

INCOME TAX ASSESSMENT.

No. 50 of 1930.

An Act to amend the *Income Tax Assessment Act 1922-1929* and for other purposes.

[Assented to 18th August, 1930.]

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

Short title and citation.

1. —(1.) This Act may be cited as the *Income Tax Assessment Act 1930*.

(2.) The *Income Tax Assessment Act 1922-1929** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act 1922-1930*.

Definitions.

2. Section four of the Principal Act is amended—

(a) by omitting the definition of "Absentee" and inserting in its stead the following definition:—

" 'Absentee' means a person who is not a resident of Australia;";

(b) by omitting the definition of "Assessable income" and inserting in its stead the following definition:—

" 'Assessable income' means—

(a) in the case of a resident the gross income derived from all sources, whether in Australia or elsewhere; and

(b) in the case of an absentee—the gross income derived from sources in Australia,

which is not exempt from income tax under the provisions of this Act;";

* Act No. 37, 1922, as amended by No. 27, 1923; No. 51, 1924; No. 28, 1925; No. 32, 1927; No. 48, 1928; and No. 11, 1929.

- (c) by inserting in the definition of "Income", after paragraph (b), the following paragraph:—

" ; and (ba) any profit arising from the sale by any person 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) by inserting in paragraph (c) of the definition of "Income", after the word "purchases", the words "(other than purchases for the purposes of a business)" ;
- (e) by inserting at the end of paragraph (d) of the definition of "Income" the words "to the extent to which that price has not been allowed or is not allowable as a deduction under the provisions of this Act or of any Act repealed by this Act" ;
- (f) by omitting from the definition of "Income from personal exertion" the words "derived from sources in Australia" ;
- (g) by inserting in the definition of "Income from personal exertion", after the word "individual", the words "and any profit specified in paragraph (ba) of the definition of 'Income'" ;
- (h) by omitting from the definition of "Income from property" the words "derived from sources in Australia and" ; and
- (i) by inserting, after the definition of "Person", the following definition:—

" 'Resident' or 'Resident of Australia' means—

- (a) a person, other than a company, 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 financial year in which the income the subject of assessment was derived 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 ; and

- (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 its voting power controlled by shareholders who are residents of Australia ; "

Application
of Act to
Papua.

3. Section five of the Principal Act is amended by omitting the words "nor to any income earned in Papua by personal exertion by any person while there".

Levy of
Income Tax.

4. Section thirteen of the Principal Act is amended—

(a) by omitting from sub-section (1.) the words "by every taxpayer from sources within Australia during the period of twelve months ending on the thirtieth day of June preceding the financial year for which the tax is payable" and inserting in their stead the words—

"—(a) by every resident—from all sources whether in Australia or elsewhere; and

(b) by every absentee—from sources in Australia, during the period of twelve months ending on the thirtieth day of June preceding the financial year for which the tax is payable"; and

(b) by inserting in sub-section (9.), after the words "or from any other cause", the words "(but not including a change in the investment of assets from which assessable income was derived into assets from which the taxpayer derives income which is not liable to be assessed under this Act)".

Exemptions.

5. Section fourteen of the Principal Act is amended—

(a) by omitting paragraph (h) of sub-section (1.) and inserting in its stead the following paragraph:—

"(h) the official salary of—

(i) the representative in Australia of the government of another country;

(ii) a foreign consul;

(iii) a trade commissioner of any part of the British Dominions outside Australia; and

(iv) any 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 Australia 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 Commonwealth temporarily resident for similar purposes in the country so represented is exempted from income tax by that country;"

(b) by inserting in paragraph (j) of sub-section (1.) after the word "development" the words "of aviation and";

