

Income Tax Assessment Act 1937

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THE TEXT OF THE LEGISLATION FOLLOWS

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Western Australia

Income Tax Assessment Act 1937

An Act to consolidate and amend the law relating to the imposition, assessment, and collection of a Tax upon Incomes.

[Assented to 21 December 1937]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows: —

Part I — Preliminary

1. Short title

This Act may be cited as the *Income Tax Assessment Act 1937*, and shall come into operation on a day to be fixed by proclamation.¹

[Section 1 amended by 12 of 1940 s.24.]

2. Repeal of certain Acts

The Acts specified in the first and second column of the First and Second Schedules to this Act are repealed to the extent respectively specified in the third column of those Schedules.

3. Saving provisions

Notwithstanding the repeal of the previous Acts, and notwithstanding anything contained in any Act or law to the contrary —

- (a) Except as in this Act is otherwise provided the last levy, assessment, and collection of income tax or dividend duty under the previous Acts shall be for the year ended on the thirtieth day of June, one thousand nine hundred and thirty-seven, and the last annual period in respect of which returns of income shall be furnished under the previous Acts shall end on the thirtieth day of June, one thousand nine hundred and thirty-six (or where another period is accepted by the Commissioner in lieu of such last annual period then such other period so accepted):

Provided that in respect to companies which balance their accounts on a date other than the thirtieth day of June, the last annual period in respect to which returns shall be furnished and assessments shall be made under the Acts specified in the Second Schedule shall be determined by the Commissioner, but so that

there shall be continuity of period of returns
under this Act and the previous Acts;

- (b) All income tax or dividend duty or special tax, and any additional tax or other increase of tax, whether by way of penalty or otherwise, in respect of any income or profit derived during any period which was payable or leviable under the previous Acts or special tax Acts, or any of them, may be assessed and demanded, and shall be enforceable and recoverable, and all penalties and fines incurred under the previous Acts or special tax Acts shall be enforceable and recoverable as if the previous Acts had not been repealed, and for that purpose the previous Acts and all regulations made thereunder shall remain in force without limit of time, and to the intent that any assessment or amended assessment issued under such previous Acts or the special Acts, or any of them, may at any time be amended by the Commissioner to include or exclude any income which should have been therein included or excluded, or to exclude or reduce the amount of any deduction which had been wholly or partly incorrectly allowed, or to allow any further deductions which should have been allowed in such assessment or amended assessment, or to assess at a higher rate any income not already assessed at the full rate applicable thereto, and to the further intent that any additional amount of tax assessed together with any additional tax by way of penalty in respect of any such amended assessment shall be enforceable and recoverable as if the previous Acts had not been repealed:

Provided that nothing in this paragraph shall prejudice or affect the right of any party to any judgment of any court of competent jurisdiction obtained prior to the commencement of this Act, or any right of appeal from any such judgment.

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- (c) All notices given and returns made either before or after the commencement of this Act, in respect of income for the year of income ended on the 30th day of June, 1937, shall (without prejudice to the power of the Commissioner to give any notices which may be given or any returns which may be required in respect of income derived during such year of income under this Act) be deemed to have been made or given also under this Act.

[4. *Repealed by No. 10 of 1998 s.76.*]

5. Definitions

In this Act, unless the contrary intention appears —

“agent” includes —

- (a) every person who in the State, for or on behalf of any person out of the State, holds or has the control, receipt or disposal of any money belonging to that person; and
- (b) every person declared by the Commissioner to be an agent

or the sole agent of any person for any of the purposes of this Act;

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

“assessable income” means all the amounts which under the provisions of this Act are included in the assessable income;

“assessment” means the ascertainment of the amount of taxable income and of the tax payable thereon;

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

“Australia” means all the States of the Commonwealth, and those Territories of the Commonwealth which are on the main land of Australia;

- “**business**” includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee;
- “**child**” includes step-child and/or adopted child;
- “**Commissioner**” means the Commissioner of Taxation;
- “**company**” includes all bodies or associations, corporate or unincorporate, but does not include partnerships;
- “**dividend**” includes any distribution made by a company to its shareholders, whether in money or other property, and any amount credited to them as shareholders, and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents a capitalisation of profits; but does not include a return of paid-up capital or a reversionary bonus on a policy of life-assurance;
- “**exempt income**” means income which is exempt from income tax, and includes income which is not assessable income;
- “**foreign company**” means a company incorporated outside the State;
- “**friendly society**” means a society duly registered as a friendly society under any law of the Commonwealth, or any State, or of a Territory of Australia;
- “**income from personal exertion**” or “**income derived from personal exertion**” means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit

arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include —

- (a) interest, unless the taxpayer's principal business consists of the lending of money, or unless the interest is received in respect of a debt due to the taxpayer for goods supplied or serviced rendered by him in the course of his business; or
- (b) rents or dividends;

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

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

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

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

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

“non-resident” means a person who is not a resident of the State;

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

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

“person” includes a company, partnership, or trustee;

“person resident out of Australia” or **“person resident out of the State”** means a person who is not a resident of Australia or a resident of the State of hereinafter defined;

“previous Acts” means the *Land and Income Tax Assessment Act 1907*, and amendments, and the *Dividend duties Act 1902*, and its amendments, and when considered in relation to any time means those Acts, or if they have been amended, those Acts as amended as in force at that time;

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

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

“resident of the State” means —

- (a) a person who resides in the State, and includes a person —
 - (i) whose domicile is in the State, unless the Commissioner is satisfied that his permanent place of abode is outside the State; or
 - (ii) who has actually been in the State, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is outside the State, and that he does not intend to take up residence in the State;
- (b) a company which is incorporated in the State or which, not being incorporated in the State, carries on business in the State and has either its central management and control in the State or the preponderance of voting power of its shareholders controllably by shareholders who are residents of the State;

“resident of Australia” means —

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- (a) a person who resides in Australia, and includes a person —
 - (i) whose domicile is in Australia, unless the Commissioner is satisfied that his permanent place of abode is outside Australia; or
 - (ii) who has actually been in Australia continuously or intermittently during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is outside Australia, and that he does not intend to take up residence in Australia;
- (b) a company which is incorporated in Australia or which, not being incorporated in Australia, carries on business in Australia and has either its central management and control in Australia or the preponderance of voting power of its shareholders controllable by shareholders who are residents of Australia;

“shareholder” includes member or stockholder;

“special tax” means hospital fund contributions or financial emergency tax as assessed under one of the special tax Acts;

“spouse” means the husband or wife of the tax-payer;

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

“taxpayer” means a person deriving income;

“the State” means the State of Western Australia;

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

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

- (a) an executor or administrator, guardian, committee, receiver, or liquidator; and
- (b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability;

“year of income” means —

- (a) the financial year next preceding the year of tax; or
- (b) the accounting period, if any, adopted under this Act in lieu of that financial year;

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

[Section 5 amended by No. 13 of 1937 s.5.]

Part II — Administration

6. Commissioner of Taxation

For the purposes of this Act, the Governor shall appoint a Commissioner of Taxation who shall have the general administration of this Act; provided that the Commissioner of Taxation in office at the commencement of this Act shall continue in office as if he had been appointed by the Governor under this Act.

7. Commissioner may delegate

The Commissioner may delegate to any officer such powers, duties and functions by this Act or the regulations hereunder, conferred or imposed upon him, as it may be considered expedient by him so to delegate.

8. State may arrange with Commonwealth for collection of taxes

- (1) The State may arrange with the Commonwealth for the collection by Commonwealth officers of the income tax payable under this Act and the Acts repealed by this Act.

[(2) repealed]

- (3) A notification in the *Government Gazette* that any person therein named has been appointed for the purposes of this Act shall be conclusive evidence of such appointment.

[Section 8 amended by No. 57 of 1997 s.76.]

9. Officers to observe secrecy

- (1) For the purposes of this section “**officer**” means a person who is or has been appointed or employed by the Commonwealth or by the State, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other

person, disclosed or obtained under the provisions of this Act or of any previous Act relating to income tax or dividend duty.

- (2) Subject to this section an officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while he is, or after he ceases to be an officer, make a record of, or divulge or communicate to any person any such information so acquired by him.
- (3) An officer shall not be required to produce in court any return, assessment or notice of assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or of any previous Act relating to income tax or dividend duty.
- (4) Nothing in this section shall be deemed to prohibit the Commissioner, or any person thereto authorized by him, from communicating any information to —
 - (a) any person performing, in pursuance of any appointment or employment by the Commonwealth or by a State, any duty arising under any Act administered by the Federal Commissioner of Taxation or the Federal Commissioner of Land Tax, for the purpose of enabling that person to carry out any such duty;
 - ² (b) a Board of Review appointed under this Act;
 - (c) the Commissioner of Income Tax for any State, or the authority administering any Act of a State relating to stamp duties or death or succession duties if that authority is authorized by law to afford similar information to the Commissioner;
 - (d) The Commissioner of Pensions or the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions; or

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- (e) the Commissioner for Maternity Allowances for the purpose of any law relating to maternity allowances.
- (5) Any person to whom information is communicated under the last preceding subsection and any person or employee under his control shall, in respect of the information, be subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) of this section, as if he were an officer.
- (6) Every officer shall make an oath or declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

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

[Section 9 amended by No. 12 of 1940 s.3; No. 51 of 1992 s.16 (1).]

Part III — Liability to taxation

Division 1 — General

10. Income tax

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

11. Accounting period

- (1) Any person may, with the leave of the Commissioner, adopt an accounting period being the twelve months ending on some date other than the thirtieth day of June. His accounting period in each succeeding year shall end on the corresponding date of that year, unless with the leave of the Commissioner some other date is adopted.
- (2) Where the Commissioner has accepted returns from any person based on an accounting period as defined in the previous Acts for the purposes of assessment for the last financial year to which those Acts applied, the person shall be deemed to have adopted a corresponding accounting period under this section.

12. Money credited, reinvested, etc., to be income

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

13. Where consideration not in cash

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

14. Income arising from past transactions

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

15. Exemptions

The following incomes shall be exempt from income tax: —

- (a) the official salary of any person being —
 - (i) the Governor of the State;
 - (ii) the representative in the State of the government of another country;
 - (iii) a foreign consul;
 - (iv) a trade commissioner of any part of the British Empire other than the State;
 - (v) a member of the staff of any such representative, foreign consul or trade commissioner if the member is domiciled in the country represented by the representative, foreign consul or commissioner, and is temporarily resident in the State by direction of the Government of the country so represented for the purpose of performing his official duties, and if the official

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

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- being representative of that part of the British Empire;
- (iii) by the representative of any Government visiting the State on behalf of that Government, or by any member of the entourage of that representative, in his official capacity as such representative or member;
 - (iv) in the capacity of representative of any society or association established for education, scientific, religious or philanthropic purposes, by any person visiting the State in that capacity for the purpose of attending international or empire conferences or for the purpose of carrying on investigation or research for such society or association;
 - (v) in the capacity of representative of the press outside Australia, by any person visiting the State in that capacity for the purpose of reporting the proceedings relating to any matters referred to in the preceding subparagraph of this paragraph; and
 - (vi) by any person visiting the State, from an occupation carried on by him while in the State, if the Treasurer certifies in writing that the visit and occupation are primarily and principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia;
 - (vii) as director's fees or salary by a non-resident during a visit to Australia during which he acts as a director, manager, or other administrative officer of a manufacturing, mercantile or mining business or of a business of primary production, if the visit of the non-resident to Australia does not exceed six months;

- (d) the revenue of a local government or of a public authority constituted under any Act of the Commonwealth or of the State;
- (e) the income of a religious, scientific, charitable or public educational institution;
- (f) the income of a trade union and the income of an association of employers or employees registered under any Act of the Commonwealth or of the State relating to the settlement of industrial disputes;
- (g) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, and being a friendly society, or a society or association established for musical purposes, or for the encouragement of music, art, science or literature, but not being a building society, to the extent to which the income is not derived from a business carried on by the society or association, or from services rendered by the society or association to any person for reward;
- (h) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia to the extent to which the income is not derived from a business carried on by the society or association or from services rendered by the society or association to any person for reward;
- (i) the income of a savings bank conducted exclusively for the benefit of depositors, and the income of the body corporate styled the commissioners of the Agricultural Bank of Western Australia;
- (j) the incomes of the following funds, provided that the particular fund is being applied for the purpose for which it was established —

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- (i) a provident, benefit or superannuation fund established for the benefit of employees;
 - (ii) a fund established by will or instrument of trust for public charitable purposes; and
 - (iii) a fund established for the purpose of enabling scientific research to be conducted by or in conjunction with a public university or public hospital;
- (k) interest on bonds, debentures, stock or other securities of the Commonwealth issued for the purpose of Commonwealth Loans where that interest has been declared by the prospectus to be free from State income tax;
- (l) interest on Western Australian Government debentures inscribed stock and Treasury bills;
- (m) pensions paid under the *Australian Soldiers' Repatriation Act 1920-1934*, and wounds and disability pensions of the kinds specified in sub-section (2) of section sixteen of the *Finance Act 1919*, of the United Kingdom, or paid under the *Invalid and Old Age Pensions Act 1908* (Commonwealth), and amendments;
- (n) the income received by way of periodical payments in the nature of alimony or maintenance, by a woman from her husband or former husband: Provided that for the purpose of making such payments the husband, or former husband, has not divested himself of any income producing assets, or diverted from himself income upon which he would otherwise have been liable to tax;
- (o) income derived by a *bona fide* prospector from the sale, transfer or assignment by him of his rights to mine for gold in a particular area in the State. For the purpose of this paragraph, "***bona fide prospector***" means a person who has carried out the whole of major part of the field work of prospecting for gold in the particular area, or who has contributed to the expenditure incurred in the

work of prospecting and development in that area, and includes a company which has itself carried out the whole or major part of such work;

- (p) income derived by a resident of the State from sources out of the State where income tax is not expressly made payable in respect of that income;
- (q) income derived by a non-resident of the State from sources wholly out of the State;
- (r) the “taxable income” not exceeding two hundred and fifty pounds of a male person over sixty-five years of age or a female person over sixty years of age: Provided that for the purposes of this exemption the deductions referred to in sections seventy-nine, eighty, and eighty-two shall not be allowable deductions;
- (s) subject as in this paragraph hereafter provided, in the case of any person enlisted in or appointed to the naval, military, or air forces of the Commonwealth of Australia or any part of the King’s Dominions, or of any Ally of Great Britain, for service outside Australia during the war existing at the date of the coming into operation of this paragraph, between His Majesty the King on one side and Germany and Italy on the other side — the pay and allowances earned by him as a member of the said forces during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, or the date of his enlistment or appointment (whichever is the later date), and terminating on the date of his discharge or the termination of his appointment, as the case may be:

Provided that —

- (i) this paragraph shall continue in force during the continuance of the said war and thereafter until the expiration of twelve months after the date of the issue of a

proclamation by the Governor General of the Commonwealth that the said war has ceased, and no longer;

- (ii) this paragraph shall apply to all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, and to all subsequent years; and
- (iii) this paragraph shall not apply to any pay or allowances earned as aforesaid during the year of income by a member of the said forces, who does not at any time during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, and terminating one year after the close of that year of income —
 - (a) in the case of a member of the naval forces of the Commonwealth — serve in a seagoing ship; or
 - (b) in the case of a member of the military or air force of the Commonwealth — embark for service outside Australia.

[Section 15 amended by No. 12 of 1940 s.4; No. 14 of 1996 s.4.]

16. Limitation of exemption

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

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

Division 2 — Income

Subdivision A — Assessable Income Generally

17. Gross income from certain sources

- ³ (1) the assessable income of a taxpayer shall include —
- (a) where the taxpayer is a resident of the State, the gross income derived by him directly or indirectly from all sources in the State, and dividends from any company, whether incorporated in the State or not, and whether paid out of income derived from sources in or outside the State; and
 - (b) where the taxpayer is a non-resident of the State, the gross income derived directly or indirectly from all sources in the State,

which is not exempt income.

