
INCOME TAX ASSESSMENT.

No. 34 of 1915.

An Act relating to the Imposition Assessment and Collection of a Tax upon Incomes.

[Assented to 13th September, 1915.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Income Tax Assessment Act 1915.*^(a) Short title.

2. This Act shall be divided into parts as follows :— Parts.

Part I.—Introductory.

Part II.—Administration.

Part III.—Liability to Taxation.

Part IV.—Returns and Assessments.

Part V.—Objections and Appeals.

Part VI.—Collection and Recovery of Tax.

Part VII.—Miscellaneous.

3. In this Act, unless the contrary intention appears :— Definitions.

“ Absentee ” means a person who does not reside in Australia, and includes a person who has been absent from Australia during more than half the financial year in which the income the subject of the assessment was derived, unless he satisfies the Commissioner that he resides in Australia ; but does not include a public officer of the Commonwealth or a State who is absent in the performance of his duty.

^(a) This Act has since been amended by Act No. 47, 1915 (*infra*, p. 193). For a copy of this Act as so amended see *infra*, p. 273.

- “Agent” includes every person who in Australia, for or on behalf of any person out of Australia (in this section called “the principal”) has the control receipt or disposal of any income belonging to the principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act.
- “Australia” includes the Territory of Papua.
- “Business” includes any profession, trade, employment, vocation, or calling.
- “Commissioner” means the Commissioner administering this Act.
- “Company” includes all bodies or associations corporate or unincorporate.
- “Income” includes interest upon money secured by mortgage of any property in Australia.
- “Income from personal exertion” or “income derived by any person from personal exertion” means income derived in Australia consisting of earnings, salary, wages, commission, fees, bonuses, pensions, superannuation allowances, retiring allowances and gratuities not paid in a lump sum, allowances received in the capacity of employee, and the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person.
- “Income from property” or “income derived from property” means all income derived in Australia and not derived from personal exertion.
- “Income tax” means the income tax imposed as such by any Act as assessed under this Act.
- “Mortgage” includes any charge, lien, or encumbrance to secure the repayment of money upon which interest is payable.
- “Partners” includes persons who are in receipt of income jointly.
- “Person” includes a company.
- “Taxable income” means the amount of income remaining after all deductions allowed by this Act have been made.
- “Taxpayer” means any person chargeable with income tax.
- “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.

4. This Act shall extend to the Territory of Papua.

Act to extend
to Papua.

PART II.—ADMINISTRATION.

5.—(1.) The Commissioner of Taxation shall have the general administration of this Act. Commissioner.

(2.) The Commissioner shall be paid such remuneration as the Parliament provides.

6. There may be such Deputy Commissioners of Taxation as are required, who shall, subject to the control of the Commissioner, have such powers and functions as are prescribed or as the Commissioner directs. Deputy Commissioners.

7.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation. Delegation by the Commissioner.

(2.) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Commissioner.

8.—(1.) The Commissioner shall furnish to the Treasurer annually, for presentation to the Parliament, a report on the working of this Act. Report by the Commissioner.

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

9.—(1.) Every officer executing any power or duty conferred or imposed on any officer under this Act or the regulations, shall, before entering upon his duties or exercising any power under this Act, make before a Justice of the Peace or a Commissioner for taking affidavits or a Commissioner for Declarations, a declaration in the form prescribed. Officers to observe secrecy.

(2.) Any officer who acts in the execution of his office before he has made the prescribed declaration shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

PART III.—LIABILITY TO TAXATION.

10.—(1.) Subject to the provisions of this Act, income tax shall be levied and paid in and for each financial year upon the taxable income derived directly or indirectly by every taxpayer from sources within Australia during the period of twelve months ending on the thirtieth day of June preceding the financial year in and for which the tax is payable. Income tax.

(2.) The income tax shall be at such rates as are declared by the Parliament. Rates of tax.

Exemptions.

