

UNEMPLOYMENT RELIEF TAX (MANAGEMENT) ACT.

Act No. 13, 1939.

An Act to provide for the assessment and collection of Unemployment Relief Tax; and for purposes connected therewith. [Assented to, 29th September, 1939.]

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 "Unemployment Relief Tax (Management) Act, 1939." Short title and commencement.

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

(3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1-5.

PART II.—UNEMPLOYMENT RELIEF FUND—ss. 6, 7.

PART III.—LIABILITY TO TAXATION—ss. 8-16.

PART IV.—RETURNS, ETC.—ss. 17-19.

PART V.—TAX UPON INCOME FROM EMPLOYMENT—ss. 20-22.

PART VI.—GENERAL—ss. 23, 24.

2. (1) This Act shall be read with the Income Tax (Management) Act, 1936, as amended by subsequent Acts, which Act as so amended is in this Act referred to as the Principal Act.

(2)

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(2) In this Act, unless the contrary intention appears—

“Assessable income” includes—

- (a) all amounts which under the provisions of the Principal Act are included in the assessable income except the amounts referred to in paragraph (p) of subsection one of section nineteen of that Act; and
- (b) all income derived by a resident (other than a company which is not a private company) from any source outside this State except income derived from such a source which—
 - (i) is income from employment; or
 - (ii) is income from the carrying on of any trade or business other than an investment business; and
- (c) income from employment derived while on the high seas by officers, seamen and others employed on ships who are residents and who are not on articles entered into or out of New South Wales, but does not include the part of any pension received by any person in respect of or for or in relation directly or indirectly to any past employment or service of that person being a sum which bears the same proportion to the full amount of such pension as the part of that employment or service given or rendered out of this State bears to the whole of that employment or service.

“Defendant” means a person who resides in Australia and who is wholly maintained by the taxpayer and who is the spouse of the taxpayer or is a child under the age of sixteen years. A spouse shall be deemed to be wholly maintained if the net amount of income derived by such spouse from all sources during the year ending on the thirtieth day of June, one thousand nine hundred and thirty-nine, did not exceed one hundred pounds.

“Employee”

“Employee” includes—

- (a) a person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration;
- (b) a director of a company;
- (c) an insurance or time payment canvasser or collector, paid wholly or in part by commission;
- (d) a person in receipt of a pension or retiring allowance;
- (e) a person employed at piece-work rates;
- (f) a person working under contract for labour only, or substantially for labour only;
- (g) a person in receipt of remuneration from a person who is an employer.

“Employer” includes—

- (a) a person making payment of pensions or retiring allowances so far as regards such payments;
- (b) the Crown in right of the State of New South Wales;
- (c) the Crown in right of the Commonwealth of Australia in relation to persons in respect of whom any special agreement as is referred to in section twenty-two of this Act has been entered into;
- (d) any person with whom an agreement has been entered into in accordance with subsection three or subsection four of this section;
- (e) any person making payments to a person who is an employee as such.

“Income from employment” means all assessable income of any person (other than a company) as an employee from salary, wages, fees, commission, allowances, or payments to an employee as such including all assessable income referred to in paragraphs (h) and (i) of subsection one of

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of section nineteen of the Principal Act, after deduction of the expenses actually incurred in gaining or producing such income, and including also all pensions and retiring allowances, but not including any such assessable income received from any employer in any case in which he is not bound to collect tax from the employee.

“Net assessable income” means assessable income after making therefrom the deductions allowed by this Act, but in the case of any person (other than a company) does not include any income which is income from wages within the meaning of that term as defined in the Special Income and Wages Tax (Management) Act, 1936-1938, or is income from employment as defined in this Act.

“Person” includes a company, corporation, local authority or statutory body.

“Tax” means Unemployment Relief Tax imposed as such by any Act as assessed or calculated under this Act.

(3) The Commissioner may agree with any employer who is not bound to collect tax from an employee that as from the dates specified in the agreement the employer shall assume the obligation of collecting tax upon the income of his employees which would if he were so bound be income from employment and as from a date specified in the agreement that income shall be deemed to be income from employment for the purposes of this Act.

(4) The Commissioner may agree with any person making payments to another person and which payments constitute emoluments of any office or employment that as from the date specified in the agreement the person making the payments shall assume the obligation of collecting tax upon such payments as if they were income from employment and as from such date such payments shall be deemed to be income from employment for the purposes of this Act.

(5) Any agreement made under subsection three of section two of the Special Income and Wages Tax (Management)

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(Management) Act, 1936-1938, shall, as from the commencement of this Act, have and take effect as if the employer who was a party thereto had from such commencement assumed the obligation referred to in subsection three of this section by an agreement made thereunder.

3. (1) The Prevention and Relief of Unemployment Act, 1930-1936, shall continue in force for all purposes in connection with Unemployment Relief Tax payable in respect of net assessable income derived prior to the income year ended on the thirtieth day of June, one thousand nine hundred and thirty-three, or prior to such other period as may be or may have been accepted by the Commissioner in lieu of such year and of income from employment derived prior to the first day of December, one thousand nine hundred and thirty-three.

(2) The Special Income and Wages Tax (Management) Act, 1933-1934, shall continue in force for all purposes in connection with Special Income Tax payable in respect of net assessable income derived prior to the year of income ended on the thirtieth day of June, one thousand nine hundred and thirty-six, or prior to such other period as may be accepted by the Commissioner in lieu of such year and Wages Tax in respect of income from wages derived prior to the first day of November, one thousand nine hundred and thirty-six.

(3) Subject to subsection four of this section, the Special Income and Wages Tax (Management) Act, 1936-1938, shall continue in force for all purposes in connection with Special Income Tax payable in respect of net assessable income derived prior to the year of income ended on the thirtieth day of June, one thousand nine hundred and thirty-nine, or prior to such other period as may be accepted by the Commissioner in lieu of such year and in connection with Wages Tax in respect of income from wages derived prior to the commencement of this Act.

