

INCOME TAX (MANAGEMENT) ACT.

Act No. 41, 1936.

An Act to provide for the assessment and collection of a tax on incomes; to amend the Income Tax (Management) Act, 1912, the Income Tax (Management) Act, 1928, and certain other Acts; and for purposes connected therewith. [Assented to, 28th July, 1936.]

Edward VIII.
No. 41, 1936.

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

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Income Tax (Management) Act, 1936."

(2)

Short title and
commencement.
N.S.W. Act No.
25, s. 1, 1928.
Cwth. Act,
1936, No. 27,
s. 1.

No. 41, 1936.

PART I.
PRELIMINARY.Operation
of Act.
N.S.W. Act,
1928, No.
35, s. 2.
Cwth Act,
1936, No.
27, s. 2.

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

2. (1) The Income Tax (Management) Act, 1912, as amended by subsequent Acts, shall, subject to the amendment made therein by sections twenty-nine and fifty-three of the Income Tax (Management) Act, 1928, continue in force for all purposes in connection with income tax payable in respect of the income which has been received prior to the year ended on the thirtieth day of June, one thousand nine hundred and twenty-eight, or prior to such other period as may be or may have been accepted by the Commissioner in lieu of such year.

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

Existing
regulations.
N.S.W. Act,
1928, No.
35, s. 3.
Cwth Act,
1936, No.
27, s. 2.

3. (1) All existing rules, regulations and forms made or prescribed under the Income Tax (Management) Act, 1928, as amended by subsequent Acts, or continuing in force by virtue of such Acts shall continue in force and shall apply to proceedings under this Act, so far as such rules, regulations and forms may be applicable until rules, regulations and forms are made and prescribed under this Act.

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

(2) All notices given and returns made during the year one thousand nine hundred and thirty-six under the Income Tax (Management) Act, 1928, as amended by subsequent Acts, in respect of income derived during the year ended on the thirtieth day of June, one thousand nine hundred and thirty-six, shall (without prejudice to the power of the Commissioner to give any notices which may be given or require any returns which may be required in respect of income derived during such year, under this Act) be deemed to have been made or given also under this Act.

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

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Division
into Parts
and
Divisions.

Cwth Act,
1936, No.
27, s. 5.

PART I.—PRELIMINARY—ss. 1-5.

PART II.—ADMINISTRATION—ss. 6-9.

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

DIVISION 1.—*General*—ss. 10-17.

DIVISION 2.—*Income*—ss. 18-56.

SUBDIVISION A. *Assessable income generally*—
ss. 18-20.

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

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and partly out of this State*—ss. 31-51.

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DIVISION 3.—*Deductions*—ss. 57-92.

DIVISION 4.—*Leases*—ss. 93-103.

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DIVISION 7.—*Trustees*—ss. 121-129.

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

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

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

DIVISION 11.—*Banks*—ss. 150-154.

DIVISION 12.—*Life assurance companies*—ss. 155-
161.

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—ss. 162-167.

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

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

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

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

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

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

PART V.—OBJECTIONS AND APPEALS—ss. 218-252.

PART VI.—COLLECTION AND RECOVERY OF TAX—ss.
253-269.PART VII.—PENAL PROVISIONS AND PROSECUTIONS—
ss. 270-287.

PART VIII.—MISCELLANEOUS—ss. 288-305.

SCHEDULES.

Definitions.
N.S.W. Act,
1928, No.
85, s. 4.
Cwth Act,
1936, No.
27, s. 6.

5. In this Act, unless the contrary intention appears—

“A State” means a State of the Commonwealth of
Australia.

“Agent” includes—

(a) every person who in this State for or
on behalf of any person out of this State
holds or has the control, receipt or dis-
posal of any money belonging to that
person; and(b) every person declared by the Commis-
sioner to be an agent or the sole agent of
any person for any of the purposes of this
Act.“Allowable deduction” means a deduction allowable
under this Act.“Assessable income” means all the amounts which
under the provisions of this Act are included in
the assessable income.“Assessment” means the ascertainment of the
amount of taxable income and of the tax pay-
able thereon.“Assistant Commissioner” means Assistant Com-
missioner of Taxation.“Australia” includes the whole of the Common-
wealth of Australia.“Business” includes any profession, trade, employ-
ment, vocation or calling, but does not include
occupation as an employee.

“Commissioner”

“Commissioner” means the Commissioner of Taxation.

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

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

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

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

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

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INARY.

carrying out of any profit-making undertaking or scheme, but does not include—

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

(b) rents or dividends.

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

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

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

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

“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 amount remaining after deducting from the assessable income all allowable deductions except the statutory exemption.

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

“Paid” in relation to dividends includes credited or distributed.

“Partnership” means an association of persons carrying on business as partners or in receipt of income jointly but does not include a company.

“Person” includes a company.

“Prescribed”

"Prescribed" means prescribed by this Act or by any rules or regulations made or in force under this Act, or the Income Tax (Management) Act, 1912, as amended by subsequent Acts, or the Income Tax (Management) Act, 1928, as amended by subsequent Acts.

"Previous Act" means the Income Tax (Management) Act, 1928, and when considered in relation to any time means that Act, or if it has been amended, that Act as amended as in force at that time.

"Previous Acts" means all Acts passed prior to the commencement of this Act relating to the assessment and collection of income tax in this State; and when any such Act is considered in relation to any time, means such Act, or if it has been amended, such Act as amended as in force at that time.

"Primary production" means production resulting directly from the cultivation of land or the maintenance of animals, poultry or bees for the purpose of selling them or their bodily produce including natural increase and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

"Relative" means a husband or wife or a relation by blood, marriage or adoption.

"Resident" means—

(a) a person, other than a company, whose usual or principal place of abode is in this State and includes any such person who is a public officer of the Commonwealth or of this State and who is absent from this State in the performance of his duty, and the wife of such public officer absent from this State with him; and

(b) a company which is incorporated in this State or which, not being incorporated in this State, carries on business in this State

and

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INARY.

and has either its central management and control in this State, or its voting power controlled by shareholders who are residents of this State.

“Shareholder” includes member or stockholder.

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

“Taxpayer” means a person deriving income.

“This Act” includes the regulations in force thereunder.

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

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

“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.

“Year of income” means—

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

PART II.

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ADMINISTRATION.

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TRATION.

6. (1) For the due administration of this Act and the previous Acts, the Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a Commissioner of Taxation, who may sue and be sued by that name.

Commis-
sioner of
Taxation.
N.S.W. Act,
1928, No. 35,
s. 5 (1).
Cwth. Act,
1936, No. 27,
s. 8.

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

N.S.W. Act,
1928, No. 35,
s. 5 (2).

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

Assistant
Commis-
sioners.
N.S.W. Act,
1928, No. 35,
s. 5 (3)a.

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

Powers of
Assistant
Commis-
sioners.

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

Officers.
N.S.W. Act,
1928, No. 35,
s. 5 (3)b.

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

Acting
Commis-
sioner.
N.S.W. Act,
1928, No. 35,

(7)

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PART II.
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TRATION.
Delegation.

N.S.W. Act,
1928, No.
35, s. 5
(6).

Cwth Act,
1936, No.
27, s. 12.

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

N.S.W. Act,
1928, No.
35, s. 5 (6).

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

Authorities
of Assistant
Commis-
sioners.

N.S.W. Act,
1928, No.
35, s. 5 (7).

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

Reports by
Commis-
sioner.

N.S.W. Act,
1928, No. 35
s. 91.

Cwth Act,
1936, No. 27,
s. 14.

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

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

8.

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

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Officers to
observe
secrecy.

N.S.W. Act,
1928, No. 35,
s. 6.

Cwth Act,
1936, No. 27,
s. 16.

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

(3) An officer shall not be required to produce in 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 as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the previous Acts.

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

(a) any person performing, in pursuance of any appointment or employment by this State or by the Commonwealth, any duty arising under any Act administered by the Commissioner of Taxation of the Commonwealth or the Commissioner of Land Tax of the Commonwealth for the purpose of enabling that person to carry out any such duty;

(b) the Commissioner of Income Tax for a State, or the authority administering any Act of a State relating to stamp duties, succession duties, or estate duties, if that authority is authorised by law to afford similar information to the Commissioner or an Assistant Commissioner; or

(c) a Board of Appeal under this Act.

(5)

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TRATION.**

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

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

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

Income Tax
(Commonwealth) Collec-
tion Act,
1923, not
affected.

N.S.W. Act,
1928, No. 35,
s. 7.

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

PART III.**LIABILITY TO TAXATION.****DIVISION 1.—General.**

Income tax.

N.S.W. Act,
1928, No. 35,
s. 8.

Cwth Act,
1936, No. 27,
s. 17.

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

Adjustment
by reason of
alteration of
year of income.
N.S.W. Act,
1928, No. 35,
s. 8.

(2) Where a company is wound up, or an individual person dies or ceases to be a taxpayer, in any year, and the same income of that company or person has, under the provisions of this Act or the previous Acts been included in the assessable income of that company

OR

or person for more than one year of income, and no adjustment in regard thereto has previously been made, the Commissioner shall make such adjustment as is just.

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TAXATION.

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

Accounting
period.
N.S.W. Act,
1928, No. 35,
s. 38 (3).
Cwth Act,
1936, No. 27,
s. 18.

(2) Where the Commissioner has under the previous Act accepted returns from any person made up to a date other than the thirtieth day of June for the purpose of assessment for the last year to the income of which that Act applied that person shall be deemed to have adopted an accounting period under this section ending on the corresponding date.

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

Money
credited
reinvested,
etc., to
be income.
N.S.W. Act,
1928, No. 35,
s. 8 (4).
Cwth Act,
1936, No. 27,
s. 19.

13. For all the purposes of this Act income wherever derived, and any expense wherever incurred, shall be expressed in terms of Australian currency.

Income to
be expressed
in
Australian
currency.
Cwth. Act
1936, No. 27,
s. 20.

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

Where con-
sideration
not in cash.
N.S.W. Act
1928, No. 35,
s. 13.
Cwth. Act
1936, No. 27,
s. 21.

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

Income
arising
from past
transactions.
N.S.W. Act
1928, No. 35,
s. 8 (5).
Cwth. Act
1936, No. 27
s. 22.

income

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TAXATION.
DIVISION 1.
GENERAL.

Exemptions.
N.S.W. Act
1928, No. 35,
s. 10.
Cwth. Act
1936, No. 27,
s. 23.

N.S.W. Act
1928, No. 35,
s. 10 (1) a.

N.S.W. Act
1928, No. 35,
s. 10 (1) b.

N.S.W. Act
1928, No. 35,
s. 10 (1) b.

N.S.W. Act
1928, No. 35,
s. 10 (1) b.

N.S.W. Act
1928, No. 35,
s. 10 (1) b.

N.S.W. Act,
1929, No. 47,
s. 4 (1) a.

income shall be assessable under this Act notwithstanding that the transaction was entered into prior to that commencement.

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

(a) the official salary of any person being—

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

(b)

- (b) the remuneration paid by the Government of the Commonwealth or of this State to a person who is not a resident of Australia for expert advice to that Government or as a member of a Royal Commission;

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GENERAL.

N.S.W. Act,
1928, No. 35,
s. 10 (1) o.

Cwth Act,
1936, No. 27,
s. 23 (b).

- (c) income derived—

Cwth Act,
1936, No. 27,
s. 23 (c).

- (i) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting Australia in that capacity for the purpose of engaging in contests in Australia in that sport or game;

N.S.W. Act,
1928, No. 35,
s. 10 (1) p.i.

- (ii) by any club or association in any other part of the British Empire as its share of the proceeds of cricket, football, or similar matches played in Australia by a team controlled by that club or association visiting Australia from that part of the British Empire, and recognised by the authority controlling that class of match in Australia as being representative of that part of the British Empire;

- (iii) by the representative of any government, visiting Australia on behalf of that government, or by any member of the entourage of that representative, in his official capacity as such representative or member;

N.S.W. Act,
1928, No.
35, s. 10 (1),
p. ii.

- (iv) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes, by any person visiting Australia in that capacity for the purpose of attending international or Empire conferences or for the purpose of carrying on investigation or research for such society or association;

N.S.W. Act,
1928, No.
35, s. 10 (1),
p. iii.

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PART III.
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DIVISION 1.
GENERAL.

N.S.W. Act,
1928, No.
35, s. 10 (1),
p. iv.

N.S.W. Act,
1928, No.
35, s. 10
(1), p. v.

(v) in the capacity of representative of the press outside Australia by any person visiting Australia in that capacity for the purpose of reporting the proceedings relating to any matters referred to in subparagraphs (i), (ii), (iii), and (iv) of this paragraph;

(vi) by any person visiting Australia, from an occupation carried on by him while in Australia, if in the opinion of the Colonial Treasurer that visit and occupation are primarily and principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia; and

(vii) as remuneration by a non-resident during a visit to Australia during which he acts as a director, manager or other administrative officer of a manufacturing, mercantile or mining business or of a business of primary production, if the visit of the non-resident to Australia does not exceed six months and the remuneration is not an allowable deduction in any assessment under this Act of the person paying it;

N.S.W. Act,
1928, No. 35,
s. 10 (1) (e).
Cwth. Act,
1936, No. 27,
s. 23 (d).

(d) the revenue of a municipal corporation or other local governing body or of a public authority;

N.S.W. Act,
1928, No. 35,
s. 10 (1) (h).
Cwth. Act,
1936, No. 27,
s. 23 (e).

(e) the income of a religious, scientific, charitable or public educational institution;

N.S.W. Act,
1928, No. 35,
s. 10 (1) (g).
Cwth. Act,
1936, No. 27,
s. 23 (f).

(f) the income of a trade union and the income of an association of employers or employees registered under any Act of the Commonwealth or of a State, or under any law in force in a territory being part of the Commonwealth, relating to the settlement of industrial disputes;

(g)

- (g) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, and being a friendly society, or a society or association established for musical purposes, or for the encouragement of music, art, science or literature; No. 41, 1936.
PART III.
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TAXATION.
DIVISION 1.
GENERAL.
N.S.W. Act,
1928, No. 35,
s. 10 (1) (f).
s. 10 (1) (l).
Cwth. Act,
1936, No. 27,
s. 23 (g).
- (h) The income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia; N.S.W. Act,
1928, No. 35,
s. 10 (1) (k).
Cwth. Act,
1936, No. 27,
s. 23 (h).
- (i) the income of the Rural Bank of New South Wales; N.S.W. Act,
1928, No. 35,
s. 10 (1) (e).
Cwth. Act,
1936, No. 27,
s. 23 (i).
- (j) the incomes of the following funds, provided that the particular fund is being applied for the purpose for which it was established— Cwth. Act,
1936, No.
27, s. 23
(j).
- (i) a provident, benefit or superannuation fund established for the benefit of employees:
- (ii) a fund established by will or instrument of trust for public charitable purposes; and N.S.W. Act
1928 No.
35, s. 10
(1) (i).
- (iii) a fund established for the purpose of enabling scientific research to be conducted by or in conjunction with a public university or public hospital:
- (k) interest on bonds, debentures, stock or other securities issued by the Government of New South Wales or the Government of the Commonwealth of Australia and interest on bonds, debentures, stock or other securities issued by the Rural Bank of New South Wales prior to the commencement of this Act where such interest was exempt under the previous Act, or issued by that bank after the commencement of this Act where, with the approval of the Governor, such interest has been declared to be free of State income tax: N.S.W. Act,
1928, No.
35, s. 10
(1) (r).
Provided

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N.S.W. Act,
1928, No. 35,
s. 10 (1) (n).
Cwth. Act,
1936, No.
27, s. 23
(k).

Cwth. Act,
1936, No.
27, s. 23
(l).

N.S.W. Act,
1928, No.
35, s. 10
(1) (j).

N.S.W. Act,
1928, No.
35, s. 10
(1) (q).
Cwth. Act,
1936, No.
27, s. 23
(n).

N.S.W. Act,
1929, No. 47,
s. 4 (1) (b).
Cwth. Act,
1936, No. 27,
s. 23 (o).

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

- (l) pensions paid under the Australian Soldiers' Repatriation Act, 1920-1934, of the Parliament of the Commonwealth, and any pension paid to a non-resident who is a resident of Australia to the extent to which such pension is liable to income tax under the law of any other State of Australia;
- (m) the income received by way of periodical payments in the nature of alimony or maintenance by a woman from her husband or former husband provided that for the purpose of making such payments the husband, or former husband, has not divested himself of any income-producing assets or diverted from himself income upon which he would otherwise have been liable to tax;
- (n) the income of a Starr-Bowkett building society, and the income of a rural society registered as such under the Co-operation Act, 1923-1935, as amended by subsequent Acts, if the principal business of that rural society is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members;
- (o) the income derived by a resident of any territory or island in the Pacific Ocean other than New Zealand, which is governed, controlled or held under mandate by the Government of any part of the British Empire, or by a condominium in which any part of the British Empire is concerned, from the sale in this State by or on behalf of that person of produce of the territory or island of which he is a resident;
- (p) the income derived prior to the first day of July, one thousand nine hundred and thirty-nine, by a person from the working of a mining property in Australia or in the territories of Papua and

New

New Guinea principally for the purpose of obtaining gold, or gold and copper, provided that in this case the value of the output of gold is not less than forty per centum of the total value of the output of the mine;

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

N.S.W. Act,
1928,
No. 35, s. 11
(n) prov.
Cwth. Act
1936, No.
27, s. 23 (p).