11. The following incomes, revenues, and funds shall be exempt from income tax :—

- (a) the revenue of a municipal corporation or other local governing body or of a public authority ;
- (b) the income of a society registered under a Friendly Societies Act of the Commonwealth or a State and not carried on for pecuniary profit ;
- (c) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or a State relating to the settlement of industrial disputes ;
- (d) the income of a religious, scientific, charitable, or public educational institution ;
- (e) the income derived from the bonds, debentures, stock, or other securities of the Commonwealth issued for the purposes of the *War Loan Act (No. 1) 1915* ;
- (f) the income of a provident, benefit, or superannuation fund established for the benefit of the employees in any business ; and
- (g) the salary of the Governor-General and the salaries of the Governors of the States.

Limitation of exemption.

12. With respect to income which, under the last preceding section is exempt from income tax, the exemption shall be limited to the person specified in that section, and shall not extend to the salaries and wages of persons employed by such persons, although such salaries and wages may be paid wholly or in part out of the income revenues or funds so exempt.

Exemption of income from personal exertion earned by persons on active service.

13. This Act shall not apply to any person who is on active service during the present war with the military or naval forces of the Commonwealth or any part of the King's Dominions or of an ally of Great Britain so far as regards income derived from personal exertion and earned prior to the commencement of this Act or during the present state of war.

What is included in income.

14. The income of any person shall include—

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

Provided that for the purpose of computing such profits the value of all live-stock, produce, goods and merchandise (not being plant used in the production of income) not disposed of at the beginning and end of the year in which the income was derived shall be taken into account ;

- (b) dividends, interest, profits, or bonus credited or paid to any member, shareholder, or debenture-holder of a company, but not including a reversionary bonus issued on a policy of life insurance :

Provided that where a company distributes to its members or shareholders any undistributed income

accumulated prior to the commencement of this Act the sum so received by the member or shareholder shall not be included as part of his income ;

- (c) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust ;
- (d) money derived by way of royalty or from bonuses, premiums, fines, or foregifts demanded and given in connexion with leasehold estates ;
- (e) five per centum of the capital value of land and improvements thereon owned and used or used rent free by the taxpayer for the purpose of residence or enjoyment and not for the purpose of profit or gain, less the interest paid on a mortgage of that land, if the taxpayer satisfies the Commissioner that the mortgage was entered into in good faith ;
- (f) five per centum of the capital amount of a retiring allowance or gratuity, which is paid in a lump sum ;
- (g) all allowances, gratuities (except retiring allowances and gratuities paid in lump sums) bonuses, and premiums, whether in money or goods or sustenance or land allowed given or granted to a taxpayer in respect of or for or in relation to any employment or service of such taxpayer to the amount of the value of such allowances, gratuities, bonuses and premiums respectively ; and
- (h) a cash prize in a lottery.

15.—(1.) In the case of a person selling goods in Australia on account of a person not resident in Australia, or on account of a company not registered in Australia, the principal shall be deemed to have derived from such sale a taxable income equal to Five pounds per centum upon the price at which the goods were sold.

Agent selling
goods for
foreign
principal

(2.) The person selling the goods shall be assessable on the taxable income as the agent for the principal and shall be personally liable for the payment of the tax.

16.—(1.) For the purpose of ascertaining the taxable income of a company there shall be deducted from the total income, in addition to any other deductions allowed by this Act, so much of the income as is distributed to the members, shareholders, or debenture-holders of the company :

Taxation of
companies.

Provided that in the case of a life insurance company there shall also be deducted so much of the income as consists of premiums paid upon the policies issued by the company :

Provided also that a company, notwithstanding any contract, agreement, or arrangement entered into by it, may, with the approval of the Commissioner, charge *pro ratâ* the amount of the tax actually paid by it against those beneficially interested in the income of the company.

(2.) Where, in the opinion of the Commissioner, a company has not in any year distributed to its members or shareholders a reasonable proportion of its income, there shall be included in the income

of each member or shareholder, without in any way diminishing the liability of the company, so much of the income of the company which is not distributed in that year as bears to that income the proportion which the interest of the member or shareholder in the paid-up capital of the company bears to the paid-up capital of the company:

Provided that where a company dealing with exported butter distributes within twelve months after the export of any consignment any funds held in reserve for the purpose of insuring regularity of price on that consignment tax shall not be levied on those funds in the hands of the company.