(4) The Special Income and Wages Tax (Management) Act, 1936-1938, shall continue in force and apply to dividends and interest referred to in section eleven of that Act and payable prior to the commencement of this Act, and shall likewise continue in force and apply to

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to all assessments in which tax has been charged under section six and subsection two of section eight of the Special Income and Wages Tax Act, 1938.

Existing regulations.

4. (1) All rules, regulations and forms made or prescribed under the Special Income and Wages Tax (Management) Act, 1936-1938, and in force immediately before the commencement of this Act, shall apply mutatis mutandis 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, 1939.

(2) All notices given and returns made during the year one thousand nine hundred and thirty-nine under the Income Tax (Management) Act, 1936, 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-nine, 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.

Administration.

5. (1) The Commissioner shall have the general administration of this Act and may sue or be sued by the name of the Commissioner of Taxation.

Officers.

(2) The Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint such persons as may be deemed necessary for the carrying out of this Act.

Absence of Commissioner, delegation of powers and secrecy.

(3) The provisions of subsections six, seven, eight and nine of section six, and of section eight, of the Principal Act, shall, mutatis mutandis, extend to the administration of this Act.

PART II.

UNEMPLOYMENT RELIEF FUND.

Unemployment Relief Fund.

6. (1) There shall be opened within the Colonial Treasurer's accounts a fund which shall be called the "Unemployment Relief Fund."

(2)

(2) There shall be paid to the credit of the Unemployment Relief Fund— No. 13, 1939.

- (a) the proceeds of the tax as defined in this Act;
- (b) receipts and arrears of—

- (i) unemployment relief tax collected under the Prevention and Relief of Unemployment Act, 1930-1936, at any time after the thirtieth day of June, one thousand nine hundred and thirty-nine, including any such unemployment relief tax collected after the commencement of this Act;
- (ii) tax collected under the Special Income and Wages Tax (Management) Act, 1933-1934, or the Special Income and Wages Tax (Management) Act, 1936-1938, at any time after the said date, including any such tax collected after the commencement of this Act;
- (c) moneys by this or any other Act authorised or directed to be paid into the Unemployment Relief Fund;
- (d) repayments of principal and payments of interest on account of moneys advanced from the Unemployment Relief Fund;
- (e) all advances or payments made by the Colonial Treasurer to the Unemployment Relief Fund, which advances or payments he is hereby authorised to make.

(3) Subject to appropriation by Parliament moneys in the Unemployment Relief Fund may be applied for any of the following purposes—

- (a) in defraying the cost of administration in relation to the relief of unemployment and other expenses incidental thereto including such costs and expenses incurred during the period commencing on the first day of July, one thousand nine hundred and thirty-nine, and ending on the date of the commencement of this Act;
- (b) in defraying the costs incurred in assessing and collecting Unemployment Relief Tax under the Prevention

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Prevention and Relief of Unemployment Act, 1930-1936, and any tax under the Special Income and Wages Tax (Management) Act, 1933-1934, and the Special Income and Wages Tax (Management) Act, 1936-1938, including any such costs incurred during the period referred to in paragraph (a) of this subsection;

- (c) in defraying the cost of assessment and collection of tax under this Act;
- (d) in defraying the cost of providing food and other assistance to unemployed persons and other persons in necessitous circumstances, including any such costs incurred during the period referred to in paragraph (a) of this subsection;
- (e) in defraying the costs of or making payments towards the training of youths and untrained persons for employment or the training of persons for whom no employment can be found in the occupation or pursuit for which they have been trained, including any such costs incurred or payments made during the period referred to in paragraph (a) of this subsection;
- (f) in meeting payments made or to be made in the financial year which commenced on the first day of July, one thousand nine hundred and thirty-nine, and in any succeeding financial year by way of interest, exchange, sinking fund and other capital charges in respect of so much of the capital indebtedness of the Metropolitan Water, Sewerage and Drainage Board and the Hunter District Water Board as is remitted under section 69A of the Metropolitan Water, Sewerage and Drainage Act, 1924-1937, and under the Hunter District Water, Sewerage and Drainage Act, 1938, respectively;
- (g) in meeting payments made or to be made by the Colonial Treasurer in the financial year which commenced on the first day of July, one thousand nine hundred and thirty-nine, and in any succeeding financial year under any undertaking given by him pursuant to section 422B of the Local

Unemployment Relief Tax (Management) Act.

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Local Government Act, 1919, as amended by subsequent Acts, or under any agreement entered into by him pursuant to section 493A of the said Act as so amended;

- (h) in making grants, loans and advances for any purposes connected with or relating to the relief of unemployment and in defraying the cost of carrying out works for any such purpose;
- (i) in repaying advances and payments made to the Unemployment Relief Fund by the Colonial Treasurer where such advances and payments are repayable;
- (j) in recouping the Consolidated Revenue Fund for payments made or to be made out of that fund in the financial year commencing on the first day of July, one thousand nine hundred and thirty-nine, or in any succeeding financial year by way of interest, exchange, sinking fund and other capital charges in respect of any loan moneys expended at any time after the first day of July, one thousand nine hundred and thirty-two (including loan moneys expended after the commencement of this Act), in carrying out works for the relief of unemployment, or in making advances to the council of any municipality or shire or to any county council for any purposes connected with or relating to the relief of unemployment;
- (k) for any other purpose for which moneys in the Unemployment Relief Fund are appropriated by any Act.

7. The provisions of the Audit Act, 1902, as amended by subsequent Acts, shall extend and apply to and in relation to the Unemployment Relief Fund in the like manner as those provisions apply to and in relation to the Consolidated Revenue Fund.

Application
of Audit
Act, 1902.

PART

PART III.

LIABILITY TO TAXATION.

Incidence
of tax
in respect
of net
assessable
income.