Provided that, where goods are exported by a resident of the State to a place outside Australia and sold by him or by a branch of his business or by an agent, the whole of the sale price of such goods shall, unless the Commissioner is satisfied that income tax has been paid in the country of sale upon the profit derived by the exporter from such sale, be deemed to be assessable income derived from a source in the State.

- (2) Without limiting the generality of the preceding subsection, the assessable income of a taxpayer shall include —
- (a) interest (except interest paid outside Australia to a non-resident on debentures issued outside Australia by a

company) on money secured by mortgage of any property to the following extent —

- (i) where the whole of the property is in the State, the whole of that interest;
 - (ii) where some of the property is in and some out of the State, the whole of that interest if the taxpayer is a resident and income tax (other than Commonwealth income tax) is not paid out of the State on any part of that interest, and, in any other case, the part of that interest which bears to the whole of that interest the same proportion as the value of the property in the State bears to the value of the whole of the property; and
 - (iii) where the whole of the property is out of the State but in Australia, none of that interest;
- (b) where the taxpayer is a resident of the State interest on money lodged or in respect of debts situated in the Territory for the Seat of Government of the Commonwealth and income arising from other investments in that Territory;
 - (c) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme;
 - (d) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust;
 - (e) the amount of any annuity, excluding, in the case of an annuity which has been purchased, that part of the annuity which represents the purchase price to the extent to which that price has not been allowed or is not allowable as a deduction in assessments for income tax under this Act or any previous Act;

- (f) five per centum of the capital amount of any allowance, gratuity or compensation where that amount is paid in a lump sum in consequence of retirement from, or the termination of, any office or employment, and whether so paid voluntarily, by agreement or by compulsion of law: Provided that this paragraph shall not apply in respect of any amount paid or credited by a company which under any provision of this Act is deemed to be a dividend paid to the recipient;
- (g) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by him, whether so allowed, given or granted in money, goods, land, meals, sustenance, the use of premises or quarters or otherwise: Provided that this paragraph shall not apply to any allowance, gratuity or compensation which is included in the last preceding paragraph or which under any provision of this Act is deemed to be a dividend paid to the recipient;
- (h) in the case of any pension received by a resident of the State in respect of or for or in relation directly or indirectly to any past employment or service rendered by him irrespective of the source from which the pension is received —
 - (i) if the whole of that employment or service was given or rendered in Australia, the full amount of such pension;
 - (ii) if part only of that employment or service was given or rendered in Australia, a part of such pension being a sum which bears the same proportion to the full amount of such pension as the part of that employment or service which was given or rendered in Australia bears to the whole of that employment or service:

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

- (i) any amount received as or by way of royalty;
- (j) any bounty or subsidy to the extent to which it is received in or in relation to the carrying on of a business in the State;
- (k) the amount of any fee or commission received for procuring a loan of money;
- (l) any amount received as or by way of bonus other than a reversionary bonus on a policy of life assurance;
- (m) any amount received by way of insurance or indemnity for or in respect of any loss —
 - (i) of trading stock which would have been taken into account in computing taxable income; or
 - (ii) of profit or income which would have been assessable income,
if the loss had not occurred, and any amount so received for or in respect of any loss or out-going which is an allowable deduction.
- (n) the amount or value of any consideration received in connection with a right to remove standing timber from land less the amount, if any, by which the value of the land is or will be diminished by the removal of the timber; and
- (o) the amount of salary, wages or remuneration derived whilst temporarily engaged on duties out of the State by a taxpayer who ordinarily resides in the State:

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

For the purposes of paragraph (o) and of paragraph (h) of this section, **“income tax”** means such tax imposed as income tax as in the opinion of the Commissioner is reasonably comparable in its nature to the tax assessed under this Act.

[Section 17 amended by No. 12 of 1940 s.5.]

18. Interest on loans raised in Western Australia by Governments outside Australia

- (1) The interest on loans raised in the State, after the thirty-first day of December, One thousand nine hundred and twenty-three, by the Government of any country or dominion out of Australia, or by any authority constituted by or under any law of any such country or dominion, and received directly or indirectly by a resident of the State shall be deemed to be derived by him from a source in the State, and shall be included in his assessable income.
- (2) For the purposes of this section, a loan shall be deemed to have been raised in the State if subscriptions to the loan were invited in the State by public advertisement, by the issue of a prospectus, or otherwise.

19. Insurance companies other than life insurance companies

- (1) Notwithstanding the repeal of the *Dividend Duties Act 1902*, and amendments, the provisions of section eight thereof shall continue and remain in force so as to apply to the assessment and collection of duty on premiums received by a company

subject to taxation under that section up to and including the thirty-first day of December, one thousand nine hundred and thirty-seven.

- (2) For the year of assessment ending on the thirtieth day of June, one thousand nine hundred and thirty-nine, a company which carries on insurance business (other than a life insurance company) shall be assessable on one half of its taxable income for the year of income ending on the thirtieth day of June, one thousand nine hundred and thirty-eight, or the accounting period which has, with the leave of the Commissioner, been substituted for the year of income ending on that date.

Subdivision B — Trading Stock

20. Trading stock to be taken into account

- (1) Where a taxpayer carries on any business, the value, ascertained under this subdivision, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income.
- (2) Where the value of all trading stock on hand at the end of the year of income exceeds the value of all trading stock on hand at the beginning of that year, the assessable income of the taxpayer shall include the amount of the excess.
- (3) Where the value of all trading stock on hand at the beginning of the year of income exceeds the value of all trading stock on hand at the end of that year, the amount of the excess shall be an allowable deduction.

21. Value at beginning of year of income

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

22. Where Commonwealth and State values differ

- (1) Where the value of live stock at the beginning of the year of income, as ascertained for the purpose of assessment to income tax under the law of the ascertained under the last preceding section, and it appears to the Commissioner that, if those values were equal, the corresponding values would remain equal in subsequent years, the taxpayer may, subject to this section, take his live stock into account at the beginning of the year of income at a value equal to its corresponding value under the law of the Commonwealth.
- (2) Where the value at which that live stock is taken into account at the beginning of the year of income exceeds the value as ascertained under the last preceding section, amounts in the aggregate equal to the excess shall be included in the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.
- (3) Where the value of live stock as ascertained under the last preceding section exceeds its value as taken into account at the beginning of the year of income, amounts in the aggregate equal to the excess shall be deducted from the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.
- (4) the amounts referred to in subsections (2) and (3) of this section and the years in respect of which they are to be taken into account shall be such amounts and years as are agreed upon by the taxpayer and the Commissioner, and unless and until those amounts and years are so agreed upon, this section shall not apply to the assessment of that taxpayer.

23. Value at end of year of income

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

24. Value of live stock at end of year of income

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

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

25. Changes in basis of valuation of live stock

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

26. Cost price of natural increase

- (1) The cost price per head of natural increase of any class of live stock of a taxpayer shall be the cost price selected by him within the limits prescribed in respect of live stock of that class.
- (2) Where a taxpayer does not so select within the time and in the manner prescribed, he shall be deemed to have selected, as the cost price, the lower of the prescribed limits.

27. Disposal of assets of a business

- (1) Subject to this section, where the whole or any part of the assets of a business carried on by a taxpayer is disposed of by sale or otherwise howsoever, whether for the purpose of putting an end to the business or any part thereof or not, and the assets

disposed of include any property being trading stock, standing or growing crops or crop-stools, the value of that property shall be included in his assessable income, and any person acquiring that property shall be deemed to have purchased it at the amount of that value.

- (2) For the purposes of this section, the value of any property or live stock shall be —
- (a) the price specified in any contract of sale or arrangement as the price at which it was disposed of; or
 - (b) if the Commissioner is not satisfied with the price specified in the contract of sale or arrangement, or if a price is not specified in any such contract or arrangement —
 - (i) the market value of the property or live stock on the day of disposal; or
 - (ii) if in the opinion of the Commissioner there is insufficient evidence of the market value on that day, the value which in his opinion is fair and reasonable.

28. Devolution on death

- (1) Where the assets of a business carried on by a taxpayer devolve by reason of his death, and those assets include any property being trading stock, standing or growing crops or crop-stools, the value of that property shall, subject to this Act, be included in the assessable income derived by the deceased up to the date of his death, and the person upon whom the property devolves shall be deemed to have purchased it at that value.
- (2) For the purpose of the last preceding subsection, the value of the property so to be included shall be the amount which would have been included in respect of that property in the assessable income of the deceased person, under the last preceding section if he had not died but had disposed of the property on the day of his death for the purpose of putting an end to the whole of a

business carried on by him and without any price being specified in any contract or arrangement:

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

Subdivision C — Business carried on partly in and partly out of the State

29. Profits from dealing in land

Where any person —

- (i) engages in the business of dealing in land situate in the State; or
- (ii) acquires any such land for the purpose of sale or disposal,

the profit, if any, arising from that business or from the sale or disposal of that land shall be deemed to have been derived from a source within the State, and shall be included in the assessable income of that person, notwithstanding any transaction concerning the acquisition, sale, or disposal of the land takes place outside the State.

In this section “**land** ” means any interest in land, and includes an option over an interest in land.

30. Goods deemed to be sold in the State

Where a person sells goods by means of anything done by himself when in the State, or by means of an agent or representative in the State, and those goods are in the State or

are to be brought into the State for the purpose or in pursuance or in consequence of such sale, he shall be deemed to have sold them in the State.

31. Goods deemed to be sold out of the State

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

32. Instrumentality

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

33. Interstate Trading

- (1) Except as otherwise provided in this subdivision —
- (a) where goods are sold in the State by any person, the whole of the profit arising from the sale shall be deemed to be income derived in the State;
 - (b) where goods are sold out of the State but in Australia by any person, the whole of the profit arising from the sale shall be deemed to be income derived out of the State.
- (2) this section shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.

[Section 33 inserted by No. 12 of 1940 s.6, as s.32A, now renumbered s.33.]

34. Sales by manufacturers

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

35. Sales by merchants

Where goods are imported into the State from a place outside Australia by a person not being the manufacturer of the goods, and are sold either before or after importation by him in the State, the profit deemed to be derived in the State from the sale shall be ascertained by deducting from the sale price of the goods their purchase-price and the expenses incurred in transporting them to and selling them in the State.

36. Determination by Commissioner

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

37. Sales in the State by a manufacturer

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

38. Sales out of the State by a manufacturer

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

39.⁴ Sales in the State by a merchant

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

[Section 39 amended by No. 12 of 1940 s.7.]

40.⁵ Sales out of the State by a merchant

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

[Section 40 inserted by No. 12 of 1940 s.8.]

41. Sales of primary produce

(1) Notwithstanding anything contained in this subdivision the following provisions shall apply in cases where profits are derived from the sale of goods produced in mining or in primary production: —

- (a) Where the goods are produced in the State all profits derived by the producer on the sale of the goods shall be deemed to be income derived in the State wherever the goods may be sold or delivered.
- (b) Where the goods are produced in another State none of the profits resulting from the sale of the goods by the

producer shall be deemed to be derived in the State notwithstanding that the goods are sold or delivered in the State.

- (2) For the purpose of this section the sale price of goods shall include any bonus or premium received on or in connection with the sale of the goods.
- (3) In this section “**mining**” includes all kinds of mining for metals or minerals and mineral oil, and “**primary production**” means production resulting directly from the cultivation of land or the maintenance of animals, poultry or bees for the purpose of selling them or their bodily produce, including natural increase. It also includes the manufacture of dairy produce by the person who produced the raw material used in such manufacture and the drying, processing and packing of fruit by the grower of the fruit.

42. Ascertainment of profits

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

43. Assessable income and deductions

The assessable income of a taxpayer shall include any income derived in the year of income by him which under the provisions of this subdivision is deemed to be derived in the State, and no amount which is in the nature of a loss or outgoing and which is already taken into account under the last preceding section in ascertaining the amount of any profit derived by him shall be an allowable deduction.

44. General provisions

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

Subdivision D — Dividends

45. Dividends

- (1) Subject to this section the assessable income of a shareholder in a company (whether the company is incorporated in the State or not) shall, if the shareholder is a resident of the State, include dividends paid to him by the company out of profits derived by it from any source.
- (2) The assessable income of a shareholder shall not include dividends paid after the commencement of this Act wholly and exclusively from —
 - (i) profits arising from the sale of compulsory resumption for public purposes of assets not acquired from the purpose of resale at a profit; or
 - (ii) profits arising from the re-valuation of assets not acquired for the purpose of resale at a profit or from the issue of shares at a premium, if in either case the dividends paid from such profits are satisfied by the issue of shares of the company declaring the dividend.

46. Rebate on dividends

- (1) A shareholder shall be entitled to a rebate in his assessment of the amount obtained by applying to that part of the dividends which is included in his taxable income a rate equivalent to —
 - (a) the rate of tax payable by him on income from property; or

(b) the rate of tax payable by companies for the year of tax, whichever is the less.

Provided that if a dividend is paid from profits exempt under section one hundred and twenty-three, the rebate shall be at the rate of tax payable by him on his income from property.

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

47. Distributions by liquidators

- (1) Amounts distributed to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been applied to replace a loss of paid-up capital, shall for the purposes of this Act be deemed to be dividends paid out of profits of the company to the shareholders by the company.
- (2) Amounts so distributed shall, to the extent to which they are paid out of any profits or income, be deemed to have been paid wholly and exclusively out of those profits or that income.

48. Loans to shareholders

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

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

49. Payments to shareholders and directors

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

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

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

Division 3 — Deductions

50. Allowable deductions

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

51. Successive deductions

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

52.⁶ Deductions in case of composite incomes

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

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

[Section 52 amended by No. 12 of 1940 s.9.]

53. Losses and outgoings

- (1) All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or are incurred in relation to the gaining or production of exempt income, or of a capital, private or domestic nature.
- (2) Expenditure incurred or deemed to have been incurred in the purchase of stock used by the taxpayer as trading stock shall be deemed not to be an outgoing of capital or of a capital nature.

54. Head office expenses

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

55. Loss on property acquired for profit-making

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

56. Repairs

- (1) Expenditure incurred by the taxpayer in the year of income for repairs, not being expenditure of a capital nature, to any

premises, or part of premises, plant, machinery, implements, utensils, rolling stock, or articles held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose, shall be an allowable deduction.

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

57. Depreciation

- (1) Depreciation during the year of income of any property being plant or articles owned by a taxpayer and used by him during that year for the purpose of producing assessable income, and of any property being plant or articles owned by the taxpayer which has been installed ready for use for that purpose and is during that year held in reserve by him shall, subject to this Act, be an allowable deduction.
- (2) In this section “**plant**” includes animals used as beasts of burden or working beasts in a business other than a business of primary production, and machinery, implements, utensils and rolling stock.

58. Basis of depreciation

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

59. Calculation of depreciation

- (1) Subject to this section, the depreciation allowable under this Act in respect of any unit of property shall be —
- (a) the percentage fixed under the last preceding section, or under the previous Acts, of the depreciated value of that unit at the beginning of the year of income; or

- (b) at the option of the taxpayer (to be exercised within the time, in the manner, and subject to the conditions prescribed), the percentage so fixed of the cost of that unit.
- (2) The deduction allowable in respect of any unit of property shall not exceed the depreciated value of that unit.

60. Alteration of method of calculation

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

61. Depreciation under Commonwealth and State Acts

- (1) Where the depreciated value under this Act of any property at the beginning of the year of income is higher than its depreciated value at that time under the Commonwealth Act relating to income tax, and the Commissioner is satisfied that if those values were equal the corresponding values in each subsequent year would remain equal, the Commissioner may allow, in lieu of the depreciation otherwise allowable, an amount of depreciation calculated as if the depreciated value at the beginning of the year of income under the Commonwealth Act had been substituted for the depreciated value at that time under this Act.
- (2) Where the last preceding subsection is applied in any assessment, a further amount of depreciation shall also be an allowable deduction in that assessment, being an amount determined by the Commissioner, which shall not be less than one-tenth part of the difference between those depreciated values at the beginning of the year to the assessment of the income of which this section is first applied, provided that the

further amount shall not in any case exceed the amount required to make the depreciated values of the property under this and the Commonwealth Act equal.