- (c) by inserting at the end of paragraph (j) of sub-section (1.) the words "to the extent to which the income is not derived from a trade or business carried on by the society or association, or from services rendered by the society or association to any person for reward";
- (d) by omitting from paragraph (m) of sub-section (1.) the word "and";
- (e) by omitting from paragraph (n) of sub-section (1.) the words—
 "provided that the purchase of the produce in Australia is made for the purpose of export for sale outside Australia and that the Commissioner is satisfied that the produce has been exported without unnecessary delay";
 and
- (f) by inserting at the end of sub-section (1.) the following paragraphs:—
 "(p) the salaries of officers of the government of any country outside Australia, which is part of the British Empire, who are temporarily in Australia 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 Commonwealth temporarily in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country;
- "(q) income derived from sources outside Australia —
 (i) by a resident of Australia to the extent to which that income is proved to the satisfaction of the Commissioner—
 (1) to be chargeable with income tax in any country outside Australia; or
 (2) to be derived from the sale of any produce which is chargeable in the hands of the person deriving that income with royalty or export duty by the Government of any country outside Australia; and
 (ii) by a person who derives income from sources in Australia which is subject to exemption under paragraphs (g), (h), (i) or (p) of this sub-section; and
- "(r) 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 Australia by a team controlled by that club or association visiting Australia from that part of the British Empire and recognized by the authority controlling that class of match in Australia as being representative of that part of the British Empire;
 - (iii) by the representative of any government, visiting Australia on behalf of that government, or by any member of the entourage of that representative, in his official capacity as such representative or member ;
 - (iv) in the capacity of representative of any society or association established for educational, scientific, religious or philanthropic purposes, by any person visiting Australia in that capacity for the purpose of attending international or Empire conferences or for the purpose of carrying on investigation or research for such society or association ;
 - (v) in the capacity of representative of the press outside Australia, by any person visiting Australia in that capacity for the purpose of reporting the proceedings relating to any matters referred to in the preceding sub-paragraphs of this paragraph; and
 - (vi) by any person visiting Australia from an occupation carried on by him while in Australia, if, in the opinion of the Treasurer, that visit and occupation are primarily and principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia; and
- “(s) the proceeds arising from the sale for use outside Australia of iron ore quarried or mined by the vendor in Australia.”.

6. Section sixteen of the Principal Act is amended—

What is
included as
income.

- (a) by omitting from paragraph (b) all the words commencing with the words “(b) in the case of a member” and ending with the words “profits of the company:” and inserting in their stead the words—

“(b) in the case of a member, shareholder, depositor or debenture-holder of a company—

- (i) dividends, bonuses or profits (but not including a reversionary bonus issued on a policy of life assurance) credited, paid or distributed by the company (whether a resident or an absentee)—

(1) to a member or shareholder who is a resident—out of profit derived by the company from any source; or

- (2) to a member or shareholder who is an absentee—to the extent to which the dividends, bonuses, or profits have been credited, paid, or distributed out of profit derived from sources in Australia:

Provided that, where the company distributes, to a member or shareholder who is a resident, any income upon which it is exempt or would, if it were a resident, be exempt from income tax under paragraph (q) of sub-section (1.) of section fourteen of this Act or any income derived from sources outside Australia prior to the first day of July One thousand nine hundred and twenty-nine as dividends, bonuses, or profits among its members or shareholders, the income so distributed shall not be assessable income of the member or shareholder:”;

- (b) by omitting the third proviso to sub-paragraph (i) of paragraph (b) and inserting in its stead the following proviso:—

“Provided also that where the company distributes any of the profits arising from the sale, or compulsory resumption for public purposes, of assets which were not acquired for the purpose of re-sale at a profit, the profits so distributed shall not be assessable income to the member or shareholder;”;

- (c) by omitting from sub-paragraph (ii) of paragraph (b) the words "or sale" and inserting in their stead the words "sale or compulsory resumption for public purposes";
- (d) by omitting from sub-paragraph (ii) of paragraph (b) the words "(4) not subject to income tax;" and inserting in their stead the words—

"(4) not assessable income of the company;"

- (e) by omitting from the first proviso following sub-paragraph (iii) of paragraph (b) the words "additional amount of tax due to the inclusion of the dividends, bonuses, profits or shares in his assessment" and inserting in their stead the words "tax on that part of the dividends, bonuses or profits or of the face value of the shares which is included in his taxable income";
- (f) by omitting paragraph (d) and inserting in its stead the following paragraph:—

"(d) money derived by way of royalty or bonuses, and any amount received by way of premium, fine or foregift or consideration in the nature of a premium, fine or foregift demanded and given in connexion with a lease, or by way of consideration for the assignment or transfer of a lease, or for goodwill or a licence in respect of a business carried on on the leased property, or for surrendering a lease, goodwill or licence, and shall also include, where that amount or any part of that amount is paid by a company in the form of shares in that company to a person who has a controlling interest in that company and where those shares are sold or transferred by that person during the unexpired period of the lease calculated from the date when those shares were received or taken, or within a period of two years after that date, whichever period is the lesser— the amount for which the shares were so sold or transferred:

"Provided that if that person has paid any amount to acquire that lease, goodwill or licence or for the surrender to him of a lease, goodwill or licence for the purpose of granting, assigning or transferring that lease, goodwill or licence and the whole or any portion of that amount has not, in the assessments of the income of that person, been allowed as a deduction, under the provisions of this Act or of any Act repealed by this Act, he shall be entitled to a deduction in his assessment of an amount which bears the same proportion to the amount which has not been so allowed as the amount included in his assessable income, under the provisions

of this paragraph in respect of that lease, goodwill or licence, bears to the total amount of the consideration for the grant assignment or transfer of that lease, goodwill or licence:

