

SPECIAL INCOME AND WAGES
TAX (MANAGEMENT) ACT.

Act No. 43, 1936.

An Act to provide for the assessment and collection of Special Income Tax and of Wages Tax; and for purposes connected therewith. <sup>Edward VIII,
No. 43, 1936</sup>
[Assented to, 31st October, 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 "Special Income and Wages Tax (Management) Act, 1936." ^{Short title.}

(2) This Act shall commence on the day appointed by the Governor and notified by proclamation published in the Gazette as the day upon which the Income Tax (Management) Act, 1936, shall commence.

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

PART I.—PRELIMINARY—*ss.* 1-5.

PART II.—LIABILITY TO TAXATION—*ss.* 6-14.

PART III.—RETURNS, ETC.—*ss.* 15-17.

PART IV.—WAGES TAX—*ss.* 18, 19.

PART V.—GENERAL—*ss.* 20, 21.

2. (1) This Act shall be read with the Income Tax (Management) Act, 1936, which Act is in this Act referred to as the Principal Act. <sup>Interpre-
tation.</sup>

(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 wages; or
 - (ii) is income from the carrying on of any trade or business other than an investment business; and
- (c) income from wages derived while on the high seas by officers, seamen and others employed on ships who are residents and on New South Wales articles,

but does not include income exempt from tax under this Act or the part of any pension received in respect of or for or in relation directly or indirectly to any past employment or service 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.

“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 superannuation, pension or retiring allowance;
- (e)

- (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.

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“Employer” includes—

- (a) a person making payment of superannuation, 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 arrangement as is referred to in section nineteen of this Act has been entered into;
- (d) any person with whom an arrangement has been entered into in accordance with subsection three of this section;
- (e) any person making payments to a person who is an employee as such.

“Income from wages” 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 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, 1933-1934, or is income from wages as defined in this Act.

“Person”

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

“Tax” means Special Income Tax or Wages Tax.

“Unemployment Relief Acts” means the Prevention and Relief of Unemployment Act, 1930-1935.

(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 wages and as from a date specified in the agreement that income shall be deemed to be income from wages for the purposes of this Act.

Operation of Prevention and Relief of Unemployment Acts.

3. (1) The Prevention and Relief of Unemployment Act, 1930-1935, 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.

Operation of Special Income and Wages Tax (Management) Act, 1933-1934.

(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.

Existing regulations.

4. (1) All existing rules, regulations and forms made or prescribed under the Special Income and Wages Tax (Management) Act, 1933-1934, 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.

(2)

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(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.

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

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.

Administration.

(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.

Officers.

(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.

Absence of Commissioner, delegation of powers and secrecy.

PART II.

LIABILITY TO TAXATION.

6. Subject to this Act, Special Income 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-six (or the accounting period, if any, accepted by the Commissioner in lieu of that year) and for each year of income thereafter.

Incidence of Special Income Tax.

7. Subject to this Act, Wages 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 wages derived by any person on and after the first day of November, one thousand nine hundred and thirty-six.

Incidence of Wages Tax.

8.

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Exemp-
tions.

8. (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 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;
- (b) any war pension paid by the Imperial or any other Government;
- (c) income derived from old-age or invalid pensions;
- (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, 1927-1932, as amended by subsequent Acts;
- (f) income derived from any payment made in respect of children under the Child Welfare Act, 1923, as amended by subsequent Acts;
- (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;
- (i) the income from wages 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: Provided that this exemption shall not apply to any income from wages derived by an employee whose total income from all sources exceeds one hundred and four pounds, in which case such income from wages shall be deemed to be net assessable income of the year of income in which it is received;
- (j)

- (j) the income from wages derived by any person after the commencement of this Act from employment upon any work declared by the Governor in accordance with section nine of the Unemployment Relief Acts to be work provided for the relief of unemployment or upon approved works within the meaning of section five of the (Commonwealth) Loan (Unemployment Relief Works) Act, 1932.