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

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

- (i) in the case of a non-resident—the whole of the interest on money so loaned where the money is secured by the mortgage of property and the whole of the property is out of this State but in Australia;
- (ii) in the case of a non-resident—a proportionate part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State but in Australia;
- (iii) in the case of a resident—the whole of the interest on money so loaned where the money is secured by the mortgage of property and the whole of the property is out of this State but in Australia and income tax (other than Commonwealth income tax) has been paid in any other State of Australia on that interest by that resident;

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- (iv) in the case of a resident—a proportionate part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State but in Australia and income tax (other than Commonwealth income tax) has been paid in any other State of Australia on that proportionate part by that resident;
- (s) interest on money loaned out of this State to the following extent—
 - (i) in the case of a non-resident—a proportionate part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State;
 - (ii) in the case of a resident—a proportionate part of the interest on money so loaned where the money is secured by the mortgage of property and part of the property is out of this State and income tax (other than Commonwealth income tax) has been paid in any other State of Australia on that proportionate part by that resident;
- (t) income derived directly or indirectly by a resident from a source out of this State, to the extent to which it is not—
 - (i) income derived directly or indirectly from a source in this State or income deemed by or under this Act to be derived in this State;
 - (ii) income which by any provision (other than subsection one of section eighteen) of this Act applicable to income so derived is expressly included in the assessable income;
- (u) interest received from a company by a non-resident of Australia on money raised out of Australia and secured by debentures of the company, where the company has established to the satisfaction

Cwth. Act,
1936, No.
27, s. 25
(2).

satisfaction of the Commissioner, pursuant to subsection three of section one hundred and sixty-eight of this Act, that such non-resident could have enforced payment of such interest without any deduction under subsection two of that section;

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- (v) interest received from any municipal corporation or other local governing body or from a public authority by a non-resident of Australia on money raised out of Australia and secured by stock or debentures which have been issued by such corporation, body, or authority, where such interest is payable out of Australia;

cf. New Zealand Act, 1923, No. 21, s. 78 (h).

- (w) the income of—

Cwth. Act, 1936, No. 27, s. 23 (s).

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

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

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

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

Limitation of exemption. N.S.W. Act, 1928, No. 35, s. 10 (2).

Cwth. Act, 1936, No. 27, s. 24.

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

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DIVISION 2.—*Income.*PART III.
LIABILITY TO
TAXATION.SUBDIVISION A. *Assessable income generally.*DIVISION 2.
INCOME.Gross in-
come from
certain
sources.N.S.W. Act,
1928, No. 35,
s. 4.
Definition of
"Income."Cwth. Act,
1936, No.
27, s. 25
(1).**18.** (1) The assessable income of a taxpayer shall include—

- (a) where the taxpayer is a resident—the gross income derived directly or indirectly from all sources whether in or out of this State, and
- (b) where the taxpayer is a non-resident—the gross income derived directly or indirectly from all sources in this State.

(2) Notwithstanding anything contained in this Act, exempt income shall not be included in the assessable income of a taxpayer.

Certain
items of
assessable
income.N.S.W. Act,
1928, No. 35,
s. 4.
Definition of
"Income."Cwth. Act,
1936, No.
27, s. 25
(2).**19.** (1) The assessable income of a taxpayer shall include—

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

(f)

N.S.W. Act,
1928, No.
35, s. 8 (6).Cwth. Act,
1936, No. 27
s. 26 (a).

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

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INCOME.

N.S.W. Act,
1928, No. 36,
s. 11 (c).

Cwth. Act,
1936, No. 27,
s. 26 (b).

N.S.W. Act,
1928, No. 36,
ss. 11 (c),
19 (1) (j).
Cwth. Act,
1936, No.
27, s. 26
(c).

N.S.W. Act,
1928, No. 35,
s. 11 (i).
Cwth. Act,
1936, No.
27, s. 26
(d).

N.S.W. Act,
1928, No. 35,
ss. 11 (j),
11 (h).
Cwth. Act,
1936, No.
27, s. 26
(c).

N.S.W. Act,
1928, No. 35,
s. 11 (d).
Cwth. Act,
1936, No. 27,
s. 26 (f).

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INCOME.Cwth. Act,
1936, No.
27, s. 26

(g).

Cwth. Act,
1936, No.
27, s. 26 (h).N.S.W. Act,
1928, No. 35,
s. 11 (d).Cwth. Act,
1936, No. 27,
s. 26 (i).Cwth. Act,
1936, No.
27, s. 26 (j).N.S.W. Act,
1928, No.
35, s. 11 (f).

(k) any bounty or subsidy to the extent to which it is received in or in relation to the carrying on of a business in this State;

(l) the amount of any fee or commission received for procuring a loan of money;

(m) any amount received as or by way of bonus other than a reversionary bonus on a policy of life assurance;

(n) any amount received by way of insurance or indemnity for or in respect of any loss—

(i) of trading stock which would have been taken into account in computing taxable income; or

(ii) of profit or income which would have been assessable income,

if the loss had not occurred and any amount so received for or in respect of any loss or outgoing which is an allowable deduction;

(o) the amount or value of any consideration received in connection with a right to remove standing timber from land less the amount, if any, by which the value of the land is or will be diminished by the removal of the timber;

(p) the amount of salary, wages or remuneration derived whilst temporarily engaged on duties out of this State by a taxpayer who ordinarily resides in this State where those duties relate to an office or employment in this State:

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

(q)

- (q) in the case of any pension received by a resident in respect of or for or in relation directly or indirectly to any past employment or service rendered by him irrespective of the source from which the pension is received—

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- (i) if the whole of that employment or service was given or rendered in Australia—the full amount of such pension;
- (ii) if part only of that employment or service was given or rendered in Australia—a part of such pension being a sum which bears the same proportion to the full amount of such pension as the part of that employment or service which was given or rendered in Australia bears to the whole of that employment or service:

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

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

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

Interest on
loans raised
in this State
by Govern-
ments
outside
Australia.
N.S.W. Act,
1928, No. 35,
s. 14.
Cwth. Act,
1936, No. 27,
s. 27.

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

SUBDIVISION

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SUBDIVISION B.—*Trading stock.*PART III.
LIABILITY TO
TAXATION.DIVISION 2.
INCOME.Trading
stock to be
taken into
account.N.S.W. Act
1928, No.
35, s. 11 (a).
Cwth. Act
1936, No.
27, s. 28.

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

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

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

Value at
beginning of
year of
income.N.S.W. Act
1928, No. 35,
s. 11 (a).
2nd prov.
Cwth. Act,
1936, No. 27,
s. 29.

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

Where Com-
monwealth
and State
values differ.Cwth. Act
1936, No. 27,
s. 30.

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

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

(3) Where the value of live stock as ascertained under section twenty-two of this Act exceeds its value as taken

taken into account at the beginning of the year of income, amounts in the aggregate equal to the excess, shall be deducted from the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.

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

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

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

Value at end of
year of income.
N.S.W. Act
1928, No. 35,
s. 11 (a).
Cwth. Act
1936, No. 27,
s. 31.

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

Value of live
stock at end
of year of
income.
N.S.W. Act
1928, No. 35,
s. 11 (a) (ii).
Cwth. Act
1936, No.
27, s. 32.

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

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

Changes in
basis of
valuation of
live stock.
N.S.W. Act,
1928, No. 35,
s. 11 (a) (ii).
Cwth. Act,
1936, No. 27,
s. 33.

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

Cost price
of natural
increase.

(a) where the cost price of natural increase of that class has been previously taken into account under this Act by the taxpayer—the cost price

Cwth. Act
1936, No. 27,
s. 34.

per

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INCOME.

per head at which natural increase of that class was last taken into account unless, with the leave of the Commissioner, the taxpayer selects another cost price; and

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

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

Omission
of natural
increase
under pre-
vious Act.
C'wth. Act
1936, No. 27,
s. 35.

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

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

- (a) where the taxpayer had exercised under the Commonwealth Income Tax (Assessment) Act, 1922-1934, an option to value live stock at market selling price—the market selling price as at the beginning of the year;
- (b) where the taxpayer had exercised under that Act an option to value live stock at cost price—a value per head selected by the taxpayer within the limits prescribed as cost price for natural increase under that Act, by regulations in force immediately preceding the commencement of the Commonwealth Income Tax Assessment Act, 1936, or where he does not so select within the time and in the manner prescribed—the lower of those prescribed limits.

(3) The value per head ascertained as the cost price of natural increase under paragraph (b) of subsection two of this section shall, unless altered with the leave

leave of the Commissioner, apply also to natural increase of the first year of income to which this Act applies and of all subsequent years:

Provided that the value per head of natural increase of the first year of income to which this Act applies and of all subsequent years shall not be less than the lower of the limits prescribed under this Act in respect of the value to be selected as the cost price of natural increase.

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

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

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

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

(3) For the purposes of this Act the consideration which is attributable to each separate asset disposed of shall be determined by the Commissioner and the amount so determined shall be deemed to be the price at which such asset was disposed of.

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Disposal
of assets
of a
business.

N.S.W. Act
1928, No. 35,
s. 11 (k),

Cwth. Act
1936, No. 27,
s. 30.

(4)

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

(a) the dissolution of a partnership; or

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

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

Devolution
on death.
C'wth Act
1936, No. 27,
s. 37.

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

(2) For the purpose of subsection one of this section the value of the property so to be included shall be the amount which would have been included in respect of that property in the assessable income of the deceased person under section twenty-nine of this Act, if he had not died but had disposed of the property on the day of his death for the purpose of putting an end to the whole of the business carried on by him:

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

SUBDIVISION

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

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PART III.
LIABILITY TO
TAXATION.

DIVISION 2.
INCOME.

Definitions.

31. In this Subdivision—

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

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

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

Goods
deemed to be
sold in this
State.
Cwth Act
1936, No. 27,
s. 41.

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

Goods
deemed to
be sold out
of this
State.

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

Instru-
mentality.
Cwth. Act,
1936, No. 27.
s. 41.
N.S.W. Act,
1928, No. 35.
s. 25.
Hughes v.
Munro.
5 C.L.R., 289.

35. Except as provided in this Subdivision—

- (a) where goods are sold in this State by any person the whole of the profit arising from the sale shall be deemed to be income derived in this State;
- (b) where goods are sold out of this State but in Australia by any person the whole of the profit arising from the sale shall be deemed to be income derived out of this State.

Sales of
goods in and
out of this
State.

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Sales in
this State
of goods
manufac-
tured
out of
Australia.

36. Where goods produced, manufactured or partly manufactured out of Australia are sold in this State by the producer or manufacturer of the goods, and the profit arising from the production or manufacture and sale is deemed to be income derived in this State, the Commissioner shall ascertain the profit from the sale of the goods on the basis of the actual cost of the production or manufacture of the goods and in any case where it appears to the Commissioner to be difficult to ascertain such actual cost he may adopt as the cost any amount which he considers reasonable arrived at in such manner and by such means as he considers just and the Commissioner shall, if he is satisfied that portion of the profit from the sale attributable to the operations of production or manufacture carried on out of this State, is liable to income tax in the country of production or manufacture, allow a rebate as follows:—

- (a) where the goods are wholly produced or manufactured out of Australia—a rebate of one-half of the tax payable under this Act on the profit; or
- (b) where the goods are subject to further processes of manufacture in Australia—a rebate of an amount determined by the Commissioner not exceeding one-half of the tax payable under this Act on the profit.

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

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

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

38. Where goods manufactured in this State are sold out of this State but in Australia by the manufacturer, two-thirds of the profit arising from the manufacture and sale shall be deemed to be income derived in this State.

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

39. Where goods are sold in this State in the course of a business carried on out of this State but in Australia by a person not being the manufacturer of the goods, one-half of the profit arising from the sale shall be deemed to be income derived in this State.

40. Where goods are sold out of this State but in Australia in the course of a business carried on in this State by a person not being the manufacturer of the goods, one-half of the profit arising from the sale shall be deemed to be income derived in this State.

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

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

Sales of
primary
produce
and coal in
Australia.

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

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

N.S.W. Act,
1928, No.
35, s. 25 (3).

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

Ascertain-
ment of
profits.

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

Assessable
income and
deductions.
Cwth. Act,
1936, No.
27, s. 43.

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INCOME.Exclusion
of mining.

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

(2) Where, for any of the reasons stated in section forty-five of this Act, the source of any profit from the carrying on of any such business as is referred to in subsection one of this section is not exclusively in this State, the part of the profit deemed to be derived from a source in this State and the part of the profit deemed to be derived from a source out of this State shall be determined in accordance with section forty-five of this Act.

Source or
income derived
from the export
of goods
manufactured
or produced
in this State.
N.S.W. Act,
1928, No. 35,
s. 28 (1).
Cwth. Act,
1936, No. 27,
s. 42.

45. Where goods are exported from this State and either before or after export are sold out of Australia and—

- (a) by reason of the manufacture, extraction from the earth, winning, production or purchase of such goods in this State; or
- (b) by reason of successive steps of extraction, winning, production, or manufacture in and out of this State; or
- (c) by reason of the making of contracts out of this State; or
- (d) for any other reason whatever;

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

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

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

47.

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

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

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

(3) The return shall set out particulars of any apportionments and shall be accompanied by a full and complete statement of income and expenditure and assets and liabilities in connection with the business in and out of this State.

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

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

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

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INCOME.

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

N.S.W. Act,
1928, No.
35, s. 27 (b).

Allocation
or appor-
tionment of
income
where
source not
definitely
ascertain-
able.

N.S.W. Act,
1928, No.
35, s. 27 (b).

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Income
assessable
under more
than one
section.

N.S.W. Act,
1928, No.
35, s. 28 (2).

Determination
by Commis-
sioner.

C'wth Act,
1936, No.
27, s. 41.

Apportion-
ment of loss.

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

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

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

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

SUBDIVISION D. *Dividends.*

Inclusion of
dividends in
assessable
income.

N.S.W. Act,
1928, No.
35, s. 11 (b).

C'wth. Act,
1936, No. 27,
s. 44 (1).

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

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

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

(3)

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

- (a) if the shareholder is a company, except to the extent to which the shareholder is a trustee otherwise than for another company and except for the purposes of section ninety of this Act; or
- (b) if the shareholder is a non-resident but is a resident of Australia if, under the laws of the State in which he resides such dividends are liable to be included in his assessable income for purposes of income tax (being income tax imposed as such and which, in the opinion of the Commissioner, is reasonably comparable in its nature to the tax assessed under this Act).

53. The assessable income of a shareholder shall not include dividends received from a company that does not carry on business in, or derive income from sources in Australia, or dividends paid on or after the first day of January, one thousand nine hundred and thirty-six, wholly and exclusively out of one or more of the following:—

- (a) income derived from sources outside Australia, not being income which under this Act is or has been assessable income of the company;
- (b) profits arising from the sale or compulsory resumption for public purposes of assets if the company was not liable to tax in respect of those profits under this or the previous Acts;
- (c) profits arising from the revaluation of assets not acquired for the purpose of resale at a profit or from the issue of shares at a premium, if the dividends paid from such profits are satisfied by the issue of shares of the company declaring the dividend;
- (d) interest which is exempt under paragraph (k) of section sixteen or interest exempted under paragraph (r) of subsection one of section ten of the previous Act;
- (e) income upon which tax has been assessed and paid under the provisions of Division 9 of this Part or section thirty-one of the previous Act; or

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Exclusion of
certain divi-
dends from
assessable
income.

N.S.W. Act,
1928, No.
35, s. 11 (b).

Cwth Act,
1936, No.
27, s. 44 (2).

N.S.W. Act,
1928, No.
35, Schedule
Part 9.

(f)

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TAXATION.DIVISION 2.
INCOME.N.S.W. Act,
1928, No.
35, s. 10
(1) s.Further
provision
for ex-
clusion of
dividends.

- (f) exempt income derived by a company from the working of a gold mining property in Australia or in the territory of New Guinea where such dividends are paid before the first day of July, one thousand nine hundred and thirty-nine.