" Provided further that this paragraph shall not apply to—

- (i) an amount paid by a company in the form of shares in that company except to the extent provided in this paragraph;
- (ii) any amount of income specified in paragraph (c) of sub-section (1.) of section fourteen of this Act; or
- (iii) any lease from the Commonwealth or a State being a perpetual lease without revaluation or a lease with a right of purchase;"

(g) by omitting from paragraph (h) the words "or in the case of any person who disposes of to another person (otherwise than by sale or by way of testamentary disposition)—

(c) any assets of a business carried on by him,"

and inserting in their stead the following sub-paragraph:—

"or (c) any assets of a business, carried on by him, for any purpose not mentioned in the last two preceding sub paragraphs;"

(h) by omitting from sub-paragraph (3) of paragraph (h) the words "determined by the Commissioner as fairly representing" and inserting in their stead the words "which, in the opinion of the Commissioner, fairly represents";

(i) by omitting from the first proviso to paragraph (h) the words "by applying the provisions of sub-sections (2.) and (3.) of section seventeen of this Act, is found or determined as the price or value of the wool as distinct from the sheep" and inserting in their stead the words "if the provisions of sub-sections (2.) and (3.) of section seventeen of this Act were applied, would be or would be deemed to be the price or value of the wool as distinct from the sheep, but not exceeding the excess, if any, of the sale price of the sheep in the wool over the value at which those sheep were brought to account at the end of the year immediately preceding that in which the sale took place or, if they were purchased after the end of that year, over the purchase price of those sheep"; and

(j) by omitting from the second proviso to paragraph (h) the words "no amount has been included in" and inserting in their stead the words "any amount has been excluded from".

Sale of sheep
in the wool.

7. Section seventeen of the Principal Act is amended—

- (a) by omitting from sub-section (2.) the words "value determined by the Commissioner as fairly representing" and inserting in their stead the words "amount which, in the opinion of the Commissioner, fairly represents"; and
- (b) by omitting from paragraph (b) of sub-section (3.) the words "determined by the Commissioner as fairly representing" and inserting in their stead the words "which, in the opinion of the Commissioner, fairly represents".

Taxation of
companies.

8. Section twenty of the Principal Act is amended—

- (a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

"(1.) In calculating the taxable income of a co-operative company there shall be deducted, in addition to any other deductions allowed under this Act, so much of the assessable income of the company as—

(a) is distributed among its shareholders as interest or dividends on shares; or

(b) is distributed among its members as rebates on purchases by the members from the company; or

(c) in the case of a company having as its primary object that specified in paragraph (b) of sub-section (1A.) of this section—is applied by the company for or towards the repayment of any moneys loaned to the company by a government of the Commonwealth or a State to enable the company to acquire assets which are required for the purpose of carrying on the business of the company or to pay that government for assets so required which the company has taken over from that government:

Provided that the deduction under this paragraph shall not be allowed unless shares representing not less than ninety per centum of the paid up capital of the company are held by persons who supply the company with the commodities or animals which the company requires for the purposes of its business." ; and

- (b) by inserting in sub-section (1A.), after paragraph (c), the following paragraph:—

" ; (d) The obtaining of funds from its members for the purpose of making loans to its members to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business : " ;

- (c) by omitting the proviso to sub-section (1a.) and inserting in its stead the following provisos:—

"Provided that a company which, before the thirty-first day of December One thousand nine hundred and thirty, has altered its rules to meet the requirements of this section relating to the prohibition of the quotation of the shares for sale or purchase at any Stock Exchange or in any other public manner whatsoever, shall be regarded as a co-operative company as from the date of the commencement of this section ;

Provided further that if, in any financial year, the amount represented by the value upon the disposal among, or acquisition from, the members of a company of commodities and animals acquired or disposed of by that company in the ordinary course of the industry, trade or business, or the amount represented by the receipts from the storage or packing of the commodities of the members of a company or the amount loaned to members, is less than ninety per centum of the amount represented by the total value of such commodities and animals disposed of or acquired, respectively, by the company, or (as the case may be) of the amount represented by the total receipts of the company from the storage or packing of commodities or by the total loans made by the company, that company shall not, in respect of that year, be deemed to be a co-operative company."

9. Section twenty-one of the Principal Act is amended—

- (a) by inserting in sub-section (1.), after the word "company" (first occurring), the words " (other than a private company to which section twenty-one A of this Act applies) "; and
- (b) by inserting at the end of the proviso to sub-section (2.) the words "or if, in any case in which a company which is interposed between that person and the company is not incorporated in Australia, the Commissioner is unable to ascertain the identity of that person or that part of the sum or further sum which that person would have so received, the Commissioner may assess the tax and the additional tax, if any, which would have been payable if the company which is so interposed had only one shareholder".

