of premises or quarters provided rent free by his employer ;
- (i) five per centum of the capital amount of a retiring allowance or gratuity (not being an amount paid to a director of a company) paid in a lump sum ;
- (j) all allowances, gratuities (except retiring allowances or gratuities paid in lump sums otherwise than to a director of a company), bonuses and premiums, whether in money or goods or sustenance or land allowed, given or granted to a person in respect of or for or in relation directly or indirectly, to any employment or service of such person to the amount of the value of such allowances, gratuities, bonuses and premiums respectively ;
- (k) the proceeds derived from the sale (whether compulsory or otherwise and whether for the purpose of putting an end to a business or otherwise) of—
 - (a) the whole or part of the trading stock of any business ;
 - (b) any standing crop ; and
 - (c) all live-stock forming part of the assets of any business (not being live-stock which in the opinion of the Commissioner were ordinarily used by the person as beasts of burden or as working beasts) :

Provided that—

First proviso.

- (i) this paragraph shall not apply to the proceeds derived from the sale of any live-stock which, in the opinion of the Commissioner, were ordinarily used by the person for breeding purposes and were sold by that person for the purpose of putting an end to the whole of a business

business carried on by him, or in consequence of the acquisition or resumption of land used by him for a business carried on by him, under the provisions of any law of the Commonwealth or the State which contains a provision for the compulsory acquisition or resumption of land, except that, when such live-stock includes sheep in the wool, there shall be included in the assessable income of that person the amount which is determined as the price or value of the wool as distinct from the sheep;

- (ii) notwithstanding anything contained in this section or in section nineteen of this Act, no deduction shall be allowed to any person on account of live-stock sold by him in respect of which, by virtue of paragraph (i) of this proviso, no amount (other than in respect of wool) has been included in his assessable income; and
- (iii) for the purpose of paragraph (k) of this section, "sale" includes any disposition otherwise than by way of sale, and in any such case the sale price shall be deemed to be the market value of the trading stock, standing crop or live-stock ruling on the day on which the disposition is made, and the person acquiring any such property shall be deemed to have purchased it at the amount so fixed as the sale price :

Cwth Act
1922-1925,
s. 17 (2).
Second
proviso.

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

shall be deemed to be the price paid by the purchaser for the trading stock, standing crop, live-stock, or wool as the case may be; No. 35, 1928.

- (l) interest credited or paid to or otherwise derived by any depositor or debenture holder of a company, and amounts derived by any member or shareholder in a company from the sale of rights to take up shares or debentures in a company;
- (m) money or consideration derived from the, granting of an option of purchase of any property;
- (n) the amount of the consideration for the transfer, assignment, cancellation, or surrender of a lease of land (including the goodwill of any business carried on on the land) less the deductions provided for in paragraphs (a), (b) and (c) of subsection three of section twelve:

Provided that—

- (i) where the lease transferred, assigned, cancelled, or surrendered was acquired by the taxpayer prior to the first day of July, one thousand nine hundred and twenty-three; or
- (ii) where the lease was transferred, assigned, cancelled, or surrendered after the thirtieth day of June, one thousand nine hundred and twenty-eight, and was acquired by the taxpayer during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-four; or
- (iii) where in any other case the lease transferred, assigned, cancelled, or surrendered was acquired by the taxpayer before the sixth year prior to the income year in which the lease is transferred, assigned, cancelled, or surrendered,

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

Provided

No. 35, 1923.

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

Net profits on sale of certain property are income (see N.S.W. Act 1912 No. 11, s. 4).

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

"Real property."

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

Provided that this subsection shall not apply to—

- (i) The sale by any person of real property which was bought by him prior to the first day of July, one thousand nine hundred and twenty-three ; or
- (ii) the sale by any person after the thirtieth day of June, one thousand nine hundred and twenty-eight, of real property which was bought by him during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-four ; or
- (iii) the sale by any person of premises owned and solely used by him as his principal place of abode during any period of or exceeding four years.

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

Provided

Provided that this subsection shall not apply to—

No. 35, 1928.

- (i) The sale by any person of personal property other than shares in any company which was bought by him prior to the first day of July, one thousand nine hundred and twenty-seven; or
- (ii) the sale by any person after the thirtieth day of June, one thousand nine hundred and twenty-eight, of personal property other than shares in any company which was bought by him during the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight; or
- (iii) the sale during the income year by any person of personal property (other than shares or securities) of an aggregate value not exceeding two hundred pounds.

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

Assessment of profit.

- (a) the expenses of sale;
- (b) the cost of the property to the vendor (less all amounts in respect of depreciation which were allowable as deductions from his assessable income under this and the previous Act); and
- (c) any other expenses, including interest on borrowed money, proved to the satisfaction of the Commissioner to have been incurred in connection with the acquisition, improving and holding of any such property, and which were not allowable as a deduction from the income of the income year or any previous income year:

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

First proviso.

Provided

No. 35, 1928.

Second
proviso.

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

Sales on
terms.

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

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

Division of
profit to de-
termine rate
of tax.

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

Gifts by
purchaser.

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

assessable income of the first-mentioned person under the provisions of this section had such person continued to hold the property and made such sale.

No. 35, 1928.

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

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

Sale of shares of private company.

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

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

"Sale."
"Bought."

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

Consideration to be valued.

No. 35, 1928.

Interest on
loans raised
in N.S.W. by
countries
outside the
Common-
wealth.

C'wth Taxa-
tion of
Loans Act,
1923, s. 5.

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

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

- (a) the interest is received directly or indirectly by a resident person or by a New South Wales company or by any other company carrying on business in the State in connection with or as an operation of its business so carried on; or
- (b) such interest is otherwise liable to income tax under this Act.

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

Interest on
State loans.
Ibid. s. 3.

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

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

What
"loans"
includes.
Ibid. sec.

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

Company
taxable on
interest paid
by it.
C'wth Act,
1922-1927,
s. 20.

17. In addition to any other income tax payable by it, a company shall also pay income tax—

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

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

- (b) on interest paid or credited in respect of debentures payable to bearer issued in the State or to secure money used in the State the names and addresses of the holders of which are not supplied to the Commissioner by the company as if the total amount so paid or credited were the taxable income of an individual:

18. For the purposes of the preceding section—

- (a) a company shall be entitled to deduct and retain for the use of the company from the amount payable to any of the persons referred to in paragraph (a) of such section such amount as is necessary to pay the tax which becomes due in respect of that amount;
- (b) a company shall be entitled to deduct and retain for the use of the company from the interest payable to any person who is a holder of debentures payable to bearer an amount which bears the same proportion to the amount paid by the company under paragraph (b) of such section as the interest payable to that person bears to the total interest payable in respect of those debentures;
- (c) where a company pays tax under such section on any interest, and any person includes that interest in his return, and is liable to pay income tax thereon, the amount of tax paid by the company in respect of that interest shall be deducted from the total tax payable by the person;
- (d) where the Commissioner is satisfied that the holder of debentures payable to bearer is a person who is not liable to pay income tax, the Commissioner shall refund to the person entitled thereto the amount of tax paid by the company in respect of the debentures of that person.

No. 35, 1928.

Deductions
and refund
for the
purposes of
s. 17.
Cwth Act,
1922-1927,
s. 20.

No. 35, 1928.

General
deductions.

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

C'wth Act,
1922-1927,
s. 23.

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

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

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

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

(c) Sums expended by the taxpayer during the income year for repairs to or on that part of any property occupied for the purpose of producing the assessable income, or from which the assessable income is derived, and for the repair of machinery, implements, and plant used by the taxpayer for the purpose of producing the assessable income;

(d) The sum actually expended by the taxpayer during the income year for food and for rent of quarters provided for an employee who is employed exclusively in a business of the taxpayer yielding assessable income :

Provided

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

- (e) Retiring allowances and pensions paid to employees and former employees in respect of past services in the taxpayer's business and so much of the assessable income as is set aside or paid by an employer of labour as or to a fund to provide individual personal benefits, pensions, or retiring allowances for employees :

Provided that—

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

(f)

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

Provided

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

No. 35, 1928.