(3.) The Commissioner shall furnish to the Treasurer annually, for presentation to Parliament, a report of all cases in which action has been taken under the provisions of sub-section (2.) of this section with a statement of the reasons therefor.

**Taxation of
a mining
company.**

17. In connexion with income derived from mining operations (other than coal mining) carried on in Australia the following provisions shall apply:—

- (a) the return required by this Act to be made by the person deriving the income in the first place shall show the total income so derived during the financial year in respect of which the return is compiled;
- (b) the capital expended by the person carrying on the mining operations in necessary plant and development of a mining property from which income has been received (less the distributed and undistributed income derived prior to the financial year beginning the first day of July One thousand nine hundred and fourteen by that person) shall be divided by the estimated number of years during which payable mining operations may be expected to continue under normal conditions, and the quotient thus obtained shall, in addition to any other deductions allowed by this Act, be deducted from the income;
- (c) where separate and distinct mining operations are carried on by the same person either alone or in association with any other person and a profit is made on some and a loss is made on others, that person shall be entitled to deduct the sum of the losses from the sum of the profits, and the balance of profits (if any) shall be included in the income of that person.

Deductions.

18. In calculating the taxable income of a taxpayer the total income derived by the taxpayer from all sources in Australia shall be taken as a basis, and from it there shall be deducted—

- (a) all losses and outgoings, including commission, discount, travelling expenses, interest, and expenses actually incurred in Australia in gaining or producing the gross income:

Provided that where a taxpayer employs his sons or daughters over the age of fifteen years in his business such

sum as the Commissioner considers reasonable shall be deducted for their services ;

- (b) all rates and taxes, including State and Federal land taxes and State income tax, actually paid by the taxpayer during the year in which the income was received ;
- (c) every premium or sum paid by the taxpayer on the insurance on his own life or that of his wife or children or for a deferred annuity or other provision for his wife or children or in respect of any fidelity guarantee or bond, which such taxpayer is required to provide in the exercise of his business :

Provided that in no case shall any deduction be allowed under this paragraph beyond the sum of Fifty pounds in the aggregate ;

- (d) sums expended for repairs to or on that part of any property occupied for the purpose of producing income and for the repair of machinery, implements, utensils, rolling-stock, and articles employed by the taxpayer for the purpose of producing income :

Provided that the sums shall be estimated on the annual average sums expended for such purposes during the year in which the income was derived and the two years immediately preceding it ;

- (e) such sum as the Commissioner thinks just and reasonable as representing the diminished value per centum by wear and tear, during the year in which the income was derived, of any machinery, implements, utensils, rolling-stock, and articles used by the taxpayer for the purpose of producing income :

Provided that where a deduction has been allowed under paragraph (d) of this section the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph :

Provided further that where in any business income is set apart by the taxpayer by way of a fund to cover depreciation under any of the headings mentioned in this paragraph, the amount so set apart for the year in which the income was derived shall, subject to the approval of the Commissioner, be the sum to be deducted for depreciation ;

- (f) the sum actually expended by the taxpayer on food, or the estimated annual value of quarters, provided for an employee (other than a member of the taxpayer's own family under the age of fifteen years) who is employed exclusively in a business yielding an income to the taxpayer ;
- (g) payments not exceeding Fifty pounds in the aggregate, made during the year in which the income was derived

by a taxpayer who is in receipt of salary, wages, allowances, stipends, or annuity to superannuation, sustentation, widows or orphans' fund or any society duly registered under any Friendly Societies Act of the Commonwealth or a State ;

- (h) gifts exceeding Twenty pounds each to public charitable institutions in Australia and contributions exceeding Five pounds in the aggregate in respect of each object of contribution made during the continuance of the present war to any public fund established in any part of the King's Dominions or in any country in alliance with Great Britain for any purpose connected with the present war :