Taxation of
companies
where
distribution
not reasonable.

10. After section twenty-one of the Principal Act the following section is inserted:—

"21A.—(1.) Notwithstanding anything contained in this Act, where the Commissioner is of the opinion that any company formed after the commencement of the *Income Tax Assessment Act 1915*, being a company wherein not less than ninety per centum of the paid-up capital is represented by shares held by or on behalf of not more than ten individuals, or a company having such a company as its principal shareholder, has been formed for the purpose, *inter alia*, of relieving any person or persons specified by the Commissioner (other

Taxation of
private
companies.

than a company) from any liability to which he or they would have been subject under this Act if the company had not been formed, and that purpose is, in the opinion of the Commissioner, effective in the year in which the income was derived, that company shall—

- (a) where there is in the opinion of the Commissioner only one such person—he deemed to be an individually owned private company; or
- (b) where there are in the opinion of the Commissioner two or more such persons—he deemed to be a severally owned private company.

“(2.) For the purposes of this section the expression ‘shares held by or on behalf of’ or any expression of similar import, includes any share held by or in the name of—

- (a) any nominee;
- (b) any person who is a relative by blood, marriage or adoption, of a shareholder, if that relative has acquired the share by gift from that shareholder or by means of money received from that shareholder; and
- (c) any *cestui que trust* to whom a trustee being the legal owner of shares in a private company, is required by the terms of the trust to pay the income, if any, derived by him from the ownership of the shares.

“(3.) The income tax payable by companies to which this section applies shall be at such rates as are declared by the Parliament.

“(4.) In computing the taxable income of a company to which this section applies, no deduction shall be allowed in respect of any remuneration paid to any of the individuals referred to in sub-section (1.) of this section, by whom or on whose behalf not less than ninety per centum of the paid-up capital of the company is held.

“(5.) Any remuneration in respect of which, by virtue of the last preceding sub-section, no deduction is allowable, shall not be included in the assessable income of the individuals to whom it is paid.

“(6.) Where the whole or any part of the income in respect of which a company has paid or is liable to pay income tax in accordance with the provisions of this section is distributed to the members or shareholders of that company, a member or shareholder who is a taxpayer shall be entitled to a rebate of the amount by which his income tax is increased by reason of the inclusion in his assessable income of the amount so distributed to him.”.

Deductions.

11. Section twenty-three of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “from all sources in Australia” (first occurring);
- (b) by adding at the end of paragraph (a) of sub-section (1.) the following proviso:—

“: Provided further that, where any person would, but for this proviso, be entitled to a deduction in respect of any premium paid under a contract of insurance or guarantee against loss, damage or risk of any kind

whatever (not being a contract of life insurance) with an absentee (herein referred to as 'the insurer') who is not carrying on in Australia an insurance business either in a principal office or by means of a branch or through any other representative empowered to receive and deal with premiums under such contracts on behalf of the insurer, that person shall not be entitled to any deduction in his assessment in respect of that premium." ;

- (c) by omitting paragraph (b) of sub-section (1.) and inserting in its stead the following paragraph :—

" (b) all rates, State and Federal land taxes and State income tax (other than taxes which are deductible under section seventeen of the *Estate Duty Assessment Act 1914-1928*) for which the taxpayer is personally liable and which are annually assessed and are paid in Australia by the taxpayer in the year in which the income was derived ;

Provided that, when a taxpayer receives a refund of the whole or any part of the rates or taxes mentioned in this paragraph, the amount of the refund shall be brought into account as income in the year in which the refund is received ; "

- (d) by inserting in clause (4) of the first proviso to paragraph (e) of sub-section (1.), after the word "assessments", the words "and the amount, if any, allowable in any subsequent assessments, of the income of that person" ;
- (e) by omitting from paragraph (g) of sub-section (1.) the words "a taxpayer who is in receipt of salary, wages, allowances, stipends or annuity, or whose taxable" and inserting in their stead the words "the taxpayer, if he is a resident and is in receipt of salary, wages, allowances, stipends or annuity, or if his net" ;
- (f) by adding at the end of paragraph (g) of sub-section (1.) the following words :—

" For the purpose of this paragraph 'net income' means the residue of the assessable income of the taxpayer after allowing all other deductions allowed by this Act except the deduction under section twenty-four ; "

- (g) by inserting at the end of paragraph (i) of sub-section (1.) the following proviso :—

" Provided that, when any such shares are acquired and sold in circumstances which cause the proceeds of sale to be assessable income, the amount allowable as a deduction in respect of the cost of acquisition of those shares or in respect of their value at the commencement

of the period in which the sale was made shall not be greater than the excess (if any) of that amount over the amount or the total of the amounts allowed or allowable as deductions under this paragraph in respect of calls paid by the taxpayer upon those shares ;” ;