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

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

- (i) where a deduction has been allowed under paragraph (c) of this subsection, the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph ;
- (ii) where a person from whose assessable income a deduction has been made under this paragraph, sells any property in respect of the depreciation of which the deduction was made, there shall be deducted from his assessable income of the income year in which the sale was effected the amount (if any) by which the sale price is less than the depreciated value of the property as at the time of sale, as determined under this paragraph (1). If the sale price exceeds that depreciated value the amount of the excess shall be returned as income in the income year in which the sale was effected.

“ Depreciated

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

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

- (iii) where any property in respect of which a deduction is allowable under this paragraph has been acquired (either before or after the commencement of this Act) from one person by another person, the person who acquired that property shall not be entitled to any greater deduction under this paragraph than that which would have been allowed to the person from whom it was acquired if he had retained it, unless the surplus over the depreciated value has been returned as income by the vendor in pursuance of condition (ii) of this paragraph, in which case the purchaser shall be entitled to a deduction for depreciation based on the cost price of the property to him :

Provided

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

- (iv) no deduction under this paragraph (1) shall be allowable in respect of any property where the amount already allowed for depreciation under this Act or the previous Act or any Act repealed by the previous Act equals the value on which depreciation is allowable under this paragraph.

(m) A proportionate part of—

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

over

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

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

Provided that—

- (i) the taxpayer proves to the satisfaction of the Commissioner that he has paid such an amount ;
- (ii) the deduction under sub-paragraph (1) of this paragraph shall not be made with respect to any lease from the Commonwealth or the State or any authority of the State, being a perpetual lease without re-valuation or a lease with a right of purchase ;
- (iii) where in the case of an assignment or transfer (either before or after the commencement of this Act) of a lease, or of a right to remove standing timber from land, the amount received has not been returned as income by the assignor or transferrer of the lease or right and the person who acquired the lease or right was a company in which the assignor or transferrer was at or about the date of the assignment or transfer substantially interested as a shareholder, or was a company the shareholding interests in which were at or about the date of such assignment or transfer in substantially the same hands as those of the company from

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

No. 35, 1923.

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

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

- (o) The expenditure actually incurred during the income year by any taxpayer carrying on mining operations (other than coal mining or quarrying) in the State for labour and materials employed in sinking shafts in a producing mine and in the course of extending the area of operations.

(p)

- (p) The sum of one hundred pounds in respect of the annual allowance of members of the Legislative Assembly of New South Wales or of New South Wales' members of the Parliament of the Commonwealth.
- (q) Gifts of ten shillings and upwards made out of the assessable income derived during the year in which the gifts are made to public charitable institutions in the State, to the Sydney University, or to colleges affiliated therewith, if the gifts are verified to the satisfaction of the Commissioner.

For the purpose of this subparagraph—

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

“Gift” means a gift in the form of money or a gift in kind when the Commissioner is satisfied that the donor has used part of his assessable income of the year for the acquisition of the gift.

“Public charitable institution” means a public hospital, a public benevolent institution, the trustees of the Australian Museum, the trustees of the Public Library of New South Wales, the trustees of the National Art Gallery, the National Library referred to in the National Library Act, 1924, a public educational institution not carried on for the profit of individuals, an institution for the benefit of returned soldiers, and includes a public fund established and maintained for the purpose of providing money for such institutions, or for the relief of persons in necessitous circumstances.

(r)

No. 35, 1928.

- (r) Such amount as the Commissioner considers just and reasonable (not exceeding fifty pounds for each child) as representing the cost to a taxpayer for food, quarters and other expenses in respect of children who are over the age of sixteen years and under twenty-one years of age at the beginning of the income year and who are wholly or partly employed by him in his business, and to whom no payments are made for wages.
- (s) Sums expended in boring, sinking wells or excavating tanks for water by a taxpayer carrying on a pastoral or agricultural business, if such operations are either unsuccessful or result in other than drinkable water being obtained but not including the cost of plant or of material which may be used elsewhere.
- (2) In the case of a resident person—
- (a) every premium or sum paid by the taxpayer during the income year for the insurance of the taxpayer's own life or that of the wife, husband or children of the taxpayer or for a deferred annuity or other like provision for the husband, wife or children of such taxpayer, or in respect of any fidelity guarantee or bond which such taxpayer is required to provide for the exercise of his business: Deductions allowed to residents. N.S.W. Act, 1912, No. 11, s. 16 (1), (b), (c), (d). Cwth Act, 1922-1927, s. 23 (1), (c), (g), (k), (o).
- Provided that in no case shall any deduction be allowed under this paragraph beyond the sum of fifty pounds in the aggregate, or for any premium or sum paid in respect of any insurance, annuity, or other provision effected outside Australia.
- (b) payments not exceeding one hundred pounds in the aggregate made for the personal benefit of the taxpayer or his wife or children during the income year by a taxpayer who is in receipt of salary, wages, allowances, stipends or annuity, or whose taxable income does not exceed eight

eight hundred pounds, to superannuation, sustentation widows' or orphans' fund established in Australia, or any society duly registered under any Friendly Societies Act of the Commonwealth or State;

- (c) (i) the amount of fifty pounds in respect of each child who is wholly maintained by the taxpayer and who is under the age of sixteen years at the beginning of the income year.

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

- (ii) the amount of fifty pounds in respect of the wife of a taxpayer who is not separated from her husband either under an order of a court of competent jurisdiction or a separation agreement, or who, if so separated, is wholly maintained by him ;
- (iii) an amount not exceeding fifty pounds for sums actually expended towards the maintenance of dependants by an unmarried taxpayer. A dependant means a relative of the taxpayer by blood, marriage or adoption. Any payments to the dependant which, in the opinion of the Commissioner, are for board and lodging of or other services to the taxpayer shall be excluded in calculating such expenditure:

Provided

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

- (d) such sum as is paid by the taxpayer to—
- (i) any legally qualified medical practitioner, dentist, public or private hospital, nurse or chemist in respect of any illness of or operation upon the taxpayer or the wife, husband or any of the children or dependants (as defined in paragraph (c) (iii)) of the taxpayer; and to
 - (ii) any undertaker for funeral and burial or cremation expenses arising out of the death of the wife or husband of the taxpayer or of any of his children or dependants (as defined in paragraph (c) (iii)).

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

- (e) expenses actually incurred by a taxpayer in educating his children under eighteen years of age (not exceeding fifty pounds for each child during the income year) if suitable educational facilities are not provided by the State within reasonable daily travelling distance of the place of residence of the taxpayer. This paragraph shall not apply where the taxable income exceeds eight hundred pounds.

No. 35, 1928.

Deduction to individual resident.

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

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

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

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

Parts of income from which deductions are to be made.

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

20. (1) The deductions in paragraph (q) of subsection one, and in subsection two and in subsection three of section nineteen shall be made in the first place from income derived from personal exertion.

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

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

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

Matters not allowed as deductions.

C'wth Act, 1922-1927, s. 25.

N.S.W. Act, 1912, No. 11, s. 16 (1) (e) (iii), and s. 16 (3).

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

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

(b) domestic or private expenses, other than as specified in subsection two of section nineteen;

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

(d)

- (d) money not wholly or exclusively laid out or expended for the production of the assessable income; No. 35, 1923.
- (e) rent, or value of, or cost of repairs to any premises or part of premises not usually occupied for the purpose of producing assessable income;
- (f) any bad debts, except as provided for in paragraph (k) of subsection one of section nineteen of this Act;
- (g) any loss not connected with or arising out of the production of assessable income, except as specified in sections twelve and twenty-two;
- (h) investment, expenditure, loss or withdrawal of capital; money used or intended to be used as capital; capital used in the improvement of premises occupied for the purpose of any business, or used in the production of income; interest which might have been made on such capital or money if laid out at interest—except as specifically allowed by subsection one of section nineteen;
- (i) interest, except as provided in paragraph (a) of subsection one of section nineteen of this Act;
- (j) any wastage or depreciation of any lease or in respect of any loss occasioned by the expiration of any lease, except as provided in paragraph (m) of subsection one of section nineteen of this Act;
- (k) any payment of income tax or of any other rates or taxes not allowed as a deduction by paragraph (b) of subsection one of section nineteen.
- (l) any expenses which have been incurred in deriving income which is exempt from income tax;
- (m) any sum as a bonus or fee, salary, commission or allowance paid or credited to a director of a company or to a member of the family of a director of a company in excess of what the Commissioner considers a reasonable amount,

No. 35, 1923.