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

Incidence
of tax in
respect of
income from
employment.

9. Subject to this Act, tax in such amounts or at such rates as may be fixed by any Act shall be paid to the Commissioner in respect of the income from employment derived by any person on and after the date of the commencement of this Act.

Exemptions.

10. (1) The incomes, revenues, and funds exempt from income tax by virtue of section sixteen of the Principal Act, and also any income derived from a source outside this State by the Governor or any other person whose salary or remuneration is exempt from income tax under that section, shall, subject to this Act, also be exempt from tax under this Act, and in addition, there shall also be exempt—

- (a) all the income derived from carrying on the business of life insurance other than that appropriated for the payment of dividends or which enures for the benefit of shareholders;
- (b) any war pension paid by the Imperial or any other Government;
- (c) income derived from old-age or invalid pensions payable under the (Commonwealth) Invalid and Old Age Pensions Act, 1908-1935;
- (d) income derived from pensions payable under the Widows' Pensions Act, 1925, as amended by subsequent Acts;
- (e) income derived from payments in respect of any children under the Family Endowment Act, 1927-1938;
- (f) income derived from any payment made in respect of children under the Child Welfare Act, 1923, as amended by subsequent Acts;
- (g)

- (g) income derived from any payment made to any person as charitable relief by any Government department or agency;
- (h) the net assessable income of any person (other than a company) domiciled in this State whose total income from all sources during the year of income does not exceed one hundred pounds or where the person has a dependant does not exceed two hundred and eighteen pounds;
- (i) the income from employment of an employee while he is in receipt of such income at a rate less than two pounds per week or the equivalent hourly or daily rate, or where the employee has a dependant while he is in receipt of such income at a rate less than four pounds four shillings per week or the equivalent hourly or daily rate:
 - Provided that this exemption shall not apply to any income from employment derived during any year of income by an employee whose total income from all sources during that year of income exceeds one hundred and four pounds or where the employee has a dependant exceeds two hundred and eighteen pounds, in either of which cases such income from employment shall be deemed to be net assessable income of the year of income in which it is received;
- (j) the income from employment derived by any person from employment upon any work declared by the Governor in accordance with section 8B of the Industrial Arbitration (Eight Hours) Amendment Act, 1930, as amended by subsequent Acts, to be a work for the unemployed.
 - This exemption shall extend only to the income of persons who are in receipt of wages and bonuses at the rates directed by the Minister pursuant to section 8B of the Industrial Arbitration (Eight Hours) Amendment Act, 1930, as amended by subsequent Acts;
- (k) the income from employment of officers, seamen, and others employed on ships trading between Australia and New Zealand and who are on New Zealand articles; (!)

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(l) income derived from property by a person (other than a company) ordinarily resident in a reciprocating State:

Provided that, where in any proclamation under section eleven of this Act, the Governor has declared a State to be a reciprocating State in respect of a particular class of income derived from property specified in the proclamation the exemption under this paragraph shall not apply to any part of the income derived from property other than the particular class of such income so specified in the proclamation:

Provided further that the exemption under this paragraph shall not apply to any part of the income derived from property which is not subject, in the reciprocating State, to any tax which, in the opinion of the Governor, is substantially similar to the tax as defined in this Act for the time being in force in New South Wales, unless the Governor by proclamation published in the Gazette in accordance with subsection one of section eleven of this Act, declares such State to be a reciprocating State for the purposes of this Act in respect of such part of the income derived from property which is not subject to any such tax;

(m) income derived from a pension by any person domiciled in this State, whose total income from all sources during the year of income does not exceed two hundred pounds.

(2) Where any income is exempt from 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.

(3) The exemption of any income from 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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Recipro-
cating
State.

11. (1) Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any State of the Commonwealth for the exemption, in that State, of income derived from property or of any particular class of income derived from property by a person (other than a company) ordinarily resident in New South Wales, from any tax which, in the opinion of the Governor, is substantially similar to the tax as defined in this Act for the time being in force in New South Wales, or is satisfied that the laws of that State do not impose any such tax upon such income or such particular class of income, as the case may be, derived by such person, the Governor may, from time to time, by proclamation published in the Gazette, declare such State to be a reciprocating State for the purposes of this Act in respect of income derived from property or of any particular class of income derived from property specified in the proclamation, as the case may require, and shall in such case also declare the year of income as from the commencement of which such State shall become a reciprocating State for the purposes of this Act, and as from the commencement of such year of income such State shall be a reciprocating State for the purposes of this Act, according to the tenor of the proclamation.

(2) Any proclamation made under section 8A of the Special Income and Wages Tax (Management) Act, 1933-1934, or under section nine of the Special Income and Wages Tax (Management) Act, 1936-1938, and in force immediately before the commencement of this Act, shall be deemed to have been made under this section.

(3) Any proclamation made or deemed to have been made under this section may be revoked or varied by the Governor by a subsequent proclamation published in the Gazette.

12. (1) Subject to this section net assessable income Net assessable income. shall be assessed in like manner as taxable income is assessed under the Principal Act.

(2) The assessable income of a company shall include dividends which would be included therein if subsection three of section fifty-two of the Principal Act were omitted from that section:

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Provided that in the case of a company (other than a private company) which is a resident, the assessable income shall include dividends only to the extent to which they would be included therein if derived by a non-resident of Australia.

(3) Subject to paragraph (1) of subsection one of section ten and to section eleven of this Act the assessable income of a non-resident who is a resident of Australia shall include dividends which would be included therein if subsection three of section fifty-two of the Principal Act were omitted from that section.

(4) In the assessment of the income of a resident (other than a company which is not a private company) the provisions of section fifty-three (except paragraphs (b), (c) and (f) thereof) of the Principal Act shall not apply.

(5) There shall be the like deductions as are allowed under the Principal Act, except—

- (a) the deductions from any income from employment;
- (b) the deductions under paragraph (a) of subsection one of section eighty-eight, section eighty-nine, section ninety, and section ninety-one of the Principal Act.