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 nine of the Unemployment Relief Acts;

- (k) the income from wages of officers, seamen, and others employed on ships trading between Australia and New Zealand and who are on New Zealand articles;
- (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 nine 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 Special Income Tax for the time being in force in New South Wales.

- (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.

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(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.

Recipro-
cating
State.

9. (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 Special Income Tax for the time being in force in New South Wales, 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, 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.

Net assess-
able income.

10. (1) Subject to this section 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:

Provided

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 one of section eight and to section nine 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) Section fifty-four of the Principal Act shall not apply to exclude from the assessable income any dividend which would have been assessable income under the Special Income and Wages Tax (Management) Act, 1933-1934, if that Act and the Income Tax (Management) Act, 1928, had applied to income derived during the year of income ending on the thirtieth day of June, one thousand nine hundred and thirty-six.

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

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

(7) 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)

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- (b) where that net profit is only partly assessable and the dividend is not appropriated wholly and exclusively from the profits or income specified in paragraphs (b), (c) or (f) of section fifty-three of the Principal Act—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.

Deduction
from
dividends,
interest, etc.

11. (1) A company which has during the year ending on the thirtieth day of June, one thousand nine hundred and thirty-six, or any subsequent year, paid to its shareholders not domiciled in this State a dividend in respect of shares registered upon a register situate in this State, shall, unless it has deducted and retained from such dividend, in pursuance of subsection three of this section, an amount sufficient to pay the tax, retain out of any moneys in its hands belonging to a shareholder to whom such dividend has been paid an amount sufficient to pay the tax in respect of the dividend so paid at such rate as may be fixed by any Act and forward such amount to the Commissioner with the prescribed return within such time as may be prescribed.

(2) Any person who has during the year ending on the thirtieth day of June, one thousand nine hundred and thirty-six, or any subsequent year, paid to a person not domiciled in this State any amount for interest on money lent in this State shall, unless he has deducted and retained from such interest, in pursuance of subsection three of this section, an amount sufficient to pay the tax out of any moneys coming to his hand belonging to the person to whom such payment was made, retain an amount sufficient to pay the tax in respect of the amount so paid at such rate as may be fixed by any Act and forward such amount to the Commissioner with the prescribed return within such time as **may be** prescribed.

(3) Where—

- (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)

(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, No. 43, 1936.

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.

(4) 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.

(5) (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) 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.

(6) (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)

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(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 subsections one, two and three 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) 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

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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.

(7) 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.

(8) 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.

(9) 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 Unemployment Relief Acts or Special Income Tax under this Act or the Special Income and Wages Tax (Management) Act, 1933-1934.

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

Provided

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Provided that, where tax has been so retained or 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 retained or deducted and retained, and any claim for refund of tax by the shareholder or interest recipient shall be made to the Commissioner.

(11) In this section the phrases "moneys in its hands belonging to a shareholder" and "moneys coming to his hand belonging to the person" shall include money due or payable to such shareholder or person.

(12) 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 retained or deducted and retained under this section.

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.

(13) 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.

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

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Rebate
of tax.

- (a) any dividend or interest upon which tax has been paid under section eleven of this Act;
- (b) any dividend or interest upon which tax has been paid under section ten of the Special Income and Wages Tax (Management) Act, 1933-1934;
- (c) any dividend or interest upon which Unemployment Relief Tax has been paid under section nineteen of the Unemployment Relief Acts; or
- (d) any income upon which such person has paid tax under this Act or has paid tax under the Special Income and Wages Tax (Management) Act, 1933-1934, or has paid Unemployment Relief Tax under the Unemployment Relief Acts,

there shall be deducted from the tax otherwise payable by such person the amount of tax or Unemployment Relief Tax 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 ten of this Act or under section nine of the Special Income and Wages Tax (Management) Act, 1933-1934, or under section eighteen of the Unemployment Relief Acts there shall be deducted from the tax otherwise payable by such person the amount of tax payable in respect of the dividends so included.

13. (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.