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

- (n) head office expenses of a company beyond an amount which bears the same proportion to the total head office expenses as the revenue derived by the company in the State bears to the total revenue or beyond such an amount in excess thereof as may be fixed by the Commissioner;
- (o) any sum paid by a taxpayer to a relative by blood, marriage, or adoption, in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business and for services rendered;
- (p) any sum paid or payable by a company to any member or shareholder in excess of the amount which the Commissioner is satisfied has been paid bona fide in the course of business or for services rendered. This paragraph shall apply only to companies to which section thirty-one may be applied;
- (q) any loss or expense which is recoverable under any contract of insurance or indemnity.

Deduction of
business
losses.

C'wth Act,
1922-27,
s. 26.

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

First
proviso.

22. (1) Where a taxpayer makes a loss in any income year in carrying on a business or businesses either alone or as a partner with other persons, the proceeds of which, if any, would be assessable income, he shall be entitled to deduct the loss from any assessable income derived by him in that year from other sources:

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

Provided

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

No. 35, 1928.

Second
proviso.

(2) If the taxpayer did not derive any assessable income from other sources in that year or if the loss exceeds the net assessable income derived by him from other sources, the loss or the excess of the loss over such net assessable income, as the case may be, shall be carried forward into his subsequent yearly returns, but not exceeding two years subsequent to the year in which the loss occurs. In this subsection "net assessable income" means net income as defined in section four of this Act, but not including any deduction allowable under this section.

(3) The loss or the excess of the loss which is carried forward under the provisions of subsection two hereof shall be deducted from the assessable income of the year or years into which it is carried forward in the order provided in the provisos to subsection one hereof.

(4) Where any taxpayer who is entitled to a deduction under subsection two hereof is a taxpayer to whom section nine of this Act applies, then the amount of the loss carried forward under subsection two hereof shall not be taken into account under paragraph (d) of subsection one of section nine in ascertaining the excess of allowable deductions for the year in which the loss was incurred.

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

23. In the case of any company (other than a co-operative society) which entirely or mainly either purchases from or sells to its own members or shareholders, or of a mutual building, investment or

Co-operative
societies and
the like.

insurance

No. 35, 1928.

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

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

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

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

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

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

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

(3)

- (3) No deduction shall in any case be allowed in respect of the amount distributed among the members or shareholders as interest in respect of, or as dividends on, shares. No. 35, 1928.
- (4) The taxable income of a co-operative society shall be assessed subject to section sixty-three of the Co-operation Acts, 1923-1928, or any amendment thereof or any enactment substituted therefor.

24. (1) When a foreign company or non-resident person carries passengers, live-stock, mails, or goods shipped in the State, either as owner or charterer of any vessel, such company or person shall by itself or himself or by the master or its or his agent in the State, within the prescribed time or when the Commissioner may require, make a return of the full amount payable to it or to him, whether such amount is payable in the State or beyond the State, in respect of the carriage of such passengers, live-stock, mails or goods. Carriers by ship.
C'wth Act, 1922-27, s. 27.
N.S.W. Act, 1912, No. 11, s. 19 (1A).

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

(2) Where no return is made under this section by such person or company, or by the master or other such agent, the Commissioner may determine the amount payable to such person or company in respect of the carriage of passengers, live-stock, mails and goods, and may assess the tax payable on five pounds per centum of that amount, and the master shall be assessed thereon and shall be liable to pay the tax assessed.

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

(4) Wherever an assessment is made upon the master or wherever the master becomes otherwise liable to pay the tax assessed, the Commissioner shall give notice of

No. 35, 1928.

of such assessment or liability to the master, and such master shall thereupon pay the tax prior to the clearance of the ship, and subject to any law of the Commonwealth, the Collector of Customs shall have power to detain the ship until such payment is made.

Agents selling
goods in the
State for non-
resident.

See N.S.W.
Act, 1912,
No. 11, s. 18.
Hughes v.
Munro,
9 C.L., R. 289.

25. (1) When any person in the State (herein termed "the agent") on behalf of a principal resident or carrying on business out of the State or on behalf of a foreign company, sells or disposes, or is instrumental in selling or disposing of any property for the principal, whether such property is in the State or is by the contract to be brought into the State, and whether the contract is made by the agent in the State or by or on behalf of the principal out of the State, and whether the moneys arising therefrom are paid to or received by the principal directly or otherwise, the moneys arising therefrom shall be deemed to be income derived by the principal from a business carried on by him in the State, and the taxable income derived therefrom by the principal shall, if such income cannot, in the opinion of the Commissioner, be otherwise satisfactorily determined, be assessed on an amount of taxable income equal to five pounds for every one hundred pounds of the amount for which such property has been sold or disposed of.

(2) Such agent shall as regards such income be subject to the provisions and entitled to the benefits relating to agents contained in this Act.

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

Life
assurance
companies.

See C'wth
Act, 1922-
1927, s. 20.

S.A. Act,
1927, No.
1,787, s. 30.

26. (1) The taxable income of a mutual life assurance company, carrying on business in the State, shall be arrived at by taking as a basis all assessable income from investments, including income from rents derived from a source in the State, and deducting therefrom the expenses arrived at under subsection two hereof. To the amount so ascertained there shall be added any taxable income assessable under the provisions of section twelve.

(2)

(2) The amount allowable as a deduction on account of the expenses of a mutual life assurance company shall be such amount as bears to the total expenses (both in and outside the State) incurred by the company in the general management of the business, not including expenditure exclusively incurred in gaining or producing the premium income of the company, the same proportion as the assessable income from investments, including income from rents, bears to the total income of the company from its investments (wherever derived) including income from rents. No. 35, 1928.

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

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

(3) The taxable income (other than taxable income assessed under the provisions of section twelve) of a mutual life assurance company shall not be assessed at an amount less than an amount which bears the same proportion to the amount which would be assessed as the taxable income of such a company if all its income from investments, including income from rents, were treated as derived from a source in the State, as the amount assured under policies held by New South Wales policy-holders at the end of the income year bears to the total of the amount assured under policies held by all its policy-holders at the end of such income year.

(4) In the case of a company (other than a mutual life assurance company) carrying on the business of life assurance in the State the taxable amount of income from life assurance business shall be determined on a similar basis to that herein provided in the case of a mutual life assurance company.

(5) In the case of any company to which this section applies, and which also carries on a business other than life assurance, the investments and expenses
to

No. 35, 1928.

to be taken into account shall be the investments and expenses in respect of its life assurance business, and the taxable income of such other business shall be added to the taxable income of the life assurance business.

(6) No assessment shall be made on any company (including a mutual life assurance company) in respect of its life assurance business unless the company derives a profit and surplus from such business. In ascertaining such profit and surplus, all rents, interest and other profits and earnings in respect of or in relation to such business (whether derived in or outside the State) including interest chargeable by the company on overdue premiums shall be included, but no deduction shall be made in respect of any of the matters prohibited to be deducted by section twenty-one of this Act.

Income of
person carry-
ing on busi-
ness in and
outside the
State.

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

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

- (a) Where the taxable income derived from sources in the State is capable of being kept separate and apart from income derived from sources outside the State the taxable income derived from sources in the State shall be the actual amount of taxable income so derived.
- (b) In all other cases the person liable to make the return shall furnish the Commissioner with a return showing a true estimate of the amount of the net income which has been derived from sources in the State. In making such estimate there shall be added to the income definitely ascertainable as being derived in the State a proper proportion of the income which cannot be definitely allocated to sources in or outside the State. The return shall set out the method by which any such apportionment has been ascertained, and shall be accompanied by a full and complete statement of all income and expenditure and assets and liabilities in connection with the business both
inside

inside and outside the State. The Commissioner may accept such estimate or may without limitation of his powers under section forty-two or any other section of this Act assess the taxable income derived from sources in the State by ascertaining in accordance with this Act the total taxable income which would have been derived from the business if the income from sources both in and outside the State were derived from sources in the State and apportioning such total taxable income as between sources in and outside the State in proportion to either—

No. 35, 1928.