(6) In the case of a company (other than a company in liquidation) which, during or within nine months after the close of the year of income, has paid to its shareholders registered upon a register situate in this State and to resident shareholders registered upon a register situate outside this State a dividend out of the net profit of that year, there shall also be deducted—

- (a) where that net profit is wholly assessable—the amount of the dividend so paid; or
- (b) where that net profit is only partly assessable—an amount which bears the same proportion to the total amount so paid as the profits which form part of the assessable income of the company bear to the total profits of the company:

Provided

Provided that the profits or income specified in paragraphs (b), (c), (d), or (f) of section fifty-three of the Principal Act shall be excluded from the apportionment under this paragraph where a dividend is appropriated from profits or income other than the profits or income so specified or where a dividend is appropriated wholly and exclusively from the profits or income so specified.

13. (1) Where on or after the date of the commencement of this Act—

- (a) a dividend becomes payable by a company to a shareholder not domiciled in this State in respect of its shares registered upon a register situate in this State, or
- (b) interest becomes payable by a person (in this section referred to as the interest payor), to a person not domiciled in this State (in this section referred to as the interest recipient) on money lent in this State,

the company or interest payor, as the case may be, shall deduct and retain from such dividend or such interest when paid an amount sufficient to pay the tax in respect of such dividend or such interest at such rate as may be fixed by any Act and shall forward such amount to the Commissioner with the prescribed return within such time as may be prescribed.

(2) Where a company pays a dividend otherwise than in cash, it shall, before distributing the dividend, set aside an amount sufficient to meet the tax payable under this section and forward such amount with the prescribed return within such time as may be prescribed.

(3) (a) Where a person fails to forward to the Commissioner within the prescribed time any amount which he is required so to forward by this section he shall be liable to pay as additional tax an amount equal to ten per centum of the amount which he so failed to forward.

(b) The Commissioner may in any case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(c)

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(c) If in any case in which a person 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.

(4) (a) The place of residence of a shareholder or interest recipient last known to the company or interest payor at the date of payment of a dividend or interest, as the case may be, shall, for the purposes of this section, but subject to paragraph (b) of this subsection, be conclusive evidence as between the shareholder and the company or as between the interest recipient and the interest payor, as the case may be, and as between the company or interest payor, as the case may be, and the Commissioner and be *prima facie* evidence as between the shareholder or interest recipient and the Commissioner that at such date the shareholder or interest recipient was domiciled in the State or country in which such residence is situated.

(b) The Commissioner may from time to time by notice in writing (a copy of which shall be forwarded by post to the shareholder or interest recipient at the last address known to the Commissioner) notify the company or interest payor where the shareholder or interest recipient as the case may be, is domiciled, and for the purposes of this section such notice shall—

- (i) as between the Commissioner and the company or interest payor, as the case may be, and
- (ii) as between the company and shareholder or interest payor and interest recipient, as the case may be,

notwithstanding anything in paragraph (a) of this subsection be conclusive evidence of the domicile of the shareholder or interest recipient from the receipt of such notice by the company or interest payor, as the case may be, and until the same is withdrawn.

(c) The Commissioner may from time to time withdraw such notice by a like notice in writing, a copy of which shall be forwarded by post to the shareholder or interest recipient as aforesaid.

(d)

(d) A shareholder or interest recipient may in writing request the Commissioner to notify the company or interest payor, as the case may be, that he is domiciled in this State, and when any notice relating to the domicile of such shareholder or interest recipient has previously been given, to withdraw such notice.

Any such request shall be accompanied by a statement setting out fully the facts upon which the request is based.

If the Commissioner refuses any such request he shall give notice of such refusal to the shareholder or interest recipient.

(e) A shareholder or interest recipient shall have a right of objection and appeal to the Board of Appeal against any notice relating to the domicile of such shareholder or interest recipient or against any notice of refusal of a request made under paragraph (d) of this subsection by such shareholder or interest recipient.

The provisions of section two hundred and thirty-one of the Principal Act shall mutatis mutandis apply to any objection or appeal under this paragraph; and for the purpose of such application the copy of the notice relating to domicile and the notice of refusal of the request shall be deemed to be a notice of assessment.

The period within which an objection or appeal under this paragraph may be lodged shall commence to run from the date on which, in the ordinary course of post, the copy of the notice relating to domicile or the notice of refusal of the request, would be received.

(5) A shareholder or interest recipient shall not be entitled to make any claim against a company or interest payor in respect of tax retained and paid to the Commissioner in accordance with this section and the receipt of the Commissioner therefor shall, to the extent of the amount thereby acknowledged, be a complete acquittance and discharge to the company or the interest payor, as the case may be, of and from all liability in respect of such dividend or interest.

(6)

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(6) A person domiciled outside this State shall have the same right of objection and appeal in respect of tax deducted under this section as if an assessment had issued to him.

For the purposes of this subsection the period within which an objection may be lodged shall commence to run from the date on which, in the ordinary course of post, an assessment would be received if issued on the date on which the tax is paid by the company or interest payor to the Commissioner.

(7) A company shall not be required to deduct tax under this section in respect of such part of any dividend as is distributed out of income upon which it has paid Unemployment Relief Tax under the Prevention and Relief of Unemployment Act, 1930-1936, or Special Income Tax under the Special Income and Wages Tax (Management) Act, 1933-1934, or under the Special Income and Wages Tax (Management) Act, 1936-1938, or tax under this Act.

(8) Tax shall not be deducted and retained under this section from dividends or interest exempt from tax by the operation of paragraph (1) of subsection one of section ten of this Act:

Provided that, where tax has been so deducted and retained before the publication in the Gazette of a proclamation declaring the State in which the shareholder or interest recipient is ordinarily resident to be a reciprocating State, such tax shall, as between the company and the shareholder or as between the interest payor and the interest recipient, as the case may be, be deemed to have been lawfully deducted and retained, and any claim for refund of tax by the shareholder or interest recipient shall be made to the Commissioner.