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

62. Disposal, loss or destruction of depreciated property

- (1) where any property of a taxpayer, in respect of which depreciation has been allowed or is allowable under this or the previous Acts, is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction, shall be an allowable deduction.
- (2) If that consideration exceeds that depreciated value, the excess, to the extent of the sum of the amounts allowed and allowable in assessments for income tax under this Act and any previous law of the State in respect of depreciation, shall be included in his assessable income of that year.
- (3) The consideration receivable in respect of the disposal, loss or destruction means —
- (a) in the case of a sale of the property, the sale price less the expenses of the sale of the property;
 - (b) in the case of loss or destruction of the property, the amount received or receivable under a policy of insurance or otherwise in respect of the loss or destruction;
 - (c) in the case where the property is sold with other assets and no separate value is allocated to the property, the amount determined by the Commissioner;

- (d) in the case where property is disposed of otherwise than by sale, the value, if any, of the property at the date of disposal.

63. Acquisition of depreciated property

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

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

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

64. Property used partly for producing assessable income

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

65. Meaning of depreciated value

In this Division “**depreciated value**” of any unit of property at any time means —

- (a) in respect of any unit acquired prior to the commencement of this Act, the cost of that unit less —
 - (i) the amount of depreciation allowed or allowable under any of the previous Acts; and
 - (ii) the amount of depreciation allowed under this Act;
- (b) in respect of any unit acquired since the commencement of this Act, the cost of that unit less the amount of all depreciation allowed or allowable under this Act.

66. Bad debts

- (1) Debts which are bad debts and are written off as such during the year of income, and —
 - (a) have been brought to account by the taxpayer as assessable income of any year; or
 - (b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business,

and no other bad debts, shall be allowable deductions.

- (2) If a debtor, after incurring a debt so brought to account, or in respect of money so lent, is adjudicated bankrupt, or executes a deed of assignment or arrangement for the benefit of his creditors, the debt (where, in the opinion of the Commissioner, no amount will be paid on account of the debt) or the amount by which, in his opinion, the amount which will be received on account of the debt will be less than the debt, shall be deemed to be a bad debt.
- (3) Where in the year of income a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this or the previous Act, his assessable income shall include that amount.

67. Commission

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

68. Payments to relatives

- (1) Subject to this section, payments becoming due in the year of income by a taxpayer to a relative shall be allowable deductions only to the extent to which, in the opinion of the Commissioner, they are reasonable in amount and *bona fide* made in the production of assessable income.
- (2) Expenditure incurred, and payments becoming due, by the taxpayer in the year of income in or for the maintenance of the spouse of the taxpayer or of any member of his family under the age of sixteen years, shall not, whether or not the expenditure was incurred in the production of assessable income, be an allowable deduction.

69. Contributions to pension funds

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

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

70. Expenses of borrowing

So much of the expenditure incurred by the taxpayer in borrowing money used by him for the purpose of producing assessable income as bears, to the whole of the expenditure, the

same proportion as that part of the period for which the money was borrowed which is in the year of income, bears to the whole of that period, shall be an allowable deduction:

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

71. Expenses of preparing lease

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

72. Timber felled upon acquired land

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

73. Timber felled under right

So much of the amount paid for a right to fell timber for sale (not including an amount paid in connection with the purchase of a freehold or leasehold estate in land) as is attributable to the timber felled during the year of income shall be an allowable deduction.

74. Losses by embezzlement, etc

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

75. Rates and taxes

- (1) Sums paid by the taxpayer in the year of income —
- (a) for hospital fund contribution;
 - (b) for financial emergency tax;
 - (c) for State or Commonwealth land tax; and
 - (d) for rates to the extent to which such rates are charged or levied in respect of property held by him for the purpose of producing assessable income

shall be allowable deduction.

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

76. Subscriptions to associations

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

- (b) so much of the subscriptions, levies or contributions as bears to the whole the same proportion as the losses and outgoings incurred by the association in that year in carrying out that activity bear to its total losses and outgoings in that year, not being losses or outgoings of capital or of a capital nature.
- (3) Any periodical subscription, to which the foregoing provisions of this section do not apply, paid by the taxpayer in the year of income in respect of his membership of any trade, business or professional association, shall be an allowable deduction;

Provided that the total deduction allowable under this subsection in respect of subscriptions to any one association in that year shall not exceed ten pounds ten shillings.

77. Expenses of members of Parliament

- (1) Expenditure incurred in the year of income by the taxpayer in being elected as a member or in contesting an election for membership of the Parliament of the Commonwealth or of the Parliament of the State, shall be an allowable deduction.
- (2) When a deduction has been allowed or is allowable under the last preceding subsection in respect of any expenditure and that expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organisation the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount.
- (3) The sum of fifty pounds in respect to every member of Parliament of the State representing the Metropolitan, Metropolitan-Suburban, or West Province or an electoral district therein, and a sum of one hundred pounds in respect to every member of Parliament of the State representing any other province or electoral district, and the sum of fifty pounds in respect to the members of the House of Representatives for Perth and Fremantle and the sum of one hundred pounds in respect to every other member of the Federal Parliament for the

State where he was such a member for the whole of the year of income, and a proportionate part of that sum where he was such a member for part only of the year of income, shall be an allowable deduction.

78. Wire and wire netting

Where any taxpayer proves to the satisfaction of the Commissioner that -

- (a) he is carrying on agricultural or pastoral pursuits in a district which is subject to the ravages of animal pests; and
- (b) he has expended for or entered into a contract or undertaking with the Government or an authority of a State for the purchase of wire or wire netting for use in the construction or alteration of a fence to prevent animal pests entering upon the land used by him in the production of assessable income,

the following amount shall be an allowable deduction: —

- (c) such amount as the Commissioner is satisfied has of the wire or wire netting placed by him in position on the fence in the year of income and in so placing the wire or wire netting in position; or
- (d) where the taxpayer purchased the wire or wire netting under a contract or undertaking with the Government or an authority of a State — the amount paid by him in respect of that wire or wire netting in the year of income as purchase money or interest thereon, and the amount, if any, expended by him in that year in placing the wire or wire netting in position on the fence.

79.⁷ Gifts and contributions

- (1) The following shall, to an extent in the aggregate not exceeding the amount of income remaining after deducting from the assessable income all other allowable deductions except the

deduction of losses of previous years and of the statutory exemption, be allowable deductions: —

- (a) Gifts of the value of one pound and upwards made by the taxpayer in the year of income to any of the following funds, authorities or institutions in Western Australia —
 - (i) a public hospital;
 - (ii) a public benevolent institution;
 - (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions, or for the establishment of such hospitals or institutions, or for the relief of persons in the State who are in necessitous circumstances;
 - (iv) a public authority engaged in research into the courses, prevention or cure of disease in human beings, animals or plants, where the gift is for such research, or a public institution engaged solely in such research;
 - (v) a public university, or a public fund for the establishment of a public university;
 - (vi) a residential educational institution affiliated under statutory provisions with a public university;
 - (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the war which commenced on the fourth day of August, one thousand nine hundred and fourteen;
 - (viii) for the purpose of providing scholarships or bursaries for the maintenance of education of students at any university, college, school, or other educational establishment;

- (ix) a public institution or public fund established and maintained for the comfort, recreation, or welfare of members of the naval, military, or air forces of the Commonwealth of Australia; and
 - (x) the Commonwealth of Australia when made for purpose of defence.
- (b) Sums which are not otherwise allowable deductions and which are set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions, or retiring allowances for employees who are residents of the State and are engaged in his or any business or class of business, or dependants of such employees, if the rights of the employees or dependants to receive the benefits pensions, or retiring allowances are fully secured;
- (c) Sums which are not otherwise allowable deductions, and which are paid by the taxpayer during the year of income as retiring allowances or pensions to persons who are or have been employed or dependants of employees, where such persons are residents of the State, shall, to the extent to which in the opinion of the Commissioner those sums are paid *bona fide* in consideration of the past services of the employees in any business of the taxpayer, be allowable deductions.
- (2) For the purposes of this section “**gift**” shall not include a gift in kind —
- (a) unless it was purchased by the taxpayer within twelve months immediately preceding the making of the gift; or
 - (b) to an extent greater than the sum paid by him for the gift.

[Amended by No. 12 of 1940 s.10.]

80.⁸ Concessional deductions

The following amounts (in this Act called “**the concessional deductions**”) shall be allowable deductions where the taxpayer is domiciled in the State.

[(a) repealed by No. 12 of 1940 s.11.]

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

Provided that, where a child is born during the year of income, or attains the age of sixteen years during the year, or is wholly maintained by the taxpayer during part only of the year, or is only partially maintained by him during the whole or part of the year, the deduction allowable shall be such part of that sum as, in the opinion of the Commissioner, is reasonable in the circumstances:

- (c) Payments not exceeding fifty pounds in the aggregate made by the taxpayer in the year of income to any legally qualified medical practitioner, nurse or chemist, or public or private hospital, in respect of any illness of or operation upon the taxpayer or his spouse or any of children under the age of twenty-one years, if the spouse or child is a resident of Australia;
- (d) Payments not exceeding twenty pounds in the aggregate made by the taxpayer in the year of income for funeral and burial or cremation expenses arising out of the death of his spouse, or of any of his children under the age of twenty-one years, if the spouse or child was, at the time of death, a resident of Australia, to the extent to which those expenses are not recouped to him by any society or association; and
- (e) Payments made by the taxpayer in the year of income, not exceeding in the aggregate fifty pounds, and being —

- (i) premiums or sums for insurance on the life of the taxpayer or of his spouse or children, or for a deferred annuity or other like provisions for his spouse or children; or
- (ii) payments to provident, superannuation, sustentation, widows' or orphans' funds, or to any friendly society, for the personal benefit of the taxpayer or of his spouse or children;
- (f) money up to forty pounds for each dependant actually expended during the year by a taxpayer in or towards the support of dependants:

For the purposes of this subsection “**dependant**” means a relative of the taxpayer by blood, marriage, or adoption (but not including the spouse of the taxpayer) towards whose maintenance the taxpayer has contributed twenty-six pounds or more during the year of income, and whose income from other sources does not exceed seventy-three pounds for the year of income, and who resides in the State.

[Section 80 amended by No. 12 of 1940 s.11.]

81. Losses of previous years

- (1) For the purposes of this section, a loss shall be deemed to be incurred in any year when the allowable deductions (other than the concessional deductions and the deduction allowable under this section) from the assessable income of that year exceed the income, and the amount of the loss shall be deemed to be the amount of such excess.
- (2) So much of the losses incurred by a taxpayer in any of the three years next preceding the year of income as has not been allowed as a deduction from his income of any of those years shall be allowable as a deduction.

- (3) Where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred.
- (4) Provided that, for the purpose of this section, in the first year of assessment under this Act a person other than a company shall only be allowed losses incurred in the two years next preceding the year of income, and a company (other than a company engaged in grazing or pastoral business) shall not be allowed losses incurred prior to the first year of income under this Act:
- Provided further, that in the first two years of assessment under this Act a company engaged in grazing or pastoral business shall be allowed a deduction equal to that to which it would have been entitled had the *Dividend Duties Act 1902*, and its amendments not been repealed.
- (5) Notwithstanding any other provision of this section, where a taxpayer has prior to the year of income been adjudicated bankrupt, or, not having been adjudicated bankrupt, has been released from any debts by the operation of the *Bankruptcy Act 1924-1933*, no loss incurred by him prior to that adjudication or release shall be an allowable deduction.

82. Statutory exemption

- (1) The following amount (in this Act called “**the statutory exemption**”) shall be an allowable deduction to any person other than a company who is domiciled in the State: —
- (a) Where the taxpayer is a married man or a married woman who has a dependent husband, or a widow or widower with children who are dependants —
- (i) the sum of two hundred pounds less two pounds for every pound by which the income exceeds two hundred pounds; or
- (ii) where the income does not exceed two hundred pounds, the amount of the income.

- (b) Where the taxpayer is single or is a married woman whose husband is not dependent upon her —
 - (i) the sum of one hundred pounds less two pounds for every pound by which the income exceeds one hundred pounds; or
 - (ii) where the income does not exceed one hundred pounds, the amount of the income.

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

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

83. Double deductions

- (1) Where in respect of any amount, a deduction would but for this section be allowable under more than one provision of this Act, and whether it would be so allowable from the assessable income of the same or different years, the deduction shall be allowable only under that provision which in the opinion of the Commissioner is most appropriate.
- (2) Where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, and any expenditure incurred by him in connection with that property is an allowable deduction under this Act or has been allowed or is allowable as a deduction in assessments under the previous Acts, that expenditure shall not be deducted in ascertaining the amount of the profit or loss.

Division 4 — Leases

84.⁹ Definitions

- (1) In this Division —

“lease” when used in relation to a premium means the lease granted, assigned or surrendered, or where the premium is for or in connection with any goodwill or license means the lease of the land to which such goodwill or license is attached or connected, but does not include a lease from the Crown of land used in primary production;

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

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

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

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

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

- (2) Where a lease is sold together with other assets, the amount of the consideration attributable to the lease shall, subject to subsection (2) of Section twenty-seven, and to subsection (3) of section sixty-two of this Act, be —

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

[Section 84 amended by No. 12 of 1940 s.12.]

85. Premiums included in assessable income

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

86. Deductions

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

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

Provided that where the amount was paid prior to the first year of income under this Act and was not an allowable deduction under the previous Acts, the deduction to be allowed shall not exceed the amount of the premium included in the assessable income.

- (2) Where any premium is included in the assessable income of a taxpayer in respect of property to which he has succeeded upon the death of another person, the taxpayer shall be entitled to the deduction to which that other person would have been entitled, under this section, if he had lived and the premium had been included in his assessable income and there had been allowed or were allowable as deductions in assessments for income tax, under any other provisions of this Act or under the previous Act the same deductions as have been so allowed or are so allowable to the taxpayer in addition to any deductions that in fact have been or are so allowed or allowable to that other person.
- (3) Where any premium is paid to a taxpayer for or in connection with the grant by him of a sublease, or for or in connection with the goodwill or license attached to or connected with land the subject of a sublease so granted, and is included in the assessable income of the taxpayer of the year of income, and he has paid any amount to acquire the lease of the premises the subject of the sublease or the goodwill or license, so much of the total deductions to which he would but for this subsection be entitled in respect of that amount during the period for which that sublease is granted as bears to those deductions the same

proportion as the premium included in his assessable income bears to the total of the premiums received or to be received by him for the grant of that sublease or for the goodwill or license shall be an allowable deduction, and he shall not during that period be entitled to any further deduction in respect of that amount otherwise than under this subsection.

87. Income of a taxpayer receiving a premium

- (1) Where a premium which exceeds the sum of the allowable deductions directly relating thereto, and in respect of which the term of the lease is not less than twenty-five complete months, is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall be ascertained in accordance with this section.
- (2) Where the taxable income exceeds that net premium, or the sum of the net premiums if there are more than one of the premiums so included, the rate of tax shall be the rate which is applicable to a total taxable income equal to the amount obtained by deducting the next premium or the sum of the net premiums, as the case may be, from the taxable income and adding to the result the amount or amounts ascertained by dividing each of the net premiums by one twenty-fourth of the number of complete months in the term of the lease.
- (3) Where the taxable income is less than the net premium, or the sum of the net premiums if there are more than one of the premiums so included, the rate of tax shall be —
 - (a) where there is only one of those premiums, the rate which would be applicable to a taxable income equal to the amount ascertained by dividing the actual taxable income by one twenty-fourth of the number of complete months in the term of the lease; and
 - (b) where there are more than one of those premiums, the rate which would be applicable to a taxable income equal to the sum of the amounts ascertained by

apportioning the actual taxable income among the net premiums in proportion to their amounts, and dividing the amount so apportioned to each net premium by one twenty-fourth of the number of complete months in the term of the lease.

- (4) The section shall not apply in any case —
- (a) where the taxpayer is a company, except where, in respect of the premium, it is assessable as a trustee; or
 - (b) where a premium or premiums for the lease are payable in each of three or more years of the lease.