- (i) the sales in the State as compared with the total sales, or if there are no sales both in and outside the State, the revenue derived from sources in the State as compared with the total revenue; or
- (ii) the assets used in the State in connection with the production of taxable income as compared with the total assets employed in the production of the total taxable income referred to:

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

No. 35, 1928.

Apportion-
ment of in-
come derived
within and
outside the
State from
manu-
factures, &c.

28. (1) Whenever—

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

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

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

(2) Provided that where in the opinion of the Commissioner it is difficult or impracticable to determine whether income is assessable under this section or under some other section or sections of this Act, or where in the opinion of the Commissioner such income is assessable both under this section and under some other section or sections of this Act, the Commissioner may at his option assess such income under the provisions of the section which is in his opinion the most appropriate to the circumstances of the case.

Taxation
where local
business
controlled
abroad.

C'wth Act,
1922-1927,
s. 28.

Imperial Act,
8 & 9 Geo. V,
c. 40, Gen.
Rules 7 to 9.

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

- (a) is controlled principally by non-resident persons or a foreign company; or
- (b) is carried on by a company, a majority of the shares in which are held by or on behalf of—
 - (i) a foreign company; or
 - (ii) another company which carries on business outside the State; or
 - (iii) persons who hold a majority of the shares in a company such as is referred to in subparagraphs (i) and (ii); or

(c)

- (c) is carried on by a New South Wales company which holds, or on behalf of which other persons hold, a majority of the shares in a foreign company or a company carrying on business outside the State, No. 35, 1928.

and it appears to the Commissioner that on account of these circumstances, or on account of any other circumstances, the course of the business can be so arranged, and is so arranged, that the business produces either no taxable income or less than the ordinary taxable income which might be expected to arise from that business, the person or company carrying on the business in the State shall be assessable and chargeable with income tax on such percentage of the total receipts (whether cash or credit) of the business, as the Commissioner in his judgment thinks proper. If in his opinion, upon information subsequently obtained, the circumstances so warrant, the Commissioner may vary such percentage either by way of increase or reduction, and the assessment shall be adjusted accordingly.

(2) Section 18A of the Income Tax (Management) Act, 1912, as inserted by section five of the Income Tax (Management) Amendment Act, 1925, is hereby repealed, and such repeal shall be retrospective from the date of the commencement of such section. Repeal of s. 18A. N.S.W. Act, 1912, No. 11.

(3) This section shall be applied retrospectively to the income of the years of income ended on the thirtieth day of June, one thousand nine hundred and twenty-five, the thirtieth day of June, one thousand nine hundred and twenty-six, and the thirtieth day of June, one thousand nine hundred and twenty-seven, as far as regards any company engaged during those years in the transactions mentioned in the said section 18A, or in the business of distributing motion picture films.

(4) For the purposes of this section and section thirty, shares held by or in the names of persons who are relatives by blood, marriage, or adoption, may be treated by the Commissioner as if they were held by any one of such persons.

30. (1) Any two or more companies which consist substantially of the same shareholders may, if the Commissioner considers fit, be deemed to be a single company, and in such case shall be jointly assessed and liable accordingly. Companies consisting of substantially the same shareholders. C'wth Land Tax Act, 1910-1927, s. 40.

(2)

No. 35, 1928.

(2) Two companies shall be deemed to consist substantially of the same shareholders if not less than three-fourths of the paid-up capital of one of them is held by or on behalf of persons who hold three-fourths of the paid up capital of the other. Shares in one company held by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last mentioned company.

Where a company has not reasonably distributed its taxable income.

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

31. With a view to preventing the avoidance of income tax through the withholding from distribution of income of a company, it is hereby enacted as follows :—

- (a) Where a company has not within nine months after the close of any income year distributed to its members or shareholders (in such manner as to render the amount distributed liable to be included by them as assessable income in their returns) at least two-thirds of its taxable income of such income year, the Commissioner may determine whether a sum or a further sum (not exceeding the excess of two-thirds of the taxable income of the company over the amounts, if any, distributed by it to its members or shareholders) could reasonably have been distributed by the company to them out of such taxable income :

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

- (b) The Commissioner shall assess the tax and the additional tax, if any, which would have been payable by the members or shareholders if the sum or the further sum determined by the Commissioner in accordance with paragraph (a) of this section had been distributed to the members or shareholders who would have been entitled to receive it in proportion to their interests in the paid-up capital of the company.

(c)

(c) The company shall pay to the Commissioner the amount of the tax and additional tax assessed under paragraph (b). No. 35, 1928.
—

(d) The provisions contained in the Schedule to this Act shall have effect as to the companies to which this section shall apply, the computation of the taxable income of a company for the purposes of this section, the basis on which a determination may be made by the Commissioner, the basis on which the tax or the additional tax payable by the members or shareholders shall be assessed, and otherwise for the purpose of carrying into effect, and in connection with, this section.

32. (1) Subject to the following provisions of this section— Post-nuptial
settlements.

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

No. 35, 1928.

tax as if it were income derived by her husband, and if so assessed her husband shall be liable to income tax in respect thereof accordingly :

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

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

- (a) the income derived by a wife from a post-nuptial settlement referred to in paragraph (a) thereof, or
- (b) the income derived by a husband from a post-nuptial settlement referred to in paragraph (b) thereof, or
- (c) the excess of payments of bonus, fee, salary, commission, or allowance referred to in paragraph (c) thereof;

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

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

(1) For the purposes of subsection one the income derived from a post-nuptial settlement shall include the income from property substituted for the property settled, or being a conversion thereof.

(5)

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

No. 35, 1928.

(6) In any case to which subsection one of this section applies, the Commissioner may recover from the spouse in receipt of the income referred to in paragraph (a) or paragraph (b) of that subsection or in receipt of the excess of payments referred to in paragraph (c) thereof the sum which bears the same proportion to the total tax payable by the spouse assessed under the said subsection in respect of such income or excess as such income or excess bears to the total income included in that spouse's assessment. This subsection shall only apply where the Commissioner is of opinion that it is impracticable to recover the tax from the spouse so assessed. The right of appeal by a taxpayer under sections forty-eight and fifty-two of this Act applies to this section.

33. A partnership shall be liable to furnish a return in respect of the income of the partnership but shall not, except as provided in this section, be liable to pay any tax, but each partner shall, subject to section thirty-two, be assessed in his individual capacity in respect of—

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

- (a) his individual interest in the income of the partnership which, if the partnership were liable to pay tax, would have been the income of the partnership remaining after allowing all the deductions under this Act, except the deductions under subsections two and three of section nineteen, and under subsection three of section twenty-two, together with;
- (b) any other income derived by him separately;
and
- (c) his individual interests in the income derived by any other partnership:

Provided

No. 35, 1928.

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

- (i) with his or her spouse and any of his or her relatives by blood, marriage or adoption who is under the age of twenty-one years; or
- (ii) with any such relative; or
- (iii) with his or her spouse;

and whether in any of the cases referred to in subparagraphs (i), (ii), and (iii) of this proviso any other person is also a partner, the individual interests of such relative and spouse, or such relative or spouse, as the case may be, in the income of the partnership shall, for the purposes of this Act, be deemed to be the individual interest of such first-mentioned person in addition to his or her other individual interest, and he or she shall be allowed to deduct such amounts as the Commissioner considers reasonable and as are actually paid to any such spouse and relative, or spouse or relative, as the case may be, for services actually performed in the business.

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

Trustees.
C'wth Act,
1922-1927,
s. 31.