54. The assessable income of a shareholder shall not include—

- (a) dividends paid before the first day of January, one thousand nine hundred and thirty-six, out of one or more of the incomes, profits or interests referred to in section fifty-three of this Act; or
- (b) distributions made by a liquidator before the first day of January, one thousand nine hundred and thirty-six; or
- (c) bonus shares distributed before the thirtieth day of September, one thousand nine hundred and thirty-six;

except to the extent to which those dividends, distributions or bonus shares would have been included in the assessable income of the shareholder if the assessment had been made under the previous Act.

Rebate on
dividends.
N.S.W. Act,
1928, No.
35, s. 11 (b),
3rd, 4th
prov.

Cwth Act,
1936, No.
27, s. 46.

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

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

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

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

(3)

Income Tax (Management) Act. 665

(3) Subsection one of this section shall not extend to or in respect of any dividend distributed by a rural society, the income of which is exempt from income tax under paragraph (n) of section sixteen of this Act or to any dividend which is an allowable deduction under section one hundred and sixty-seven of this Act.

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

Distribu-
tions by
liquidator.
C'wth Act,
1936, No.
27, s. 47.

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

DIVISION 3.—*Deductions.*

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

Allowable
deductions.
N.S.W. Act,
1928, No. 35,
s. 19.
C'wth Act,
1936, No. 27,
s. 48.

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

Successive
deductions.
N.S.W. Act,
1928, No. 35,
s. 20 (4).
C'wth Act,
1936, No. 27,
s. 49.

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

Deductions
in case of
composite
incomes.
N.S.W. Act,
1928, No.
35, s. 20.

(a) where a deduction relates directly to the income from dividends it shall be made successively from that income, from the other income from property, and from the income from personal exertion;

C'wth Act,
1936, No.
27, s. 50.

(b)

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

Losses and
outgoings.
N.S.W. Act,
1928, No.
35, s. 19 (1),
a.
C'wth Act,
1936, No.
27, s. 51.

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

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

Head
office
expenses.
N.S.W. Act,
1928, No.
35, s. 21
(n).

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

Loss on
property
acquired
for profit-
making.
C'wth Act,
1936, No.
27, s. 52.

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

Repairs.
N.S.W. Act,
1928, No. 35,
s. 19 (1) c.
C'wth Act,
1936, No. 27,
s. 53.

63. (1) Expenditure incurred by the taxpayer in the year of income for repairs, not being expenditure of a capital nature, to any premises, or part of premises, plant, machinery, implements, utensils, rolling stock or articles

articles held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose, shall be an allowable deduction.

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

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

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

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

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

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

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

67. Where depreciation has been allowed to a taxpayer, whether under this or the previous Act, in respect of any year prior to the year of income, the method of calculating the depreciation to be allowed to him in respect of the year

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DEDUC-
TIONS.

N.S.W. Act,
1928, No.
35, s. 21 (e).

Deprecia-
tion.

N.S.W. Act,
1928, No.
35, s. 19
(1) l.

C'wth Act,
1936, No. 27
s. 56.

Basis of de-
preciation.

C'wth Act,
1936, No.
27, s. 55.

Calculation
of depre-
ciation.

C'wth Act,
1936, No. 27
s. 56.

N.S.W. Act,
1928, No. 35,
s. 19 (1), l. iii.

Alteration
of method of
calculating
depreciation.
C'wth Act,
1936, No. 27,
s. 57.

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TIONS.Deprecia-
tion under
Common-
wealth and
State Acts.
C'wth Act,
1936, No.
27, s. 58.

year of income shall, unless altered with the leave of the Commissioner, or in the exercise of the option referred to in section sixty-six of this Act, be the same as that applied in the last preceding calculation.

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

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

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

Disposal,
loss, or
destruction
of depre-
ciated
property.N.S.W. Act,
1928, No.
35, s. 19 (1),
1, ii.C'wth Act,
1936, No.
27, s. 59.

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

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

(3)

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

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

(4) Notwithstanding anything contained in this Act where a calculation under this section is based upon the consideration receivable and for any reason the whole or any part of that consideration is not received by the taxpayer the Commissioner may, at any time, amend the assessment on the basis of the consideration received.

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

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TIONS.

Acquisition
of depre-
ciated
property.
N.S.W. Act,
1928, No.
35, s. 19 (1).
I, iii.
Cwth Act,
1936, No.
27, s. 60.

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

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

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DEDUC-
TIONS.Property
used partly
for produc-
ing assess-
able income.
C'wth Act,
1936, No.
27, s. 61.

at or about the date of the transfer substantially inter-
ested as a shareholder or unless the person who acquired
the property and the transferrer were companies the
shareholdings in which were, at or about the date of the
transfer, in substantially the same hands.

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

Definition of
depreciated
value.N.S.W. Act,
1923, No.
35, s. 19
(1), i, ii.C'wth Act,
1936, No.
27, s. 62.

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

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

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

Bad debts.

N.S.W. Act,
1923, No.
35, s. 19
(1), k.C'wth Act,
1936, No.
27, s. 63.

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

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

and no other bad debts, shall be allowable deductions.

(2)

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

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TO TAXA-
TION.DIVISION 3.
DEDUC-
TIONS.

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

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

Commission.
N.S.W. Act,
1928, No. 35,
s. 19 (1), a.
Cwth. Act,
1936, No. 27,
s. 64.

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

Payments
to relatives.
N.S.W. Act,
1928, No.
35, s. 21(o).
C'wth Act,
1936, No.
27, s. 65.

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

N.S.W. Act,
1928, No.
35, s. 21 (a)

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

Contribu-
tions to
pension
funds.
N.S.W. Act,
1928, No.
35, s. 19
(1), c.C'wth Act,
1936, No.
27, s. 66.

- (a) the taxpayer is under a legal obligation to set apart or pay that sum; and

(b)

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LIABILITY TO
TAXATION.DIVISION 3.
DEDUC-
TIONS.Expenses of
borrowing.
N.S.W. Act,
1928, No.
35, s. 19
(1), g.
C'wth Act,
1936, No.
27, s. 67.

- (b) the rights of the employees to receive the benefits, pensions or retiring allowances are fully secured.

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

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

Expenses of
preparing
lease.
C'wth Act,
1936, No.
27, s. 68.

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

Timber
felled upon
acquired
land.
C'wth Act,
1936, No.
27, s. 69.

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

Timber
felled under
right.
N.S.W. Act,
1928, No. 35,
s. 19 (1),
m (2).
C'wth. Act,
1936, No. 27,
s. 70.

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

Loss by
embezzle-
ment.
C'wth Act,
1936, No.
27, s. 71.

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

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

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DEDUC-
TIONS.

Rates and
taxes.

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

N.S.W. Act,
1928, No.
35, s. 19
(1), b.

C'wth Act,
1936, No.
27, s. 72.

(3) Sums paid by the taxpayer for any rates or taxes of any kind whatsoever, not allowed as a deduction under subsection one of this section, shall not be allowable deductions except to the extent to which they are incurred in gaining or producing assessable income.

N.S.W. Act,
1928, No.
35, s. 21, k.

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

Subscrip-
tions to
associa-
tions.

N.S.W. Act,
1928, No.
35, s. 19
(1), h.

C'wth Act,
1936, No.
27, s. 73.

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

Expenses of
members of
Parliament.

N.S.W. Act,
1928, No.
35, s. 19
(1), p.

85. (1) Expenditure incurred in the year of income by the taxpayer in being elected as a New South Wales member or in contesting an election for membership of the Parliament of the Commonwealth or of the Legislative Assembly of New South Wales shall be an allowable deduction.

Election
expenses of
members of
Parliament.

C'wth Act,
1936, No.
27, s. 74.

(2) When a deduction has been allowed or is allowable under subsection one of this section in respect of any expenditure and that expenditure or any part of

it

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DEDUC-
TIONS.Grassing
grazing
lands, etc.N.S.W. Act,
1928, No. 35,
s. 19 (1) (i).
Cwth. Act,
1936, No. 27,
s. 75.Expenditure
on mining
operations.N.S.W. Act,
1928, No. 35,
s. 19 (1) (o).
Cwth. Act,
1936, No. 27,
Division 10.Gifts and
contribu-
tions.N.S.W. Act,
1928, No.
35, s. 19
(1), q.
Cwth Act,
1936, No.
27, s. 78.

it is reimbursed to the taxpayer or paid for him by any other person or by any organization the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount.

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

87. Expenditure incurred during the year of income by any taxpayer carrying on mining operations in this State for labour and materials employed in sinking shafts in a producing mine shall be an allowable deduction.

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

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

- (i) a public hospital;
- (ii) a public benevolent institution;
- (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions in this State, or for the establishment of such hospitals or institutions or for the relief of persons in this State who are in necessitous circumstances;
- (iv) a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants, where the gift is for such research, or a public institution engaged solely in such research;

(v)

- (v) a public university, public library, public museum, or public art gallery;
- (vi) a residential educational institution affiliated under statutory provisions with the Sydney University or a public educational institution not carried on for the profit of individuals;
- (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial in this State relating to the war which commenced on the fourth day of August, one thousand nine hundred and fourteen; and
- (viii) an institution or public fund for the benefit of persons who are returned soldiers within the meaning of Part III of the Australian Soldiers' Repatriation Act, 1920-1934, of the Parliament of the Commonwealth;
- (b) sums which are not otherwise allowable deductions and which are set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions or retiring allowances for employees who are residents and are engaged in his or any business or class of business, or dependants of such employees, if the rights of the employees or dependants to receive the benefits, pensions or retiring allowances are fully secured;
- (c) sums which are not otherwise allowable deductions and which are paid by the taxpayer during the year of income as retiring allowances or pensions to persons who are or have been employees or dependants of employees, where such persons are residents, to the extent to which in the opinion of the Commissioner those sums are paid bona fide in consideration of the past services of the employees in any business of the taxpayer.

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TIONS.

N.S.W. Act,
1928, No. 35,
s. 19 (1) (e).

N.S.W. Act,
1928, No. 35,
s. 19 (1) (e).

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

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TIONS.

N.S.W. Act,
1928, No. 35,
s. 19 (1) (q).

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

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

Concessional
deductions.

N.S.W. Act,
1928, No. 35,
s. 19 (2).

Cwth. Act,
1936, No. 27,
s. 79.

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

(a) the sum of fifty pounds in respect of one relative only, but this deduction shall not be allowed—

(i) where the relative is not a resident of Australia; or

(ii) where during the year of income the relative derived a net amount of income from all sources in excess of one hundred pounds; or

(iii) where the taxpayer is not the principal support of the relative; or

(iv) where the taxpayer has not during the year of income expended at least fifty pounds towards the maintenance of the relative, unless the relative is his or her spouse. Any payments made to the relative which, in the opinion of the Commissioner, are for board and lodging of or other services to the taxpayer shall be excluded in calculating such expenditure; or

(v) where the relative is a child in respect of whom the taxpayer is allowed a deduction under paragraph (b) of this subsection;

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

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

N.S.W. Act,
1928, No. 35
s. 19 (2)
(c) (i).

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

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TIONS.

- (c) payments not exceeding fifty pounds in the aggregate made by the taxpayer in the year of income to any legally qualified medical practitioner, nurse or chemist, or public or private hospital, in respect of any illness of or operation upon the taxpayer or his spouse or any of his children under the age of twenty-one years if the spouse or child is a resident of Australia;
- (d) payments not exceeding twenty pounds in the aggregate made by the taxpayer in the year of income for funeral and burial or cremation expenses arising out of the death of his spouse, or of any of his children under the age of twenty-one years, if the spouse or child was at the time of death a resident of Australia,—to the extent to which those expenses are not recouped to him by any society or association;
- (e) payments made by the taxpayer in the year of income, not exceeding in the aggregate one hundred pounds, and being—
- (i) premiums or sums for insurance on the life of the taxpayer or of his spouse or children, or for a deferred annuity or other like provision for his spouse or children; or
 - (ii) payments to superannuation, sustentation, widows' or orphans' funds, or to any friendly society, for the personal benefit of the taxpayer or of his spouse or children; and
- (f) payments made by the taxpayer in the year of income to any registered dentist in respect of the provision by such dentist of dental treatment to the taxpayer or his spouse or any of his children under the age of twenty-one years, if the spouse or child is a resident of Australia.

N.S.W. Act,
1928, No. 35,
s. 19 (2)
(d) (i).

N.S.W. Act,
1928, No. 35,
s. 19 (2)
(d) (ii).

N.S.W. Act,
1928, No. 35,
s. 19 (2) (a)
and (b).

N.S.W. Act,
1928, No. 35,
s. 19 (2)
(d) (i).

The

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TIONS.

The deductions mentioned in this paragraph are to be allowed only when the taxable income of the taxpayer does not exceed four hundred pounds.

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

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

Losses of
previous
years.

N.S.W. Act,
1928, No. 35,
s. 22.
Cwth Act,
1936, No. 27,
s. 80.

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

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

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

(3)

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

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TIONS.

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

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

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

Statutory
exemption.
N.S.W. Act,
1928, No. 35,
s. 19 (3).
Cwth Act,
1936, No. 27,
s. 81.

(a) in the case of a person (other than a company) domiciled in this State—

(i) the sum of two hundred and fifty pounds, less one pound for every eight pounds by which the income exceeds two hundred and fifty pounds; or

(ii) where the income does not exceed two hundred and fifty pounds, the amount of the income;

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

(i) the sum of fifty pounds, less one pound for every eight pounds by which the income exceeds fifty pounds; or

(ii) where the income does not exceed fifty pounds, the amount of the income.

In

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TAXATION.DIVISION 3.
DEDUC-
TIONS.Double
deductions.N.S.W. Act,
1923, No. 35,
s. 12 (3)
b, c.Cwth Act,
1936, No. 27,
s. 82.

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

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

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

DIVISION 4.—Leases.

Definitions.

Cwth Act,
1936, No. 27,
s. 83.

93. In this Division—

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

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

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

"Premium" means any consideration in the nature of a premium, fine, or foregift payable to any person for or in connection with the grant or assignment by him of a lease, or any consideration for or in connection with the surrender of a lease, or for or in connection with any goodwill
or

or license attached to or connected with land a lease of which is granted, assigned or surrendered; and where any of the foregoing considerations is payable in more than one amount each such amount shall be deemed to be a premium.

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LEASES.

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

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

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

Premiums
included in
assessable
income.

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

N.S.W. Act,
1928, No. 35,
s. 11 (d),
11 (n).
Cwth Act,
1936, No. 27,
s. 84.

(2) Where a lease (other than a lease of premises in respect of which a publican's license or an Australian wine license is for the time being in force) assigned or surrendered was acquired by the taxpayer before the sixth year prior to the year of income in which the lease is assigned or surrendered the amount of net premium (or if in respect of the transaction there are more net premiums than one,—the sum of the net premiums) to be included as assessable income shall not be greater than the total of the amounts of deductions allowed to the taxpayer under this Act and the previous Acts in respect of the lease.

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

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

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

N.S.W. Act,
1928, No. 35,
s. 11 (n).
Cwth. Act,
1936, No. 27,
s. 85.

(b)

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LEASES.

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

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

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

Deductions
where lease
devolves
on death.

Cwth. Act
1936, No. 27,
s. 85 (2).

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

97.

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

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

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

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

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

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

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

(b)

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LEASES.

Rate of
tax where
lease
granted.

(With Act,
1936, No. 27,
s. 86.

No. 41, 1936.

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LIABILITY TO
TAXATION.DIVISION 4.
LEASES.Rate of tax
where lease
is assigned
or sur-
rendered.Cwth Act,
1936, No. 27,
s. 86.Value of im-
provements
included in
assessable
income.N.S.W. Act,
1928, No. 35,
s. 11 (g).
Cwth. Act,
1936, No. 27,
s. 87.

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

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

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

- (a) There shall be included in the lessor's assessable income of the year in which the improvements have been made, and of each year thereafter until and including the year in which the lease expires, a proportionate part of the estimated value to the lessor of such improvements as at the expiration of the lease arrived at by apportioning such value proportionately over the period of the lease unexpired at the date the improvements were made.
- (b) Where in the opinion of the Commissioner the estimated value cannot, at the date the improvements were made, be satisfactorily determined, the value of the improvements at the expiration of the lease shall be included in the lessor's assessable income of the year in which the lease expires.

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

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

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

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

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

- (a) Where, under this Act or the previous Acts, the assignor was liable to include in his assessable income the whole of the net premium for the assignment by him of the lease to the taxpayer company, a proportionate part of the amount of the premium paid, arrived at by distributing that amount proportionately over the period of the lease unexpired at the date when the premium was paid, shall be an allowable deduction.
- (b) Where the lease was acquired by the assignor before the sixth year prior to the year of income in which it was assigned to the taxpayer company, and the assignor was, either under this Act or the previous Act, liable to include in his assessable

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Deductions
to lessee in
respect of
payments
for lease.

N.S.W. Act
1928, No. 35,
s. 19 (1)
(m) (i).

Cwth. Act
1936, No. 27,
s. 88 (1).

N.S.W. Act
1928, No. 35,
s. 19 (1) (m),
3rd proviso.