(9) This section shall not apply to a dividend or interest paid to a company which is carrying on business in this State and which has a public officer duly appointed under the Principal Act, unless the Commissioner, by notice in writing to the company paying the dividend, or to the interest payor, as the case may be, directs that tax shall be deducted and retained under this section.

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Any such notice shall take effect from the date of receipt thereof by the company or interest payor, and shall remain in force until withdrawn. No. 13, 1939.

(10) This section shall not apply to a dividend or interest paid to any person where 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 the Commissioner, by notice in writing to the company paying the dividend, or to the person paying the interest, directs that the section shall not apply.

The Commissioner may from time to time withdraw such notice by a like notice in writing sent by post to the company paying the dividend, or to the person paying the interest, and this section shall thereupon apply to any dividend paid by that company or to interest paid by that person after the date on which, in the ordinary course of post, the notice would be received.

14. (1) Where there is included in the net assessable income of any person (and such person is liable to tax in respect thereof)— Rebate of tax.

- (a) any dividend or interest upon which tax has been paid under section thirteen of this Act;
- (b) any dividend or interest upon which tax has been paid under section thirteen of the Social Services Tax (Management) Act, 1939;
- (c) any dividend or interest upon which tax has been paid under section eleven of the Special Income and Wages Tax (Management) Act, 1936-1938;
- (d) any dividend or interest upon which tax has been paid under section ten of the Special Income and Wages Tax (Management) Act, 1933-1934;
- (e) any dividend or interest upon which Unemployment Relief Tax has been paid under section nineteen of the Prevention and Relief of Unemployment Act, 1930-1936; or
- (f) any income upon which such person has paid tax under this Act or under the Social Services Tax (Management) Act, 1939, or has paid tax under the

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the Special Income and Wages Tax (Management) Act, 1936-1938, or under the Special Income and Wages Tax (Management) Act, 1933-1934, or has paid Unemployment Relief Tax under the Prevention and Relief of Unemployment Act, 1930-1936,

there shall be deducted from the tax otherwise payable by such person a sum equivalent to two-thirds of the amount of any such tax or Unemployment Relief Tax (as is referred to in paragraphs (a) to (f) inclusive of this subsection) so paid in respect of such dividend, interest or income which has been included in his net assessable income.

(2) Where there is included in the net assessable income of any person (and such person is liable to tax in respect thereof) any dividend upon which tax has been paid under section twelve of this Act or under section twelve of the Social Services Tax (Management) Act, 1939, or under section ten of the Special Income and Wages Tax (Management) Act, 1936-1938, or under section nine of the Special Income and Wages Tax (Management) Act, 1933-1934, or under section eighteen of the Prevention and Relief of Unemployment Act, 1930-1936, there shall be deducted from the tax otherwise payable by such person the amount of tax payable in respect of the dividends so included.

(3) Section fifty-five of the Principal Act shall not extend to or in respect of the assessment of tax as defined in this Act.

(4) Any person (other than a company) who is domiciled in this State shall be entitled to a rebate of tax in his assessment of a sum of seventeen shillings and four pence in respect of each dependant.

(5) Where during any year of income a dependant is wholly maintained for part only of such year of income a proportionate part only of seventeen shillings and four pence shall be allowed as a rebate in respect of that dependant.

(6) Where during the year of income the taxpayer also derives income from employment as defined in this Act the rebate to which the taxpayer would otherwise be entitled under subsections four and five of this section shall

shall not be allowed unless he satisfies the Commissioner that he will not receive the full amount of rebate to which he is entitled from the tax payable by him upon income from employment during the year next succeeding the year of income, in which case the Commissioner may allow a rebate in his assessment to the extent to which the rebate that he would be entitled to has not been so allowed.

15. (1) The Commissioner may make such assessments or alterations in assessments as he considers necessary to meet cases in which, owing to a change in the class of a taxpayer's income, or owing to the failure of an employer to collect the correct amount of tax from an employee, tax would otherwise be avoided, or over taxation would result.

Assessments in special cases.

In applying this provision regard shall be had to the amount of tax paid or payable under the Prevention and Relief of Unemployment Act, 1930-1936, the Special Income and Wages Tax (Management) Act, 1933-1934, the Special Income and Wages Tax (Management) Act, 1936-1938, and the Social Services Tax (Management) Act, 1939.

(2) Where a company is wound up or an individual person dies or ceases to be a taxpayer in any year and that company or person had paid Unemployment Relief Tax under the Prevention and Relief of Unemployment Act, 1930-1936, in respect of the year ended on the thirtieth day of June, one thousand nine hundred and thirty or such other period accepted by the Commissioner in lieu thereof or where by reason of a change in the class of a person's income he has paid tax in respect of a period additional to the period in respect of which he would have paid if there had been no change in the class of his income, the Commissioner may, if no adjustment has previously been made in respect thereof, make such alterations in assessments as he considers necessary in order that the total period in respect of which the company or person has been assessed, or tax has been deducted, under the Prevention and Relief of Unemployment Act, 1930-1936, the Special Income and Wages Tax (Management) Act, 1933-1934, the Special Income and Wages

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Wages Tax (Management) Act, 1936-1938, the Social Services Tax (Management) Act, 1939, and this Act shall not exceed a period equal to that commencing on the first day of July, one thousand nine hundred and thirty, and ending on the date of death of the taxpayer or on the date on which the company or person ceased to be a taxpayer as the case may be.

(3) Subsection two of this section shall not apply to a company which is reconstructed or to a company disposing of its assets to another company where the shareholding interests in the vendor company were, at or about the date of the disposal, in substantially the same hands as those of the company acquiring the assets.

Adjustment when income derived from several employers.