(h) by omitting from paragraph (j) of sub-section (1.) the word “as” (first occurring) and inserting in its stead the word “which” ;

(i) by inserting in paragraph (j) of sub-section (1.) after the word “employees” (first occurring) the words “as is sufficient under the terms of the constitution of the fund to provide those benefits, pensions or allowances for employees who are residents.” ;

(j) by inserting in the second proviso to paragraph (j) of sub-section (1.) after the word “employees” the words “(who are residents)” ;

(k) by inserting in paragraph (n) of sub-section (1.) after the word “individual” the words “, or from a company to any individual,” ;

(l) by omitting from paragraph (o) of sub-section (1.) the words “whose taxable” and inserting in their stead the words “who is a resident and whose net” ;

(m) by adding at the end of paragraph (o) of sub-section (1.) the words—

“For the purposes of this paragraph ‘net income’ means the residue of the assessable income of the taxpayer after allowing all other deductions allowed by this Act except the deductions under section twenty-four and paragraph (g) of sub-section (1.) of this section ;” ;

(n) by omitting from paragraph (p) of sub-section (1.) the word “and” ;

(o) by inserting in paragraph (q) of sub-section (1.) after the word “land” (first occurring), the words “in Australia” ; and

(p) by inserting at the end of sub-section (1.) the following paragraph :—

“; and (r) debts actually written off as bad debts during the year in which the income was derived to the extent that it is proved to the satisfaction of the Commissioner that such debts are bad debts and are in respect of—

(i) amounts which have been brought to account as assessable income by the taxpayer in his return for any year ; or

(ii) money lent in the ordinary course of the business of the lending of money by a person who carries on that business :

Provided that any amount received at any time in respect of any such bad debts shall be brought into account as income in the year in which that amount is received."

12. Section twenty-five of the Principal Act is amended—

- (a) by inserting, after paragraph (c), the following paragraph :—

Deductions
not to be
allowed in
certain cases.

"(ca) any periodical subscription by a person in respect of his membership of an association (whether corporate or unincorporate) unless—

- (i) that subscription is expressly allowable as a deduction under any of the provisions of this Act ;
- (ii) the carrying on of a business, or the exercise of a vocation or calling, from which assessable income is derived by him is conditional upon such membership ; or
- (iii) the association carries out, on behalf of its members, during the year in which the assessable income of the person was derived, any activity of such a nature that, if carried out by that person on his own behalf, its expense would be an allowable deduction to that person under this Act :

Provided that in a case to which this sub-paragraph applies the person shall be entitled to a deduction of only so much of his subscription as bears to the whole of the subscription the same proportion as the losses or outgoings so incurred by the association in carrying out that activity bear to the total losses and outgoings (not being in the nature of losses and outgoings of capital) of the association for that year ;"

- (b) by omitting paragraph (g) and inserting in its stead the following paragraph :—

"(g) any bad debts, except those specified in paragraph (r) of sub-section (1.) of section twenty-three of this Act ;"

- (c) by omitting the proviso to paragraph (i) and the paragraph following that proviso commencing with the words " This proviso " and ending with the words " right of purchase " and inserting in their stead the following provisos and paragraph :—

" Provided that where it is proved to the satisfaction of the Commissioner that any taxpayer (being the lessee

under a lease, or the transferee or assignee of a lease) has paid any amount by way of royalty, bonus, fine, premium or foregift or consideration in the nature of a fine, premium or foregift for a lease, or a renewal of a lease, or by way of consideration for the assignment or transfer of a lease, of premises or machinery used by the taxpayer for the production of income, including, in either class of case, a sum which is attributable to the assignment or transfer of goodwill or of a licence, the taxpayer shall be entitled to a deduction from his assessable income of the sum obtained by dividing the amount so paid by the number of years of the unexpired period of the lease at the date the amount was so paid or if, after the date of such payment, the lease was owned by the taxpayer during part only of the year in which the income was derived, that part of the sum so obtained which bears the same proportion to that sum as that part of the year bears to a year, but so that the aggregate of the deductions so allowed shall not exceed the sum so paid if paid after the thirtieth day of June, One thousand nine hundred and fourteen, or the part of the sum so paid which is proportionate to the unexpired period of the lease from the thirtieth day of June, One thousand nine hundred and fourteen if the sum were paid on or prior to that date :

“ Provided further that where any taxpayer succeeds to any lease or share therein as a beneficiary upon the death of any person, or in the course of the administration of the estate of any person, who, in the opinion of the Commissioner, has paid for that lease any amount of the nature specified in the first proviso to this paragraph, the taxpayer 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 that proviso had he lived :