88. Value of improvements included in assessable income

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

- (a) There shall be included in the lessor's assessable income of the year in which the improvements have been made, and of each year thereafter until and including the year in which the lease expires, an instalment of the estimated value to the lessor of such improvements as at the expiration of the lease. The instalments shall be equal in amount and shall be such that, if received at the commencement of each of those years, they would, with interest at the rate prescribed, accumulate to a sum equal to the estimated value:

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

- (b) Where, in the opinion of the Commissioner, the instalment cannot be satisfactorily determined, the value

of the improvements at the expiration of the lease shall be included in the lessor's assessable income of the year in which the lease expires.

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

89. Deductions to lessee

- (1) Where a taxpayer has paid any premium in respect of land, premises or machinery used for the purpose of producing assessable income, and in the year of income —
- (a) he is the lessee of the land, premises, or machinery;
 - (b) in the case of a premium paid for the surrender of the lease, he would have been the lessee had the lease been transferred to him and he had not been entitled to the reversion,

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

Provided that this section shall not apply to a premium in respect of a lease granted, assigned, or surrendered prior to the first year of income under this Act, except to the extent to which that premium is assessable income under this Act to the recipient.

- (2) Where a taxpayer who in the year of income is a lessee of land used for the purpose of producing assessable income has, either before or after the commencement of the lease, incurred

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expenditure in making improvements not subject to tenants rights on that land, and such improvements —

- (a) have been made under an agreement entered into after the commencement of this Act as consideration for the grant to him of that lease:
- (b) are improvements which he was required to make under the provisions of that lease; or
- (c) have been made with the written consent of the lessor given after the commencement of this Act,

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

- (3) The provisions of the last preceding subsection shall not apply in any case —
 - (a) where the lease is a lease of land to a company from and individual or from a company to an individual, and the individual directly or indirectly controls the voting power of the company:
 - (b) where the Commissioner is of the opinion that, in consequence of the terms and conditions of the lease or of any other circumstances, the lessor is in substantial control of the operations of the lessee, or the lessee is in substantial control of the operations of the lessor.
- (4) Where any taxpayer succeeds to any lease or share therein upon the death of any person who has paid such premium or expended such money, he shall be entitled to the same deduction, or part thereof proportionate to his share in the lease, as that person would have been entitled to under this section had he lived.

90. Not to apply to certain leases

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

Division 5 — Partnerships

91. Definitions

In this Division —

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

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

92. Partnerships

A partnership shall furnish a return of the income of the partnership, but shall not, except as provided in this Division, be liable to pay tax thereon.

93. Income of partner

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

94. Options of partners in respect of live stock

- (1) In calculating the net income of a partnership or a partnership loss for the purpose of assessing any partner's share, the

partnership shall be deemed to have exercised or failed to exercise all options and rights to select a value for live stock under his Act in the same manner as the partner has in fact exercised or failed to exercise those options and rights, and the partnership shall not, as a partnership, be entitled to exercise any such option or right.

- (2) The fact that a taxpayer has entered into a partnership or that any variation has taken place in the membership of any partnership of which the taxpayer is a member shall not —
- (a) affect any option or any right to select a value from live stock previously exercised by him under this Act; or
 - (b) Confer upon him any right to alter any such option or value without the leave of the Commissioner.

95.¹⁰ Partner not in receipt and control of share

- (1) Where a partnership is so constituted or controlled, or its operations are so conducted, that any partner has not the real and effective control and disposal of his share of the net income of the partnership, the Commissioner may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one —
- (a) had been received by the partner who has the real and effective control of that share; or
 - (b) had been divided between such other partners as have the real and effective control of that share in proportion to the extent to which, in the opinion of the Commissioner, they respectively have the real and effective control of that share —

as the case may be, and had been added to and included in his or their assessable income, and the partnership shall be liable to pay the tax so assessed.

- (2) Where the provisions of this section are applied to a share of the next income of a partnership, that share shall not be included in the assessable income of any partner.
- (3) For the purpose of this section, but without limiting its application, a partner shall be deemed not to have the real or effective control and disposal of any money received by him which is applied to meet the private or domestic obligations of any other partner.

[Section 95 amended by No. 12 of 1940 s.13.]

Division 6 — Trustees

96. Net income of trust estate

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

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

97. Trustees

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

98. Beneficiary not under any disability

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

99. Beneficiary under disability

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

100. Where no person presently entitled

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

101. Beneficiary under disability deriving income from other sources

- (1) The assessable income of any beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall include his individual interest in the net income of the trust estate or estates.
- (2) There shall be deducted from the income tax assessed against such beneficiary the tax paid or payable by any trustee in respect of that beneficiary's interest in the net income of the trust estate.

102. Discretionary trusts

For the purposes of this Division, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour

the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.

103. Income of deceased received after death

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

104. Revocable trusts and trusts for minors

- (1) Where a person has created a trust in respect of any income or income-producing assets, and —
 - (a) he has a power, whenever exercisable, to revoke or alter the trusts so as to acquire a beneficial interest in the income derived during the year of income, or the assets producing that income or any part of that income or of those assets; or
 - (b) income is under that trust, in the year of income, payable to or accumulated for or applicable for the benefit of a child or children of that person who is or are under the age of twenty-one years and unmarried —

the net income of the trust estate or part thereof attributable to that beneficial interest (as the case may be) shall if the Commissioner so determines be deemed to be income of that person if living.

- (2) Any income tax which by virtue of this section is chargeable on and is paid by the person creating the trust may be recovered by that person from any trustee or beneficiary to whom the income is payable by virtue or in consequence of the creation of the trust.

Division 7 — Banks

105. Definitions

(1) In this Division —

“Average value” in relation to any assets in or out of Australia means the average value of those assets for the year of income ascertained in the manner provided by section sixty AD of the *Commonwealth Bank Act 1911-1932*, as in force at the commencement of this Act for the preparation of the quarterly abstracts furnished by banks in accordance with that section:

Provided that nothing herein shall be held to bind the Commissioner as to the value of any asset, whether within or without the State, at any time if in his opinion, formed before or after assessment, the State is prejudicially affected by the value adopted for such asset.

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

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

“Gross income from all sources” means the gross income derived from sources in and out of the State, including the profit, if any, derived from the sale, conversion or redemption of Government or other securities; but does not include discount derived from and upon the issue of Commonwealth Treasury Bills or interest derived from exempt assets.

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

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

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

(2) For the purposes of this Division —

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

106. Net income from all sources

- (1) The net income of a bank from all sources shall be its gross income from all sources less the deductions allowable under subsection two of this section.
- (2) The deductions so allowable from the gross income from all sources shall be —
 - (a) the deductions which would be allowable deductions if the gross income from all sources were derived from a source in the State, exempt —
 - (i) interest paid or payable; and
 - (ii) the deductions provided under paragraphs (a) and (b) of subsection (1) of section seventy-five, section seventy-six, and paragraph (a) of subsection (1) of section seventy-nine of this Act;
 - (b) the sum which bears to the total interest payable by the bank for the year of income the same proportion as the average value over that year of its non-exempt assets bears to the average value over that year of its total assets except specific exempt assets;
 - (c) where the gross income from all sources includes a profit arising from the sale, conversion or redemption of exempt assets except specific exempt assets and Commonwealth Treasury Bills, the sum which bears to the total amount of interest payable by the bank for the year of income the same proportion as the average value over that year of such exempt assets sold, converted or redeemed bears to the average value over that year of its total assets (except specific exempt assets) not exceeding the amount of the profit so included;
 - (d) any loss arising from the sale, conversion or redemption of Government or other securities.

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

107. Assessable income

- (1) The assessable income of a bank shall include so much of the net income of the bank from all sources as bears to that net income the same proportion as the average value over the year of income of its non-exempt assets in the State bears to the average value over that year of its non-exempt assets in and out of the State.
- (2) Any amount which is included in the gross income from all sources of a bank shall not, except to the extent provided in this Division, be included in the assessable income of the bank, and any deduction which is taken into account in ascertaining the net income from all sources of the bank shall not, except to the extent so provided, be an allowable deduction.
- (3) From the amount included under this section in the assessable income of a bank there shall be deducted any amounts which are allowable deductions under paragraphs (a) and (b) of subsection (1) of section seventy-five, section seventy-six, and paragraph (a) of subsection (1) of section seventy-nine of this Act.

108. Commencement of ss.106 and 107

- (1) Sections one hundred and six and one hundred and seven of this Act shall commence on the publication in the *Gazette* of a proclamation¹¹ by the Governor that in his opinion the Parliaments of at least three States other than the State of Western Australia have passed similar provisions to those sections and upon sections one hundred and six and one hundred and seven coming into operation the provisions of those sections shall not apply in any case where —

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- (a) a bank has elected in the prescribed manner that those sections shall not apply with respect to the assessment of its income; and
 - (b) the Commissioner is satisfied that the laws of at least three States other than the State of Western Australia enable a similar election to be made, and is further satisfied that in all the other State of Australia in which the bank derives income and the laws of which enable a similar election to be made, the bank has made that election.
- (2) In the proclamation by the Governor under subsection one of this section the Governor shall declare the year of income as from the commencement of which sections one hundred and six and one hundred and seven of this Act shall be deemed to have come into force.¹²
- (3) Subject to subsection five of this section an election made under subsection one of this section within the period of six months after the end of the year of income shall apply to that year of income and subsequent years, and an election made after such period shall apply to the year of income in which it is made and subsequent years: Provided that an election made within six months after the date of publication of the proclamation shall apply to the year of income as from the commencement of which the said sections first came into force.
- (4) With respect to the years of income prior to the year of income to which sections one hundred and six and one hundred and seven apply, and with respect to years of income to which such sections do not apply by reason of an election as aforesaid and the Commissioner being satisfied as aforesaid the following provisions shall apply: —
- (a) the allowable deduction in respect of interest payable to a bank for the year of income shall be the sum which bears to the total interest payable by the bank for the year of income the same proportion as the average value

over that year of its non-exempt assets in the State bears to the average value over that year of its total assets except specific exempt assets;

- (b) notwithstanding section fifty-three of this Act the expenditure (other than interest) incurred in relation to the gaining or production of income derived from exempt assets shall be an allowable deduction;
 - (c) for the purpose of determining the deduction for head office expenses the expression “total income” in section fifty-four of this Act shall not include income derived from exempt assets;
 - (d) outgoings incurred in the State in relation to funds employed out of the State shall be an allowable deduction, and outgoings incurred out of the State in relation to funds employed in the State shall not be an allowable deduction. For the purposes of this paragraph “outgoings” does not include interest or head office expenses.
- (5) Except with the previous written consent of the Commissioner, a bank shall not withdraw an election made under subsection one of this section.

109. Conversion of ex-Australian funds

- (1) except for the valuing of assets for the purposes of subsection one of section one hundred and seven of this Act, and notwithstanding sections twenty-one and twenty-three and paragraph (c) of subsection two of section one hundred and five of this Act, a bank, if it elects in the prescribed manner to do so, may convert its funds out of Australia at the rates and in the manner specified in this section.
- (2) The conversion of such funds at the beginning of the year of income shall be made at the rate or respective rates adopted for the purpose of assessment under this or the previous Act at the end of the year immediately preceding the year of income.

- (3) The conversion of such funds at the end of the year of income shall be made —
- (a) in respect of so much of those funds as does not exceed the amount of the funds at the beginning of the year of income, at the rate of respective rates applied at that date pursuant to subsection two of this section; and
 - (b) in respect of the balance, if any, at the rate or respective rates arrived at by averaging separately the value of the whole of the funds acquired during the year of income in each country out of Australia, according to the respective rates at which exchange could have been effected by telegraphic transfer at the respective dates of acquisition of such funds.
- (4) In respect of transactions in exchange by a bank to which the preceding provisions of this section apply and which elects in the prescribed manner to come under this subsection the order in which any funds of the bank in a country out of Australia shall be deemed to have been disposed of shall be the order arrived at by treating funds in such country acquired as such in any year of income as having been disposed of before funds in such country acquired as such in an earlier year of income.

Division 8 — Life assurance companies

110. Definitions

In this Division —

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

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

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

111. Application of Division

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

112. Premiums, etc., not assessable income

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

113. Deductions not allowable

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

114. Net investment income

- (1) The net investment income of a company shall be its investment income less —
 - (a) the sum of the management expenses of the life assurance business of the company; and
 - (b) the amount which would be an allowable deduction in respect of depreciation of property used by the company for the purposes of that business if that business were wholly carried on in this State;

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

- (2) The net Australian investment income of a company shall be so much of the net investment income of the company as bears to

the net investment income the same proportion as the liabilities of the company under life assurance policies held by Australian policy holders bears to the liabilities of the company under all life insurance policies of the company.

115. Assessable income

- (1) Except where subsection two of this section applies, the assessable income of a company shall include so much of the net investment income of the company as bears to the net investment income the same proportion as the total amount assured under life assurance policies held by policy holders of the company who are residents of the State bears to the total amount assured under all life assurance policies of the company.
- (2) Where, at the end of the year of income, at least seventy-five per centum of the liabilities of a company under policies of life assurance is in respect of policies held by policy holders out of Australia, the assessable income of the company shall include so much of the net Australian investment income of the company as bears to that investment income the same proportion as the total amount assured under life assurance policies held by policy holders of the company who are residents of the State bears to the total amount assured under life assurance policies held by Australian policy holders of the company.
- (3) Any amount which is included in the investment income of the company shall not, except to the extent provided in this Division, be included in the assessable income of the company and any deduction which is taken into account in ascertaining the net investment income of the company shall not, except to the extent so provided, be an allowable deduction.

116. When liabilities exceed assets

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

income tax in respect of the income derived in that year from that business.

Division 9 — Co-operative and mutual companies

117. Co-operative companies

- (1) In this Division, “**co-operative company**” means a company the rules of which limit the number of shares which may be held by, or by and on behalf of, any one shareholder, and prohibit the quotation of the shares for sale or purchase at any stock exchange or in any other public manner whatever and which is established for the purpose of carrying on any business having as its primary object or objects one or more of the following: —
 - (a) the acquisition of commodities or animals for disposal or distribution among its shareholders;
 - (b) the acquisition of commodities or animals from its shareholders for disposal or distribution;
 - (c) the storage, marketing, packing or processing of commodities of its shareholders;
 - (d) the rendering of services to its shareholders;
 - (e) the obtaining of funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.
- (2) The term also includes a company which has no share capital and which is established for the purpose of carrying on any business having as its primary object or objects any one or more of the foregoing objects.
- (3) If in the ordinary course of business of a company in the year of income, the value of commodities and animals disposed of to or acquired from its shareholders by the company, or the amount of its receipts from the storage, marketing, packing and processing of commodities of its shareholders, or from the rendering of services to them, or the amount lent by it to them,

is less respectively than ninety per centum of the total value of commodities and animals disposed of or acquired by the company, or of its receipts from the storage, marketing, packing and processing of commodities, or from the rendering of services, or of the total amount lent by it, that company shall in respect of that year be deemed not to be a co-operative company.

118. Sums received to be taxed

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

119. Deductions allowable to co-operative company

- (1) So much of the assessable income of a co-operative company as —
 - (a) is distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company; and in the case of a company to which paragraph (e) of section one hundred and seventeen applies, as
 - (b) is distributed among its shareholders as interest shall be an allowable deduction.
- (2) No such rebate or bonus based on purchases made by a shareholder from the company shall be included in his assessable income except where the price of such purchases is allowable as a deduction in ascertaining his taxable income of any year.
- (3) Amounts allowed under paragraph (b) of this section shall be assessable as income from property in the hands of the shareholders.

120. Mutual insurance associations

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

Division 10 — Mining

121. Deduction for capital expenditure

A person (other than a company) deriving income from a mining tenement, as defined by the *Mining Act 1904*, and amendments thereto, worked by him, or on his behalf, shall not be liable to pay tax on such income until that income including all income which was subject to a similar exemption under the previous Acts has exceeded the amount of the capital expenditure by him on such tenement.

122. Deduction for cost of development

A mining company shall be allowed a deduction for money expended in the State in development of its mining property, including money expended in testing and working mines held under option of purchase.

For the purposes of this section, the term “**development**” shall include all underground mining work the cost of which is not deductible under Division three.