Provided that payments shall not be allowable as deductions under this paragraph unless verified to the satisfaction of the Commissioner ;

- (i) five per centum of the total amount paid in the year in which the income is derived in respect of calls on the shares of a company :

Provided that the total amount of calls paid in the year in which the income is derived shall be deducted in the case of calls on shares in a mining company ; and

- (j) sums set aside or paid by an employer of labour as or to a fund to provide individual personal benefits, pensions, or retiring allowances to employees :

Provided that the deduction shall not be allowed unless the Commissioner is satisfied that the fund has been established or the payment made in such a manner that the rights of the employees to receive the benefits, pensions, or retiring allowances have been fully secured:

Provided also that if the Commissioner is satisfied that a sum has been so set aside or paid by any person to provide individual personal benefits, pensions, or retiring allowances to employees in any business the person setting aside or paying the sum shall be entitled to deduct it.

Special
deductions.

19.—(1.) In the case of a person (other than a company or an absentee) there shall be deducted, in addition to the sums set forth in the last preceding section, the following sums :—

- (a) in respect of the income derived from personal exertion—

(i) if the income does not exceed Five hundred pounds—the sum of One hundred and fifty-six pounds,

(ii) if the income exceeds Five hundred pounds—the sum of One hundred and fifty-six pounds less Three pounds for every Ten pounds by which the income exceeds Five hundred pounds ;

- (b) in respect of the income derived from property—the sum of One hundred and fifty-six pounds less Two pounds for every Five pounds by which the income exceeds One hundred and fifty-six pounds :

Provided that where the aggregate deductions calculated under paragraphs (a) and (b) of this section exceed One hundred and fifty-six pounds the sum to be deducted under this section shall be One hundred and fifty-six pounds apportioned between the income derived from personal exertion and the income derived from property in the proportion those incomes bear to each other ; and

- (c) the sum of Thirteen pounds in respect of each child of the taxpayer under the age of sixteen years.

(2.) For the purposes of this section “income” means the total income of a taxpayer after allowing the deductions set forth in the last preceding section.

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

Deductions not to be allowed in certain matters.

- (a) The cost incurred in the maintenance of any taxpayer, his family, or establishment other than as specified in section eighteen of this Act ;
- (b) Domestic or private expenses ;
- (c) Any loss or expense which is recoverable under any contract of insurance or indemnity ;
- (d) Income carried to any reserve fund or capitalized in any way ;
- (e) Money not wholly and exclusively laid out or expended for the production of income ;
- (f) Rent, or value of or cost of repairs or alterations to any premises or part of premises not occupied for the purpose of producing income ;
- (g) Any bad debts, except bad debts proved to be such to the satisfaction of the Commissioner and to have been incurred in and actually written off by the taxpayer in the year in which the income was derived :

Provided that all amounts at any time received on account of any such bad debts shall be credited in income in the year in which the same were received and be subject to tax :

Provided further that bad debts incurred in the year preceding that in which the income was derived and not proved to be bad and written off until the year in which the income was derived may be deducted if the Commissioner considers they would have been deductible if they had been proved to be bad and actually written off in the year in which the income was derived ;

- (h) Any loss not connected with or arising out of the production of income, or any capital withdrawn from any business producing income, or any sum used or intended to be used as capital in any business, or any capital used in the improvement of premises occupied for the purpose of any business ;
- (i) Any wastage or depreciation of lease or in respect of any improvements on leasehold property, or in respect of any loss occasioned by the expiration of any lease :
 Provided that when it shall be proved to the satisfaction of the Commissioner that any taxpayer has paid any fine, premium, or foregift, or consideration in the nature of fine, premium, or foregift for a lease or a renewal of a lease of premises used for the production of income, the Commissioner may allow, as a deduction for the purpose of arriving at the income, the sinking fund according to calculations based on the prescribed tables for the calculation of values required to recoup the taxpayer the amount so paid for the lease or a renewal of the lease ;
- (j) Interest which might have been earned on any capital employed in the production of income, if lent out at interest ;
- (k) Payments made by husband to wife or by wife to husband.