34. (1) A trustee shall not be liable to pay income tax as trustee, except as provided by this Act, but each beneficiary who is not under a legal disability, and who is presently entitled to a share of the income of the trust estate shall, subject to section thirty-two, be assessed in his individual capacity in respect of—

- (a) his individual interest in the income of the trust estate, which if the trustee were liable to pay the tax in respect of the income of the trust estate, would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deductions under subsections two and three of section nineteen, and under subsection three of section twenty-two, together with—
- (b) any other income derived by him separately ;
- and (c)

- (c) his individual interests in the income derived from any other source. No. 35, 1928.

(2) A trustee shall be separately assessed and liable to pay income tax in respect of that part of the income of the trust estate which if the trustee were liable to pay tax in respect of the income of the trust estate, would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deductions under subsections two and three of section nineteen and under subsection three of section twenty-two; and

- (a) which is proportionate to the interest in the trust estate of any beneficiary who is under a legal disability; or
- (b) to which no other person is presently entitled and in actual receipt thereof and liable as a taxpayer in respect thereof.

(3) A beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall be assessed in his individual capacity in respect of.

- (a) his individual interest, upon which the trustee is liable to be assessed under subsection two of this section, in the income of each trust estate;
- (b) any other income derived by him separately; and
- (c) his individual interests in the income derived from any other source:

Provided that there shall be deducted from the tax assessed against the beneficiary the tax paid by any trustee in respect of the beneficiary's interest in the income of a trust estate.

(4) For the purposes of this section, where by any deed, will, or settlement a trustee is required to hold the income of a trust fund in trust for the beneficiaries specified therein in such manner as he in his absolute discretion thinks fit, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount of the income of the year paid to him by the trustee in the exercise of his discretion under the deed, will, or settlement.

(5)

No. 85, 1928.

(5) Notwithstanding anything contained in this section the Governor may make regulations applying the provisions of section twenty-two, either in whole or in part, with such additions, modifications, and limitations as he thinks fit to trustees carrying on a business and to incomes of beneficiaries derived from their interests in such business.

Income under a disposition made by a person applicable to the minor unmarried child of such person.

See Imp. Act, 12 and 13 Geo. V, c. 17, s. 20 (c).

35. Notwithstanding anything in the preceding section or elsewhere contained in this Act, any income which by virtue or in consequence of any disposition made, directly or indirectly, by any person, either before or after the commencement of this Act, is payable to, or accumulated, or applicable for the benefit of a child of that person, shall, if and so long as the child is a minor and unmarried, be deemed for the purposes of this Act, to be the income of the person, if living, by whom the disposition was made:

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

Definitions for the purpose of s. 35.

36. For the purpose of section thirty-five—

- (i) the expression “child” includes a step-child or adopted child; and
- (ii) the expression “disposition” includes any trust, covenant, agreement, or arrangement.

Graduated rates of tax on companies

37. The rates of income tax on the taxable incomes of companies may be fixed (either as regards the whole or part of the taxable income, and either as regards all companies or any class or classes of companies) on such graduated scale as may be fixed by the Income Tax Act declaring the rates of income tax.

PART IV.

RETURNS AND ASSESSMENTS.

38. (1) For the purpose of assessment and levy of income tax, every person shall, when called upon by the Commissioner by notice published in the Gazette, furnish to the Commissioner in the prescribed manner a return setting forth a full and complete statement of the income derived by him during any income year to which this Act applies. The Commissioner may in such notice exempt such classes of persons as he may specify from liability to furnish a return, but such exemption shall not exempt any such person from liability to furnish a return if so required by the Commissioner under the provisions of the next succeeding section :

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

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

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

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

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

39. (1) The Commissioner may at any time require any person to furnish a return or a further and fuller return of income either in respect of the whole or any part of income received by such person, whether on

New further
and fuller
returns.
See C'wth
Act, 1922-
1927, s. 33.

L

his

No. 35, 1928.

his own behalf or as an agent or trustee, and although a return has been previously made by such person for the same period.

(2) All the provisions of this Act shall extend and apply to any such return or further and fuller return, and assessments may be made upon or in respect of it by the Commissioner in such manner as may be necessary.

(3) In addition to the returns specified in this and the preceding section, every person, whether a taxpayer or not, shall, as and when required by the Commissioner, make such further or other returns as the Commissioner requires for the purposes of this Act.

(4) Except in the case of fraud, or in respect of any year for which a return has not been furnished, nothing in this section shall empower the Commissioner to require a return or a further or fuller return in respect of any year of income more than six years prior to the year in which the requirement is made.

Returns
deemed to be
duly made.
C'wth Act,
1922-1927,
s. 34.
Assessment.
Ibid. s. 35.

40. Any return purporting to be made or signed by or on behalf of any taxpayer or person shall be deemed to have been duly made and signed by him until the contrary is proved.

41. From the returns and from any other information in his possession, or from any one or more of these sources, the Commissioner shall cause assessments to be made for the purpose of ascertaining the taxable income upon which income tax shall be levied.

Default
assessment.
Ibid. s. 36.
N.S.W. Act,
1912, No. 11,
ss. 21, 22.

42. If—

- (a) any person makes default in furnishing any return; or
- (b) the Commissioner is not satisfied with the return made by any person, whether or not he has previously made an assessment in respect of such return; or
- (c) the Commissioner has reason to believe that any person (though he may not have furnished any return or been required to furnish a return) is a taxpayer; or
- (d) the Commissioner has reason to believe that any person is about to leave the State; or
- (e)

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

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

Particulars of assessment.

N.S.W. Act, 1912, No. 11, s. 23 (5).

44. (1) The Commissioner may at any time cause to be made all such alterations in or additions to any assessment as he thinks necessary in order to insure its completeness and accuracy, notwithstanding that income tax may have been paid in respect of income included in the assessment :

Alterations and additions to and reinstatement of assessment.

C'wth Act, 1922-1927, s. 37.

Provided that every alteration or addition which has the effect of imposing any fresh liability, or increasing any existing liability, shall be notified to the taxpayer affected and, unless made with his consent, shall be subject to objection :

Provided further that an alteration or addition shall not be made in or to an assessment after the expiration of three years from the date when the tax payable on the assessment was originally due and payable, unless the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance was due to fraud or evasion.

(2) The Commissioner may at any time cause any assessment to be rescinded or he may cause any assessment previously rescinded (excepting and in so far as such action was taken in consequence of a decision on an objection or an appeal) to be reinstated, provided that any reinstatement of an assessment shall, unless made with the consent of the taxpayer, be subject to objection.

(3)

No. 35, 1928.

(3) When any alteration in an assessment has the effect of reducing the taxpayer's liability, such alteration shall be notified to the taxpayer, and any tax overpaid shall be refunded by the Colonial Treasurer :

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

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

Validity of
assessment.
Cwth Act,
1922-1927, s. 38.

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

Copies as
evidence.
Ibid. s. 39.

46. (1) The production of any notice of assessment or of any document under the hand of the Commissioner, Assistant Commissioner, or Acting Commissioner purporting to be a copy of a notice of assessment shall—

- (a) be conclusive evidence of the due making of the assessment; and
- (b) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment when it shall be *prima facie* evidence only.

(2) The production of any document under the hand of the Commissioner, Assistant Commissioner, or Acting Commissioner purporting to be a copy of or extract from any return or notice of assessment, shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

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

47.

47. (1) As soon as conveniently may be after an assessment is made the Commissioner shall cause notice in writing of the assessment to be given to the person liable to pay the income tax.

(2) The omission to give any such notice shall not invalidate the assessment.

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Notice of
assessment.
Cwth Act,
1922-1927,
s. 49.

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

PART V.

OBJECTIONS AND APPEALS.

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

Objections.
Cwth Act,
1922-1927,
ss. 50, 51A.

(2) The Commissioner shall consider the objection and may either disallow it or allow it either wholly or in part.

(3) The Commissioner shall give to the objector written notice of his decision on the objection.