123. Capital expenditure of companies

- (1) A company other than a coal mining company, which carries on mining operations as its principal business, shall be exempt

from taxation under this Act until the profits derived by the company after the 30th June, 1924, as assessed under the previous Acts, and the taxable income as assessed under this Act equal the amount of capital paid up in cash after that date, and tax shall only be payable on the taxable income of the company so far as such profits and taxable income aforesaid exceed the amount of capital paid up in cash after that date.

- (2) If the company carries on mining operations in and out of the State, or carries on any other business than mining, the exemption under this section shall be limited to the capital invested by it in the mining business in Western Australia.

Provided that the company shall, as and when required by the Commissioner, supply information showing full details as to how the capital was expended, and what assets were acquired with the capital paid up after the thirtieth day of June, one thousand nine hundred and twenty-four.

Division 11 — Interest paid by companies

124. Interest paid by company to a non-resident

- (1) Where interest is paid or credited by a company to any person who is not a resident of Australia —
- (a) on money secured by debentures of the company and used in the State, or used in acquiring assets for use or disposal in the State; or
 - (b) on money lodged at interest in the State with the company,

the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax on that interest at the rate declared by Parliament.

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

- (3) Where a company establishes, to the satisfaction of the Commissioner, that a person can enforce payment, without any deduction under this section, of interest on any such money secured by debentures issued prior to the commencement of this Act, or on money lodged at interest with it prior to such commencement, this section shall not apply in respect of the interest paid or credited to that person.
- (4) this section shall not apply to interest paid or credited to a company which is carrying on business in the State and which has a public officer duly appointed under this Act, unless the Commissioner, by notice in writing to the company paying or crediting the interest, directs that the section shall so apply.

125. Interest paid by a company on bearer debentures

- (1) Where interest is paid or credited by a company in respect of debentures payable to bearer the names and addresses of the holders of which are not supplied to the Commissioner by the company, the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax upon the total amount so paid or credited in respect of those debentures at the rate of tax which would be applicable if that amount were the taxable income of one individual.
- (2) The company may deduct and retain for its own use from the amount payable to any person who is a holder of any of those debentures an amount bearing the same proportion to the amount of tax payable by the company under this section as the interest payable to that person bears to the total interest payable in respect of those debentures.
- (3) Where the Commissioner is satisfied that that person is not liable to furnish a return, he shall refund to him the amount of tax paid by the company in respect of his debentures.

126. Rebate of tax paid by company

- (1) Where the company pays tax under this Division on any interest, and that interest is included in the assessment of the person to whom it was paid or credited, the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person.
- (2) Where that person is a resident of Australia and is not liable to pay income tax, or the tax paid by the company exceeds the amount of tax payable by that person, the amount of tax paid by the company or, as the case may be, the amount of the excess, shall be refunded to that person.

127. Tax on interest

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

Division 12 — Oversea ships

128. Taxable income of ship owner or charterer

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

129. Master or agent to make returns

The master of the ship, or the agent or other representative in the State of the owner or charterer, shall, when called upon by

the Commissioner by notice in the *Gazette* or by any other notice to him, make a return of the amount so paid or payable.

130. Determination by Commissioner

If such return is not made, or if the Commissioner is not satisfied with the return, he may determine the amount so paid or payable.

131. Assessment of tax

The master, agent or representative, as agent for the owner or charterer, may be assessed upon the taxable income and shall be liable to pay the tax assessed.

132. Master liable to pay

- (1) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master shall be liable to pay the tax.
- (2) This section shall not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

133. Notice of assessment

Where any person is liable to pay tax under this Division, the Commissioner shall give notice to him of the assessment, and he shall forthwith pay the tax.

134. Detention of ship

Subject to the consent of the Commonwealth the Collector of Customs shall have power to detain the ship until he is satisfied that any tax which has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

135. Freights payable under certain agreements

- (1) Where goods are shipped in pursuance of an agreement of the kind specified in section seven C of the *Australian Industries Preservation Act 1906-1937*, of the Commonwealth, the amount paid or payable to the owner or charterer of the ship in respect of the carriage of those goods, shall, for the purposes of this Division, be deemed to be the amount remaining after deducting from the amount which would be payable according to the gross rate of freight specified in the agreement the amount of any rebate allowed in pursuance of the agreement or any payment, whenever made, by the owner or charterer, or out of funds provided by the owner or charterer, to any person or persons, being the owner or shipper of the goods, or the agent of either of them, in respect of the shipment.
- (2) This section shall apply to all assessments made after the twentieth day of November, one thousand nine hundred and thirty-one.

[Section 135 inserted by No. 12 of 1940 s.14, as s.133A now renumbered s.135.]

Division 13 — Western Australian business controlled outside the State

136. Western Australia business controlled out of the State

Where any business carried on in the State —

- (a) is controlled principally by non-residents of the State or by a foreign company; or
- (b) is carried on by a company a majority of the shares in which is held by or on behalf of —
 - (i) a foreign company; or
 - (ii) any other company which carries on business out of the State; or

- (iii) persons who hold a majority of the shares in a company such as is referred to in subparagraphs (i) and (ii) of the paragraph; or
- (c) is carried on by a company incorporated under the laws of the State which holds or on behalf of which other persons hold a majority of the shares in a foreign company or a company carrying on business out of the State

and it appears to the Commissioner that the taxable income disclosed in respect of the business is less than the amount of taxable income which might be expected to arise from that business, the person carrying on the business in the State shall, notwithstanding any other provision of this Act, be liable to pay income tax on a taxable income of such amount of the total receipts (whether cash or credit) of the business as the Commissioner determines.

Division 14 — Film business controlled abroad

137. Film business controlled out of Australia

Where any person who is not a resident of Australia derives income under any contract or agreement with any person in relation to the carrying on in the State by that person of a business of distributing, exhibiting, or exploiting motion picture films, or of leasing such films to other persons, or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connection with such films, and that business —

- (a) is controlled principally by person not residents of Australia; or
- (b) is carried on by a company a majority of the shares in which is held by or on behalf of persons not residents of Australia; or

- (c) is carried on by a company which holds, or on behalf of which other person hold, a majority of the shares in a company which is not a resident of Australia

the person who is not a resident of Australia deriving that income shall be liable to pay income tax thereon.

138. Taxable income

Where any person not a resident of Australia has derived such income, an amount equal to thirty per centum of the gross income so derived shall be included in his taxable income:

Provided that, where it is proved to the satisfaction of the Commissioner that that amount should be varied, he may assess the amount to be so included at such other amount as he determines.

139. Liability of agent

Any person carrying on business in the State, who has entered into any such contract or agreement with any person resident out of Australia, shall for all purposes of this Act be the agent of that person who is not a resident of Australia and shall not make any payment of any income assessable under this Division to any such person who is not a resident of Australia or transfer out of the State any such income for the purpose of making such payment, unless and until arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed to be paid by any such person who is not a resident of Australia.

140. Penalty

Any person who makes any payment or transfers any income in contravention of the last preceding section of this Act shall be guilty of an offence, and for every such offence shall be liable to pay the amount of tax which is or becomes payable in respect of that income by the person who is not a resident of Australia for

whom the person paying or transferring the income is the agent, and in addition a penalty of not more than one hundred pounds.

Division 15 — Insurance with non-residents

141. Interpretation

In this Division —

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

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

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

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

“insurer” means any person resident out of Australia who undertakes liability under any insurance contract.

142. Income derived by insurers out of Australia

Where an insured person, whether a resident or non-resident of the State, has entered into an insurance contract with an insurer, and the insured property at the time of the making of the contract is situated in the State or the insured event is one which can happen only in the State, the premium paid or payable under the contract shall be included in the assessable income of the insurer, and shall be deemed to be derived by him from sources in the State, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

143. Where insured person is a resident

Where an insured person who is a resident of the State has entered into an insurance contract with an insurer, and an agent or representative in the State of the insurer was in any way instrumental in inducing the entry of the insured person into that contract, any premium paid or payable under the contract shall, wherever the insured property is situate, or the insured event may happen, be included in the assessable income of the insurer, and shall be deemed to be derived by him from sources in the State, and, unless the contract was made by a principal office or branch established by the insurer in Australia, this Division shall apply to that premium.

144. Taxable income of insurer resident out of Australia

The insurer shall be deemed to have derived in any year, in respect of the premiums paid or payable in that year under such contracts, a taxable income equal to ten per centum of the total amount of such premiums:

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

145. Liability of agents of insurer

The insured person and any person in the State acting on behalf of the insurer shall be the agents of the insurer, and shall be jointly and severally liable as such for all purposes of this Act. If either of those persons pays or credits to the insurer any amount in respect of the insurance contract before arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed

under this Division in respect of that amount, that person shall be personally liable to pay that tax.

146. Deduction of premiums

Notwithstanding any other provision of this Act no such premium shall be an allowable deduction to the insured person unless arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed in respect of that premium.

147. Information to be furnished

Every person who has paid any such premium due under an insurance contract shall furnish, with his return for the year of income in which the payment is made, particulars as to the name and address of the insurer and the amount paid to him.

148. Rate in special circumstances

Where the insurer satisfies the Commissioner that, on account of special circumstances, it is necessary that the rate of tax payable by him under this Division should be ascertained at the time when premiums are paid to him, the Commissioner may direct that the tax so payable in respect of premiums paid during any financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

149. Re-insurance with non-resident

- (1) Notwithstanding anything contained in this Act, where a person carrying on the business of insurance in the State re-insures the whole or part of any risk with another person carrying on a similar business but not in the State —
 - (a) the premium paid or credited in respect of any such re-insurance shall not be —

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- (i) an allowable deduction to the person carrying on the business of insurance in the State; or
 - (ii) included in the assessable income of the person carrying on the business of insurance outside the State; and
- (b) the income of the person carrying on the business of insurance in the State shall not include sums recovered from the person carrying on business outside the State in respect of a loss or risk so re-insured.
- (2) This section shall have effect and operate and shall be deemed to have had effect and to have been in operation as from the date of the coming into operation of this Act.

[Section 149 inserted by No. 12 of 1940 s.15, in the place of s.147 of No. 13 of 1927, repealed, and now renumbered s.149.]

Division 16 — Tax on racing stakes

150. Tax on racing stakes

- (1) A club or company which conducts horse-racing shall be liable, without affecting its liability (if any) in respect to other income tax payable by it, to pay at such rate as may be declared by Parliament income tax on the stakes won in any horse-race conducted by it.
- (2) The club or company may deduct and retain from the stake sufficient money to pay the tax thereon.
- (3) Returns under this Division shall be due and the tax shall be payable within fourteen days of the date when the stakes are payable.

Part IV — Returns and assessments

151. Annual returns

- (1) Every person shall, if required by the Commissioner by notice published in the *Gazette*, furnish to the Commissioner in the prescribed manner, within the time specified in the notice, or such extended time as the Commissioner may allow, a return signed by him setting forth a full and complete statement of the total income derived by him during the year of income, and of any deductions claimed by him:

Provided that the Commissioner may, in the notice, exempt from liability to furnish returns such classes of persons not liable to pay income tax as he thinks fit, and any person so exempted need not furnish a return unless he is required by the Commissioner to do so.

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

152. Further returns, etc

- (1) Every person shall, if required by the Commissioner, whether before or after the expiration of the year of income, furnish to the Commissioner, in the manner and within the time required by him, a return, or a further or fuller return, of the income or any part of the income derived by him in any year, whether on his own behalf or as agent or trustee, and whether a return has or has not previously been furnished by him for the same period.
- (2) If no income has been so derived by the person so required to furnish a return, he shall nevertheless furnish a return stating that fact.

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153. Special returns

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

154. Returns deemed to be duly made

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

155. Certificate of sources of information

- (1) any person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner shall sign a Certificate (in this Act called an “**agent’s certificate**”) in the prescribed form to be indorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.
- (2) Every person carrying on business who does not furnish with his return an agent’s Certificate shall furnish particulars in the prescribed form, indorsed on or annexed to the return, setting out such information as to the sources available for the compilation of the return as is prescribed.

156. Assessments

From the returns, and from any other information in his possession, or from any one or more of these sources, the Commissioner shall make an assessment of the amount of the taxable income of any taxpayer, and of the tax payable thereon.

157. Default assessments

If —

- (a) any person makes default in furnishing a return; or

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

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

158. Special assessments

- (1) The Commissioner may at any time during any year, or after its expiration, make an assessment of the taxable income derived in that year or any part of it by any taxpayer, and of the tax payable thereon.
- (2) Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

159. When taxpayer about to leave the State

- (1) Whenever the Commissioner has reason to believe that a taxpayer is about to leave the State he may —
 - (a) forthwith require that taxpayer to furnish a return of income for any year or years of income if a return for any period has not already been furnished by the taxpayer, and a return of income for the period from the first day of the current year of income to the date of the taxpayer's proposed departure;
 - (b) forthwith make assessments on any return so furnished;
 - (c) make an assessment in default of such returns or without requiring any return.

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

160. Assessments on all persons liable to tax

Where, under this Act, any person is liable to pay tax, the Commissioner may make an assessment of the amount of such tax.

161. Amendment of assessments

- (1) The Commissioner may, subject to this section, at any time amend any assessment whether made under this or the previous Acts, by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.
- (2) Where a taxpayer has not made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and the Commissioner is of opinion that there has been an avoidance of tax, the Commissioner may —
- (a) where he is of opinion that the avoidance of tax is due to fraud or evasion, at any time; and
 - (b) in any other case, within six years from the date upon which the tax became due and payable under the assessment,
- amend the assessment by making such alterations therein or additions thereto as he thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of tax as the case may be.
- (3) Where a taxpayer has made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and an assessment is made after that disclosure, no amendment of the assessment increasing the liability of the taxpayer in any particular shall be made except to correct an error in calculation or a mistake of fact; and no such amendment shall be made after

the expiration of three years from the date upon which the tax became due and payable under that assessment.

- (4) No amendment effecting a reduction in the liability of a taxpayer under an assessment shall be made except to correct an error in calculation or a mistake of fact; and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.
- (5) Where an assessment has, under this section, been amended in any particular, the Commissioner may, within three years from the date upon which the tax became due under the amended assessment, make, in or in respect of that particular, such further amendment in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the taxpayer under the assessment as is just.
- (6) Where an application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment, and the taxpayer has supplied to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application, the Commissioner may amend the assessment when he decides that application notwithstanding that that period has elapsed.
- (7) Nothing contained in this section shall prevent the amendment of any assessment in order to give effect to the decision upon any appeal, or its amendment by way of reduction in any particular in pursuance of an objection made by the taxpayer or pending any appeal.
- (8) Where —
 - (a) any provision of this Act is expressly made to depend in any particular upon a determination, opinion, or judgment of the Commissioner; and

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

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

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

162. Where no notice of assessment served

- (1) Where a taxpayer has duly furnished to the Commissioner a return of income, and no notice of assessment in respect thereof has been served within twelve months thereafter, he may in writing be registered post request the Commissioner to make an assessment.
- (2) If within three months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer, any assessment issued thereafter in respect of that income shall be deemed to be an amended assessment, and for the purpose of determining whether such amended assessment may be made, the taxpayer shall be deemed to have been served on the last day of the three months with a notice of assessment in respect of which income tax was payable on that day.

163. Refund of tax overpaid

Where by reason of any amendment the taxpayer's liability is reduced, the Commissioner may refund any tax overpaid.

164. Amended assessment to be an assessment

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

165. Notice of assessment

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

166. Validity of assessment

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

167. Judicial notice of signatures

All courts and all persons having by law or consent of parties authority to hear, receive and examine evidence, shall take judicial notice of the signature of every person who is or has been the Commissioner; provided such signature is attached or appended to any official document.

168. Evidence

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

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- (2) The production of a *Gazette* containing a notice purporting to be issued by the Commissioner shall be conclusive evidence that the notice was so issued.
- (3) The production of a document under the hand of the Commissioner, purporting to be a copy of a document issued by the Commissioner, shall be conclusive evidence that the document was so issued.
- (4) The production of a document under the hand of the Commissioner purporting to be a copy of or extract from any return or notice of assessment shall be evidence of the matter therein set forth to the same extent as the original would be if it were produced.