Deduction of losses from profits.

21. Where a taxpayer either alone or with other persons carries on or is interested as a partner in more than one business the income (if any) from which would be taxable, and makes a profit in one or more of such businesses, and a loss in another or others, the taxpayer shall be entitled to deduct the sum of the losses from the sum of the profits.

Ship charterers.

22.—(1.) Every person whose principal place of business is out of Australia and who either as owner or charterer of any ship carries passengers, live stock, mails or goods shipped in Australia shall by his agent or other representative in Australia, when called upon by the Commissioner by notice published in the *Gazette* or by any other notice, make a return of the full amount payable to him (whether such amount be payable in or beyond Australia) in respect of the carriage of the passengers, live stock, mails and goods.

(2.) The agent shall be assessed thereon and liable to pay tax on Five pounds per centum of the amount so payable.

(3.) When such person has no recognised agent or representative in Australia other than the master of the ship and the master fails to make any return, the Commissioner may assess such master, and the master shall be liable to pay the tax assessed.

(4.) The Commissioner shall give notice of every such assessment to the master, and the master shall pay the tax assessed prior to the clearance of the ship.

(5.) The Collector of Customs for the State in which the master is called upon to pay the tax shall not grant a clearance and may detain the ship, until he is satisfied that the tax has been paid.

23. When the carrying on of any business involves the exportation of live stock, produce, or other commodities or substances from Australia for sale beyond Australia, before any sale or contract of sale of them at a definite price has been made, the value of such live stock, produce, or other commodities or substances at the time of their export based upon the ruling Australian market value for home consumption of similar goods of similar quality shall be the value for the purpose of ascertaining the total income of such business from the sale of such goods for the purposes of section fourteen of this Act.

Value of live stock, produce, and other commodities exported from Australia.

24. A company which has at any time before or after the commencement of this Act borrowed money on debentures, shall be deemed to be the agent for each debenture-holder, so far as may be necessary for the purposes of this Act.

Company agent for debenture-holders.

25.—(1.) Partners shall be assessed and liable in respect of the income derived by them as partners as if it had been derived by a single person, without regard to the respective interests therein or to any deductions to which any of them may be entitled under this Act, and without taking into account any income derived by any one of them separately or as partner with any other person.

Partners.

(2.) Each partner shall in addition be separately assessed and liable in respect of—

- (a) his individual interest in the income, together with
- (b) any other income derived by him separately, and
- (c) his individual interests in the income derived by any other partnership.

(3.) Partners shall in no case be deemed in respect of their joint assessment to be absentees; but any of the partners who is an absentee shall be separately assessed and liable under this section as an absentee.

26.—(1.) Any person who derives income as a trustee shall be assessed and liable in respect of income tax as if he were beneficially entitled to the income :

Trustees.

Provided that where he derives income in respect of different trust estates for different beneficial owners who are not for any reason liable to be jointly assessed, the tax payable by him shall be separately assessed in respect of each of these estates:

Provided also that where a trustee also derives income beneficially, he shall be separately assessed for that income, and for the income of which he is trustee, unless for any reason he is liable to be jointly assessed independently of this section.

(2.) A trustee shall in no case be deemed to be an absentee; but any of the beneficiaries who are absentees shall be separately assessed and liable as absentees.

Deduction
where income
is distributed.

27.—(1.) In the assessment of any person (other than a company or a trustee) who derives the income in the first place, there shall be deducted from the total tax assessable to that person so much of the total tax as bears to the total tax the proportion which that part (if any) of the whole income which is distributed to any other taxpayer, who is entitled to receive it as income, bears to the whole income.

(2.) In the assessment of a trustee, there shall be deducted from the tax assessable to him so much of the total tax as bears to the total tax the proportion which that part (if any) of the whole income, which is distributed to the beneficiaries, bears to the whole income.