“ The provisos to this paragraph shall not apply—

- (a) to any lease from the Commonwealth or a State being a perpetual lease without re-valuation or a lease with a right of purchase ; or
- (b) to entitle a company to a deduction in respect of any amount paid by the company to any person in the form of shares in that company, except where the shares have been sold by that person, and the sale price is, by virtue of paragraph (d) of section sixteen of this Act, assessable to that person, in which case the company shall be entitled to a deduction under the first proviso to this paragraph in respect of

the amount paid by the purchaser of those shares as if it were an amount paid by the company as specified in that proviso;"; and

- (d) by inserting at the end of paragraph (k) the words "and not in pursuance of an arrangement entered into for the purpose of relieving the husband or wife or both from any liability which would have occurred under this Act if the payments had not been made".

13. Section twenty-five A of the Principal Act is repealed and the following section inserted in its stead:—

"25A. Where, in respect of property of any person from the use or ownership of which assessable income may be derived, any expenditure is incurred by that person in connexion with the acquisition or use of that property and a deduction in respect of that expenditure has been allowed or is allowable under any other provision of this Act, and the whole or any part of the proceeds of the sale of that property is assessable as income of that person, no deduction shall be allowed from the proceeds so assessable in respect of the expenditure so allowed or allowable."

*Income
deductions.*

14. Section twenty-six of the Principal Act is amended:—

- (a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

*Deductions of
business losses.*

"(1.) Where a loss is made in any year by any person:—

- (a) in carrying on a business in Australia;
 (b) if he is a resident, in carrying on a business the proceeds of which (if any) derived from sources outside Australia would not be wholly exempt from income tax under the provisions of sub-paragraph (i) of paragraph (q) of sub-section (1.) of section fourteen of this Act; or

- (c) upon the sale of any property the profits (if any) from the sale of which would have been assessable as income of that person,

that person shall be entitled to a deduction of that loss from the net assessable income (if any) derived by him in that year."

- (b) by omitting sub-section (2A.) and inserting in its stead the following sub-section:—

"(2A.) Where in any year a person who has made a loss to which this section applies derives income which for any reason is not liable to be assessed, the amount deductible under this section, from the net assessable income of the year in which that income was derived, shall be —

- (a) if the person is not an absentee—the amount by which the total sum which would otherwise be deductible under this section exceeds the income which is not so liable, after deducting

from that income, in any case in which there is a business loss which is attributable to sources outside Australia (not being a loss which is allowable as a deduction under this section) the amount of that loss; and

(b) if the person is an absentee—the amount by which the loss exceeds the income derived from sources in Australia which is not so liable.”; and

(c) by omitting paragraph (b) of sub-section (6.) and inserting in its stead the following paragraph:—

“(b) ‘loss’ means—

(i) in the case of a business the income (if any) of which would, in the opinion of the Commissioner, be apportionable between sources within and sources outside Australia and the proceeds (if any) of which would be assessable only to the extent that they were derived from sources within Australia—so much of the loss sustained as, in the opinion of the Commissioner, is attributable to sources within Australia; or

(ii) in the case of a business carried on wholly or partly outside Australia the income (if any) of which derived from sources outside Australia would be taxable in part only under this Act—so much of the loss which is attributable to sources outside Australia as, in the opinion of the Commissioner, is proportionate to the part of the income which would be so taxable,

and shall be calculated without taking into account any Federal income tax paid or payable by the taxpayer.”.

15. After section twenty-eight of the Principal Act the following sections are inserted:—

Taxation of
film businesses
controlled
abroad.

“28A.—(1.) Notwithstanding anything contained in this Act, where any person residing outside Australia, or any foreign company, derives income under any contract or agreement with any person in relation to the carrying on in Australia 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 connexion with such films, and, in the opinion of the Commissioner, that business—

(a) is controlled principally by persons resident outside Australia or by a foreign company; or

(b) is carried on by a company, a majority of the shares in which are held by or on behalf of—

(i) a foreign company ; or

(ii) persons who hold a majority of the shares in a foreign company ; or

(c) is carried on by a company (other than a foreign company) which holds, or on behalf of which other persons hold, a majority of the shares in a foreign company,

the person residing outside Australia, or the foreign company, deriving that income shall be assessable and chargeable with income tax thereon.

"(3.) Where any person or foreign company has derived income which is assessable under the last preceding sub-section, the taxable income of that person or company shall be deemed to be equivalent to thirty per centum of the amount of the gross income so derived :

Provided that, where it is proved to the satisfaction of the Commissioner that the percentage specified in this sub-section should be varied, that person or foreign company shall be assessable and chargeable with income tax on such other percentage of that gross income as the Commissioner in his judgment thinks proper.