Part V — Objections and appeals

169.¹³ Board of Review

- (1) For the purposes of this Part the Governor may appoint a Board of Review consisting of a chairman and two other members as hereinafter provided.
- (2) The State may arrange with the Commonwealth for the holding by the chairman and members of a Board of Review under the Commonwealth Act, known as the “*Commonwealth Income Tax Assessment Act 1936*” of the offices of chairman and members respectively of the Board under this Act.
- (3) Any agreement relating to any such arrangement may make provision for any other matters necessary or expedient to be provided for carrying out the arrangement.
- (4) The Governor may appoint as chairman and members of the Board the Chairman and members for the time being of any Board of Review under the said Commonwealth Act, and with the same tenure of office as they hold under the said Act; and may remove or suspend the chairman or other member if he is removed or suspended from his office under the said Commonwealth Act.
- (5) The Board of Review shall hear and determine appeals from assessments made under this Act and any other appeal in respect of an objection lodged under the provisions of section one hundred and seventy of this Act and shall have all the powers and functions of the Commissioner in making assessments, determinations, and decisions under this Act, and such assessments, determinations, and decisions of the Board, and its decisions upon appeal shall for all purposes (except for the purpose of objections thereto and appeals therefrom) be deemed to be assessments, determinations, or decisions of the Commissioner.

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- (6) The sittings of the Board of Review shall not be deemed to be public, and the Board shall at any time, on the application of either party, exclude from any such sitting, or require to withdraw therefrom, any person not concerned.

170. Objections

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

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

171. Decision of Commissioner

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

172. Appeals

- (1) A taxpayer dissatisfied with the decision may, within sixty days after such service, in writing request the Commissioner to treat his objection as an appeal, and forward it to the Board of Review or to the Supreme Court, and the Commissioner shall, in accordance with the request, forward the appeal to the Board or Court chosen.

- (2) If, within sixty days after receiving the request, the Commissioner does not refer the decision or forward the objection, the taxpayer may, at any time thereafter, give him notice in writing to do so, and the Commissioner shall, within sixty days after receiving the notice, refer the decision or forward the objection to the Board or Court accordingly:

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

- (3) Upon any appeal —
- (a) The taxpayer shall be limited to the grounds as stated in his objections, and
 - (b) the burden of proving that the assessment is excessive shall lie upon the taxpayer.
- (4) Where the appeal is to the Supreme Court it shall be heard and determined by a single judge sitting in Court or in Chambers.
- (5) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the appeal.

173. Power of Court on hearing of appeals

- (1) On the hearing of the appeal, the Supreme Court, or the Board of Review, may make such order as it thinks fit, and may either reduce or increase the assessment.
- (2) The court may, in its discretion, award costs.
- (3) On the hearing of the appeal the judge of the Supreme Court may, if he thinks fit, and the Board of Review shall, on the request of the party, state a case in writing for the opinion of the Supreme Court upon any question arising in the appeal which in

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the opinion of the judge or of the Board of Review, as the case may be, is a question of law.

- (4) The Supreme Court shall hear and determine the question, and shall be at liberty to draw from the facts and documents stated or comprised in the case inferences whether of law or fact, and shall remit the case with its opinion to the judge or the Board of Review, as the case may be, and may make such order as to costs of the case stated as it thinks fit.
- (5) An appeal shall lie to the Court of Appeal from any order made under subsection one of this section.

[Section 173 amended by No. 45 of 2004 s. 37.]

174. Rules

- (1) the Governor may make rules for regulating the practice and procedure in relation to appeals dealt with by the Board of Review.
- (2) The judges of the Supreme Court or a majority of them may make rules of Court for regulating the practice and procedure in relation to appeals to the Supreme Court against assessments.

175. Pending appeal not to delay payment of tax

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

176. Adjustment of tax after appeal

If the assessment is altered on the appeal a due adjustment shall within thirty days of the decision or of the receipt by the Commissioner of all information necessary for him to give effect to that decision, as the case may be, be made for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

Part VI — Collection and recovery of tax

Division 1 — General

177. When tax payable

- (1) Subject to the provisions of this Part, any income tax assessed shall be due and payable by the person liable to pay the tax thirty days after the service of a notice of assessment.
- (2) Where a date is specified in the notice as the date upon which the tax is to be due and payable, that date shall be deemed to be the date upon which it is due and payable unless the contrary to proved.

178. Taxpayer leaving the State

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

179. Extension of time and payment by instalments

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

180. Penalty for unpaid tax

- (1) If any tax remains unpaid after the time when it becomes due and payable at the rate of ten per centum per annum on the amount unpaid, computed from that time: or, when an extension of time has been granted under the last preceding section of this Act, from such date as the Commissioner determines, not being a date prior to the date on which the tax was originally due and payable.

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

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

[Amended by No. 12 of 1940 s.17.]

181. Tax a debt due to the King

Income tax when it becomes due and payable shall be a debt due to the King on behalf of the State and payable to the Commissioner in the manner and at the place prescribed.

182. Recovery of tax

Any tax unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.

183. Persons leaving Australia to obtain certificate

Upon the application of any person about to leave Australia, the Commissioner may, if he is satisfied —

- (a) that such person is not liable to pay Income tax; or
- (b) that arrangements have been made to the satisfaction of the Commissioner for the payment of all Income tax which is or may become payable by such person; or
- (c) that the Income tax payable by such person is irrecoverable —

issue a certificate that for the purposes of this Act there is no objection to the departure of such person from Australia.

[Section 183 inserted by No. 12 of 1940 s.18 in place of s.181 of No. 13 of 1937, repealed, and now renumbered s.183.]

184. Authority to travel not to issue without certificate

- (1) Unless and until such certificate has been presented to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship or aircraft by which that person intends to leave Australia at the port or place at which his passage is to be booked, an authority for that person to travel by that ship or aircraft shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.
- (2) Any person who, in contravention of this section, issues an authority to any person to travel by the ship or aircraft shall be personally liable to pay the amount of tax, if any, which is or may become due and payable by such person, and shall be guilty of an offence.

Penalty: Not less than fifty pounds or more than two hundred pounds.

185. Certificates and list of passengers to be lodged by ship-owner

- (1) The owner or charterer, or the representative of the owner or charterer, of every ship or aircraft which takes passengers on board at any port or place shall, on the first working day after the departure of the ship or aircraft from that port or place, lodge all certificates so presented at the office of the Commissioner of Taxation, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship or aircraft) who travelled on the ship or aircraft.
- (2) Every owner or charterer, or his representative, who fails to comply with this section shall be guilty of an offence.

Penalty: Not less than ten pounds or more than one hundred pounds.

186. Temporary business

- (1) Where the Commissioner has reason to believe that any person establishing or carrying on business in the State intends to carry on that business for a limited period only, or where the Commissioner for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of Income tax on, the Income derived by that person.
- (2) A person who fails to give security when required to do so under this section shall be guilty of an offence.

Penalty: Not less than two pounds or more than one hundred pounds.

187. Substituted service

If a taxpayer —

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

service of any process in proceedings against him for recovery of income tax may, without leave of the court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in the State.

188. Liquidators, etc

- (1) Every person (in this section called “**the trustee**”) —
 - (a) who is liquidator of any company which is being wound up; or
 - (b) who is received for any debenture holders, and has taken possession of any assets of a company; or

- (c) who is agent for a non-resident and has been required by his principal to wind up the business or realise the assets of his principal,

shall within fourteen days after he has become liquidator, or after he has so taken possession of assets, or after he has been so required by his principal, give notice thereof to the Commissioner.

- (2) The Commissioner shall as soon as practicable thereafter notify to the trustee the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company or principal, as the case may be.
- (3) The trustee —
 - (a) shall not without the leave of the Commissioner part with any of the assets of the company or principal until he has been so notified;
 - (b) shall set aside out of the assets available for the payment of the tax assets available for the payment of the tax assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
 - (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.
- (4) If the trustee fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under the last preceding subsection), he shall, to the extent of the value of the assets of which he has taken possession and which were available at any time for the payment of tax, be personally liable to pay the tax, and shall be guilty of an offence.
Penalty: Not less than one pound or more than fifty pounds.

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

189. When tax not paid during lifetime

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

- (a) The Commissioner shall have the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living.
- (b) The trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment.
- (c) The trustees shall be subject to penalties by way of additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living:
Provided that the Commissioner may in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.
- (d) The amount of any tax payable by the trustees shall be a first charge on all the taxpayer's estate in their hands.

190. Provision for payment of tax by trustees of deceased person

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

- (2) The trustees shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him.
- (3) Where the trustees are unable or fail to furnish a return, the Commissioner may make an assessment of the amount on which, in his judgment, tax ought to be levied and the trustees shall be liable to pay tax as if that amount were the taxable income of the deceased.
- (4) A trustee shall not be liable under this section to pay tax beyond the amount or value of the assets of the deceased which came to his hands or which but for his default ought to have come to his hands.

191. Commissioner may collect tax from person owing money to taxpayer

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

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

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

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- (i) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act, or the whole of the money when it is equal to or less than that amount; or
- (ii) such amount as is specified in the notice out of each of any payments which the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act is satisfied,

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

- (2) Any person who fails to comply with any notice under this section shall be guilty of an offence and for every such offence be liable to a penalty of not more than fifty pounds and in addition the court may order that person to pay to the Commissioner the sum which he was required to pay under this section.
- (3) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of such payment.
- (4) If the Commissioner receives any payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice thereof to that person.
- (5) In the foregoing provisions of this section —
 - “**tax**” includes any judgment debt and costs in respect of tax;
 - “**person**” includes company, partnership, Commonwealth or a State officer, and any public authority (corporate or unincorporate) of the Commonwealth or a State.

- (6) This section shall not be binding on the Commonwealth nor any employee thereof, unless the Governor General of the Commonwealth consents. If he so consents, this section shall be binding on the Commonwealth to the extent to which and in the manner in which the Governor General agrees, and on employees of the Commonwealth to the extent necessary to give effect to the agreement.

192. Consolidation assessments

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

Division 2 — Payment and collection of income tax by instalments¹⁴

193. Interpretation

- (1) In this Division, unless the contrary intention appears —
- “**Employee**” means any person who receives or is entitled to receive any salary or wages under a contract of service and includes —
- (a) a director of a company;
 - (b) an insurance or time-payment canvasser or collector paid wholly or in part by commission;
 - (c) a person in receipt of superannuation, pension, or retiring allowance;
 - (d) a member of Parliament;

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- (e) any person who receives or is entitled to receive any salary or wages as defined in paragraph (b) of the definition of “salary or wages,” hereunder.

“Employer” includes any person or any body corporate or unincorporate who or which pays or is liable to pay any salary or wages.

“Salary or wages” means salary, wages, commission, bonus or allowance paid (whether at piecework rates or otherwise) to any employee as an employee under a contract of service and includes —

- (a) any salary or wages paid to any officer or other person employed in any public department;
- (b) any payments made for labour only or substantially for labour only to any person under any classes of contracts of service or of contracts for service, which are prescribed by the Governor, for the purposes of this definition under and in accordance with subsection 92) of this section; and
- (c) any payments by way of remuneration made by a company to a director of such company;
- (d) any allowance paid to a member of Parliament;
- (e) any payment by way of superannuation, pension, or retiring allowance; and
- (f) any payment by way of commission to an insurance or time payment canvasser or collector.

“Tax payable by an employee” or **“Tax payable by the employee”** means any tax due and payable by the employee or which may become payable by the employee under any assessment made or to be made on any return which he has lodged or has been required to lodge, or under any assessment made or to be made in default of any such return.

“Tax stamps” means tax instalment stamps caused to be prepared and placed on sale by the Commissioner pursuant to this Division.

- (2) The Governor may by Order in Council published in the *Government Gazette* prescribe classes of contracts of service and contracts for service under which payments made for labour only or substantially for labour only to any person shall be deemed to be salary or wages.

[Section 193 inserted by No. 25 of 1939 s.4 (b) as s.191; amended by No. 12 of 1940 s.19, and now renumbered s.193.]

194. Deductions to be made although no rates of tax declared

Subject to Parliament declaring rates of and authorizing such deductions, deductions from salary or wages shall be made under or pursuant to this Division notwithstanding that the rates of tax have not been declared for the year of tax in which the deductions so authorized are to be made.

[Section 194 amended by No. 25 of 1939 s.4 (b), as s.192, now renumbered s.194.]

**195. Duty of employer to make deductions from salary or wages.
Amount of deductions**

- (1) Where an employee is entitled to receive salary or wages from an employer in respect of any week or part thereof amounting in all to thirty-seven shillings or more, the employer shall at the time of payment make deductions from such salary or wages for or on account of the tax payable by such employee at the rates declared or authorized by Parliament.

Provided that no deduction shall be made from such salary or wages paid to any aboriginal native or person subject to the *Native Administration Act 1905-1936*.

- (2) Where the salary or wages for any week or part of a week is or are paid in two or more separate sums, all sums so paid shall,

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for the purpose of computing the amount of deduction under this section, be treated as one sum and the deduction may be made at the option of the employer either wholly from any one of the sums or in part from each of two or more of the sums.

- (3) Where an employee received, in addition to his salary or wages, meals, sustenance, the use of premises, or quarters or any of them from his employer as part consideration for his services, the employee shall for the purpose only of computing the deduction under this section be deemed to have received as salary or wages, in addition to any money actually payable to him a sum (at the rate of fifteen shillings per week for meals or sustenance, and five shillings per week for the use of premises or quarters) for each week during which meals or sustenance or the use of premises or quarters are or is received.
- (4) (a) If any employer fails to make any deduction required by this section to be made he shall be guilty of an offence and for every such offence shall be liable to a penalty of not more than twenty pounds and in addition be liable to pay to the Commissioner any amounts omitted to be deducted.
- (b) The Commissioner may recover those amounts from the employer by action in any court of competent jurisdiction or the court may in proceedings for any offence under this section order payment of those amounts.
- (c) If the Commissioner recovers any such amount he shall retain the same as payment of any tax payable by the employee.
- (d) The employer may recover from the employee any amounts omitted to be deducted which he has paid to the Commissioner under this subsection.

[Section 195 inserted by No. 25 of 1939 s.4 (b), as s.193; amended by No. 12 of 1940 s.20, now renumbered s.195.]

196. Employer to deliver stamps to employee

- (1) At the time of paying to any employee any salary or wages from which a deduction under this Division is made, the employer or the person making the payment on his behalf shall deliver to the employee adhesive tax stamps denoting the amount deducted.
- (2) Forthwith after receiving from his employer any tax stamps in accordance with this Division every employee shall securely affix them to a clear space on a page of the book which he is required to provide and keep pursuant to the next succeeding section but shall not affix any stamp to one side of a page if a stamp has already been affixed to the other side of that page.
- (3) Every employee who has received any stamps from his employer as aforesaid shall, forthwith after affixing them in the said book and in the presence of his employer or the person making the payment on behalf of such employer, write in ink on every such stamp his name or initials and the date of payment:

Provided that this subsection shall not apply in the case of any employee who receives such stamps as aforesaid from any employer who has obtained the authority in writing of the Commissioner to deliver to his employees tax stamps make in such manner as the Commissioner approves.

- (4) Any person who commits any contravention of or fails to comply with any provision of this section shall be guilty of an offence.

Penalty: Twenty pounds.

[Inserted by No. 25 of 1939 s.4 (b), as s.194.]

197. Employee to keep stamp book; production of book

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

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

[Inserted by No. 25 of 1939 s.4 (b), as s.195.]