(3.) Notwithstanding anything contained in section fifty-two of this Act, a trustee is hereby authorized to retain from time to time out of any money, which comes to him as trustee, so much as is necessary to pay the tax due by him under this section on so much of the whole income as is not distributed as income to such of the beneficiaries as are taxpayers.

PART IV.—RETURNS AND ASSESSMENTS.

Persons to
furnish return.

28.—(1.) For the purpose of assessment and levy of income tax every person whose total income derived from all sources in Australia during the year beginning first of July One thousand nine hundred and fourteen, and ending thirtieth of June One thousand nine hundred and fifteen and during each succeeding year beginning first of July amounted or amounts to the sum of One hundred and fifty-six pounds shall when called upon by the Commissioner by notice published in the *Gazette* furnish to the Commissioner in the prescribed manner a return setting forth a full and complete statement of all such income derived by him.

Year of income.

(2.) The first assessment of income tax shall be as for the financial year commencing on the first day of July One thousand nine hundred and fifteen, and each subsequent assessment shall be as for the succeeding financial year :

Provided that nothing in this sub-section shall prevent the Commissioner requiring returns to be furnished to him before the commencement of any financial year for which income tax is to be assessed.

(3.) When the income of any person cannot be conveniently returned as for the year fixed by this Act, the Commissioner may accept returns made up to the date of the annual balance of the accounts of such person.

New or further
and fuller
returns.

29.—(1.) The Commissioner may at any time require any person to furnish a return or a further and fuller return of income either in respect of the whole or any part of income received by such person, whether on his own behalf or as an agent or trustee, and although a return has been previously made by such person for the same annual period.

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

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

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

Returns deemed to be duly made.

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

Assessments to be made.

32. If—

- (a) any person makes default in furnishing any return ; or
- (b) the Commissioner is not satisfied with the return made by any person ; or
- (c) the Commissioner has reason to believe that any person (though he may not have furnished any return) is a taxpayer,

Assessment in case of default or unsatisfactory return.

the Commissioner may make an assessment of the amount upon which, in his judgment, income tax ought to be levied, and the person assessed shall be liable to income tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

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

Alterations of assessment.

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

(2.) When any alteration in an assessment has the effect of reducing the taxpayer's liability the Commissioner may refund the taxpayer any tax overpaid.

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

Validity of assessment.

Copies as
evidence

35.—(1.) The production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—

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

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

Notice of
assessment.

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

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

PART V.—OBJECTIONS AND APPEALS.

Objection.

37.—(1.) A taxpayer who is dissatisfied with the assessment made by the Commissioner under this Act may, within thirty days after service by post of the notice of assessment, lodge an objection in writing with the Commissioner against the assessment stating fully the reason for the objection.

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

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

(4.) A taxpayer who is dissatisfied with the decision of the Commissioner, may, within thirty days after the service by post of notice of the decision of the Commissioner, ask the Commissioner to treat his objection as an appeal, and forward it either to the High Court, the Supreme Court, or a County or District Court of a State, or such other Court as is specified in that behalf by proclamation, as required by the taxpayer.

(5.) When the appeal is to the High Court or a Supreme Court, it shall be heard by a single Justice of the Court.

(6.) An inferior Court of a State shall not have jurisdiction under this section unless it is constituted or presided over by a Judge authorized in that behalf by the Governor-General.

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

Power of Court
on hearing of
appeal.

38.—(1.) On the hearing of the appeal, the Court may make such order as it thinks fit, and may either reduce or increase the assessment, and its order shall be final and conclusive on all parties except as provided in this section.

(2.) The costs of the appeal shall be in the discretion of the Court.

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

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

(5.) An appeal shall lie to the High Court, in its appellate jurisdiction, from any order made under sub-section (1.) of this section.

39.—(1.) The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment appealed from ; and income tax may be levied and recovered on the assessment as if no appeal were pending. Pending appeal not to delay payment of tax.

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

40.—(1.) The Justices of the High Court or a majority of them may make Rules of Court for regulating the practice and procedure in relation to appeals against assessments. Rules of Court.