"(3.) For the purposes of this section ' foreign company ' means a company incorporated outside Australia.

"(4.) Any person carrying on business in Australia who has entered into, with any person residing outside Australia or with a foreign company, a contract or agreement of the nature specified in sub-section (1.) of this section, shall, for all purposes of this Act, be the agent for the person residing outside Australia or the foreign company and shall not make any payment of any income assessable under this section to or on account of that person or company and shall not transfer out of Australia any such income for the purpose of making any 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 that person or company.

"(5.) Any person who makes any payment or transfers any income in contravention of the last preceding sub-section shall be guilty of an offence.

Penalty : The amount of tax which is, or may become payable by the person or company for whom or for which the person paying or transferring the income is the agent and, in addition, a fine not exceeding One hundred pounds.

"28a.—(1.) Notwithstanding anything contained in this Act, where any person in Australia (referred to in this section as ' the Income derived from Insurance.

insured') enters into a contract of insurance or guarantee against loss, damage or risk of any kind whatever (not being a contract of life insurance)—

- (a) with an absentee (referred to in this section as 'the insurer') who is not carrying on in Australia an insurance business either in a principal office or by means of a branch; or
 - (b) with a person in Australia acting on behalf of the insurer,
- any premium paid or payable under that contract shall be deemed to be assessable income derived from sources in Australia by the insurer.

"(2.) The insurer shall be deemed, in respect of the premiums, to have derived in any year a taxable income equal to ten per centum of the total amount of premiums paid or payable during that year to the insurer or to the person in Australia acting on behalf of the insurer:

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

"(3.) The insured and any person in Australia acting on behalf of the insurer shall be the agents, and shall be jointly and severally liable as such, for all purposes of this Act of the insurer, and if either of those persons pays or credits any amount in respect of that contract to the insurer 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 section in respect of that amount, the person paying or crediting that amount shall be personally liable for payment of so much of the income tax, if any, as is or may become payable by the insurer on ten per centum of that amount.

"(4.) Every person who exports any goods from Australia shall furnish to the Collector of Customs for transmission to the Commissioner a copy of the Customs entry for such goods and shall show thereon such information regarding the insurance of those goods as is prescribed."

Partners.

16. Section twenty-nine of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-sections:—

"(2.) Where the Commissioner is of opinion that a partnership between husband and wife or between two or more husbands and any or all of their wives, or between relatives by blood, marriage or adoption, was formed or has been varied for the purpose of relieving any member thereof specified by the Commissioner from any liability to which he would have been subject under this Act if the partnership had not been formed, and that that purpose is effective in the year in which the income was derived or where there is a trust

which is a partnership as defined in section four of this Act, the partnership shall be assessed as if it were a single person without regard to the interests therein of any of the partners or to any deductions to which any of them should be entitled under this Act, and shall—

(a) if there is only one such member or if it is such a trust—be deemed to be an individually owned partnership; or

(b) if there are two or more such members—be deemed to be a severally owned partnership.

"(3.) The income tax payable by partnerships to which the last preceding sub-section applies shall be at such rates as are declared by the Parliament.

"(4.) Any member of a partnership to which sub-section (2.) of this section applies shall not be assessed, under the provisions of sub-section (1.) of this section, in his individual capacity in respect of his individual interest in the income of that partnership."

17. Section thirty-one of the Principal Act is amended by inserting in paragraph (a) of sub-section (1.), after the word "twenty-four", the words "and, where the beneficiary has no beneficial interest in the corpus of the estate, except the deduction under section twenty-six in respect of any loss which is required to be met out of the corpus". Trustees.

18. Section thirty-two of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:— Persons to furnish returns.

"(1.) For the purpose of assessment and levy of income tax, every person 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 the total assessable income derived by him during the financial year ending on the preceding thirtieth day of June if the amount of that income is—

(a) in the case of a resident—not less than Three hundred pounds; or

(b) in the case of a company or an absentee—in excess of One pound."

19. Section thirty-seven of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-sections:— Alteration of assessments.

"(1.) The Commissioner may, subject to this section, cause to be made 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:

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.

"(1A.) An alteration in or addition to an assessment may be made under this section—

- (a) where the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance is due to fraud or evasion—at any time;
- (b) where the Commissioner is of opinion that there has been an avoidance of tax in the assessment owing to the failure or omission of the taxpayer to keep books, accounts or records from which the income of the taxpayer might reasonably be ascertained, and that the avoidance is not due to fraud or evasion—within six years from the date when the tax payable on the assessment was originally due and payable; and
- (c) in any other case—within three years from the date when that tax was originally due and payable."

20. After section fifty-one A of the Principal Act the following section is inserted:—

Objections
and appeals
in certain cases.