198. Employee may produce book to Commissioner

- (1) Any employee from whose salary or wages deductions have been made under this Division may, subject to the regulations, at any time produce to the Commissioner the book containing the stamps issued to him under this Division, and the Commissioner shall thereupon cancel the said stamps.
- (2) The Commissioner may apply the amount represented by the face value of those stamps in payment or part payment of any tax payable by the employee, and that amount shall be deemed to have been paid by the employee in satisfaction or part satisfaction of that tax and not otherwise.
- (3) If, however, there is no tax payable by the employee, or if the face value of the stamps produced by the employee exceeds the amount of such tax payable, the Commissioner shall, without any further or other authority than this Act, refund to the employee the face value of the stamps, or, as the case may be, the amount by which the face value of the stamps exceeds the amount of such tax.
- (4) If the deductions made under this Division from the salary or wages of any employee up to the last day of May in any financial year are insufficient to pay the tax payable by that employee, the balance of the said tax, if it has not previously become due and payable shall be due and payable fourteen days thereafter, and if not then paid shall bear additional tax as provided for by this Act.

[Inserted by No. 25 of 1939 s.4 (b), as s.196.]

199. Group schemes

- (1)
 - (a) If arrangements satisfactory to the Commissioner are made between any employer and any of his employees whereby for the purpose of paying tax due or to become due by those employees such employees will suffer periodical deductions under this Division in accordance with such arrangements from their salary or wages the Commissioner may, in writing, notify the employer that stamps in respect of the salary or wages of those employees need not be delivered or affixed in accordance with this Division during the period mentioned in the notice and thereafter the employer shall make deductions in accordance with such arrangements from the salary or wages of those employees during the said period.
 - (b) If the Commissioner is of opinion that having regard to the nature of the employment of any class or classes of employees it is not desirable that an employer of any employees of any such class should deliver to those employees stamps in accordance with this Division, the Commissioner may in writing notify the employer that stamps in respect of the salary or wages of those employees shall not be delivered or affixed in accordance with this Division during the period mentioned in the notice; and thereafter the employer shall make deductions in accordance with the requirements of such notice from the salary or wages of those employees during the said period.
- (2) The amount of any deductions so made or purporting to have been so made shall be deemed to be a debt due to the crown, and shall be paid to the Commissioner by such employer at such times or intervals as the Commissioner appoints.

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- (3) If any employer fails to pay such amount to the Commissioner within seven days after the time or interval appointed by the Commissioner he shall be guilty of an offence.
Penalty: One hundred pounds.
- (4) If the amount so deducted from the salary or wages of any such employee during any year of tax exceeds the amount of tax payable by the employee, the Commissioner shall upon payment of the tax and without any further or other authority than this Division refund to such employee the excess amount, and if the Commissioner is satisfied that there is no tax payable by the employee the Commissioner shall, without any further or other authority than this Division, refund to such employee the amount so deducted.
- (5) If the amount so deducted from the salary or wages of any employee during any year of tax up to the fifteenth day of June of that year is insufficient to pay the tax payable by the employee, the balance of such tax shall be due and payable on that date.
- (6) Every employer notified in writing by the Commissioner under subsection (1) of this section shall —
- (a) furnish to the Commissioner at such times or intervals as the Commissioner appoints, statements, lists, or any other information which the Commissioner requires for the purposes of this Division; and
 - (b) issue to any employee at such time as the Commissioner appoints a certificate showing the amount deducted under this section during such period or periods as the Commissioner determines.
- (7) The Commissioner may cancel a notice under this section at any time, and thereafter the duties of the employer and the employee under this Division shall be the same as if the said notice had not been given.

[Inserted by No. 25 of 1939 s.4 (b), as s.197.]

200. State Government employees

- (1) Except where arrangements are made under the last preceding section this Division shall apply to all employees of the State and the Permanent Head of the Department in which any such employee works shall be deemed to be his employer within the meaning of this Division.
- (2) If any person receives salary or wages out of the general revenue of the State, but is not employed in any department, the Treasurer shall be deemed to be the employer.

[Inserted by No. 25 of 1939 s.4 (b), as s.198.]

201. Arrangements with Commonwealth

The State may enter into an agreement with the Commonwealth for the deduction by the Commonwealth from periodical payments of salary or wages paid to persons who are officers within the meaning of section two of the *Income Tax Collection Act 1938*, of the Commonwealth of the tax payable under this act in respect of salaries or wages paid by the Commonwealth to such persons. Any amounts deducted in pursuance of an agreement made under this section shall be paid by the Commonwealth authority making the deduction to the Commissioner as representing the State, in such manner and at such times as are provided by the agreement. In such agreement such adaptations of the provisions of section one hundred and ninety-nine of this Act as are necessary may be made, and where any such agreement is entered into and so long as it continues in operation the provisions of that section shall, with all necessary adaptations, extend and apply accordingly.

[Inserted by No. 25 of 1939 s.4 (b), as s.199.]

202. Certificate of exemption from deduction

- (1) The Commissioner may issue to any employee a certificate that no deductions from his salary or wages need be made during any period specified in the certificate: Provided that where it is

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subsequently ascertained that there is or will be tax payable by the employee, the Commissioner may, by notice to the employee, cancel the certificate.

- (2) During the period so specified no employer to whom the said certificate is exhibited shall make any deductions under this Division from the salary or wages of that employee.
- (3) Any person who —
 - (a) alters any certificate issued as aforesaid, or
 - (b) exhibits to any employer any certificate which has been so altered, or
 - (c) without lawful excuse has in his possession any colourable imitation of a certificate issued as aforesaid, or
 - (d) falsely pretends to be the person named in any certificate or causes any employer to refrain from making the deductions from his salary or wages by the production of any document other than the certificate issued to himself and from the time being in force

shall be guilty of an offence.

Penalty: Fifty pounds.

[Inserted by No. 25 of 1939 s.4 (b), as s.200.]

203. Other offences. Presenting document relating to another person

- (1) Any person who presents any document under the hand of the Commissioner for the purpose of obtaining credit with respect to or a refund of the value of tax stamps which have been delivered in respect of the salary or wages of some person, other than the person named in such document, shall be guilty of an offence.

Penalty: Fifty pounds.

- (2) Any person who —

- (a) endeavours to obtain for his own advantage or benefit credit with respect to or a refund of the value of tax stamps which have been delivered in respect of the salary or wages of some person other than himself; or
- (b) presents any document under the hand of the Commissioner and pretends to be the person named therein for the purpose of obtaining credit with respect to or a refund of the value of tax stamps

shall be guilty of an offence.

Penalty: One hundred pounds, with a minimum of Two pounds, or imprisonment for twelve months.

- (3) Any person who —
 - (a) fraudulently removes or causes to be removed from the stamp book of any employee any tax stamp affixed therein; or
 - (b) affixes a tax stamp so removed to any other book; or
 - (c) utters any tax stamp which has, to his knowledge, been fraudulently removed from any book to which it had previously been affixed

shall be guilty of an offence.

Penalty: One hundred pounds.

[Inserted by No. 25 of 1939 s.4 (b), as s.201.]

204. Payment by tax stamps by person other than employees

- (1) Any taxpayer not being an employee may at any time purchase tax stamps from persons authorized by the Commissioner to sell tax stamps and may after receiving his notice of assessment and on or before the due date shown thereon produce to the Commissioner such stamps.
- (2) the Commissioner shall thereupon cause the said stamps to be retained and defaced and the amount of the face value thereof shall be deemed to have been paid by such taxpayer in

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satisfaction (in so far as the same extends) of any tax payable by him.

- (3) If the Commissioner is satisfied that there is no tax payable or if the face value of the tax stamps produced by the taxpayer exceeds the amount of tax payable by him the Commissioner shall without any further or other authority than this Division, refund to the taxpayer the face value of the stamps or (as the case may be) the amount by which the face value of the stamps exceeds the amount of tax payable.
- (4) If the face value of the stamps produced by the taxpayer is less than the amount of tax payable by him the balance of the said tax shall be due and payable on the date of payment shown on the notice of assessment.
- (5) All stamps so produced shall be affixed in a book of convenient size and shape provided and kept by such taxpayer for the purpose but stamps shall not be affixed on both sides of any page of such book.

[Inserted by No. 25 of 1939 s.4 (b), as s.202.]

205. Liability where employer is an association

- (1) Where an employee is employed by an unincorporated body of persons other than a firm the manager or other principal official of such body shall be deemed to be the employer within the meaning of this Division.
- (2) Where an employee is employed by a firm each partner shall be deemed to be the employer within the meaning of this Division and any one of them may be proceeded against for any contravention of or failure to comply with any of the provisions of this Division in relation to the employee; but not more than one person shall be punished for the same contravention or failure.

[Inserted by No. 25 of 1939 s.4 (b), as s.203.]

206. Power of Commissioner to require delivery of stamps held on behalf of another person

- (1) The Commissioner or any officer authorized by the Commissioner may require any person to deliver to him tax stamps which are in his possession and are held by him on behalf of some other person; and the Commissioner shall issue his receipt for the stamps which have been so delivered.
- (2) If any person when so required does not deliver those stamps to the Commissioner or other officer he shall be guilty of an offence.
Penalty: Fifty pounds.
- (3) The Commissioner shall allow credit with respect to or (as the case requires) a refund of the value of such stamps upon application by the employee to whom such stamps were delivered by his employer.
- (4) When ever the Commissioner suspects that any tax stamps produced to him have been obtained in contravention of any provision of this Division he may retain those stamps for such period as he thinks fit, and shall not take them in satisfaction of any tax payable or make any refund in respect of them until he has satisfied himself as to the identity of the person (if any) to whom the stamps were lawfully delivered by an employer.

[Section 206 inserted by No. 25 of 1939 s.4 (b), as s.204.]

207. Commissioner to prepare and issue stamps

- (1) The Commissioner shall cause to be prepared and placed on sale sufficient tax stamps of suitable denominations for the purposes of this Division.
- (2) Every such stamp shall bear the words "Tax instalment" clearly printed thereon.
- (3) If at any time hereafter any lawful and valid arrangement is made between the governor General of the Commonwealth of

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Australia and the Governor of the State, or between the said Commonwealth and the State, as provided for in section two hundred and eight of this Act and pursuant thereto tax stamps issued by the Commonwealth Authority under the income tax laws of the Commonwealth in relation to the payment under those laws of income tax by employees liable to pay the same by deductions from their salary or wages may be used under and for the purposes of this Act in lieu of tax stamps prepared and placed on sale by the Commissioner as provided for in subsection (1) of this section, the operation of subsections (1) and (2) of this section shall, so long as the said arrangement continues in force and Commonwealth tax stamps are used as aforesaid, be suspended.

[Section 207 inserted by No. 25 of 1939 s.4 (b), as s.205, amended by No. 12 of 1940 s.21.]

208. Use of Commonwealth tax stamps by the State

- (1) Where the Parliament of the Commonwealth has enacted legislation which is similar to the provisions of this Division and tax stamps are prepared and placed on sale by the Commonwealth Authority for the purposes of that legislation, the Governor of the State may arrange with the Governor General of the Commonwealth, or the State may arrange with the Commonwealth, as the case may require, for the use by the State for the purposes of this Division of tax stamps, prepared and placed on sale by the Commonwealth Authority as aforesaid.
- (2) The agreement relating to any such arrangement may make provisions for any other matters necessary or convenient to be provided for carrying out the arrangement.
- (3) The agreement relating to any such arrangement shall contain a provision for ascertaining what proportion of the proceeds of the sales of Commonwealth tax stamps in the State shall be deemed to be attributable to sales for the purposes of this Division and what proportion shall be deemed to be attributable to sales for

the purposes of the Commonwealth legislation, and the proceeds shall, in the first instance, be divided between the State and the Commonwealth accordingly.

- (4) As soon as possible after the close of each financial year, the State and the Commonwealth shall, in accordance with such method as is specified in the arrangement, determine what proportion of the proceeds of sales of Commonwealth tax stamps in the State during that financial year was attributable to sales for the purposes of this Division and what proportion was attributable to sales for the purposes of the Commonwealth, as the case requires, shall make such payment to the other party as is necessary in order that each shall receive the proportion to which, under the terms of the arrangement, it is entitled.

[Amended by No. 12 of 1940 s.22, now incorporated as s.208.]

209. Commissioner may license vendors of stamps

- (1) The Commissioner may be writing under his hand license vendors of tax stamps and may direct how and under what conditions stamps may be issued to such vendors for sale, and what accounts of such tax stamps shall be kept by such vendors.
- (2) Such licenses may be granted as aforesaid for any period of time and may at any time be revoked by the Commissioner.
- (3) The issue or revocation of any such licenses shall be notified in the *Government Gazette*.
- (4) A licensed vendor of tax stamps may be remunerated by commission at a rate prescribed by regulations.
- (5) The Commissioner may and shall, if so required by the Treasurer, authorize any officer of any public department either of the State or the Commonwealth to sell tax stamps.
- (6) This section shall operate and have effect subject to any arrangement mentioned in subsection (3) of section two hundred

and seven of this Act whilst such arrangement continues in force.

[Inserted by No. 25 of 1939 s.4 (b), as s.206; amended by No. 12 of 1940 s.23.]

210. Licensed vendors of stamps to notify fact

- (1) Every person holding a license to sell tax stamps shall cause a notification of such fact to be put up and kept affixed outside the place in which such stamps are sold in such manner as may be prescribed by the regulations:

Provided that this subsection shall not apply where tax stamps are issued to any officer of any public department either of the State or of the Commonwealth for sale to the public.

- (2) Any licensee who fails or refuses to comply with the provisions of this section shall be guilty of an offence.

Penalty: Five pounds, and in addition a daily penalty of ten shillings for every day or part of a day during which the offence continues.

[Inserted by No. 25 of 1939 s.4 (b), as s.207.]

211. Sale of tax stamps by unauthorized persons prohibited

- (1) No person, other than a person licensed or authorized by the Commissioner to sell tax stamps shall sell or offer for sale such stamps or otherwise dispose of the same except by production of them to the Commissioner as provided in this Division or the regulations, but nothing in this subsection shall be deemed to prohibit the delivery in accordance with this Division of tax stamps by an employer to any of his employees.
- (2) No person (except an employee receiving stamps from his employer in accordance with this Division) shall knowingly purchase or obtain tax stamps from any person other than a person licensed or authorized by the Commissioner to sell such stamps.

- (3) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

Penalty: One hundred pounds.

[Inserted by No. 25 of 1939 s.4 (b), as s.208.]

[212.] *Repealed by No. 84 of 2004 s. 80.]*

Part VII — Penal provisions and prosecutions

213. Taxation prosecution

In this Part, “**taxation prosecution**” means a proceeding by the Crown for the recovery of a pecuniary penalty under this Act.

214. Failure to furnish returns or information, etc

- (1) Any person who fails to duly furnish any return or information or comply with any requirement of the Commissioner as and when required by this Act or the regulations or by the Commissioner shall be guilty of an offence.

Penalty: Not less than two pounds or more than one hundred pounds.

- (2) A prosecution for an offence against this section may be commenced at any time.

215. Refusal to give evidence

Any person who refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him by, or to produce any book or paper required of him by the Commissioner or any such officer, shall, unless just cause or excuse for the refusal or neglect is shown by him, be guilty of an offence.

Penalty: Not less than two pounds or more than one hundred pounds.

216. Order to comply with requirement

- (1) Upon the conviction of any person for an offence against either of the last two preceding sections, the Court may order his within a time specified in the order to do the act which he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence.

Penalty: Not less than ten pounds or more than five hundred pounds.

- (2) An order under this section may be made orally by the court to the accused, or may be served in the manner prescribed.

[Section 216 amended by No. 84 of 2004 s. 82.]

217. Additional tax in certain cases

- (1) Notwithstanding anything contained in the last three preceding sections, any taxpayer who fails to duly furnish as and when required by this Act or the regulations, or by the Commissioner, any return or any information in relation to any matter affecting either his liability to tax or the amount of the tax, shall be liable to pay as additional tax an amount equal to the tax assessable to him or the amount of one pound, whichever is the greater.
- (2) Any taxpayer who omits from his return any assessable income, or includes in his return as a deduction for expenditure incurred by him an amount in excess of the expenditure actually incurred by him, shall be liable to pay as additional tax an amount equal to double the difference between the tax properly payable by him and the tax that would be payable if it were assessed upon the basis of the return furnished by him, or the amount of one pound, whichever is the greater.
- (3) The Commissioner may in any case, for reasons which he thinks sufficient, and either before or after making any assessment, remit the additional tax or any part thereof.
- (4) If in any case in which a taxpayer is liable to pay additional tax under this section a taxation prosecution is instituted in respect of the same subject matter, the additional tax shall not be payable unless and until the prosecution is withdrawn.