(2.) All such rules shall—

- (a) be notified in the *Gazette* ;
- (b) take effect from the date of notification, or from a later date specified in the rules ;
- (c) be laid before both Houses of the Parliament within thirty days of the making thereof, or if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(3.) If either House of the Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after the rules have been laid before that House, disallowing any rule, that rule shall thereupon cease to have effect.

PART VI.—COLLECTION AND RECOVERY OF TAX.

41.—(1.) Income tax shall be due and payable thirty days after the service by post of a notice of assessment. Date of payment of tax.

(2.) Where an assessment is amended in accordance with this Act and additional income tax is thereby payable by the taxpayer, the additional income tax shall be due and payable thirty days after the service by post of the notice of amended assessment upon the taxpayer.

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

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

Penal tax.

43. If the income tax or additional income tax payable on an amended assessment is not paid before the expiration of the time specified in section forty-one of this Act or such further time as may be allowed by the Commissioner under section forty-two of this Act, additional tax amounting to ten per centum of the tax unpaid shall be payable in addition by way of penalty:

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax imposed by way of penalty or any part thereof. The Commissioner shall furnish to the Treasurer annually, for presentation to Parliament, a report of all such remissions with a statement of the reasons therefor.

Recovery of tax.

44.—(1.) Income tax shall be deemed when it becomes due and payable to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.

(2.) Any income tax unpaid, including any additional tax, may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

Substituted service.

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

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

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

When tax not paid during lifetime.

46. 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 and complete returns :—

(a) The Commissioner shall have the same powers and remedies against the executors and administrators of the taxpayer in respect of the taxable income of the taxpayer as he would have had against the taxpayer in his lifetime.

(b) The executors and administrators shall make such returns as the Commissioner requires for the purpose of a full assessment.

(c) The assessment shall be at the rates payable in respect of years for which the income tax ought to have been paid and the amount shall (where the taxpayer's default was intentional) be treble the amount of the difference between the income tax so assessed and the amount

actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the hands of the executors and administrators.

- (d) No lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section and recovering the treble tax as in the case of ordinary assessments and taxation.

47. No statute of limitations at any time in force shall bar or affect any action or remedy for the recovery of income tax. Statute of limitations.

48. Where a taxpayer makes a default in the payment of income tax, then without in any way relieving him from his liability the following provisions shall apply as long as the default continues :— Remedy against other persons where taxpayer makes default.

- (a) If the tax is payable in respect of income derived solely or partially from rents, then the lessee or occupier of the property in respect of which the rent is paid shall be responsible for payment of the tax payable in respect of such rent, and it may be recovered from him as if he were the defaulting taxpayer.

- (b) All payments made under this section by a lessee or occupier shall be deemed to be made on behalf of the defaulting taxpayer :

Provided that the responsibility of the lessee or occupier under this section shall only be to the extent of any rent or payments due by him to the taxpayer at the time of demand made or action brought by the Commissioner, or from time to time accruing due thereafter.

49. Every person who, under the provisions of this Act, pays any income tax for or on behalf of any other person, shall be entitled to recover the same from that other person as a debt, together with the costs of recovery, or to retain or deduct same out of any money in his hands belonging or payable to that other person. Recovery of tax paid on behalf of another person.

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

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

PART VII.—MISCELLANEOUS.

Public officer
of company.

51. Every company which carries on business in Australia shall at all times be represented by a person residing in Australia duly appointed by the company or by its duly authorized agent or attorney, and with respect to every such company and person the following provisions shall apply :—

- (a) The person so appointed shall for the purpose of this Act be called the public officer of the company.
- (b) The company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner.
- (c) If the company fails or neglects to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

Penalty : Fifty pounds for every day during which the failure or neglect continues.

- (d) Service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (e) 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 by a taxpayer, and in case of default shall be liable to the same penalties.
- (f) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not exclude the company from the necessity of complying with any of the provisions of this Act or the regulations, or from the penalties of the section on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.

Agents and
trustees.