"51B. Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner under section twenty-one A, paragraph (n) of sub-section (1.) of section twenty three, or sub-section (2.) of section twenty-nine of this Act (whether in the exercise of a discretion conferred upon the Commissioner or otherwise) and who is dissatisfied with any assessment made pursuant to or involving such opinion, decision or determination shall, after the assessment has been made, have the same right of objection and appeal in respect of such opinion, decision or determination and assessment as is provided in sections fifty, fifty-one and fifty-one A of this Act."

Date of
payment of
tax.

21. Section fifty-four of the Principal Act is amended by omitting sub-section (4.) and inserting in its stead the following sub-sections:—

"(4.) Subject to this section, every person who is about to leave Australia shall apply to the Commissioner at his office or at the office of a Deputy Commissioner for a certificate that—

- (a) income tax is not payable by that person; or
- (b) all income tax which has been assessed to that person has been paid or that arrangements satisfactory to the Commissioner have been made for the payment of that tax and of any further income tax which may become due and payable by that person,

and the Commissioner, Assistant Commissioner or Deputy Commissioner, upon being satisfied as to the facts, may issue a certificate accordingly.

"(4A.) Every certificate issued under the last preceding sub-section shall be presented by or on behalf of the person to whom it is issued to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship by which the person intends to leave

Australia at the port at which passage by the ship is to be booked, and unless and until such certificate is so presented an authority for that person to travel by that ship shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

"(4B.) Any owner or charterer or the representative or employee of the owner or charterer of any ship who issues in contravention of the provisions of the last preceding sub-section an authority to any person to travel by the ship shall be guilty of an offence.

Penalty: The amount of tax, if any, which is, or may become, due and payable by the person to whom the authority to travel is issued and in addition a fine not less than Fifty pounds or more than Two hundred pounds.

"(4C.) The owner, charterer, or the representative of the owner or charterer, of every ship which takes passengers on board at any port shall on the first working day after the advertised date of departure of the ship from the port in Australia at which the certificate mentioned in this section is required to be presented, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port is situated, 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) who sailed on the ship.

"(4D.) Every owner or charterer of a ship or his representative who fails to comply with the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than One hundred pounds."

22. After section sixty-seven of the Principal Act the following section is inserted:—

"67A. If any person, in any declaration made under, or authorized or prescribed by, this Act or the regulations thereunder, knowingly and wilfully declares to any matter or thing which is false or untrue, he shall be deemed to be guilty of wilful and corrupt perjury and shall upon conviction be liable to imprisonment for a period not exceeding four years."

False
declarations.

23. Section eighty-three of the Principal Act is repealed and the following section inserted in its stead:—

"83.—(1.) In any taxation prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.

Averment of
prosecutor
sufficient.

"(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 by witnesses; 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 by witnesses 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.) The foregoing provisions of this section shall not apply to—

(a) an averment of the intent of the defendant; or

(b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

"(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant."

Treatment
of convicted
offenders.

24. Section eighty-five of the Principal Act is amended by omitting from paragraph (c) the word "justice" and inserting in its stead the word "distress".

Public officer of
company.

25. Section eighty-eight of the Principal Act is amended by adding at the end thereof the following paragraph:—

"(h) 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."

Application of
Act.

26.—(1.) The amendments effected by paragraphs (c) and (g) of section two and by paragraph (c) of section eleven of this Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and twenty-two and all subsequent years.

(2.) The amendment effected by paragraph (a) of section five of this Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and twenty-three and all subsequent years.

(3.) The second proviso inserted by paragraph (c) of section eight of this Act in sub-section (1A.) of section twenty of the Principal Act shall apply to assessments for the financial year beginning on the first day of July One thousand nine hundred and twenty-five and all subsequent years.

(4.) The amendment effected by paragraph (p) of section eleven of this Act shall be deemed to have commenced on the date of commencement of the *Income Tax Assessment Act 1928*.

(5.) The following amendments effected by this Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty and all subsequent years:—

The amendments effected by paragraphs (a), (b), (d), (e), (f), (h) and (i) of section two, by section three, by section four, by paragraphs (c), (e) and (f) of section five, by paragraphs (a), (b), (c) and (f) of section six, by paragraph (a) of section eleven, by paragraphs (a) and (c) of section twelve, by paragraph (a) (in so far as it relates to losses made in carrying on a business) of section fourteen and by paragraphs (b) and (c) of section fourteen (in so far as they relate to losses incurred in carrying on a business the proceeds of which, if any, derived from sources outside Australia would not be wholly exempt from income tax under the provisions of sub-paragraph (i) of paragraph (g) of sub-section (1.) of section fourteen of the Principal Act as amended by this Act), by section fifteen and by section seventeen.