(4) A taxpayer who is dissatisfied with the decision of the Commissioner may, within thirty days after the service of notice by post or otherwise of the decision of the Commissioner, in writing request the Commissioner to treat his objection as an appeal and to forward it to a Court of Review or to the Supreme Court of New South Wales in order that the objection may be heard and determined.

(5) The Commissioner shall, if the taxpayer's request is accompanied by such fee (not exceeding one guinea) as may be prescribed, forward the appeal as requested.

(6) A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection, unless the court hearing the appeal gives leave to add further grounds.

(7)

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(7) For the purpose of hearing appeals under this section, the Supreme Court shall consist of a single justice.

(8) On the hearing of the appeal the court may make such order as it thinks fit, and may reduce, increase, or vary the assessment.

(9) An order of the court shall be final and conclusive on all parties except as provided in this section.

(10) The costs of the appeal shall be in the discretion of the court.

(11) On the hearing of the appeal, the court may, if it thinks fit, state a case in writing for the opinion of the Full Court upon any question which in the opinion of the court is a question of law.

(12) The Full Court shall hear and determine the question, and remit the case, with its opinion, to the court below, and may make such order as to costs of the case stated as it thinks fit.

(13) The Commissioner or a taxpayer may appeal to the Full Court, in its appellate jurisdiction, from any order made under subsection (8) of this section.

(14) If the assessment has been reduced by the Commissioner after considering any objection, the reduced assessment shall be the assessment appealed from.

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

Pending
appeal not to
delay
payment.
Cwth Act,
1922-1927,
s. 52.

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

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

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

No. 35, 1928.

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

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

Proceedings
and powers of
Court of
Review.
Ibid. ss. 26 to
29, 31, 32.

(2) In addition to any other powers conferred upon it by this Act, the court may—

- (a) fix the time and place for the sittings of the court and adjourn such sittings to another time and place;
- (b) amend any order of the court;
- (c) order the Commissioner to pay to the appellant his costs of an appeal from any assessment in respect of which the Commissioner may have acted unreasonably or oppressively towards the appellant;
- (d) order the appellant to pay to the Commissioner any tax or additional tax found to be due, and his costs of any frivolous or vexatious appeal;
- (e) on the application of the appellant exclude from the court during the hearing of an appeal all or any persons other than the parties or their representatives;
- (f) assess any costs payable under any order of the court, or order that such costs be taxed by the taxing officer of the Supreme Court or of any District Court, whereupon such costs shall be taxed by such officer accordingly;

(g)

No. 35, 1928.

N.S.W. Act,
1912, No. 11,
s. 30.

- (g) exercise all the powers for the time being of a District Court with reference to the issue of summonses and subpoenas compelling the attendance of witnesses and production of documents, and punishing persons who have disobeyed subpoenas, or who being in court refuse to be sworn in or to give evidence;
- (h) for cause shown allow further time within which an objection may be made (but in no case shall time be allowed so as to exceed nine months from the date of service of the notice of assessment) notwithstanding that the time for making an objection may have expired;
- (i) order the Commissioner to cause any judgment obtained by him against the appellant to be amended or vacated to conform to the determination on the appeal.

(3) Any order of the court for the payment of any tax, additional tax, or costs may be made subject to conditions, and shall have the effect of and shall be deemed to be a judgment of the Supreme Court for the amount of such payment, and judgment for such amount may be entered up in such court by the Commissioner against the appellant, and the said amount may be recovered by process of such court as in pursuance of such judgment.

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

(5) The Commissioner and the appellant may appear on any appeal by counsel, solicitor, or agent authorised in that behalf.

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

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

(8)

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

No. 35, 1928.

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

(10) The Governor may by regulations prescribe the rules to be observed in proceedings under this section or section forty-eight.

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

52. (1) Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner under this Act (whether in the exercise of a discretion conferred upon the Commissioner or otherwise) and who is dissatisfied with the assessment made pursuant to or involving such opinion, decision or determination shall, after the assessment has been made, have the same right of objection in respect of such opinion, decision or determination and assessment as is provided in section forty-eight, and also the same right of appeal against any decision of the Commissioner upon any such objection, except that such appeal shall be made to a Court of Review only.

Appeals to
Court of
Review
assisted by
assessors.

(2) For the purpose of any appeal in pursuance of this section the Court of Review shall be assisted by two assessors appointed under this Act, who may advise the court, but shall not adjudicate on the matter before the court.

(3) The assessors shall be appointed by the Governor, but one of them shall be a public accountant of at least ten years' standing.

(4) The assessors shall be appointed in such manner and shall be paid such allowances and fees as may be prescribed.

No. 35, 1923.

Appeals
against
assessments
under
previous Act.

53. (1) The provisions of this part of this Act shall apply to all assessments which may hereafter be made under the provisions of the previous Act, and also to all assessments made under such previous Act in respect of which the time for lodging an appeal has not elapsed at the commencement of this Act.

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

PART VI.

COLLECTION AND RECOVERY OF TAX.

Date of pay-
ment of tax.
N.S.W. Act,
1912, No. 11,
s. 24.

Cwth Act,
1922-1927,
ss. 54, 56.

54. (1) The income tax shall be due and payable to the Commissioner on such day as shall be fixed in the notice of assessment.

(2) Where an assessment is amended in accordance with this Act and additional tax is thereby payable by the taxpayer, the additional tax shall be due and payable to the Commissioner on such day as shall be fixed in the notice of amended assessment.

(3) If any income tax or additional income tax payable under an assessment made before the thirty-first day of July, one thousand nine hundred and twenty-nine, is not paid within thirty days after such tax shall have become due and payable by the taxpayer or within such further time as the Commissioner may allow under the next succeeding section, or if any income tax or additional income tax payable under an assessment made on or after the thirty-first day of July, one thousand nine hundred and twenty-nine is not paid within sixty days after such tax shall have become due and payable by the taxpayer, or within such further

further time as the Commissioner may allow under the next succeeding section, the taxpayer shall be liable to pay additional tax of an amount equal to ten per centum upon the amount of the tax unpaid:

No. 35, 1928.

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

55. The Commissioner may in such cases as he thinks fit—

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

Extension of time to pay and instalments.
Cwth Act, 1922-1927, s. 55.

56. Income tax or additional tax due to the Commissioner under this Act shall be deemed to be a debt due to the King, and shall be collected and received by the Commissioner on account of and shall be paid into the Consolidated Revenue. Any income tax unpaid, including any additional tax, may be sued for and recovered in any court of competent jurisdiction by the Commissioner:

Tax a Crown debt.
N.S.W. Act, 1912, No. 11, s. 7.
Cwth Act, 1922-1927, s. 57.

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

Exchange.

57. If, in any proceedings against a taxpayer for the recovery of income tax or additional tax, the defendant—

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

Substituted Service.
Cwth Act, 1922-1927, s. 58.

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

58.

No. 35, 1928.

Trustees,
agents, and
others to give
notice.

See C'with
Act,
1922-1927,
ss. 59, 60.

58. (1) Every person who is—

- (a) trustee or official assignee in the estate of any person whose property is being administered under any law of the State or the Commonwealth relating to bankruptcy, or who has in any manner assigned his estate or part thereof for the benefit of his creditors or any of them; or
- (b) receiver for any debenture holders and who has taken possession of the assets of a company; or
- (c) liquidator of any company which is being wound up; or
- (d) trustee in the estate of any deceased person; or
- (e) an agent for a principal who is a non-resident person and has been required by his principal to wind up the business or to realise the assets of his principal,

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

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

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

59.

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

No. 55, 1928.

Where tax not paid in lifetime.

Cwth Act, 1922-1927, s. 61.

- (1) The Commissioner shall have the same powers and remedies against the trustees of the taxpayer in respect of the taxable income of the taxpayer as he would have had against the taxpayer in his lifetime;
- (2) the trustee shall make such returns as the Commissioner requires for the purpose of an accurate assessment;
- (3) the assessment shall be at the rates applicable to the income of the income year in which the income was derived, and the amount shall (where the taxpayer's default was intentional) be double the amount of the difference between the income tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the hands of the trustees;
- (4) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section, and recovering the tax or double tax as in the case of ordinary assessments and taxation.
- (5) The trustees shall only be personally responsible to the extent of the taxpayer's estate in the hands of such trustees at the date when any claim is made under this section by the Commissioner against such trustees.