16. Where during any year of income any person derives income from employment from more than one employer and the total amount of tax, if any, deducted by his employers is less than the amount of tax which would have been deducted if the total income from employment were derived from one employer, the Commissioner may assess such person on the total income from employment together with the net assessable income, if any, derived by him during such year of income as if such income were net assessable income.

This section shall extend, mutatis mutandis, to income from wages as defined in the Special Income and Wages Tax (Management) Act, 1936-1938.

PART IV.

RETURNS, ETC.

Returns.

17. (1) The returns made in pursuance of a notice issued under the provisions of section two hundred and one of the Principal Act shall be deemed to be also made under and for the purpose of this Act.

The regulations may prescribe forms of return to be made in respect of incomes assessable for tax as defined in this Act and in respect of which a return under the Principal Act is not required by the Commissioner.

(2)

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(2) The Commissioner may, from time to time, by notice published in the Gazette, require every employer to furnish a return setting out such information as may be required relating to numbers, groups and earnings of employees, amounts of tax collected from employees or such similar matters as may be prescribed.

18. (1) Notwithstanding anything contained in this Act, or in the Principal Act, the Commissioner may furnish to the Government Statistician for New South Wales any information disclosed by the returns under subsection two of section seventeen of this Act.

(2) Before any such information is so furnished, the Government Statistician and every officer or employee of the Bureau of Statistics and Economics shall take and subscribe before a justice of the peace such oath of fidelity and secrecy as may be prescribed.

(3) If the Government Statistician or any such officer or employee acts in the execution of his office in relation to any such return before he has taken the prescribed oath he shall be liable to a penalty of not less than ten and not more than one hundred pounds.

(4) The Government Statistician and every such officer or employee who without lawful excuse makes a record of or reveals the name of any employer who has furnished a return pursuant to subsection two of section seventeen of this Act, or the particulars contained in any such return, shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years with hard or light labour.

(5) Any person who has held the office of Government Statistician, or who has been an officer or employee of the Bureau of Statistics and Economics, or who has performed any duty under this Act in the said Bureau and who reveals any information as to any employer who has furnished a return pursuant to subsection two of section seventeen of this Act, or as to any of the particulars contained in any such return, to any person other than a person to whom he has been authorised by the Commissioner to communicate it, shall be guilty of a misdemeanour and shall be liable to imprisonment for any term not exceeding two years, with hard or light labour.

Authority
to disclose
information
in returns
to the
Government
Statistician.

ef. Act No.
34, 1930,
s. 23c.

(6)

No. 13, 1939.

(6) The Government Statistician shall not, nor shall the Commissioner or any officer or employee of the Bureau of Statistics and Economics, or any officer appointed to act in the administration of the Principal Act, be required to produce in any Court any return made pursuant to subsection two of section seventeen of this Act, or to divulge or communicate to any Court the name of any employer who has made any such return, or any of the particulars contained in any such return, except as may be necessary for the purpose of carrying into effect the provisions of this Act.

(7) Nothing in this section shall prevent the Government Statistician from compiling from such returns, and publishing statistics based on the particulars contained in such returns; but such statistics shall not disclose the name of any employer who has made any such return nor the particulars contained in any particular return.

Machinery
provisions
of Principal
Act to apply
to this Act.

19. (1) The provisions of Part IV (Returns and Assessments); Part V (Objections and Appeals); Part VI (Collection and Recovery of Tax); Part VII (Penal Provisions and Prosecutions); and Part VIII (Miscellaneous) comprising sections two hundred and one to three hundred and five inclusive of the Principal Act, and any regulations made to give effect to such sections, shall be applicable to the tax payable under this Act as if such tax were the income tax under the Principal Act.

(2) The Commissioner may make an assessment under this Act jointly with an assessment under any other Act administered by him and may serve a notice of the joint assessment as if it were one assessment. In any such case the Commissioner shall allocate the proper amounts of tax to the Unemployment Relief Fund and to the fund to which the proceeds of the tax levied under such other Act are required to be paid. Any refunds of tax shall be dealt with in like manner.

PART V.

TAX UPON INCOME FROM EMPLOYMENT.

20. (1) With regard to the tax payable upon income from employment, the following provisions shall have effect:—

(a) Every employer shall collect from his employees, by deduction or otherwise, tax in the amounts or at the rate or rates as may be fixed by any Act.

(b) (i) Every employer shall keep such records as are prescribed of all payments, amounts credited, or allowances made, by him to his employees.

(ii) Every employer the number of whose employees liable to tax is not less than ten (or such other number as may be prescribed) shall pay to the Commissioner at such times and in such manner as are prescribed, the amount of tax payable upon such payments credits and allowances and shall affix the official receipts in respect of such payments to such records in the manner prescribed.

(iii) Every employer the number of whose employees liable to tax is less than ten (or such other number as may be prescribed) shall affix the prescribed stamps to the value of the tax payable upon such payments credits and allowances to such records in the prescribed manner and shall cancel such stamps at such times and in such manner as are prescribed.

(c) Where the number of employees liable to tax falls below ten (or such other number as may be prescribed) the employer shall continue to pay the tax and otherwise follow the procedure laid down in subparagraph (ii) of paragraph (b) of this subsection until authorised by the Commissioner in writing to affix and cancel the prescribed stamps in the manner provided in subparagraph (iii) of such paragraph (b). Notwithstanding the number of employees liable to tax

Tax on
income
from
employment.

tax the Commissioner may by notice in writing direct any employer to pay the tax or affix and cancel the prescribed stamps as he may determine.

Under application by any employer the Commissioner may permit such employer to change from one method of payment to the other method: Provided that where such permission is given the employer shall adhere to such other method until he is authorised by the Commissioner to alter such method.