Assess-
ments in
special
cases.

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

(2)

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(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 Unemployment Relief Acts 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 Unemployment Relief Acts, the Special Income and Wages Tax (Management) Act, 1933-1934, 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.

14. Where during any year of income any person derives income from wages while in the employ of 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 wages were derived from one employer, the Commissioner may assess such person on the total income from wages, 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, 1933-1934.

PART III.

RETURNS, ETC.

15. (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. Returns.

The regulations may prescribe forms of return to be made in respect of incomes assessable for Special Income Tax and Wages Tax and in respect of which a return under the Principal Act is not required by the Commissioner

(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.

16. (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 fifteen of this Act. Authority to disclose information in returns to the Government Statistician.

(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. cf. Act No. 34, 1930, s. 23c.

(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 fifteen 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 or without hard labour.

(5)

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(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 fifteen 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 or without hard labour.

(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 fifteen 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.

17. 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.

PART

PART IV.

WAGES TAX.

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

Tax on
income
from
wages.

- (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 to such records in the prescribed manner the prescribed Wages Tax Stamps to the value of the tax payable upon such payments credits and allowances 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 two of paragraph (b) of this subsection until authorised by the Commissioner in writing to affix and cancel the prescribed Wages Tax Stamps in the manner provided in subparagraph three of such paragraph (b). Notwithstanding the number of employees

employees liable to tax the Commissioner may by notice in writing direct any employer to pay the tax or affix and cancel Wages Tax Stamps as he may determine.

Upon 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 when 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 wages records or the Commissioner is not satisfied that the records kept are correct, the Commissioner may by notice in writing fix the amount of wages 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)

Special Income and Wages Tax (Management) Act.

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(3) Subsection one of this section shall not apply in respect of an employee casually employed in a domestic or other capacity and otherwise than in connection with the business of the employer. No. 43, 1936,
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(4) Wages Tax 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 Wages Tax 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 Wages Tax 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, 1920-1933, or the Entertainments Tax (Management) Act, 1929.

(6) Where the Commissioner is satisfied—

- (a) that an employer has purchased Wages Tax Stamps for the purpose of stamping the prescribed records of wages; 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 prescribed records of wages,

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No. 43, 1936.

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) No employer shall destroy any of the prescribed records without obtaining the consent in writing of the Commissioner to the destruction:

Provided that where a period of three years from the last date of payment of wages required to be entered in any such record has elapsed an employer may give to the Commissioner notice in writing of his intention to destroy such record 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 the 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 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)

(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.

No. 43, 1936.

Averment of prosecutor sufficient.

cf. (Commonwealth) 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.

19. (1) The Governor may arrange with the Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, that the taxation under the law of the State of New South

Arrangements with the Commonwealth.

Wales

No. 48, 1936.

Wales of the salaries and allowances of the persons referred to in subsection four of section nineteen of the (Commonwealth) Financial Emergency Acts, 1931, to the extent to which such taxation is permitted by or under that section, shall be deducted from the periodical payments of the salary and allowances of those persons and shall be paid to the State of New South Wales in such manner and at such times as are provided by the arrangement.

(2) Expressions used in subsection one of this section shall have the meanings which those expressions bear in subsection four of section nineteen of the (Commonwealth) Financial Emergency Acts, 1931.

(3) The persons in respect of whom any such arrangement as is referred to in this section may be or has been entered into, shall, as from the date or dates fixed by the arrangement, 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 arrangement provides for the deduction of tax from the salaries and allowances of those persons and as from the date or dates fixed by the arrangement be deemed to be or have been, as the case may be, an employer.

(4) Any arrangement made under section seventeen of the Special Income and Wages Tax (Management) Act, 1933-1934, and in force at the commencement of this Act, shall be deemed to have been made under this section.

PART V.

No. 43, 1936.

GENERAL.

20. 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.

Services of notices by post.

21. (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.

Regulations.

(2) The Governor 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 either House of Parliament pass 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.

(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.