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assessable income a part only of the net premium for the assignment by him of the lease to the taxpayer company this section shall not be construed as entitling the taxpayer company to an allowable deduction in respect of the premium greater than the amount, if any, ascertained by dividing the amount of any premium paid by the assignor for the lease by the number of years of the period of the lease unexpired when such payment of premium by the taxpayer company was made.

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

Deductions
to lessee
in respect of
improvements
on
leased land.

N.S.W. Act
1928, No. 35
s. 19 (1) (n)

Cwth Act,
1936, No. 27,
s. 88 (2).

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

- (a) have been made as consideration for the grant to him of that lease, or
- (b) are improvements which he was required to make under the provisions of that lease, or
- (c) have been made with the written consent of the lessor,

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

(2)

(2) This section shall not apply—

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

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N.S.W. Act,
1928, No. 35,
s. 19 (1) (n),
proviso.

C'wth Act
1936, No. 27,
s. 88 (3).

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

Deductions
to taxpayer
succeeding
to lease.

C'wth Act
1936, No. 27,
s. 88 (4).

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

Division not
to apply to
certain
leases.

N.S.W. Act
1928, No. 35,
s. 19 (1) (m)
2nd proviso.

C'wth Act
1936, No. 27,
s. 89.

DIVISION 5.—*Casual profits.*

104. In this Division—

“Bought” includes an exchange of property and the acquisition of shares by the issue thereof.

Definitions.

N.S.W. Act
1928, No. 35,
s. 12 (8).

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

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

“Real

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TAXATION.DIVISION 5.
CASUAL
PROFITS.N.S.W. Act
1928, No. 35,
ss. 12 (1)
and 12 (1)
(iii).N.S.W. Act
1928, No. 35,
s. 12 (8).Profits
from sale
of real
property.N.S.W. Act
1928, No. 35,
s. 12 (1).Profits
from sale
of personal
property.N.S.W. Act
1928, No. 35,
s. 12 (2).

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

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

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

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

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

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

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

107.

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

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PROFITS.

Amount of
casual
profit.

N.S.W. Act,
1928, No. 35,
s. 12 (3).

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

(2) Where the property sold represents part only of the property bought the deductions under paragraphs (a), (b) and (c) of subsection one of this section shall be such part of the amounts set out in those paragraphs as is properly attributable to the part of the property sold.

(3) Where any property referred to in this Division is sold with other assets, the sale price, or amount realised by the sale, of that property shall be determined in the same manner as the value of property is determined under subsection three of section twenty-nine of this Act.

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

Amount of
casual loss.

109.

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CASUAL
PROFITS.Sales on
terms.N.S.W. Act,
1928, No. 35,
s. 12 (4).

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

- (a) the amount of the casual profit which would have been derived if the sale had been for cash shall be ascertained, and there shall be included as a casual profit in the assessable income of each year of income in which a payment is received, so much of that amount as bears to that amount the same proportion as the payments received in that year bear to the total purchase price;
- (b) the amount of the casual loss which would have been incurred if the sale had been for cash shall be ascertained and so much of that amount as bears to that amount the same proportion as the payments received in any year of income bear to the total purchase price shall be the casual loss attributable to that year of income.

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

Rate of
tax
where
casual
profit
included
in assessable
income.

N.S.W. Act,
1928, No. 35,
s. 12 (5).

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

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

(3)

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

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

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

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

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

(6) For the purposes of this section “casual profit” includes a net premium assessable under Division 4 of this Part, where that net premium is received for
the

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CASUAL
PROFITS.Deduction
of casual
losses.N.S.W. Act,
1928, No. 35,
s. 12 (3),
2nd prov.

the assignment or surrender of a lease but does not include income assessable under section one hundred and twelve of this Act.

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

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

(3) Nothing in this section shall apply with respect to any loss incurred by a taxpayer prior to the year ended on the thirtieth day of June, one thousand nine hundred and thirty-four, or the accounting period accepted by the Commissioner under the previous Act in lieu of that year or with respect to any loss incurred by a taxpayer from the sale of any property except to the extent to which the profit, if any, from the sale would, under section one hundred and five or section one hundred and six of this Act, have been included in his assessable income.

Assessable
income to
include
amounts
from sale of
rights and
from grant-
ing of
option.N.S.W. Act,
1928, No. 35,
s. 11 (1).N.S.W. Act,
1928, No. 35,
s. 11 (m).

112. The assessable income of a taxpayer shall include—

- (a) any amount derived by a shareholder in a company from the sale in this State of rights to take up shares or debentures in a company;
- (b) any consideration received at any time for the granting of an option to purchase or lease any property where the term of the option expires in the year of income and the option has not been exercised.

113.

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

(2) Where a property has reverted to the vendor the amount of casual profit or casual loss shall be recalculated and for that purpose the sale price shall be deemed to be an amount equal to the sum of all the amounts received by the vendor and the amount of the market value of the property on the date of the reversion.

(3) For the purpose of applying the provisions of this Division to any subsequent sale of property which has reverted to a vendor, such property shall be deemed to have been bought originally by him at that market value.

114. Where a person has bought property and assures it otherwise than by way of sale whether by delivery or otherwise to a person who sells it, the casual profit, if any, arising from the sale shall be included in the assessable income of the vendor if the casual profit from that sale would have been assessable income of the first-mentioned person under this Division had he continued to hold the property and made the sale.

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

115. Where a person who has bought real property assures it or causes it to be assured to a private company and he is at or about the date of the assurance substantially interested as a shareholder therein and he sells substantially the whole of his shares in that company the casual profit, if any, arising from the sale shall be deemed to be assessable income of that person under section one hundred and five of this Act, if, had he continued to hold that real property and had he sold that real property at

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PROFITS.

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

Gifts by
purchaser.
N.S.W. Act,
1928, No. 35,
s. 12 (6).

Sale of
shares of
private
company.
N.S.W. Act,
1928, No. 35,
s. 12 (7).

the

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the time when he sold the shares, the casual profit on such sale of the real property would have been deemed to be assessable income of such person under section one hundred and five of this Act.

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

Exchange
of property.

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

Purchase
price when
amount
paid for
an option.

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

DIVISION 6.—Partnerships.

Definitions.

N.S.W. Act,
1928, No. 35,
s. 33.Cwth Act,
1936, No. 27,
s. 90.**117.** In this Division—

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

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

Partnership
liable to
furnish
return.
N.S.W. Act,
1928, No. 35,
s. 33.
Cwth. Act,
1936, No. 27,
s. 91.

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

119.

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

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

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DIVISION 6.
PARTNER-
SHIPS.

Income of
partner.
N.S.W. Act,
1928, No. 35,
s. 33.
Cwth Act,
1936, No.
27, s. 92.

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

Shares of
relatives.
N.S.W. Act,
1928, No. 35,
s. 33.

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

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

DIVISION 7.—*Trustees.*

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

Net income
of trust
estate.

N.S.W. Act,
1928, No. 35,
s. 34 (1).

Cwth Act,
1936, No. 27,
s. 95.

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

(b)

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TRUSTEES.

N.S.W. Act,
1928, No. 35,
s. 34 (5).

Trustees.

N.S.W. Act,
1928, No. 35,
s. 34 (1).
Cwth. Act,
1936, No. 27,
s. 96.

Beneficiary
not under
any dis-
ability.

N.S.W. Act,
1928, No. 35,
s. 34 (1).

Cwth. Act,
1936, No. 27,
s. 97.

Beneficiary
under
disability.

N.S.W. Act,
1928, No. 35,
s. 34 (2).

Cwth. Act,
1936, No. 27,
s. 98.

Where no
person
presently
entitled.

N.S.W. Act,
1928, No. 35,
s. 34 (2).

Cwth. Act,
1936, No. 27,
s. 99.

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

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

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

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

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

125. (1) Where there is no beneficiary presently entitled to any part of the income of a trust estate, or where there is a part of that income to which no beneficiary is so entitled, the trustee shall be assessed and liable to pay tax on the net income of the trust estate, or on that part of that net income as the case may be, as if it were the income of an individual, and were not subject to any deduction other than the statutory exemption.

(2) Where the net income or a part of the net income of a deceased estate which is assessable to a trustee under the preceding subsection includes income upon which a presumptive beneficiary, being a living person, would

would be assessed if he were presently entitled to his share of that income the trustee shall be separately assessed in respect of that share as if it were the income of an individual and were not subject to any deductions. The amount of tax assessed to a trustee under this subsection shall not be less than the amount which would be payable on that share of the income by the presumptive beneficiary if he were presently entitled to that share.

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

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

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

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

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

129. (1) Where either before or after the commencement of this Act a person has created a trust in respect of any income or income-producing assets and he has a power whenever exercisable to revoke or alter the trust so as to acquire a beneficial interest in the income derived during the year of income or the assets producing that income

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Beneficiary
under dis-
ability
deriving
income from
other
sources.

N.S.W. Act,
1928, No. 35,
s. 34 (3).

Cwth. Act,
1936, No. 27,
s. 100.

Discretion-
ary trusts.

N.S.W. Act,
1928, No. 35,
s. 34 (4).

Cwth. Act,
1936, No. 27,
s. 101.

Income of
deceased
received
after death.

Revocable
trusts and
dispositions
to minors.

Cwth. Act,
1936, No. 27,
s. 102.

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LIABILITY TO
TAXATION.DIVISION 7.
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income or any part of that income or of those assets, the net income of the trust estate, or part thereof attributable to that beneficial interest, as the case may be, shall, if the Commissioner so determines, be deemed to be income of that person, if living.

N.S.W. Act,
1928, No. 35,
s. 35.

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

N.S.W. Act,
1928, No. 35,
s. 35, prov.

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

Definitions.

N.S.W. Act,
1928, No. 35,
s. 36.

(4) For the purposes of this section—

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

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

Definitions.

N.S.W. Act,
1928, No. 35,
s. 32 (3).

130. In this Division—

“Post-nuptial settlement” includes any conveyance, delivery or transfer of property, but does not include a post-nuptial settlement in writing made in pursuance of a written ante-nuptial agreement for such settlement entered into by the husband and the wife in consideration of the marriage.

N.S.W. Act,
1928, No. 35,
s. 32 (4).

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

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

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DIVISION 8.
ASSESSMENT
OF INCOME
OF HUSBAND
AND WIFE.

Post-nuptial
settlements.

N.S.W. Act,
1928, No. 35,
s. 32 (1)
a, b.

Payments
by private
company.

N.S.W. Act,
1928, No. 35,
s. 32 (1) c.

132. Where a private company—

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

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

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

Certain
sections
not to
apply in
certain
cases.

N.S.W. Act,
1928, No. 35,
s. 32 (1),
prov.

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

Recovery
of tax.

N.S.W. Act,
1928, No. 35,
s. 32 (6).

(2) Where section one hundred and thirty-two of this Act applies, the Commissioner may recover from the spouse in receipt of the excess payments referred to
in

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OF INCOME
OF HUSBAND
AND WIFE.

in that section a sum which bears to the total tax payable by the taxpayer referred to in the said section the same proportion as that excess bears to the total income included in the assessment of the taxpayer.

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

DIVISION 9.—*Private companies.*

Definitions.
Cwth. Act,
1936, No. 27,
s. 103.

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

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

“Distributable income” means in relation to any year of income the amount ascertained by the Commissioner under this Division as being the amount which could reasonably have been distributed by a private company to its shareholders out of its taxable income.

“Investment company” means a company the income of which, other than dividends from private companies, is ordinarily derived solely or principally from such sources that income derived from those sources by an individual would be income from property.

N.S.W. Act,
1928, No. 35,
Schedule c. 1
(III).

“Nominee” of any person means one who may be required to exercise his voting power at the direction of, or holds shares directly or indirectly on behalf of, that person and includes a relative of that person.

N.S.W. Act,
1928, No. 35,
Schedule
c. 1.

“Private company” means a company which is under the control of not more than seven persons, and which is not a company in which the public are substantially interested or a subsidiary of a public company.

“Private company tax” means the tax imposed on a private company under this Division.

“Undistributed

“Undistributed amount” means—

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- (a) the amount by which the dividends paid by a private company out of its taxable income of the year of income falls short of a sufficient distribution; or
- (b) where no dividends have been so paid, the amount which would have been a sufficient distribution.

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(2) For the purposes of this Division—

- (a) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power, have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year of income beneficially held by, the public (not including a private company) and any such shares have in the course of that year been quoted in the official list of a Stock Exchange; N.S.W. Act,
1928, No. 35,
Schedule c. 1
(ii).
- (b) a company shall be deemed to be a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company is in the hands of one or more companies none of which is a private company; N.S.W. Act,
1928, No. 35,
Schedule c. 1
(i).
- (c) a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons; N.S.W. Act,
1928, No. 35,
Schedule c. 1
(iii).
- (d) persons in partnership and persons interested in the estate of a deceased person or in property held in trust shall respectively be deemed to be a single person; N.S.W. Act,
1928, No. 35,
Schedule c. 1
(iii).
- (e) a private company shall be deemed to have made a sufficient distribution of its income of the year of income if it has paid in dividends out of the taxable income of that year the amount of its distributable income; N.S.W. Act,
1928, No. 35,
s. 31 (a).
- (f)

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PRIVATE
COMPANIES.N.S.W. Act,
1928, No. 35,
Schedule c. 2.Determination
by Commis-
sioner where
private com-
pany has not
made sufficient
distribution.12 and 13
Geo. V, ch.
17, s. 21.N.S.W. Act,
1928, No. 35,
ss. 31, 31 (a).Cwth. Act,
1936, No. 27,
s. 104.

- (f) the taxable income of a private company shall be calculated as if the assessable income of the company included dividends to the extent to which such dividends would be included in the assessable income of an individual taxpayer (being a resident if the company is a resident and being a non-resident if the company is a non-resident) if received by him.

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

- (a) where it appears to the Commissioner that a private company has not before the expiration of nine months after the close of the year of income made a sufficient distribution of its income of that year the Commissioner may determine the distributable income of the private company;
- (b) where an order has been made or a resolution passed for the winding up of a private company, and the order was made or the resolution was passed during the year of income or before the expiration of nine months after the close of the year of income, and the company has not before the date of the order or resolution made a sufficient distribution of its income of that year or of its income for that portion of the year of income ending on the date of the order or resolution, the Commissioner may determine the distributable income of the private company;
- (c) where the Commissioner determines the distributable income of a private company he shall (not later than three years after the making of the determination) assess the additional tax which would have been payable by each of the shareholders if the company had paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive

it

N.S.W. Act,
1928, No 35,
s. 31 (b).

it in proportion to their interests in the paid-up capital of the company and the company shall be liable to pay as private company tax the sum of the taxes so assessed.

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N.S.W. Act,
1928, No. 35,
s. 31 (c).

137. (1) Where the Commissioner has, pursuant to section one hundred and thirty-six of this Act, determined the distributable income of a private company, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of the sum so determined if there had been successive distributions of the relative parts of that amount to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may also, in addition to any other tax to which the company is liable under this Division, assess the additional tax, if any, which would in that event have been payable by that person; and the private company shall be liable to pay as private company tax the sum of the taxes so assessed.

Interposition
of companies,
trustees and
partnerships.

N.S.W. Act,
1928, No. 35,
Schedule
c. 8.

Cwth. Act,
1936, No. 27,
s. 105.

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

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

Excess dis-
tribution in
previous
years.

Cwth. Act,
1936, No. 27,
s. 106.

(2) For the purpose of calculating the excess—

(a) any part of the company's taxable income of that period upon which it has paid or is liable

to

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to pay private company tax, or tax under section thirty-one of the previous Act, shall be deemed to be a dividend paid by the company during that period; and

- (b) any dividend or part of a dividend paid out of that part of the company's taxable income shall be deemed not to be a dividend.

Distributable income.
Cwth. Act,
1936, No. 27,
s. 104.

139. Subject to the provisions of this section and of sections one hundred and forty and one hundred and forty-one of this Act, the distributable income of a private company shall be the amount which in the opinion of the Commissioner could reasonably have been distributed by the company to its shareholders out of its taxable income.

Facts to be
taken into
consideration in
making determination.

N.S.W. Act,
1928, No 35,
Schedule c. 3.

140. (1) The Commissioner in addition to any other facts which he may consider in ascertaining the distributable income of a private company may have regard to the development of businesses and industries and shall take into consideration 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;
- (b) to meet losses which the directors considered certain to arise during subsequent years; and
- (c) to meet taxes payable in respect of the company's income of the year of income except—
 - (i) private company tax; and
 - (ii) tax payable by a private company under any enactment of the Commonwealth or of any place out of this State which tax is, in the opinion of the Commissioner, reasonably comparable in its nature to private company tax.

(2) In ascertaining the distributable income of a private company other than an investment company the amount which but for this subsection would have been determined by the Commissioner as the distributable income of the company shall be reduced by one-third of so much of that amount as is not attributable to dividends received by the company from another private company.