60. (1) Where at the time of a person's death, income tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of income tax from the trustees as he would have had against that person if that person were alive.

Provision for payment by representatives of deceased person.

Cwth Act, 1922-1927, s. 62.

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

(3)

No. 35, 1928.

(3) Where the trustees are unable or fail to furnish a return, the Commissioner may, under section forty-two of this Act, make an assessment of the amount on which, in his judgment, income tax ought to be charged.

Powers over
property
vested, &c.,
in agent or
trustee.
Cwth Act,
1922-1927,
s. 89 (b).

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

Consolidation
of assessment
against non-
residents.
Qld.,
15 Geo. V,
No. 34, s. 59.

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

Recovery of
tax paid on
behalf of
another.
Cwth Act,
1922-1927,
s. 63 and 89.

63. (1) Every trustee and agent and every other person who, under the provisions of this Act, pays any income tax for or on behalf of any other person, shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned, and is hereby indemnified in respect of such payment, and shall be entitled to recover the same from that other person as a debt together with the costs of recovery, or to retain or deduct the same out of any moneys in his hands or that may subsequently come into his hands belonging or payable to that other person.

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

He

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

No. 35, 1923.

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

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

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

- (a) a person who has paid the tax in respect of any of the taxable income may recover by way of contribution from any other owner thereof a sum which bears the same proportion to the tax as the share of the taxable income of such other person bears to the whole of the taxable income ;
- (b) every person entitled to contribution in respect of income tax under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request ; or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

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

Commissioner may collect tax from person owing taxpayer money.

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

to

No. 35, 1928.

to pay to him forthwith upon the money becoming due or being held, or within such further time as the Commissioner allows, the money or so much thereof as is sufficient to pay the tax due by the taxpayer, and the penalties and costs, if any, imposed by a court on him in respect of an offence against this Act.

(2) Any person who fails to comply with any notice under this section shall be guilty of an offence and liable to a penalty of fifty pounds.

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

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

(5) If the tax due by the taxpayer, or the penalties and costs (if any) imposed by a court on him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.

(6) In this section—

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

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

Application
of sections
54 (3), 55 and
65 in connec-
tion with the
previous Act.

66. (1) The provisions of sub-section three of section fifty-four and of section fifty-five of this Act shall apply to any assessments which may hereafter be made under the previous Act.

(2)

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

No. 35, 1928.

PART VII.

PENAL PROVISIONS.

67. (1) Any person who—

- (a) fails or neglects duly to furnish any return or information or give the security required by section eighty-six or to comply with any other requirement of the Commissioner as and when required by this Act or the regulations in force under this Act, or by the Commissioner; or
- (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner or other duly authorised person, or to answer fully and truly any question put to him, or to produce any book or paper required of him by the Commissioner or any such person; or
- (c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing,

Offences.
Cwth Act,
1922-1927,
s. 66.

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

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

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(3) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section seventy of this Act.

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

Additional
tax in certain
cases.

C'wth Act,
1922-1927,
s. 67.

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

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the regulations in force thereunder or by the Commissioner; or
- (b) fails to include any assessable income in any return; or
- (c) includes in any return as a deduction an amount which is in excess of that actually expended or incurred by him

shall, if a taxpayer to whom paragraph (a) of this subsection applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax assessable to him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information, and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of one pound, whichever is the greater, or, if a taxpayer to whom paragraph (b) or (c) of this subsection applies, shall be liable to pay by way of additional tax the amount of one pound or double the amount of the difference between the tax properly payable and the tax assessed upon the basis of the return lodged, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-four of this Act:

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

(2)

(2) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by the last preceding section, or by the next succeeding section, such action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

69. Any person who, with intention to defraud, in any return understates the amount of any income, shall be guilty of an offence, and shall be liable to a penalty of not less than fifty pounds nor more than five hundred pounds, and in addition an amount equal to treble the amount of income tax which would have been avoided if the income stated in the return had been accepted as the correct income.

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

70. Any person who, 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 and shall be liable to a penalty of not less than fifty pounds nor more than five hundred pounds, and in addition treble the amount of tax, payment whereof he has avoided or attempted to avoid.

Avoiding
taxation.
Ibid. s. 69.

71. A prosecution in respect of an offence against either of the two last preceding sections may be commenced at any time within six years after the commission of the offence.

Time for
commencing
prosecution.
Ibid. s. 70;
N.S.W. Act,
1912, No. 11,
s. 36.

72. Payment of penalties under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

Penalties not to
relieve from tax
C'wth Act, 1922-
1927, s. 71.

73. Any person who obstructs or hinders any officer or person acting in the discharge of his duty under this Act or the regulations in force thereunder, shall be guilty of an offence, and shall be liable to a penalty of not less than one pound nor more than fifty pounds.

Obstructing
officers.
Ibid. s. 72.

74. Any person guilty of a breach of this Act for which no penalty is otherwise provided, shall be liable to a penalty not exceeding fifty pounds.

General
penalty.
N.S.W. Act,
1912, No. 11,
s. 38.

75. Any penalty imposed by this Act or by regulations in force thereunder may be recovered in a summary manner before two or more justices, or a stipendiary or police magistrate.

Recovery
penalty.
Ibid. s. 39.

No. 35, 1928.

Action
against
officer.N.S.W. Act,
1912, No. 11,
s. 40.

76. In any action against an officer or person for anything done in pursuance of this Act, or in the execution of the powers conferred thereby, or by the regulations, the defendant in such action may plead the general issue, and give the special matter in evidence at the trial.

Protection of
witness.C'wth Act,
1922-1927,
s. 82.

77. In any prosecution under this Act an officer or any person employed in the administration of this Act 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 or any other such person 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.

PART VIII.

MISCELLANEOUS.

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

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

- (a) such person shall be called the public officer of the company, and shall, if not already appointed, be appointed within three months after this section comes into force or after the company commences to derive income ;
- (b) the company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and the address for service in the State, has been given to the Commissioner ;

(c)

- (c) if the company fails or neglects duly to appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence and shall be liable to a penalty of fifty pounds for every day during which the failure or neglect continues;
- (d) service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the regulations in force thereunder, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient;
- (e) without prejudice to the liability of the company, the public officer shall be liable for the doing of all such things as are required to be done by or on behalf of the company under this Act or the regulations in force thereunder, and in case of default in doing any of such things, shall be liable for all penalties imposed for any breach of the provisions of this Act or such regulations, and the company, as well as such public officer, shall also be liable for such penalties;
- (f) everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from the penalties of the section or regulation on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer:

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

be

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Agents and
trustees.
C'wth Act,
1922-1927,
s. 89.

be the public officer of that company for all the purposes of this Act, and this Act shall apply to that company and that public officer accordingly.

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

- (1) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity or derived by the principal by virtue of his agency and the payment of income tax thereon.
- (2) He shall in respect of such income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act be separate and distinct from any other.
- (2) If he is a personal representative of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (4) Nothing herein contained shall exempt or discharge any principal or beneficiary from liability to make returns, and pay income tax upon the whole of his taxable income.

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

80. With respect to every person who has the receipt, control, or disposal of money belonging to a non-resident person who derives income from a source in the State, or who is a shareholder, stock-holder, debenture holder, or depositor in a company deriving income from a source in the State, the following provisions shall, subject to this Act, apply :—

- (a) he shall, when required by the Commissioner, pay the income tax due and payable by the person on whose behalf he has the control, receipt or disposal of money ;
- (b) where he pays income tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person ;
- (c)

- (c) he is hereby authorised and required to retain from time to time out of any money which comes to him on behalf of the non-resident person so much as is sufficient to pay the income tax which is or will become due by that person ;
- (d) he is hereby made personally liable for the income tax payable by him on behalf of the non-resident person if, after the Commissioner has required him to pay the tax, he disposes of or parts with any fund or money then in his possession or which afterwards comes to him from or out of which the income tax could legally be paid, but he shall not be otherwise personally liable for the tax :

Provided that the Commissioner may upon application permit disposal of such fund or money or part thereof as he considers necessary ;

- (e) he is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner.