(d) Every employer shall—

- (i) send to the Commissioner, as and where prescribed, such records or such part thereof as may be prescribed;
- (ii) send to the Commissioner, upon notice in writing from the Commissioner, such records as may be specified in such notice;
- (iii) produce such records for inspection to any person authorised either generally or in a particular case by the Commissioner to inspect such records. For the purpose of this subparagraph any such person shall have the powers provided by section two hundred and ninety-nine of the Principal Act.

(e) The Commissioner may require an employer to provide or give security to an amount and in such manner as may be approved by him for payment of the tax in any particular case.

(2) If any employer fails to keep the prescribed records or the Commissioner is not satisfied that the records kept are correct, the Commissioner may by notice in writing fix the amount of income from employment upon which, in his judgment, tax ought to be paid, and the employer shall be liable to pay tax accordingly, excepting so far as he establishes on objection that the amount is excessive.

Any such notice in writing shall be subject to the same right of objection and appeal as if it were a notice of assessment.

(3)

(3) Subsection one of this section shall not apply ~~No. 13, 1939.~~ in respect of an employee casually employed in a domestic or other capacity and otherwise than in connection with the business of the employer.

(4) The prescribed stamps shall be prepared and issued by the Commissioner of Stamp Duties, who shall provide for the distribution and sale thereof.

Such stamps shall be offered for sale or dealt in only by the Commissioner of Stamp Duties and by officers of such other Departments of the State and the Commonwealth as are approved of by him.

Any person who purchases the prescribed stamps other than from the Commissioner of Stamp Duties or from an officer of such other Department as aforesaid acting in his official capacity, shall be guilty of an offence against this Act and shall, upon summary conviction, be liable to a penalty of not less than two pounds and not exceeding one hundred pounds.

Any person other than the Commissioner of Stamp Duties or an officer of such other Department as aforesaid acting in his official capacity, who offers for sale or exchange or deals in the prescribed stamps shall be guilty of an offence against this Act and shall, upon summary conviction, be liable to a penalty of not less than two pounds and not exceeding one hundred pounds.

(5) The regulations may apply, with such modifications and adaptations as the Governor thinks fit in respect of any such stamps, all or any of the provisions (including penal provisions) of the Stamp Duties Act, 1920, as amended by subsequent Acts, or the Entertainments Tax (Management) Act, 1929-1937.

(6) Where the Commissioner is satisfied—

- (a) that an employer has purchased the prescribed stamps for the purpose of stamping the prescribed records of income from employment; and
- (b) that such stamps have been so lost or destroyed that they will not be used by any person for the purpose of stamping any such records

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he may exempt such employer from compliance with such part of the provisions of paragraphs (b) and (d) of subsection one of this section as he considers just.

(7) Every employer shall preserve the prescribed declarations made by his employees and the prescribed records unless he obtains the consent in writing of the Commissioner to the destruction of those declarations and records:

Provided that where a period of three years from the last date of payment of income from employment required to be entered in any such record has elapsed, an employer may in writing by registered post give to the Commissioner notice of his intention to destroy such declarations or records and may destroy the same after the expiration of three months from the giving of such notice unless the Commissioner has required him to preserve such declarations or records further.

(8) Any person who practises or is concerned in any fraudulent act, contrivance or device not specially provided for by law, with intent to defraud His Majesty of any tax under this Act, shall be guilty of an offence against this Act and shall be liable upon conviction by a court of summary jurisdiction to a penalty not exceeding two hundred pounds or upon conviction upon indictment to imprisonment for a term of not more than twelve months.

(9) Any employer who fails to carry out or observe any provision of this section shall, unless he has been exempted from the carrying out or observance of such provision under this section, be liable to account for and pay to the Commissioner any tax which by or because of his failure remains unpaid, together with a fine to be fixed by the Commissioner not exceeding ten per centum of such tax: Provided that upon sufficient cause being shown to the satisfaction of the Commissioner such fine may be remitted or reduced by him.

Such employer shall, upon summary conviction, be liable to a penalty of not less than two pounds and not exceeding two hundred pounds, or upon conviction upon indictment to imprisonment for a term not exceeding twelve months, and the court before which the employer is

is convicted may at the time of the conviction or at any time thereafter order the payment of the amount of tax and/or fine certified by the Commissioner or an Assistant Commissioner to be unpaid.

(10) (a) In any prosecution under this section the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.

Averment of
prosecutor
sufficient.
cf. (Common-
wealth) Income
Tax Assessment
Act, 1922-1931,
s. 83.

(b) This subsection shall apply to any matter so averred although—

- (i) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (ii) 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.

(c) Any evidence given by witnesses in support or rebuttal of the 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 subsection.

(d) The foregoing provisions of this subsection shall not apply to—

- (i) an averment of the intent of the defendant to proceedings; or
- (ii) proceedings for an indictable offence.

(e) This subsection shall not lessen or affect any onus of proof otherwise falling on the defendant.

(11) Any proceedings in respect of an offence against this section or against any regulations made in respect of the matters therein referred to may be taken at any time not exceeding twelve months from the time when the facts first came to the knowledge of the Commissioner, and may be taken by him or by some person appointed by him in writing, either generally or in a particular case.

(12) This section shall not apply in any case where the employer is the Crown in right of the Commonwealth of Australia.

(13)

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(13) Without prejudice to the generality of section four of this Act the regulations made under the Special Income and Wages Tax (Management) Act, 1936-1938, prescribing matters which are required or permitted to be prescribed under Part IV of that Act shall, to the extent to which they are in force immediately before the commencement of this Act and until amended repealed or replaced by regulations made under this Act, apply mutatis mutandis to and in respect of similar matters and things required or permitted to be prescribed under this Part.

For the purposes of such application, and without affecting the generality of the foregoing provisions of this subsection—

- (a) the prescribed Wages Tax Stamps referred to in Part IV of the Special Income and Wages Tax (Management) Act, 1936-1938, shall be the prescribed stamps for the purposes of this Part; and
- (b) the records prescribed for the purposes of Part IV of the Special Income and Wages Tax (Management) Act, 1936-1938, shall be the records prescribed for the purposes of this Part.