(3)

(3) Notwithstanding anything contained in subsection one of this section where a company carrying on an agricultural or pastoral pursuit elects within the time and in the manner prescribed that paragraph (b) of that subsection shall not apply in respect of the income from such pursuit, the company shall in lieu of the allowance under that paragraph in determining its distributable income be allowed 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.

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

141. Any sum such as is hereinafter described shall not be deducted in ascertaining the distributable income of a private company and shall be regarded as income which could reasonably have been distributed—

- (a) any sum expended or applied, or intended to be expended or applied, out of the income of a company—
 - (i) in or towards payment for the purchase of its business, undertaking or property; or
 - (ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking or property, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment therefor; or
 - (iii) in meeting any obligations of the company in respect of the acquisition of any such business, undertaking or property;
- (b) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied in pursuance or in consequence of an arrangement which, in the

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opinion

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Election by
agricultural
and pastoral
companies.

Outgoings
of a capital
nature not
deductible.
N.S.W. Act,
1928, No. 35,
Schedule
c. 4.

Arrange-
ments for
avoidance
of tax.

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PRIVATE
COMPANIES.Period in which
determination
may be made.
N.S.W. Act,
1928, No. 35,
Schedule c. 5.Determination
or further de-
termination in
certain cir-
cumstances.
N.S.W. Act,
1928, No. 35,
Schedule c. 6.Calculation of
additional
tax.N.S.W. Act,
1928, No. 35,
Schedule c. 7
(1).Cwth. Act,
1936, No. 27,
s. 104.Private
company
with small
paid-up
capital.

opinion of the Commissioner, was made for the purpose of avoidance or reduction of any liability to tax;

- (c) any tax levied upon income except as provided in paragraph (c) of subsection one of section one hundred and forty of this Act.

142. Except as provided in section one hundred and forty-three of this Act, a determination under section one hundred and thirty-six of this Act shall be made by the Commissioner not later than nine months after the date on which the tax assessed against the company under its ordinary assessment is due and payable.

143. Where the Commissioner is of opinion that—

- (a) the distributable income determined by him under section one hundred and thirty-six of this Act is excessive; or
(b) the company has withheld information or has furnished incorrect or misleading information and has avoided tax in an ordinary assessment or private company tax under this Division,

he may either before or after the time allowed under section one hundred and forty-two of this Act for making his determination, make a determination or a further determination under section one hundred and thirty-six of this Act.

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

- (a) the dividend apportioned to a shareholder shall be deemed to have been paid to him during such year of income as the Commissioner determines, having regard to the dates on which distributions of income, if any, have ordinarily been made by the company. That year shall be a year not later than that corresponding to the year of income of the company succeeding that in which the undistributed amount was derived;
(b) in the case of a company with a small paid-up capital if the Commissioner is of opinion that the company is so constituted or controlled that the shareholders holding a majority of the shares have not the real and effective control of the company,

company, the private company tax payable by the company upon the undistributed amount or part thereof which the Commissioner determines could reasonably have been distributed shall be assessed as if the shareholders would have been liable to tax upon that amount or part at a rate of tax equal to that fixed for every pound of taxable income from property in excess of the sum of five thousand five hundred pounds;

- (c) where the Commissioner is unable to ascertain the identity of the shareholders of a company, or the amounts which they would have received, he may assess the additional tax payable by that company upon the undistributed amount or part thereof which the Commissioner determines could reasonably have been distributed as if that company had one shareholder only and the company shall be liable to pay as private company tax the tax so assessed.

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

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Loans to or
payment on
behalf of
shareholders.
Cwth. Act,
1936, No. 27,
s. 108.

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

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

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

(b)

Payments to
shareholders
and directors.
N.S.W. Act,
1928, No. 35,
s. 21 (m).
Cwth. Act,
1936, No. 27,
s. 109.

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PRIVATE
COMPANIES.

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

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

DIVISION 10.—Companies consisting of same shareholders.

Companies
consisting
of same
shareholders.
N.S.W. Act,
1928, No. 35,
s. 30 (1).
30 (2).

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

Method of
assessing.
N.S.W. Act,
1928, No. 35,
s. 30 (1).

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

Losses borne
by creditors
not allow-
able.

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

DIVISION 11.—Banks.

Definitions.

N.S.W. Act,
1928, No.
35, s. 27.

150. (1) In this Division—

“Average value” in relation to any assets in or out of Australia means the average value of those assets for the year of income ascertained in the manner provided by section 60AD of the Commonwealth Bank Act, 1911-1932, as in force at the

the commencement of this Act for the preparation of the quarterly abstracts furnished by banks in accordance with that section:

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Provided that nothing herein shall be held to bind the Commissioner as to the value of any asset at any time if in his opinion, formed before or after assessment, this State is prejudicially affected by the value adopted for such asset.

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

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

“Gross income from all sources” means the gross income derived from sources in and out of this State, including the profit, if any, derived from the sale, conversion or redemption of Government or other securities; but does not include discount derived from and upon the issue of Commonwealth Treasury Bills or interest derived from exempt assets, and save as aforesaid, does not include any profit assessable under Division 5 of this Part or which would be assessable under that Division if derived from a source in this State.

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

“Sale of a security” includes a sale after a foreclosure.

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

(2) For the purposes of this Division—

- (a) interest accrued at the date of the sale of an exempt asset shall be deemed to be income derived

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derived by the vendor, and shall not be taken into account in determining the profit or loss upon the sale of the asset;

- (b) interest paid or payable by a bank upon money invested in the purchase of a security shall not be taken into account in determining the profit or loss upon the sale, redemption or conversion of the security;
- (c) the value of any asset wherever situate and any amount involved in any calculation shall, subject to section one hundred and fifty-four of this Act, be expressed in terms of Australian currency, and for this purpose the rates of exchange to be used shall be respectively the rates at which exchange could have been effected by telegraphic transfer at the dates at which the asset is to be valued or at which the amount is to be ascertained;
- (d) underwriting commission or brokerage on the issue of so much of a loan underwritten by a bank as is taken up by it pursuant to an underwriting agreement shall be deemed to be a reduction of the cost of the loan so taken up;
- (e) underwriting commission or brokerage on the issue of so much of a loan underwritten by a bank as is not so taken up by it shall be deemed to be income of the year in which the loan is issued.

Net
income
from all
sources.

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

Deductions
allowable.

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

- (a) the deductions which would be allowable deductions if the gross income from all sources were derived from a source in this State, except—
 - (i) interest paid or payable; and
 - (ii) the deductions provided under section eighty-three and paragraph (a) of subsection one of section eighty-eight of this Act;

(b)

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

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

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

Assessable
 income of
 bank.

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

(3) From the amount included under this section in the assessable income of a bank there shall be

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TAXATION.DIVISION 11.
BANKS.Assessment
on basis of
actual
income.

be deducted any amounts which are allowable deductions under section eighty-three and paragraph (a) of subsection one of section eighty-eight of this Act.

153. (1) Sections one hundred and fifty-one and one hundred and fifty-two of this Act shall commence on the publication in the Gazette of a proclamation by the Governor that in his opinion the Parliaments of three States other than this State have passed similar provisions to those sections and upon sections one hundred and fifty-one and one hundred and fifty-two coming into operation the provisions of those sections shall not apply in any case where—

- (a) a bank has elected in the prescribed manner that those sections shall not apply with respect to the assessment of its income; and
- (b) the Commissioner is satisfied that the laws of three States other than this State enable a similar election to be made, and is further satisfied that in all the other States of Australia in which the bank derives income and the laws of which enable a similar election to be made, the bank has made that election.

(2) In the proclamation by the Governor under subsection one of this section the Governor shall declare the year of income as from the commencement of which sections one hundred and fifty-one and one hundred and fifty-two of this Act shall be deemed to have come into force.

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

(4) With respect to the years of income prior to the year of income to which sections one hundred and fifty-one and one hundred and fifty-two apply and with respect

respect to years of income to which such sections do not apply by reason of an election as aforesaid and the Commissioner being satisfied as aforesaid the following provisions shall apply:—

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

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

154. (1) Except for the valuing of assets for the purposes of subsection one of section one hundred and fifty-two of this Act and notwithstanding sections twenty-two and twenty-four and paragraph (c) of subsection two of section one hundred and fifty of this Act, a bank, if it elects in the prescribed manner to do so, may convert its funds out of Australia at the rates and in the manner specified in this section.

Conversion
of ex-Aus-
tralian
funds.

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LIABILITY
TO
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BANKS.

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

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

(a) in respect of so much of those funds as does not exceed the amount of the funds at the beginning of the year of income—at the rate or respective rates applied at that date pursuant to subsection two of this section; and

(b) in respect of the balance, if any—at the rate or respective rates arrived at by averaging separately the value of the whole of the funds of each country out of Australia acquired during the year of income according to the respective rates at which exchange could have been effected by telegraphic transfer at the respective dates of acquisition of such funds.

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

DIVISION 12.—*Life assurance companies.*

Definitions.

55. In this Division—

“Company” means a company to which this Division applies.

N.S.W. Act,
1928, No. 35,
s. 26 (2).

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

“Investment

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

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LIABILITY TO
TAXATION.

DIVISION 12.
LIFE
ASSURANCE
COMPANIES.

N.S.W. Act,
1923, No. 35,
s. 10 (1)
(d).

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

Application
of Division.

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

Premiums,
etc., not
assessable
income.
N.S.W. Act,
1923, No. 35,
s. 10 (1) (d).

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

Deductions
not allowable.
N.S.W. Act,
1923, No. 35,
s. 26 (2).

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

Net
investment
income.

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

N.S.W. Act,
1923, No.
35, s. 26
(2).

(b) the amount which would be an allowable deduction in respect of depreciation of property used by the company for the purposes of that business if that business were wholly carried on in this State:

Provided that in calculating the net investment income, no deduction shall be allowed for any expenditure referred to in section one hundred and fifty-eight of this Act, or for any payment of income tax or of any tax assessed upon income.

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

Net Aus-
tralian in-
vestment
income.

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LIABILITY TO
TAXATION.DIVISION 12.
LIFE
ASSURANCE
COMPANIES.Assessable
income.N.S.W. Act,
1929, No.
47, s. 2 (1)
(a).

160. (1) Except where subsection two of this section applies, the assessable income of a company shall include so much of the net investment income of the company as bears to the net investment income the same proportion as the total amount assured under life assurance policies held by New South Wales policy holders of the company bears to the total amount assured under all life assurance policies of the company.

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

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

When
liabilities ex-
ceed assets.N.S.W. Act,
1928, No. 35,
s. 26 (6).Cwth. Act,
1936, No. 27,
s. 116.

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

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

Assessable
income of
co-operative
companies
and the like.N.S.W. Act,
1928, No. 35,
s. 23.Cwth. Act,
1930, No. 27,
s. 119.

162. The assessable income of a co-operative company shall include all sums received by it from shareholders for the storage, marketing, packing or processing of commodities or for the rendering of services, or in payment for commodities or animals or land sold whether on account of the company or on account of its shareholders.

163.

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

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PART III.
LIABILITY TO
TAXATION.

DIVISION 13.

CO-OPERATIVE AND
MUTUAL
COMPANIES.

Mutual
insurance
companies.

N.S.W. Act,
1928, No. 35,
s. 23.

Cwth. Act,
1936, No. 27,
s. 121.

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

Mutual build-
ing or invest-
ment com-
pany.

N.S.W. Act,
1928, No. 35,
s. 23.

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

Rebates on
purchases.

N.S.W. Act,
1928, No. 35,
s. 23 (2).

Cwth. Act,
1936, No. 27,
s. 120 (1) (a).

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

Cwth. Act,
1936, No.
27, s. 120
(2).

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

N.S.W. Act,
1928, No.
35, s. 23 (2)
prov.

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

Payments to
suppliers re-
tained to meet
contributions
levied.

N.S.W. Act,
1928, No. 35,
s. 23 (1) (b).

Any

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PART III.
LIABILITY TO
TAXATION.DIVISION 12.
CO-OPERA-
TIVE AND
MUTUAL
COMPANIES.Interest
on shares.Cwth. Act,
1936, No.
27 s. 120
(1) (b).

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

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

Provided that if, in the year of income, in the ordinary course of business of a society registered under the Co-operation Act, 1923-1935, as amended by subsequent Acts, the value of commodities and animals disposed of to its shareholders by the society is not less than ninety per centum of the total value of commodities and animals disposed of by the society, so much of the assessable income of the society as is distributed among its shareholders as interest or dividends on shares shall be an allowable deduction.

DIVISION 14.—*Interest paid by companies.*Interest
paid by a
company to
a non-
resident.N.S.W. Act,
1928, No. 35,
s. 17 (a).Cwth. Act,
1936, No. 27,
s. 125.

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

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

(b) on money lodged at interest in this State with the company,

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

N.S.W. Act
1928, No.
35, s. 18
(a).

(2) The company may deduct and retain for its own use out of any moneys for the time being due or payable to that person or for the time being in its hands belonging to that person, so much as is necessary to pay the tax.

(3)

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

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

(4) This section shall not apply to interest paid or credited—

(a) to a company which is carrying on business in this State and which has a public officer duly appointed under this Act, unless the Commissioner, by notice in writing to the company paying or crediting the interest, directs that the section shall so apply; or

(b) to a person (other than a company) who is a resident of Australia where the Commissioner is satisfied—

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

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

and in either case the Commissioner by notice in writing to the company paying or crediting the interest directs that the section shall not apply.

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

Interest
paid by a
company on
bearer
debentures.
N.S.W. Act
1928, No.
35, s. 17
(b).
Cwth. Act,
1936, No. 27,
s. 126.

(2) The company may deduct and retain for its own use from the amount payable to any person who is a holder of any of those debentures an amount bearing the same

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PART III.
LIABILITY TO
TAXATION.DIVISION 14.
INTEREST
PAID BY
COMPANIES.N.S.W. Act,
1928, No. 35,
s. 18 (d).

same proportion to the amount of tax payable by the company under this section as the interest payable to that person bears to the total interest payable in respect of those debentures.

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

Rebate of
tax paid by
company.N.S.W. Act
1928, No.
35, s. 18
(c).Cwth. Act,
1936, No. 27,
s. 127.

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

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

Tax on
interest.Cwth. Act,
1936, No. 27
s. 128.

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

Limitation
of applica-
tion of
Division.

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

Acquittance
and
discharge.

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

DIVISION.

DIVISION 15.—*Oversea ships.*

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

PART III.
LIABILITY TO
TAXATION.

DIVISION 15.
OVERSEA
SHIPS.

Taxable
income of
ship-owner
or charterer.

N.S.W. Act,
1928, No. 35,
s. 24 (1).

Cwth. Act,
1936, No. 27,
s. 129.

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

Master or agent
to make return.

N.S.W. Act,
1928, No. 35,
s. 24 (1).

Cwth. Act,
1936, No. 27,
s. 130.

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

Determination
by Commis-
sioner.

N.S.W. Act,
1928, No. 35,
s. 24 (2).

Cwth. Act,
1936, No. 27,
s. 131.

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

Assessment
of tax.

N.S.W. Act,
1928, No. 35,
s. 24 (1).

Cwth. Act,
1936, No. 27,
s. 132.

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

Master liable
to pay tax.

N.S.W. Act,
1928, No. 35,
s. 24 (3).

Cwth. Act,
1936, No. 27,
s. 133.

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

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

Notice of
assessment.

N.S.W. Act,
1928, No. 35,
s. 24 (4).

Cwth. Act,
1936, No. 27,
s. 134.

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PART III.
LIABILITY TO
TAXATION.DIVISION 15.
OVERSEAS
SHIPS.Clearance
of ship.N.S.W. Act
1928, No.
35, s. 24
(4).Cwth. Act,
1936, No.
27, s. 135.

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

DIVISION 16.—Businesses with a foreign relationship.

Definitions.

Cwth. Act
1936, No.
27, Divs.
13 & 14.N.S.W. Act,
1928, No.
35, s. 29
(1).

181. (1) In this Division—

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

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

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

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

Shares held
by relatives.
N.S.W. Act,
1928, No. 35,
s. 29 (4).

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

182.

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

- (a) the person carrying on that business pays or credits, or agrees to pay or credit, to a foreign taxpayer any amount which is an allowable deduction to the person so carrying on that business and which, in the opinion of the Commissioner, is in excess of a reasonable amount; or
- (b) the person carrying on that business receives or is entitled to receive from a foreign taxpayer any amount which is assessable income to the person so carrying on that business and which in the opinion of the Commissioner is less than a reasonable amount;

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

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

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

(b)

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DIVISION 16.
BUSINESSES
WITH A
FOREIGN
RELATION-
SHIP.

Taxable
income of
business
with a
foreign
relationship.