218. False returns or statements

- (1) Any person who makes or delivers a return which is false in any particular, or makes a false answer whether orally or in writing

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to any question duly put to him by the Commissioner or any officer duly authorized by him, shall be guilty of an offence.

Penalty: Not less than two pounds or more than one hundred pounds and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the return or answer had been accepted as correct.

- (2) In any prosecution for an offence under this section is shall be a defence if the accused proves —
 - (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
 - (b) that the false return or false answer was made through ignorance or inadvertence.
- (3) A prosecution for an offence against this section may be commenced at any time.

[Section 218 amended by No. 84 of 2004 s. 82.]

219. Failure to sign or false certificate

- (1) Any person required by this Act to sign an agent's certificate which is false in any particular shall be guilty of an offence.
Penalty: Not less than one pound or more than fifty pounds.
- (2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

220. False declarations

Any person who, in any declaration made under, or authorized or prescribed by this Act or the regulations, knowingly and wilfully declares to any matter or thing which is false or untrue, shall be deemed to be guilty of an offence, and shall upon conviction be liable to imprisonment for a period not exceeding two years.

221. Understating income

- (1) Any person who, or any company on whose behalf the public officer, or a director, servant, or agent of the company, in any return knowingly and wilfully understates the amount of any income or makes any misstatement affecting the liability of any person to tax or the amount of tax shall be guilty of an offence.

Penalty: Not less than twenty-five pounds, or more than five hundred pounds and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that would have been avoided if the statement in the return had been accepted as correct.

- (2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

222. Fraudulent avoidance of tax

- (1) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation shall be guilty of an offence.

Penalty: not less than twenty-five pounds, or more than five hundred pounds and, in addition, the court may order the person to pay to the Commissioner a sum not exceeding double the amount of tax that has been avoided or attempted to be avoided.

- (2) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence.

223. Obtaining information

- (1) Any person who impersonates any taxpayer for the purpose of obtaining information concerning the affairs of that taxpayer

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

- (2) Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations, shall be guilty of an offence, and for every such offence be liable to a penalty of not less than one pound and not more than fifty pounds.
- (3) Any person who fails to give his postal address in the State upon any return furnished by him, or who fails to give notice in writing to the Commissioner of any change in his postal address within one calendar month after such change shall be guilty of an offence, and for every such offence be liable to a penalty of not less than one pound and not more than twenty pounds.

224. Place where offence committed

Any of the following offences, namely —

- (a) failure to duly furnish any return or information;
- (b) making or delivering a return which is false in any particular, or making a false answer; or
- (c) failure to comply with any requirement,

shall be deemed to have been committed either —

- (i) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with; or
- (ii) at the usual or last known place of business or abode of the accused,

and may be charged as having been committed at either of those places.

[Section 224 amended by No. 84 of 2004 s. 82.]

225. Proceedings for offences

- (1) A prosecution for an offence under this Act must be commenced within 3 years after the date on which the offence is alleged to have been committed.
- (2) A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.

[Section 225 inserted by No. 59 of 2004 s. 141.]

226. Protection to witnesses

A witness on behalf of the Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

227. Averment of prosecutor sufficient

- (1) In any taxation prosecution, every averment of the prosecutor or plaintiff contained in the prosecution notice, declaration or claim shall be *prima facie* evidence of the matter averred.
- (2) This section shall apply to any matter so averred although —
 - (a) evidence in support or rebuttal of the matter averred or of any other matter is given; or
 - (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.
- (3) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.
- (4) This section shall not apply to —

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- (a) an averment of the intent of the accused; or
 - (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.
- (5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

[Section 227 amended by No. 84 of 2004 s. 80 and 82.]

228. Evidence of authority to institute proceedings

- (1) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner.
- (2) The production of a telegram purporting to have been sent by the Commissioner and purporting to authorize an officer to institute any taxation prosecution shall be sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner as the case may be.

229. Appearance by Commissioner

- (1) In any action, prosecution or other proceeding in any court by the Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the Commonwealth or a State.
- (2) The appearance of any such officer, and his statement that he appears by authority of the Commissioner shall be sufficient evidence of such authority.

230. Minimum penalties

No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the court.

231. Enforcement of orders for payment

- (1) Where an order for the payment of a sum of money by any person to the Commissioner is made under this Part by a court of summary jurisdiction, a certificate of such order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is hereby required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.
- (2) From the date of registration the certificate shall be a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court and, subject to the prescribed conditions, the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of that court in favour of the Commissioner.
- (3) The Commissioner's costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions, be deemed to be payable under the certificate.

232. Costs

In all taxation prosecutions the court may award costs against any party.

233. Penalties not to relieve from tax

The adjudgment or payment of a penalty under this Act shall not relieve any person from liability to assessment and payment of any tax for which he would otherwise be liable.

234. Penalties

Any person guilty of a breach of any of the provisions of this Act shall, except where otherwise expressly provided, be liable

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to a penalty not exceeding twenty pounds, and the Governor may, by regulation, impose a penalty not exceeding twenty pounds for the breach of any of the regulations under this Act.

Part VIII — Miscellaneous

235. Public officer of company

(1) Every company carrying on business or having an office or place of business in the State, or deriving in the State income from property, shall at all times, unless exempted by the Commissioner, be represented for the purposes of this Act by a public officer, being a person residing in the State, and duly appointed by the company or by its duly authorized agent or attorney. With respect to every such company and public officer the following provisions shall apply: —

- (a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the commencement of this Act or after the company commences to carry on business or derive income in the State.
- (b) The company shall keep the office of the public officer constantly filled.
- (c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, in the prescribed form specifying the name of the officer and an address for service upon him has been given to the Commissioner.
- (d) If the company fails to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

Penalty: Two pounds for every day during which the failure continues.

- (e) Service of any document at the address for service, or on the public officer of the company, shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or

appearing to act in the business of the company shall be sufficient.

- (f) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations, and in case of default shall be liable to the same penalties.
- (g) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.
- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.
- (i) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.
- (j) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer

would have had if it had been given to, served upon, or taken against the company or public officer.

- (2) A public officer of a company duly appointed under the previous Acts, and holding that office at the commencement of this Act, shall be deemed to be the public officer of the company duly appointed under this Act.

236. Agents and trustees

With respect to every agent and with respect also to every trustee, the following provisions shall apply: —

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon.
- (b) He shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is a trustee of the estate of a deceased person, the returns shall be the same as for as practicable as the deceased person, if living, would have been liable to make.
- (d) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of the income.
- (e) He is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph; but he shall not be otherwise personally liable for the tax.

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- (f) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirements of the Commissioner.
- (g) Where as one of two or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid.
- (h) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax.

237. Person in receipt or control of money for non-resident

- (1) With respect to every person having the receipt, control or disposal of money belonging to a non-resident, who derives income from a source in the State or who is a shareholder, debenture holder, or depositor in a company deriving income from a source in the State, the following provisions shall, subject to this Act, apply: —
 - (a) He shall when required by the Commissioner pay the tax due and payable by the non-resident;
 - (b) He is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the non-resident so much as is sufficient to pay the tax which is or will become due by the non-resident;
 - (c) He is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph; but he shall not be otherwise personally liable for the tax;

(d) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirements of the Commissioner.

(2) Every person who is liable under any contract to pay money to a non-resident shall be deemed to be a person having the control of money belonging to the non-resident, and all money due by him under the contract shall be deemed to be money which comes to him on behalf of the non-resident.

238. Person paying royalty to a non-resident taxpayer

(1) Every person who is liable under any contract to pay money as or by way of royalty to a non-resident shall, before making any payment to or on behalf of that non-resident furnish to the Commissioner a statement of the amount of royalty due to the non-resident, whether such royalty became due either before or after the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

(2) The provisions of the last preceding section of this Act shall apply in respect of payments of royalty referred to in this section.

239. Payment of tax by banker

Where any income of any person out of the State is paid into the account of that person with a banker, the Commissioner may, by notice in writing to the banker, appoint him to be the person's agent in respect of the money so paid, so long as the banker is indebted in respect thereof, and thereupon the banker shall accordingly be that person's agent.

240. Recovery of tax paid on behalf of another person

Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the same from that other person as a debt, together with the costs of recovery, in

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any court of competent jurisdiction, or may retain or deduct the same out of any money in his hands belonging or payable to that other person.

241. Contribution from joint taxpayers

Where two or more person are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax in respect of any of the taxable income —

- (a) shall be entitled to receive by way of contribution from any other of such persons a sum bearing the same proportion to the tax as that other person's share of the taxable income bears to the whole taxable income; and
- (b) may recovery that sum from that other person in any court of competent jurisdiction; or may retain or deduct that sum out of any money in his hands belonging or payable to that other person.

242. Business records in the English language to be kept

- (1) Every taxpayer carrying on a business shall keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained.
- (2) Any taxpayer who fails to keep the records required by this section shall be guilty of an offence, and for every such offence be liable to a penalty of not less than one pound and not more than fifty pounds.

243. Contracts to evade tax void

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

- (a) altering the incidence of any income tax;

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

be absolutely void, as against the Commissioner, or in regard to any proceeding under this Act, but without prejudice to such validity as it may have in any other respect or for any other purpose.

244. Covenant by mortgagor to pay tax

- (1) A covenant or stipulation in a mortgage, which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying income tax on the interest to be paid under the mortgage, shall be absolutely void.
- (2) A covenant or stipulation in a mortgage, which has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.
- (3) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee, the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.
- (4) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion

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thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise), be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise.

- (5) In this section “**mortgage**” includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted.
- (6) This section shall apply to all mortgages whether entered into before or after the commencement of this Act.

245. Periodical payments in the nature of income

Where under any contract, agreement or arrangement made or entered into orally or in writing, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of any property on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the property by periodical payments which, in the opinion of the Commissioner, are either wholly or in part really in the nature of income of that person such of those payments as are derived in the year of income shall, to the extent to which they are in that opinion in the nature of income, be included in his assessable income.

246. Access to books, etc

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

247. Department to obtain information and evidence

- (1) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connection within any department of a government or by any public authority -
 - (a) to furnish him with such information as he may require; and
 - (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.
- (2) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

248. Release of taxpayers in cases of hardship

- (1) In any case where it is shown to the satisfaction of a board consisting of the Commissioner, the Under Treasurer and the Auditor General or of such substitutes for all or any of them as the Treasurer appoints from time to time that —

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

that the exaction of the full amount of tax will entail serious hardship, the board may release the taxpayer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.

- (2) The Commissioner or his substitute shall be chairman of the board, and the decision of the majority shall prevail.
- (3) Where the amount of the taxpayer's liability is twenty pounds or less the Commissioner may exercise the powers granted by this section.

249. Regulations

The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act, and for prescribing penalties not less than one pound or more than twenty pounds for any breach of the regulations.

250. Construction of Act

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

First Schedule

No and Year of Act	Title of Act.	Extent of Repeal.
No. 15 of 1907	Land and Income Tax Assessment Act 1907	All Provisions except those relating to or connected with Land Tax
No. 14 ,, 1917	Land and Income Tax Assessment Act Amendment Act 1917	
No. 24 ,, 1918	Land and Income Tax Assessment Act Amendment Act 1918	
No. 17 ,, 1922 No. 40 ,, 1922	Land and Income Tax Assessment Act Amendments Acts 1922	
No. 36 ,, 1924	Land and Income Tax Assessment Act Amendment) Act 1924)	
No. 42 ,, 1930	Land and Income Tax Assessment Act 1930	
No. 42 ,, 1931	Land and Income Tax Assessment Act Amendment Act 1931	
No. 40 ,, 1932	Land and Income Tax Assessment Act Amendment Act No. 1 of 1932	
No. 41 ,, 1932	Land and Income Tax Assessment Act Amendment Act 1932	
No. 8 ,, 1936	Land and Income Tax Assessment Act Amendment Act 1936	

Second Schedule

Second Schedule		
No. 32 of 1902	Dividend Duties Act	The whole.
No. 30 ,, 1906	Dividend Duties Act Amendment Act 1906	do.
No. 24 ,, 1915	Dividend Duties Act Amendment Act 1915	do.
No. 22 ,, 1918	Dividend Duties Act Amendment Act 1918	do.
No. 40 ,, 1918	Dividend duties Act Amendment Act 1918 (No. 2)	do.
No. 32 ,, 1920	Dividend Duties Act Amendment Act 1920	do.
No. 35 ,, 1924	Dividend Duties Act Amendment Act 1924	do.
No. 47 ,, 1931	Dividend Duties Act Amendment Act 1931	do.
No. 21 ,, 1936	Dividend Duties Act Amendment Act 1936	do.

Notes

¹ This is a compilation of the *Income Tax Assessment Act 1937* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Income Tax Assessment Act 1937</i>	13 of 1937	21 Dec 1937	24 Dec 1937 (see <i>Gazette</i> 24 Dec 1937 p. 2169)
	25 of 1939	16 Dec 1939	1 Jul 1940 (see <i>Gazette</i> 27 May 1940 p. 1143)
	12 of 1940	24 Oct 1940	24 Oct 1940
<i>Criminal Law Amendment Act (No. 2) 1992</i> s. 16(1)	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 76	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

N.B. In this text the renumbering of sections effected in Volume 2 of the reprinted Acts of the Parliament of Western Australia has been retained.

² Section 3 (2) of the Act No. 12 of 1940, enacted that the amendments in this paragraph, provided for in section 3 (1) of the said Act, shall have effect and be deemed to have had effect as from the date of the coming into operation of the Act No. 13 of 1937.

- ³ Section 5 (2) of the Act No. 12 of 1940 enacted that this section, as amended by section 5 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ⁴ Section 7 (2) of the Act No. 12 of 1940 enacted that this section, as amended by section 7 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax, beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ⁵ Section 8 (2) of the Act No. 12 of 1940 enacted that this section, as amended by section 8 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ⁶ Section 9 (2) of the Act No. 12 of 1940 enacts that this section, as amended by section 9 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ⁷ Section 10 (2) of the Act No. 12 of 1940 enacts that this section, as amended by section 10 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ⁸ Section 11 (2) of the Act No. 12 of 1940 enacts that this section, as amended by section 11 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ⁹ Section 12 (2) of the Act No. 12 of 1940 enacts that this section, as amended by section 12 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ¹⁰ Section 13 (2) of the Act No. 12 of 1940 enacts that this section, as amended by section 13 (1) of the said Act, shall operate and have effect for the purpose of all assessments for the year of tax beginning on the first day of July, one thousand nine hundred and forty, as well as for all subsequent years.
- ¹¹ Proclaimed to commence 24th December, 1937 (see *Gazette*, 24th December, 1937).
- ¹² Declared as the year of income ended the 30th day of June, 1937, or the accounting period (if any) adopted under the Act in lieu thereof. (see *Gazette*, 31st December, 1937.)
- ¹³ Section 16 (2) of the Act No. 12 of 1940 enacts that this section, as amended by section 16 (1) of the said Act, shall have effect and shall be deemed to have had effect as from the coming into operation of the Act No. 13 of 1937 (i.e., the principal Act).

¹⁴ Note — The Act No. 25 of 1939 inserted Division 2 in Part VI of the principal Act. Section 6 of the Act No. 25 of 1939 then enacted as follows: —

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6. Deduction of Financial Emergency Tax from salary or wages of employees to cease after commencement of this Act

In the event of this Act coming into operation on a day when, under any laws of the State relating to the imposition, levying, assessment and collection of financial emergency tax provision is made and in operation for the deduction of financial emergency tax from the salary or wages of employees then, notwithstanding the said laws, as from and including the day when this Act comes into operation as aforesaid, the provisions of the said laws relating to the deduction of financial emergency tax from the salary and wages of employees shall by virtue of this section cease to operate and have effect in so far as relates to salary or wages earned by such employees after the said date, and thereafter no deduction of financial emergency tax under the said laws shall be made from the said salary or wages of such employees, and no financial emergency tax shall be payable by such employees in respect of such salary or wages.

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