52. 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 and the payment of income tax thereon.
- (b) He shall in respect of such income make the returns and be assessed thereon, but in his representative capacity only,

and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.

- (c) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) Where as agent or trustee he pays income tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person.
- (e) 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 income tax which is or will become due in respect of the income.
- (f) He is hereby made personally liable for the income tax payable in respect of the income if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which income tax could legally be paid, but he shall not be otherwise personally liable for the tax :

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

- (g) He is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner.
- (h) For the purpose of insuring the payment of income 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 income tax, and in as full and ample a manner.

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

Contracts to
evade tax
void.

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

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

F.5082.—H

Covenant by
mortgagor to
pay tax.

54. A covenant or stipulation in a mortgage of land, which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying income tax on the interest to be paid under the mortgage—

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

Access to
books etc.

55. The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents, and other papers for the purpose of ascertaining the taxable income of any person and for that purpose may make extracts from or copies of any such books, documents, or papers.

Power to
obtain evidence.

56.—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer or not, to attend and give evidence before him, or before any officer authorized by him in that behalf, concerning any income or assessment, and to produce all books, documents, and other papers whatever in his custody, or under his control, relating thereto.

(2.) The Commissioner may require the evidence to be given on oath, and either verbally or in writing, and for such 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.

Obstructing
officers.

57. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act, or the regulations, shall be guilty of an offence.

Penalty : Fifty pounds.

Offences.

58. Any person who—

- (a) fails or neglects to duly furnish any return as and when required by this Act or the regulations, or by the Commissioner ; or
- (b) without just cause shown by him 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, or to produce any book or papers required of him by the Commissioner or any such officer ; or

- (c) knowingly and wilfully makes or delivers any false return, or makes any false answer, whether verbally or in writing, in relation to any matter or thing affecting his own or any other person's liability to or exemption from assessment of income tax,

shall be guilty of an offence.

Penalty : One hundred pounds.

59.—(1.) Notwithstanding anything contained in the last preceding section, any person who fails or neglects to duly furnish any return as and when required by this Act or the regulations or by the Commissioner or fails to include any assessable income in any return shall, if a taxpayer, be liable, except as provided in this section, by way of additional tax to pay an amount of ten per centum of the amount of tax assessable to him in addition to any additional tax which may become payable by him in accordance with section forty-three of this Act :

Additional tax
in certain cases.

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

(2.) The Commissioner shall furnish to the Treasurer annually, for presentation to Parliament, a report of all such remissions with a statement of the reasons therefor.

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

60. Any person who, with intention to defraud, in any return understates the amount of any income, shall be guilty of an indictable offence.

Under-
statement of
income.

Penalty : Five hundred pounds and an amount equal to treble the amount of income tax which would have been avoided if the income stated in the return had been accepted as the correct income.

61. Any person who, by any wilful act, default, or neglect, or by any fraud, art, or contrivance whatever, avoids or attempts to avoid assessment or taxation, shall be guilty of an indictable offence.

Avoiding or
taxation.

Penalty : Five hundred pounds and treble the amount of tax payment whereof he has avoided or attempted to avoid.

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

Penalties not
to relieve from
tax.

63. Whoever aids, abets, counsels, or procures, or by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence under this Act, shall be deemed to have committed that offence, and shall be punishable accordingly.

Aiding or
abetting.

Release of
taxpayers in
cases of
hardship.

64.—(1.) In any case where it is shown to the satisfaction of the Commissioner that a taxpayer liable to pay income tax has become bankrupt or insolvent, or has suffered such a loss that the exaction of the full amount of tax will entail serious hardship, a Board, consisting of the Commissioner, the Secretary to the Treasury, and the Comptroller-General of Customs, may release such taxpayer wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.

(2.) The Commissioner shall be Chairman of the Board, and the decision of the majority shall prevail.

(3.) The Minister shall cause to be laid before both Houses of Parliament as soon as may be after the close of the financial year a full statement of all cases in which, and the grounds on which, liability has been so released.

Regulations.

65. The Governor-General 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.