N.S.W. Act,
1928, No. 35,
s. 29 (1).

Determina-
tion of
allowable
deductions.

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

- (b) In respect of the cost of goods acquired from a foreign taxpayer the reasonable amount shall not exceed the sum which would reduce the profit derived in this State from the sale of the goods to an amount less than the sum which in accordance with Subdivision C of Division 2 of this Part would be deemed to be income derived in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business selling goods in this State. Where this paragraph is resorted to, any rebates of tax allowable under the said Subdivision C under similar circumstances shall be allowed under this Division, notwithstanding that the income tax in the country of production or manufacture may have been paid by the foreign taxpayer.
- (c) In respect of any amount (other than the amounts specified in paragraphs (a) and (b) of this section) paid or credited to a foreign taxpayer, the reasonable amount shall not exceed the sum which would be an allowable deduction if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer. The allowable deduction ascertained in accordance with this paragraph may be increased by such amount as in the opinion of the Commissioner would be equivalent to the profit which would be attributable to any operations of manufacture or production carried on out of this State.
- (d) In respect of the sale price of goods sold to a foreign taxpayer the reasonable amount shall not be less than the sum which would reduce the profit derived in this State from the sale of the goods to an amount less than the sum which, in accordance with Subdivision C of Division 2 of this Part, would be deemed to be income derived in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer, and the goods were sold to a person not interested directly or indirectly in the business of the foreign taxpayer.

DIVISION

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

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184. In this Division—PART III.
LIABILITY TO
TAXATION.

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

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

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

Definitions.

Cwth. Act,
1936, No. 27,
s. 141.

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

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

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

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

Income
derived by
insurers
resident
out of
Australia.Cwth. Act,
1936, No. 27,
s. 142.

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

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PART III.
LIABILITY TO
TAXATION.DIVISION 17.
INSURANCE
WITH NON-
RESIDENTS
OF AUS-
TRALIA.Taxable
income of
non-resident
insurer.Cwth. Act,
1936, No. 27,
s. 143.Liability
of agents
of insurer.Cwth. Act,
1936, No. 27,
s. 144.Deduction
of premiums.
Cwth. Act,
1936, No. 27,
s. 145.Information
to be
furnished.
Cwth. Act,
1936, No. 27,
s. 146.Rate in
special cir-
cumstances.
Cwth. Act,
1936, No. 27,
s. 147.

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

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

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

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

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

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

191.

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

- (a) so much of the premiums received on those risks as is credited or paid to such other person; and
- (b) only so much of the losses on those risks as relates to the risks or part of the risks which have not been so reinsured,

shall, subject to this Division, be allowable deductions to the person carrying on business in this State.

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PART III
LIABILITY TO
TAXATION.

DIVISION 17.
INSURANCE
WITH NON-
RESIDENTS OF
AUSTRALIA.

Re-insurance
with persons
resident out
of Aus-
tralia.

Cwth. Act,
1936, No. 27,
s. 148.

DIVISION 18.—Averaging of incomes of primary producers.

192. (1) In this Division—

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

(2) For the purposes of this Division a beneficiary who is presently entitled to a share of the income of a trust estate and who has a beneficial interest in the corpus of that estate shall to the extent of such share be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.

Definition.

N.S.W. Act,
1928, No. 35,
s. 9 (3).

Cwth. Act,
1936, No. 27,
s. 157 (2).

Cwth. Act,
1936, No. 27,
s. 157 (3).

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

Rate of tax.
N.S.W. Act,
1928, No. 35,
s. 9 (1) a.
Cwth. Act,
1936, No. 27,
s. 156.

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

Average
income.
N.S.W. Act,
1928, No. 35,
s. 9 (1) a.
Cwth. Act,
1936, No. 27,
s. 149.

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

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

First and
subsequent
average years.
N.S.W. Act,
1928, No. 35,
s. 9 (1) b.
Cwth. Act,
1936, No. 27,
s. 150.

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PART III.
LIABILITY TO
TAXATION.

DIVISION 18.
AVERAGING
OF INCOMES
OF PRIMARY
PRODUCERS.

First cal-
culation.

N.S.W. Act,
1928, No. 35,
s. 9 (1) c.

Cwth. Act,
1936, No. 27,
s. 151.

Taxpayer
ceasing to
be primary
producer.

Cwth. Act,
1936, No. 27,
s. 152.

Primary
producer
with no tax-
able income.
N.S.W. Act,
1928, No. 35,
s. 9 (1) (d).

Cwth. Act,
1936, No. 27,
s. 153.

Excess of
allowable
deductions.

N.S.W. Act,
1928, No. 35,
s. 22 (4).

Cwth. Act,
1936, No. 27,
s. 154.

Application
of Division.

Cwth. Act,
1936, No. 27,
s. 158.

N.S.W. Act,
1928, No. 35,
s. 9 (1).

196. For the purpose of making the first calculation of the rate of tax under this Division, the first average year shall be the first year which is otherwise capable of being an average year, and in which there is no taxable income or the taxable income is less than that of the next succeeding year. No year prior to that first average year shall in any calculation of the rate of tax be capable of being an average year.

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

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

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

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

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

200. This Division shall not apply—

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

PART IV.

RETURNS AND ASSESSMENTS.

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

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

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

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

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

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

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

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Annual
returns.

N.S.W. Act,
1928, No. 35,
s. 38.

Cwth Act,
1936, No. 27,
s. 161.

Further
returns, etc.

N.S.W. Act,
1928, No. 35,
s. 39 (1).

Cwth. Act,
1936, No. 27,
s. 162.

Special
returns.

N.S.W. Act,
1928, No. 35,
s. 39 (3).

Cwth. Act,
1936, No. 27,
s. 163.

Returns
deemed to be
duly made.

N.S.W. Act,
1928, No. 35,
s. 40.

Cwth. Act,
1936, No. 27,
s. 164.

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RETURNS
AND
ASSESS-
MENTS.Certificate of
source of
information.
Cwth. Act,
1936, No. 27,
s. 165.

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

(2) Every person carrying on business who does not furnish with his return an agent's certificate shall furnish particulars in the prescribed form endorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.

Assess-
ments.N.S.W. Act,
1928, No. 35,
s. 41.Cwth. Act,
1936, No. 27,
s. 166.

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

Default
assess-
ments.N.S.W. Act,
1928, No. 35,
s. 42.Cwth. Act,
1936, No. 27,
s. 167.**207.** If—

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

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

Special
assess-
ments.Cwth. Act,
1936, No. 27,
s. 168.

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

(2)

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

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MENTS.

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

Assessments
on all persons
liable to tax.
Cwth. Act,
1936, No. 27,
s. 169.

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

Amendment
of assess-
ments.

N.S.W. Act,
1928, No. 35
s. 44.

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

Cwth. Act,
1936, No. 27,
s. 170.

- (a) where the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance is due to fraud or evasion—at any time;
- (b) where the Commissioner is of opinion that there has been an avoidance of tax owing to—
 - (i) the omission of assessable income from the taxpayer's return; or
 - (ii) a claim in the taxpayer's return for a deduction of an amount not actually expended; or
 - (iii) a misdescription in the taxpayer's return of any item of income or expenditure; or
 - (iv) the withholding of information or the furnishing of incorrect or misleading information;

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

- (c) where application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment and within that period or such further period as the Commissioner

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MENTS.

Commissioner may allow, the taxpayer has supplied to the Commissioner all information needed by him for the purpose of deciding the application—at any time;

- (d) where, as the result of an amendment to an assessment, fresh liability in respect of any particular is imposed and application for further amendment is made by the taxpayer within three years from the date upon which the additional tax became due and payable under that amendment and within that period or within such further period as the Commissioner may allow, the taxpayer has supplied to the Commissioner all information needed by him for the purpose of deciding the application—at any time but only for the purpose of reducing the assessment by adjustment of that particular; and
- (e) in any case not specified in this subsection—within three years from the date upon which the tax became due and payable under that assessment.

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

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

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

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

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

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

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

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

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

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Where no
notice of
assessment
served.

Cwth. Act,
1936, No.
27, s. 171.

Refund of
tax overpaid.
N.S.W. Act,
1928, No. 35,
s. 44 (3).

Cwth. Act,
1936, No. 27,
s. 172.

Amended as-
sessment to be
an assessment.
Cwth. Act,
1936, No. 27,
s. 173.

Notice of
assessment.
N.S.W. Act,
1928, No. 35,
s. 47.
Cwth. Act,
1936, No. 27,
s. 174.

Validity of
assessment.
N.S.W. Act,
1928, No. 35,
s. 45.
Cwth. Act,
1936, No. 27,
s. 175.

Judicial
notice of
signatures.
N.S.W. Act,
1928, No.
35, s. 46 (3).
Cwth. Act,
1936, No.
27, s. 176.

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MENTS.

Evidence.

N.S.W. Act
1928, No.
35, s. 46.Cwth. Act,
1936, No.
27, s. 177.

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

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

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

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

PART V.

OBJECTIONS AND APPEALS.

Definitions.

218. In this Part, unless the contrary intention appears—

“The Board” means the Board of Appeal constituted under this Part.

“The Court” means the Supreme Court of New South Wales.

Board of
Appeal.

219. (1) For the purposes of this Part there shall be a Board of Appeal.

(2) The Board shall consist of three members who shall be appointed by the Governor.

(3)

(3) One of the members shall be appointed by the Governor to be the chairman of the Board.

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(4) One of the members of the Board shall be a barrister or solicitor of not less than seven years standing.

(5) One of the members of the Board shall be a public accountant of not less than seven years standing.

(6) The provisions of the Public Service Act, 1902, as amended, shall not apply to the appointment of the members of the Board nor to any such person in respect of his office as such member.

(7) Every member of the Board shall be appointed for such period (but in no case exceeding four years) as the Governor may determine, but if otherwise qualified shall be eligible for re-appointment.

(8) The members of the Board shall be paid such salary or fees as the Governor may determine or as may be prescribed. The Public Service Salaries Act, 1931-1935, or any Act amending or extending that Act, shall apply with respect to such salary and fees.

(9) The members of the Board shall be entitled to receive such travelling allowances as the Governor may determine or as may be prescribed.

220. (1) In the case of the illness, suspension, absence, or inability to act of any member of the Board, the Governor may appoint a person as deputy-member of the Board (subject to his being, if the deputy of the member appointed as having the qualification referred to in subsection four of section two hundred and nineteen of this Act, qualified as provided in that subsection and to his being, if the deputy of the member appointed as having the qualification referred to in subsection five of that section, qualified as provided in that subsection) and every deputy-member appointed under this subsection shall, subject to the conditions or limitations referred to in his appointment, have the powers, duties and liabilities of a member of the Board.

(2) In the case of the illness, suspension, absence, or inability to act of the chairman of the Board, the Governor may appoint either of the other two members

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person not
to sit on
Board.

members or the deputy-member of the Board to be the deputy-chairman of the Board. Every deputy-chairman shall (subject to the conditions or limitations referred to in his appointment as deputy-member or deputy-chairman), have the powers, duties and liabilities of the chairman of the Board.

221. No person shall act as a member or deputy-member of the Board in respect of any matter in which he is directly or indirectly interested either personally or as agent or servant or otherwise howsoever.

Penalty: Five hundred pounds.

Board
may not
be sued.
Cwth. Act,
1936, No.
27, s. 181.

222. No action or suit shall be brought or maintained against any person who is or has been a member or deputy-member of the Board for any nonfeasance or misfeasance in connection with his duties. Nothing in this section shall affect the operation of section two hundred and twenty-one of this Act.

Removal of
members
of Board.

223. (1) The Governor may remove any member or deputy-member of the Board from office on a resolution for his removal being passed by each House of Parliament in the same session.

(2) The Governor may, without any such resolution having been passed, suspend or remove any member or deputy-member of the Board from office for misbehaviour or incapacity.

Vacation
of office.

(3) Any member or deputy-member of the Board shall be deemed to have vacated his office if—

- (a) he resigns his office by writing under his hand addressed to the Governor;
- (b) he becomes bankrupt, or applies to take the benefit of any Act of the Commonwealth or the State of New South Wales for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of any part of his salary or fees or property for their benefit;
- (c) he becomes an insane person or patient or incapable person within the meaning of the Lunacy Act of 1893 as amended;
- (d) he is convicted of a breach of section two hundred and twenty-one of this Act, or is convicted upon indictment of any felony or misdemeanour.

224.

224. (1) Every member and every deputy-member of the Board shall, before proceeding to discharge the duties of his office, make an oath or declaration in the manner and form prescribed by regulations made under this Act, to faithfully and impartially perform the duties of his office and not contrary to his duty to disclose any evidence or other matter coming to his notice as such member or deputy-member as the case may be.

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Secrecy.

Cwth. Act,
1936, No.
27, ss 16

(4) (b), 5.

(2) The Governor may, upon the recommendation of the Public Service Board, appoint such officers of the Board as may be necessary and such officers shall be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts.

Officers.

(3) Officers of the Board may, during their employment, fill other offices under the State, if so decided by the Governor upon the recommendation of the Public Service Board.

(4) The officers of the Board shall have such powers and discharge such duties as may be directed by the Board or the chairman or as may be prescribed.

(5) Any officer of the Board shall, if and when directed by any member of the Board so to do, make an oath or declaration in the manner and form prescribed by regulations under this Act, to maintain secrecy.

225. (1) The Board shall have such powers and authorities and perform such duties as are conferred or imposed upon it by or under this Part.

Powers
of Board.

(2) At all sittings of the Board the decision of the majority shall prevail, and in all cases the determination of the majority of the Board shall be deemed to be the determination of the Board.

Decision by
majority.

226. (1) Subject to regulations under this Act, the Board may sit at any time and at any place for the transaction of any part of the business of the Board and for the discharge of any duty or the exercise of any power or authority under this Part.

Times and
places of
sittings.

(2) The hearing, further hearing or determination of any proceeding commenced by the Board may be adjourned by the Board from time to time, and from place to place.

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(3) On the application of the taxpayer or the Commissioner the Board may exclude from the hearing of an appeal or proceeding all or any persons other than the parties or their representatives.

(4) The Board may amend any order or determination of the Board in any appeal or proceeding to correct any error or to supply any omission therein.

Representation
at hearing.
N.S.W. Act,
1928, No. 35,
s. 52 (5).

(5) Every party to any appeal or proceeding before the Board may nominate a person to represent him at the hearing.

Form of
evidence.

227. The Board, if of opinion that no injustice will be occasioned thereby, may in any case dispense with technical rules of evidence and may receive such evidence as it thinks fit whether receivable in accordance with law in other proceedings or not.

Witnesses
and evidence

228. (1) For the purpose of exercising any power or authority or performing any duty conferred or imposed on the Board by or under this Act, the Board and the members of the Board and each of them shall have respectively the same powers and authority to administer oaths and affirmations to witnesses and to examine witnesses and to inspect, retain and copy documents, books and writings as are conferred by the Royal Commissions Act, 1923, as amended by subsequent Acts on a Commission, and the members of a Commission and any of them with respect to whom the provisions of Division 1 of Part II of that Act are applicable and the chairman of the Board shall have the same powers and authority to summon witnesses and otherwise as are conferred by the said Act on a chairman of such Commission.

(2) The provisions of the said Act (section thirteen and Division 2 of Part II excepted) shall, *mutatis mutandis*, apply to and with respect to any witness or person summoned under this section or appearing before the Board and to any evidence received by or given before the Board.

Regulations.

229. (1) The Governor may make regulations for any of the following purposes:—

- (a) for regulating the practice and procedure of the Board;
- (b) for prescribing the duties of officers of the Board;
- (c)

- (c) for prescribing fees to be paid to the Board or any officer of the Board in relation to proceedings under this Part;
- (d) generally for any purpose necessary or convenient for the full or effective exercise or discharge of the powers, authorities or duties of the Board, including provisions as to allowances to witnesses and the service by post or otherwise of notices of hearings by or sittings of the Board.

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(2) The provisions of subsection two of section three hundred and three of this Act shall apply to and in respect of any regulations made under subsection one of this section.

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

Objections.
 N.S.W. Act,
 1923, No. 35,
 s. 48 (1).
 Cwth. Act,
 1933, No.
 27, s. 185.

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

N.S.W. Act,
 1923, No. 35,
 s. 48 (15).

The Board or the Commissioner may allow further time as aforesaid notwithstanding that the said period of sixty days has expired.

231. Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner given in the exercise of a discretion conferred upon him under this Act and who is dissatisfied with the assessment made pursuant to or involving such opinion, decision or determination shall, after the assessment has been made, have the same right of objection in respect of such opinion, decision

Right of
 objection
 against
 exercise
 of Commis-
 sioner's
 discretion.
 N.S.W. Act,
 1923, No. 35,
 s. 52 (1).