Rebate from
tax upon
income from
employment—
dependants.

21. (1) Subject to this section an employee shall be entitled to a rebate of an amount of fourpence in respect of each dependant from the amount of tax upon income from employment otherwise payable by him in respect of any week.

(2) (a) Every employee who claims a rebate of tax in respect of a dependant shall furnish to his employer within such time and in such manner as may be prescribed a declaration in duplicate setting out such particulars of that dependant as may be prescribed.

(b) Every declaration furnished under subsection two of section 18A of the Special Income and Wages Tax (Management) Act, 1936-1938, shall be deemed to have been furnished under this subsection.

(3) An employee shall not be entitled to any rebate under this section unless he has lodged the prescribed declaration with his employer and shall not be entitled to any

any rebate in respect of any income from employment paid more than fourteen days prior to the date of furnishing the prescribed declaration to his employer.

(4) (a) The rebate from the tax payable upon income from employment derived prior to the first day of November, one thousand nine hundred and thirty-nine, shall be a sum equivalent to two-thirds of the amount of rebate that would have been allowable under section 18A of the Special Income and Wages Tax (Management) Act, 1936-1938, if this Act had not been enacted.

(b) The rebate from the tax payable upon income from employment derived during the first period of six months after the thirty-first day of October, one thousand nine hundred and thirty-nine, shall be calculated according to the number of dependants of the employee on the first day of that period and the rebate allowable during each succeeding period of six months after that date shall be calculated according to the number of dependants of the employee on the first day of each such succeeding period.

(c) Where an employee ceases to be entitled to a rebate under this section in respect of any person claimed as a dependant in the prescribed declaration furnished by him to his employer such employee shall, within the time and in the manner prescribed, furnish to his employer a further declaration as prescribed.

(d) Every employee who claims a rebate in respect of an additional dependant shall, within the time and in the manner prescribed, furnish to his employer a further declaration as prescribed.

(5) (a) Where an arrangement satisfactory to the Commissioner is made between any employer and the Commissioner, or between any group of employers and the Commissioner, the Commissioner may approve, subject to such terms and conditions as he may think fit, of such modifications of the provisions of this section relating to the furnishing of declarations as he considers necessary to meet the circumstances of the particular case. Where the Commissioner so approves he shall in writing notify the employer, or group of employers, of such modifications and of the terms and conditions to which the approval of such modifications is subject.

(b)

No. 13, 1939.

(b) Every arrangement made under subsection five of section 18A of the Special Income and Wages Tax (Management) Act, 1936-1938, shall be deemed to have been made under this subsection.

(6) Every employer shall—

- (a) send to the Commissioner, as and when prescribed, the declarations furnished by his employees or such part thereof as may be prescribed;
- (b) send to the Commissioner, upon notice in writing from the Commissioner, such declarations as may be specified in such notice;
- (c) produce such declarations for inspection to any person authorised either generally or in a particular case by the Commissioner to inspect such declarations. For the purpose of this paragraph any such person shall have the powers provided by section two hundred and ninety-nine of the Principal Act.

Any employer who fails to comply with any of the provisions of this subsection shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(7) Any employee who makes a declaration which is false in any material particular or who fails to comply with the provisions of paragraph (c) of subsection four of this section shall be guilty of an offence and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds, and in addition the Court may order him to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the declaration furnished by him to his employer had been accepted as correct, or, as the case may be, if each person shown in the declaration last furnished by him to his employer had been accepted as still being a dependant.

(8) Notwithstanding anything contained in subsection seven of this section, any employee who makes a declaration which is false in any material particular, or who fails to comply with the provisions of paragraph (c) of

of subsection four of this section shall be liable to pay the tax avoided and shall also be liable to pay as additional tax the greater of the two following amounts:—

- (a) the sum of one pound; or
- (b) double the difference between the tax properly payable by him and the tax that would be payable if the declaration furnished by him had been accepted as correct, or, as the case may be, if each person shown in the declaration last furnished by him to his employer were accepted as still being a dependant.

(9) The Commissioner may in any case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(10) 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.

22. (1) The State of New South Wales may enter into an agreement with the Commonwealth for the deduction by the Commonwealth from periodical payments of wages, salaries or allowances paid to any officer of any tax imposed under the law of this State on those wages, salaries or allowances, and for the payment to this State of any amount deducted in pursuance of such agreement in such manner and at such times as are provided by the agreement.

Agreement
with the
Common-
wealth.

(2) Expressions used in subsection one of this section shall have the meanings which those expressions bear in section 16A of the (Commonwealth) Income Tax Collection Act, 1923-1938.

(3) The officers in respect of whom any such agreement as is referred to in this section may be entered into shall as from the date or dates fixed by the agreement be deemed to be or to have been, as the case may be, employees of the Crown in right of the Commonwealth of Australia, and the Crown in right of the Commonwealth of Australia shall to the extent to which any such agreement provides for the deduction of tax from the wages,

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wages, salaries or allowances of such persons and as from the date or dates fixed by the agreement be deemed to be or to have been as the case may be an employer who is bound to collect tax from such officers.

PART VI.**GENERAL.**

Services of notices by post.

23. Where in pursuance of the regulations any notice or other communication is required or authorised to be served upon any person by post, the service may be effected by prepaid letter post addressed to the person at his last known place of business or abode in New South Wales, and such service shall be deemed to have been effected at the time when it would in the ordinary course of post have arrived at the place to which it was addressed or at the post town or post office nearest to that place whether or not it has in fact been received by the addressee.

Regulations.

24. (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may when no other penalty is provided for impose a penalty not exceeding fifty pounds for any contravention of or failure to comply with this Act or any regulations made thereunder.

(3) The regulations shall—

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

If

If either House of Parliament passes a resolution of No. 13, 1939. 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.

(4) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate or any two or more justices.