81. Where any income of any person outside the State is paid into the account of that person with a banker in the State, the banker shall be deemed to be the person's agent in respect of the money so paid so long as he is indebted in respect thereof, and shall be subject to the provisions and entitled to the benefits relating to agents contained in this Act.

Payment of non-resident's tax by banker.
Cwth Act, 1922-1927, s. 92.

82. (1) A covenant or a stipulation in a mortgage of land which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying to or on behalf of or for the benefit of the mortgagee income tax on the interest to be paid under the mortgage—

Covenant by mortgagor to pay tax.
Ibid. s. 94.

- (a) if the mortgage was entered into on or before the date of the commencement of this Act—shall not be valid to impose on the mortgagor the obligation of paying income tax to any greater amount than the amount (if any) which would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any income tax payable on that interest ; and
- (b)

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(b) if the mortgage was entered into after that date—shall be absolutely void.

(2) A mortgage of land which contains a covenant to pay a certain rate of interest but provides that the mortgagee may accept a sum calculated to cover the interest chargeable at a lower rate together with an amount representing the income tax payable thereon shall be deemed to contain a covenant or stipulation imposing on the mortgagor the obligation of paying income tax within the preceding subsection, and shall as regards such covenant or stipulation to pay income tax be subject to such preceding subsection.

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

83. Every contract, agreement or arrangement made or entered into, in writing or verbally, whether before or after the commencement of this Act, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

- (a) altering the incidence of any income tax; or
- (b) relieving any person from liability to pay any income tax or make any return; or
- (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or
- (d) preventing the operation of this Act in any respect,

be absolutely void, but without prejudice to its validity in any other respect or for any other purpose.

Assignment
of income-
producing
asset for
certain
periodical
payments.
Ibid. s. 93A.

84. Where under any contract, agreement or arrangement made or entered into, in writing or verbally, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of an income-producing asset on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the asset by periodical payments which, in the opinion of the Commissioner, are really in the nature of income of the person assigning, conveying, transferring or disposing of the asset, that person shall be assessed to pay income tax upon those periodical payments.

Access to
books.
Ibid. s. 96.

85. The Commissioner, or any officer authorised by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act, and for such purposes may make extracts from or copies of any such books, documents and papers.

86.

86. Wherever the Commissioner has reason to believe that any person establishing or carrying on business in the State intends to carry on that business for a short time only, or intends to leave the State, or where the Commissioner for any other reason thinks it proper so to do, he may at any time, and from time to time, require the taxpayer to give security by way of bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on the income of such taxpayer.

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Security for tax.
C'with Act,
1922-1927,
s. 54 (5).

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

Department may obtain information and evidence.
Ibid. s. 97.

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

(2) The Commissioner may require the information or evidence to be given on oath, and either verbally or in writing, and for that purpose he or the officer so authorised by him may administer an oath.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

88. (1) In any case where it is shown to the satisfaction of a board consisting of the Commissioner, the Auditor-General or his deputy, and a person appointed by the Governor.

Release of taxpayer in case of hardship.
Ibid. s. 95.

- (a) that a taxpayer liable to pay income tax has become bankrupt; or
- (b) that a taxpayer has suffered such a loss or is in such circumstances, or, owing to the death of a person who, if he had lived, would have paid

(See N.S.W. Act, 1912, No. 11, s. 35.)

No. 35, 1928.

paid tax, the dependants of that person are in such circumstances that the exaction of the full amount of the tax will entail serious hardship,

the board may release the taxpayer or the executor or administrator of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessments as are necessary for that purpose.

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

Writing off
tax.

89. (1) In any case in which the board referred to in the last preceding section is satisfied that every reasonable effort has been made to recover income tax, or that it is impracticable without undue expense to recover such tax, it may direct the amount thereof to be written off.

(2) The taxpayer shall not be released from his liability in consequence of any action taken by the board under subsection one hereof, and the Commissioner may at any future time take such action to recover any such income tax as he considers the circumstances warrant.

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

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

Regulations.

90. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required, or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, including (but without limiting the foregoing power) the means of determining in all or any particular class of case, the amount of any assessable or taxable income in so far as the method of ascertainment is not herein already provided for.

(2)

(2) The regulations may impose a penalty not exceeding twenty pounds for any breach thereof, and may prescribe maximum and minimum penalties in case of any breach thereof. No. 35, 1928.

(3) The regulations shall—

- (a) be published in the Gazette ;
- (b) take effect from the date of publication or from a later date to be specified in the regulations ; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

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

91. (1) The Commissioner shall furnish to the Colonial Treasurer annually for presentation to Parliament a report on the working of the Act. Reports by
Commis-
sioner.

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

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

No. 35, 1923.

THE SCHEDULE.

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

See Imp. Act³
17 & 18 Geo. V,
c. 10, s. 31.

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

For the purposes of this paragraph—

- (i) A company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of section 31 apply, or of two or more companies none of which is a company to which those provisions apply.
- (ii) A company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power have been allotted unconditionally to or acquired unconditionally by and are at the end of the income year beneficially held by, the public (not including a company to which the provisions of this section apply) and any such shares have in the course of such income year been quoted on the official list of a stock exchange.
- (iii) A company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons.

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

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

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

2. For the purposes of section 31, dividends credited, paid or distributed to a company which is a member or shareholder in any other company shall (to the extent to which such dividends would be taxable income if paragraph (b) of section 11 applied to a company) be deemed to be part of the first-mentioned company's taxable income.

3. In addition to any other facts which the Commissioner may consider in exercising the powers conferred upon him by paragraph (a) of section 31 the Commissioner shall take into consideration the relation between the distributable income of the company and its taxable income, and the fact of the retention by the company of taxable income for the following purposes:—

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

(b)

- (b) To meet losses which the directors consider were certain to arise during subsequent income years : No. 35, 1923.

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

The Commissioner may have due regard to the development of businesses and industries.

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

- (a) any sum expended or applied, or intended to be expended or applied, out of the income of a company—
 - (i) in or towards payment for the business, undertaking or property which the company was formed to acquire or which was the first business, undertaking, or property of a substantial character in fact acquired by the company ; or
 - (ii) in redemption or repayment of any share or loan, capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment there or ; or
 - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property ;
- (b) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied in pursuance or in consequence of an arrangement which, in the opinion of the Commissioner, was made for the purpose of avoidance or reduction of any liability to income tax.

5. A determination under section 31 shall be made by the Commissioner not later than nine months after the date on which the tax assessed against the company under its ordinary assessment is due and payable.

6. Where the Commissioner has made a determination under section 31, and—

- (a) the company satisfies the Commissioner that the sum or further sum which could reasonably have been distributed by the company among the members or shareholders is an amount which is less than the sum or further sum determined by the Commissioner under such section ; or

(b)

No. 35, 1928.

- (b) where the Commissioner is satisfied that the company has withheld information or has furnished incorrect or misleading information for the purpose of avoiding tax in an ordinary assessment or under such section,

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

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

- (i) The income apportioned to a member or shareholder shall be deemed to have been received by him on such date as the Commissioner determines to be just, having regard to the dates on which distributions of income, if any, have ordinarily been made by the company.

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

Cwth Act,
1922-27, s. 21
(2).

8. Where any person (other than a company, trustee or partnership) otherwise than as a member or shareholder of the company would (if there had been successive distributions of the relevant parts of the sum or further sum determined by the Commissioner to and by each company, trustee, and partnership interposed between that person and the company in respect of which the determination is made) have received a part of that sum or further sum determined by the Commissioner under paragraph (a) of section 31, the Commissioner may, if he thinks fit, also assess the tax and the additional tax, if any, which would have been payable by that person if those distributions had been made, and such tax and additional tax shall be deemed to be tax and additional tax assessable under paragraph (b) of section 31.

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