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of Commis-
sioner.N.S.W. Act,
1928, No. 35,
s. 48 (2)
(3).Cwth. Act,
1936, No. 27,
s. 186.Application
for appeal.N.S.W. Act,
1928, No. 35,
s. 48 (4).Cwth. Act,
1936, No. 27,
s. 187.Reference
to Court
or Board.N.S.W. Act,
1928, No.
35, s. 48 (5).Cwth. Act,
1936, No.
27, s. 188.Notice to
forward
objections.Cwth. Act,
1936, No.
27, s. 189.

decision or determination and assessment as is provided in this Part and also the same right of appeal as is provided in this Part against any decision of the Commissioner upon any such objection, except that such appeal shall be made to the Board only.

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

233. A taxpayer dissatisfied with the decision may, within sixty days after such service of notice thereof (or within such further time not exceeding ninety days after such service as the Board may allow for cause shown or as the Commissioner may in writing allow) request in writing the Commissioner to treat his objection as an appeal and, subject to the provisions of this Act, to forward it to the Court or to the Board in order that it may be heard and determined. The Board or the Commissioner may allow further time as aforesaid notwithstanding that the said period of sixty days has expired.

234. (1) If the request is accompanied by a fee of one pound, the Commissioner shall, subject to the provisions of this Act, forward the objection to the Court or the Board in accordance with the request.

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

235. If within sixty days after receiving a request as aforesaid requiring the Commissioner to forward the objection to the Court or to the Board in accordance with the provisions of this Part and accompanied by the fee of one pound the Commissioner does not forward the objection, the taxpayer may at any time thereafter give him notice in writing to do so, and the Commissioner shall, within sixty days after receiving the notice, forward the objection to the Court or the Board as the case may be.

236.

236. (1) At any time before the Commissioner has forwarded an objection to the Court or to the Board, subject to the provisions of this Part the taxpayer may give notice in writing to the Commissioner that he desires to have his objection forwarded to and determined by the Board in lieu of the Court or forwarded to and determined by the Court in lieu of the Board as the case may be and (subject as aforesaid) the Commissioner shall forward the objection as requested by such notice accordingly.

(2) Where in accordance with this Part an objection has been forwarded to the Court and before the hearing of the appeal by the Court the taxpayer desires to have the appeal determined by the Board in lieu of by the Court on the ground that matters appealable to the Board only under section two hundred and thirty-one of this Act are involved in the appeal, the Court shall, on such conditions as to costs and otherwise as it thinks fit to impose, cause the appeal to be forwarded to the Board and be by it heard and determined under this Part.

237. (1) Upon every such appeal to the Court or to the Board the taxpayer shall be limited to the grounds stated in his objection unless the Court or the Board hearing the appeal gives leave to add further grounds. In such a case the Commissioner shall have thirty days (after the furnishing by the taxpayer of any information required by the Commissioner in relation to such further grounds) within which to consider the further grounds.

(2) The Court or Board may grant such leave to add further grounds upon such conditions (if any) as it thinks fit to impose.

(3) Nothing in this section authorises the Court to give leave to add further grounds raising a matter appealable to the Board only under section two hundred and thirty-one of this Act.

238. In the case of every appeal the burden of proving that any assessment is excessive shall lie upon the taxpayer.

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

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Change of
Tribunal.Grounds of
objection.
N.S.W. Act,
1928, No.
38, s. 48 (6).
Cwth. Act,
1936, No. 27,
s. 190 (a).Burden of
proof.
Cwth. Act,
1936, No. 27,
s. 190 (b).Reduced
assessments.
N.S.W. Act,
1928, No. 35,
s. 48 (14).
Cwth. Act,
1936, No. 27,
s. 191.

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to deal with
objection.N.S.W. Act,
1928, No. 35,
s. 51 (1).Cwth. Act,
1936, No. 27,
s. 192.Board on
appeal to
have powers
of Commis-
sioner.N.S.W. Act,
1928, No. 35,
s. 51 (1).Cwth. Act,
1936, No. 27,
s. 195 (1).Decision
of Board.Cwth. Act,
1936, No.
27, s. 195.N.S.W. Act,
1928, No.
35, s. 51 (6).Recovery
of costs
ordered
by Board.N.S.W. Act,
1928, No.
35, s. 51 (3).Decision of
Board to be
final.N.S.W. Act,
1928, No. 35,
s. 51 (7).

240. Except as otherwise provided in this Act the Board shall have power to review every decision the subject of an objection forwarded to it under this Act.

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

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

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

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

243. Where the Board orders the costs of any appeal or proceedings to be paid, whether after any set off or taxation or otherwise, the order of the Board shall have the effect of and shall be deemed to be a judgment of the Court for the amount payable and judgment for such amount may be entered up in the Court by the person to whom it is payable against the person by whom it is payable, and the said amount may be recovered by process of the Court as in pursuance of such judgment.

244. Except as provided by this Part the decision of the Board shall be final and conclusive.

245.

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

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APPEALS.

Private
company
determina-
tion not
invalidated.

246. The Board may 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 and may order the appellant to pay to the Commissioner his costs of any frivolous or vexatious appeal.

Costs of
appeal.
N.S.W. Act,
1928, No.
35, s. 51 (2)
(c) and (d).

247. The Board may assess any costs payable under any order made by it or may order that such costs be taxed by the proper officer of the Supreme Court in its common law jurisdiction, whereupon such costs shall be taxed by any such officer accordingly.

Taxation
of costs.
N.S.W. Act
1928, No.
35, s. 51
(2) (f).

248. (1) Where, as hereinbefore provided, the Commissioner has treated the objection of a taxpayer as an appeal and forwarded it to the Court, the Court shall, for the purpose of hearing the appeal, consist of a single justice, and the jurisdiction of the Court to determine such appeals shall be exercised by a single justice.

Jurisdic-
tion of
Court.
N.S.W. Act,
1928, No.
35, s. 48 (7).
Cwth. Act,
1936, No.
27, s. 197.

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

N.S.W. Act,
1928, No.
35, s. 48 (8).
Cwth. Act,
1936, No.
27, s. 199
(1).

(3) An order of the Court shall be final and conclusive, and no appeal shall lie to the Full Court from the order.

Cwth. Act,
1936, No. 27,
s. 199 (2).

(4) The costs of the appeal shall be in the discretion of the Court. Where the amount of tax in dispute on the appeal does not exceed ten pounds, costs shall not be allowed against either party unless the Court otherwise orders.

N.S.W. Act,
1928, No. 35,
s. 48 (10).
Cwth. Act,
1936, No. 27,
s. 199 (1).

(5) The Court may amend any order to correct any error or to supply any omission therein.

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(6) The Court, if of opinion that no injustice will be occasioned thereby, may in any case dispense with technical rules of evidence and may receive such evidence as it thinks fit whether receivable in accordance with law in other proceedings or not.

N.S.W. Act,
1928, No. 35,
s. 48 (11).Cwth. Act,
1936, No. 27,
s. 198 (1).N.S.W. Act,
1928, No. 35,
s. 48 (12).Cwth. Act,
1936, No. 27,
s. 198 (2).Commis-
sioner and
taxpayer
may appeal
to Court
from
decision of
Board.

(7) 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 of the Supreme Court upon any question which, in the opinion of the Court, is a question of law.

(8) 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 the costs of the case stated as it thinks fit.

249. (1) The Commissioner or taxpayer may, upon filing in the office of the Prothonotary of the Court within the time hereinafter mentioned, a notice of intention so to do, appeal to the Court from any decision of the Board which involves—

(a) a question of law; or

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

(2) For the purpose of hearing appeals under this section the Court shall consist of three justices.

(3) Upon the hearing of the appeal the Court may make such order as it thinks fit.

(4) The costs of the appeal shall be in the discretion of the Court. Unless by reason of possible benefit from the appeal to the taxpayer in connection with any other liability to tax or for any other reason the Court otherwise orders the Commissioner shall pay the costs of any appeal by him against a decision of the Board where the amount of tax involved in the appeal does not exceed three hundred pounds and the taxpayer has not appealed against that decision.

(5) The time for filing in the office of the Prothonotary the notice of intention to appeal referred to in subsection one of this section shall be the period of sixty days after the decision of the Board against which it is desired to appeal, or such further time as the Court before or after the expiration of such period may for cause shown allow.

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

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Pending review or appeal not to delay payment of tax.

N.S.W. Act, 1928, No. 35, s. 49 (1).

Cwth. Act, 1936, No. 27, s. 201.

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

Adjustment of tax after appeal.

N.S.W. Act, 1928, No. 35, s. 49 (2).

Cwth. Act, 1936, No. 27, s. 202.

252. The Governor may make Rules of Court regulating the practice and procedure in relation to appeals to the Court from any decision of the Board and in relation to all other appeals to the Court under this Part and to cases stated to the Court under this Part, and in regard to taxation of costs ordered to be paid by the Board and in regard to entry of judgment in the Court in respect of costs ordered to be paid by the Board.

Power to make rules of Court.

N.S.W. Act, 1928, No. 35, s. 51 (10).

Cwth. Act, 1936, No. 27, s. 203.

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

When tax payable.

N.S.W. Act, 1928, No. 35, s. 54 (1).

Cwth. Act, 1936, No. 27, s. 204.

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

Extension of time and payment by instalments.

N.S.W. Act, 1928, No. 35, s. 55.

Cwth. Act, 1936, No. 27, s. 206.

255.

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COLLECTION
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RECOVERY
OF TAX.Penalty
for unpaid
tax.N.S.W. Act,
1929, No. 47,
s. 3.Cwth. Act,
1936, No. 27,
s. 207.Income tax
a Crown
debt.N.S.W. Act,
1928, No. 35,
s. 56.Cwth. Act,
1936, No. 27,
s. 208.

Exchange.

N.S.W. Act,
1928, No. 35,
s. 56, proviso.Recovery of
tax.N.S.W. Act,
1928, No. 35,
s. 56.Cwth. Act,
1936, No. 27,
s. 209.Persons
leaving
Australia
to obtain
certificate.Cwth. Act,
1936, No. 27,
s. 210.Authority
to travel
not to issue
without
certificate.
Cwth. Act,
1936, No. 27,
s. 211.

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

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

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

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

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

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

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

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

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

260. (1) Unless and until such certificate has been presented to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship or aircraft by which that person intends to leave
Australia

Australia at the port or place at which his passage is to be booked, an authority for that person to travel by that ship or aircraft shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

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

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

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

Certificates
and list of
passengers
to be lodged
by owners
and char-
terers.
Cwth. Act,
1936, No. 27,
s. 212.

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

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

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

Security
for tax.
N.S.W. Act,
1928, No. 35,
s. 86.
Cwth. Act,
1936, No. 27,
s. 213.

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

N.S.W. Act,
1928, No. 35,
s. 67.

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

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TAX.Substituted
service.N.S.W. Act,
1928, No. 35,
s. 57.Cwth. Act,
1936, No. 27,
s. 214.Liquidators,
trustees,
agents and
others to
give notice.N.S.W. Act,
1928, No. 35,
s. 58.Cwth. Act,
1936, No. 27,
s. 215.**263.** If a taxpayer—

- (a) is absent from Australia and has not to the knowledge of the Commissioner after reasonable inquiry in that behalf any attorney or agent in Australia on whom service of process can be effected; or
- (b) cannot after reasonable inquiry be found, service of any process in proceedings against him for recovery of income tax may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last-known place of business or abode in Australia.

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

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

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

(2) The Commissioner shall as soon as practicable thereafter notify to the trustee the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company or principal as the case may be.

(3) The trustee—

- (a) shall not without the leave of the Commissioner part with any of the assets of the company or principal until he has been so notified by the Commissioner;
- (b) shall set aside out of the assets available for the payment of the tax assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
- (c)

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

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

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

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

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

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

Trustee of
estate of
deceased
person or
bankrupt.
N.S.W. Act,
1928,
No. 35, s. 58.

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

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

Where tax
not paid
during
lifetime.
N.S.W. Act,
1928,
No. 35, s. 59.
Cwth. Act,
1936, No.
27, s. 216.

- (a) the Commissioner shall have the same powers and remedies against the trustees of the estate

of

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of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living;

- (b) the trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment;
- (c) the trustees shall be subject to additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living:

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

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

Payment of
tax by
trustees of
deceased
person.
N.S.W. Act,
1928,
No. 35, s. 60.
Cwth. Act,
1936, No.
27, s. 217.

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

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

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

Commissioner
may collect
tax from
person owing
money to
taxpayer.

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

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

(c)

N.S.W. Act,
1928,
No. 35, s. 65.
Cwth. Act,
1936, No.
27, s. 218.

(c) any person who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or

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

to pay to him in satisfaction or in reduction of the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act such sum or sums at such times and out of such moneys whether then due to or held for or thereafter to become due to or held for the taxpayer as may be specified or indicated in the notice.

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

Penalty: Fifty pounds.

(3) Where the amount payable to the taxpayer by the person so notified is less than the sum specified or indicated in the notice as the sum payable out of moneys then due to or held for the taxpayer that person shall pay to the Commissioner the amount payable by that person to the taxpayer.

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

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

(6) In the foregoing provisions of this section—

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

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

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

(b)

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

(7) Any notice to be given under this section to the Commonwealth or the Crown in right of the State of New South Wales may be served upon such person as is prescribed and any notice so served shall be deemed to have been served upon the Commonwealth or the Crown in right of the State of New South Wales as the case may be.

Consolidation of
assessments.N.S.W. Act,
1928, No.
35, s. 62.Cwth. Act,
1936, No.
27, s. 219.

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

PART VII.

PENAL PROVISIONS AND PROSECUTIONS.

Taxation
prosecution.
Cwth. Act,
1936, No.
27, s. 222.

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

Failure to
furnish
returns or
information,
&c.N.S.W. Act,
1928, No. 35,
s. 67.Cwth. Act,
1936, No.
27, s. 223.

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

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

(2)

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

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

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

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

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

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

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

(2) Any taxpayer who omits from his return any assessable income, or includes in his return as a deduction for expenditure incurred by him an amount in excess of

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TIONS.

Refusal to
give
evidence.

N.S.W. Act
1928, No.
35, s. 67.

Cwth. Act
1936, No.
27, s. 224.

Order to
comply with
requirement.

N.S.W. Act,
1928, No.
35, s. 67 (3).

Cwth. Act,
1936, No.
27, s. 225.

Additional
tax in
certain
cases.

N.S.W. Act,
1928, No.
35, s. 68.

Cwth. Act,
1936, No.
27, s. 226.

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TIONS.

of the expenditure actually incurred by him, shall be liable to pay as additional tax an amount equal to double the difference between the tax properly payable by him and the tax that would be payable if it were assessed upon the basis of the return furnished by him, or the amount of one pound whichever is the greater.

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

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

False re-
turns or
statements.
N.S.W. Act,
1928, No.
35, s. 67.
Cwth. Act,
1936, No.
27, s. 227.

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

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

N.S.W. Act,
1928,
No. 35,
s. 67 (4).

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

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally, and
- (b) that the false return or false answer was made through ignorance or inadvertence.

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

276. (1) Any person required by this Act to sign an agent's certificate who fails to do so or who signs an agent's certificate which is false in any particular shall be guilty of an offence.

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

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

277. Any person who, in any declaration made under, or authorised or prescribed by this Act or the regulations, knowingly and wilfully declares to any matter or thing which is false or untrue, shall be deemed to be guilty of wilful and corrupt perjury, and shall upon conviction be liable to imprisonment for a period not exceeding four years.

278. (1) Any person who or any company on whose behalf the public officer or a director, servant or agent of the company, in any return, knowingly and wilfully understates the amount of any income or makes any misstatement affecting the liability of any person to tax or the amount of tax shall be guilty of an offence.

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

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

279. (1) Any person who or any company on whose behalf the public officer or a director, servant or agent of the company by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation shall be guilty of an offence.

Penalty: Not less than twenty-five pounds or more than five hundred pounds, and, in addition, the court may order the person or company to pay to the Commissioner a sum not exceeding double the amount of tax that has been avoided or attempted to be avoided.

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TIONS.

Failure to
sign or
false certi-
ficate.

Cwth. Act,
1936, No.
27, s. 228.

False
declarations.
Cwth. Act,
1936, No.
27, s. 229.

Understat-
ing income.
N.S.W. Act,
1928,
No. 35, s. 69.
Cwth. Act,
1936, No.
27, s. 230.

N.S.W. Act,
1928,
No. 35, s. 71.

Fraudulent
avoidance of
tax
N.S.W. Act,
1928,
No. 35, s. 70.
Cwth. Act,
1936, No.
27, s. 231.

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PART VII.
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TIONS.N.S.W. Act,
1928,
No. 35, s. 71.Obstructing
officers.N.S.W. Act,
1928, No. 35,
s. 73.Cwth. Act,
1936, No. 27,
s. 222.Protection
to witnesses.
N.S.W. Act,
1928, No.
35, s. 77.Cwth. Act,
1936, No. 27,
s. 242.Averment of
prosecutor
sufficient.
Cwth. Act,
1936, No. 27
s. 243.

(2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

280. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations shall be guilty of an offence.

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

281. A witness on behalf of the Commissioner or an Assistant Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

282. (1) In any taxation prosecution every averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be prima facie evidence of the matter averred.

(2) This section shall apply to any matter so averred, although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be prima facie evidence of the fact only.

(3) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4) This section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment; or
- (c)

- (c) any matter relating to the income or deductions in a return of the defendant if he has produced to the Commissioner or to an officer authorised by the Commissioner in that behalf sufficient records to enable the assessable income and allowable deductions of the defendant to be readily ascertained.

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PENAL PRO-
VISIONS AND
PROSECU-
TIONS.

(5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

283. (1) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner.

Evidence of
authority to
institute
proceedings.
Cwth. Act,
1936, No. 27,
s. 244.

(2) The production of a telegram purporting to have been sent by the Commissioner and purporting to authorise an officer to institute any taxation prosecution shall be sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner.

284. (1) In any action, prosecution or other proceeding in any court by the Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the State.

Appearance by
Commissioner.
N.S.W. Act,
1928, No. 36,
s. 51 (5).
Cwth. Act,
1936, No. 27,
s. 245.

(2) The appearance of any such officer, and his statement that he appears by authority of the Commissioner shall be sufficient evidence of such authority.

285. (1) The penalty pecuniary or other set out— Penalties.

- (a) at the foot of any section of this Act; or
(b) at the foot of any subsection of any section of this Act but not at the foot of the section,

shall indicate that any contravention of the section or of the subsection respectively, whether by act or omission, shall be an offence against this Act punishable upon summary conviction by a penalty not exceeding the penalty mentioned:

Provided that where the penalty is expressed to apply to a part only of the section or subsection, it shall apply to that part only.

(2)

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VISIONS AND
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TIONS.

Penalties not
to relieve
from tax.

N.S.W. Act,
1928, No. 35,
s. 72.

Cwth. Act,
1936, No. 27,
s. 251.

General
penalty.

N.S.W. Act,
1928, No. 35,
s. 74.

Action
against
officer.

N.S.W. Act,
1928, No. 35,
s. 76.

(2) The adjudgment or payment of a penalty under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

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

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

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MISCELLANEOUS.

Public
officer of
company.

N.S.W. Act,
1928, No.
35, s. 78.

Cwth. Act,
1936, No. 27,
s. 252.

288. (1) Every company carrying on business in this State or deriving in this State income from property shall at all times, unless exempted by the Commissioner, be represented for the purposes of this Act by a public officer being a person residing in this State and duly appointed by the company or by its duly authorised agent or attorney. With respect to every such company and public officer the following provisions shall apply:—

- (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the commencement of this Act or after the company commences to carry on business or derive income in this State.
- (b) The company shall keep the office of the public officer constantly filled.
- (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and
an

an address for service upon him has been given to the Commissioner.

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- (d) If the company fails to appoint a public officer when and so often as such appointment becomes necessary, it shall be guilty of an offence.

Penalty: Two pounds for every day during which the failure continues.

- (e) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (f) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.
- (g) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.
- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.
- (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.

(j)

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- (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon or taken against the company or public officer.

(2) A public officer of a company duly appointed under the previous Act and holding that office at the commencement of this Act shall be deemed to be the public officer of the company duly appointed under this Act.

Agents and
trustees.N.S.W. Act,
1928, No.
35, s. 79.Cwth. Act,
1936, No. 27,
s. 254.

289. (1) With respect to every agent and with respect also to every trustee, the following provisions shall apply:—

- (a) he shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon;
- (b) he shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if he is a trustee of the estate of a deceased person the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;

(d)

Income Tax (Management) Act.

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- (d) he is hereby authorised and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of the income; No. 41, 1938.
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N.S.W. Act,
1928, No.
35, s. 63 (2).
- (e) he is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained or should have retained under paragraph (d) of this subsection, but he shall not be otherwise personally liable for the tax; N.S.W. Act,
1928, No.
35, s. 63 (2).
- (f) he is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner; N.S.W. Act,
1928, No.
35, s. 80 (e).
- (g) where as one of two or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid;
- (h) for the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax. N.S.W. Act,
1928, No.
35, s. 61.

(2) Nothing contained in subsection one of this section shall exempt or discharge any principal or beneficiary from liability to make returns or to pay tax upon the whole of his taxable income.

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

- (a) he shall when required by the Commissioner pay the tax due and payable by the non-resident;

(b)

Person in receipt or control of money for non-resident.
N.S.W. Act,
1928, No.
35, s. 80.
Cwth. Act,
1936, No.
27, s. 255.

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- (b) he is hereby authorised and required to retain from time to time out of any money which comes to him on behalf of the non-resident so much as is sufficient to pay the tax which is or will become due by the non-resident;
- (c) he is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained or should have retained, but he shall not be otherwise personally liable for the tax;
- (d) he is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.

(2) Every person who is liable under any contract to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and all money due by him under the contract shall be deemed to be money which comes to him on behalf of the non-resident.

Person paying royalty to a taxpayer resident out of Australia.
Cwth. Act, 1936, No. 27, s. 256.

291. (1) Every person who is liable under any contract to pay money as, or by way of, royalty to a non-resident who is not a resident of Australia shall, before making any payment to, or on behalf of, that non-resident, furnish to the Commissioner a statement of the amount of royalty due to the non-resident, whether such royalty became due either before or after the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

(2) The provisions of section two hundred and ninety shall apply in respect of payments of royalty referred to in this section.

Payment of tax by banker.
N.S.W. Act, 1928, No. 35, s. 81
Cwth. Act, 1936, No. 27, s. 257.

292. Where any income of any person out of this State is paid into the account of that person with a banker, the Commissioner may, by notice in writing to the banker, appoint him to be the person's agent in respect of the money so paid so long as the banker is indebted in respect thereof, and thereupon the banker shall accordingly be that person's agent.

293.

293. Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the same from that other person as a debt together with the costs of recovery in any court of competent jurisdiction, or may retain or deduct the same out of any money in his hands belonging or payable to that other person.

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Recovery of tax paid on behalf of another person.

N.S.W. Act, 1928, No. 35, s. 63 (1).

Cwth. Act, 1936, No. 27, s. 258.

294. Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax in respect of any of the taxable income—

Contribution from joint taxpayers.

N.S.W. Act, 1928, No. 35, s. 64.

Cwth. Act, 1936, No. 27, s. 253.

(a) shall be entitled to receive by way of contribution from any other of such persons a sum bearing the same proportion to the tax as that other person's share of the taxable income bears to the whole taxable income; and

(b) may recover that sum from that other person in any court of competent jurisdiction; or may retain or deduct that sum out of any money in his hands belonging or payable to that other person.

295. (1) Every taxpayer carrying on a business shall keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained.

Records of taxpayer carrying on a business.

(2) Any taxpayer who fails to keep the records required by this section shall be guilty of an offence.

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

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

Contracts to evade tax void.

N.S.W. Act, 1928, No. 35, s. 83.

Cwth. Act, 1936, No. 27, s. 260.

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

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(d) preventing the operation of this Act in any respect,

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose.

Covenant by
mortgagor
to pay tax.N.S.W. Act,
1928, No.
35, s. 82.Cwth. Act,
1936, No.
27, s. 261.

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

- (a) if the mortgage was entered into on or before the fourteenth day of December, one thousand nine hundred and twenty-eight, shall not be valid to impose on the mortgagor the obligation of paying income tax to any greater amount than the amount (if any) which would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any income tax payable on that interest; and
- (b) if the mortgage was entered into after that date shall be absolutely void.

(2) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this subsection, which has or purports to have the purpose or effect of including in or adding to the interest payable in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

(3) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee, the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall

shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

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(4) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise) be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise.

(5) For the purposes of this section "mortgage" includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted.

298. Where under any contract agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments which, in the opinion of the Commissioner, are either wholly or in part really in the nature of income of that person such of those payments as are derived in the year of income shall to the extent to which they are in that opinion in the nature of income be included in his assessable income.

Periodical payments in the nature of income.

N.S.W. Act, 1928, No. 35, s. 84.

Cwth. Act, 1936, No. 27, s. 262.

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

Access to books, &c.

N.S.W. Act, 1928, No. 35, s. 85.

Cwth. Act, 1936, No. 27, s. 263.

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PART VIII.
MISCELLANEOUS.Department
to obtain
information
and
evidence.N.S.W. Act,
1928, No.
35, s. 87.Cwth. Act,
1936, No.
27, s. 264.Release of
taxpayers
in cases of
hardship.N.S.W. Act,
1928, No.
35, s. 88.Cwth. Act,
1936, No.
27, s. 265.

300. (1) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connection with any department of a Government or by any public authority—

(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, 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.

301. (1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner and two other persons appointed by the Governor that—

(a) a taxpayer has suffered such a loss or is in such circumstances, or

(b) owing to the death of a person who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the Board may release the taxpayer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.

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

(3) The Commissioner may exercise all the powers of the Board under this section and under section three hundred and two of this Act when the amount of tax involved in any one year does not exceed ten pounds.

(4) For the purposes of this section and of section three hundred and two of this Act tax includes any costs incurred in attempting to recover such tax.

302.

302. (1) In any case where it is shown to the satisfaction of the Board referred to in section three hundred and one of this Act that every reasonable effort has been made to recover tax, or that it is impracticable without undue expense to recover that tax, it may direct the amount thereof to be written off.

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MISCELLANEOUS.

Writing off
tax.

N.S.W. Act,
1928, No.
35, s. 89.

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

303. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required, or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and may by such regulations prescribe penalties of not less than one pound or more than twenty pounds for any breach of the regulations.

Regulations.

N.S.W. Act,
1928, No.
35, s. 90.

Cwth. Act,
1936, No.
27, s. 266.

(2) The regulations shall—

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

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

Construction of Act.
N.S.W. Act,
1928, No.
35, s. 92.

305.

No. 41, 1936.

PART VIII.
MISCEL-
LANEOUS.
Amendments
of certain
Acts.

305. (1) The Income Tax (Management) Act, 1912, as amended by subsequent Acts, is amended in the manner and to the extent set out in the first schedule to this Act.

(2) The Income Tax (Management) Act, 1928, as amended by subsequent Acts, is amended in the manner and to the extent set out in the second schedule to this Act.

(3) (a) The Co-operation Act, 1923-1935, as amended by subsequent Acts, is amended in the manner and to the extent set out in the third schedule to this Act.

(b) The Co-operation Act, 1923-1935, as amended by subsequent Acts, including this Act, may be cited as the Co-operation Act, 1923-1936.

SCHEDULES.

THE FIRST SCHEDULE.

Amendment of
Act No. 11,
1912.

Sec. 10.

The Income Tax (Management) Act, 1912, as amended by subsequent Acts, is amended—

(1) by inserting at the end of section ten the following new paragraph:—

(k) the income derived during the year ended on the thirtieth day of June one thousand nine hundred and twenty-seven by a co-operative society registered under the Co-operation Act, 1923-1935, as amended by subsequent Acts.

(2) by inserting after section forty the following new section:—

41. (1) Notwithstanding anything contained in this Act or in any other Act, the provisions of—

(a) section two hundred and ten of the Income Tax (Management) Act, 1936, shall, as from the commencement of that Act, apply to all assessments made under this Act;

(b) section two hundred and fifty-four and section two hundred and fifty-five of the Income Tax (Management) Act, 1936, shall apply to any assessments which may after the commencement of that Act be made under this Act;

(c)

New sec. 41.
Amendment of
assessments.

Income Tax (Management) Act.

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(c) section two hundred and sixty-eight of the Income Tax (Management) Act, 1936, shall apply in respect of any tax assessed under this Act which, at the commencement of the Income Tax (Management) Act, 1936, had not been paid, and of any tax which may after such commencement be assessed under this Act; No. 41, 1936.

(d) section three hundred and one and section three hundred and two of the Income Tax (Management) Act, 1936, shall apply in respect of any tax assessed under this Act which, at the commencement of the Income Tax (Management) Act, 1936, had not been paid, or which may after such commencement be assessed under this Act.

(2) "Tax" in this section includes any judgment debt and costs in respect of income tax, and all fines, penalties and costs imposed on the taxpayer by or under this Act.

THE SECOND SCHEDULE.

The Income Tax (Management) Act, 1928, as amended by subsequent Acts, is amended— Amendment of Act No. 35, 1928.

- (1) by omitting from section two the words "sixty-six, and subsection four of section eighty-nine" and by inserting in lieu thereof the symbols "53A." Sec. 2.
- (2) by omitting from paragraph (s) of subsection one of section ten, the word "four" and by inserting in lieu thereof the word "six." Sec. 10 (1).
- (3) by inserting at the end of subsection one of section ten, the following new paragraph:— Sec. 10 (1).
 - (t) the income of a co-operative society derived during the income year ended on the thirtieth day of June one thousand nine hundred and twenty-eight, and the seven succeeding income years.

- (4) by omitting paragraph (4) of section twenty-three. Sec. 23.
- (5) by inserting at the end of section forty-four, the following new subsection:— Sec. 44.

(4) The provisions of section two hundred and ten of the Income Tax (Management) Act, 1936, shall, as from the commencement of that Act, apply to assessments made under this Act: Provided that this section shall continue to apply in any case in which an alteration in an assessment would have the effect of reducing a taxpayer's liability and application for an amendment was made by the taxpayer before the commencement of the Income Tax (Management) Act, 1936.

No. 41, 1936.

New sec. 53A.

Termination
of Part V.

- (6) by inserting in Part V after section fifty-three the following new section:—

53A. (1) The preceding provisions of this Part of this Act shall cease to have effect upon the commencement of the Income Tax (Management) Act, 1936, except for the purpose of completely disposing of any appeal the hearing of which had been commenced by the Supreme Court or a Court of Review under those provisions before such commencement.

(2) The provisions of Part V of the Income Tax (Management) Act, 1936, shall apply to all assessments which may after the commencement of that Act be made under this or the previous Act and to all assessments heretofore made under this or the previous Act where the hearing of an appeal from the assessment has not been commenced by the Supreme Court or a Court of Review before the commencement of the Income Tax (Management) Act, 1936.

(3) Where the Commissioner has decided an objection against an assessment made before the commencement of the Income Tax (Management) Act, 1936, and forwarded it to the Supreme Court to be dealt with as an appeal and that Court has not commenced the hearing of the appeal, the appeal shall be dealt with by that Court under Part V of that Act.

(4) Where the Commissioner has decided an objection against an assessment made before the commencement of the Income Tax (Management) Act, 1936, and forwarded it to a Court of Review to be dealt with as an appeal and that Court has not commenced the hearing of the appeal, the appeal shall be dealt with by the Board of Appeal under Part V of that Act.

(5) If any documents relating to any matter which by this section is required to be dealt with by the Board of Appeal constituted under Part V of the Income Tax (Management) Act, 1936, are in the possession of a Court of Review, all such documents shall be forwarded to such Board of Appeal.

New sec. 66A.

- (7) by inserting in Part VI next after section sixty-six the following new section:—

66A. (1) The provisions of section sixty-five and of subsection two of section sixty-six of this Act shall cease to have effect upon the commencement of the Income Tax (Management) Act, 1936, except in respect of notices given under the authority of those enactments before such commencement.

(2) The provisions of section two hundred and sixty-eight of the Income Tax (Management) Act, 1936, shall apply in respect of any tax assessed under this Act, which at the commencement of the Income Tax (Management) Act, 1936, had not been paid and in respect of which a notice

Termination
of ss. 65 and 66
(2).

notice under the authority of section sixty-five or of subsection two of section sixty-six of this Act had not, before such commencement, been given, and of any tax which may, after such commencement, be assessed under this Act. No. 41, 1936.

(3) In this section the expression "tax" includes any judgment debt and costs in respect of tax.

(8) by omitting subsection four of section eighty-nine and by inserting in lieu thereof the following subsection:— Sec. 59.

(4) The provisions of section three hundred and one and section three hundred and two of the Income Tax (Management) Act, 1936, shall apply to any tax assessed under this Act which has not been paid before the commencement of the Income Tax (Management) Act, 1936, or which may after such commencement be assessed under the provisions of this Act, and the preceding provisions of this section, and the provisions of section eighty-eight of this Act shall thereupon cease to have effect.

THE THIRD SCHEDULE.

The Co-operation Act, 1923-1935, as amended by subsequent Acts, is amended by inserting next after subsection five of section sixty-three, the following new subsection:— Amendment of Act No. 1, 1924, sec. 63.

(6) The provisions of subsection one, of subsection two, of subsection three and of subsection five of this section shall not apply to the income of a society derived after the thirtieth day of June, one thousand nine hundred and twenty-six.