

---

# INCOME TAX ASSESSMENT.

No. 27 of 1936.

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

[Assented to 2nd June, 1936.]

**B**E 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.—PRELIMINARY.

1. This Act may be cited as the *Income Tax Assessment Act* Short title.  
1936.

2. The Acts specified in the first column of the Schedule to this Repeal.  
Act are repealed to the extent respectively specified in the second Cf. I.T.A., s. 2.  
column of that Schedule :

Provided that the Acts and parts of Acts repealed by this Act and any regulations made under the Acts or parts so repealed and in force immediately prior to the commencement of this Act, and any Act relating to income tax which was in force prior to the commencement of the Acts so repealed, shall, subject to this Act,

---

The references in the marginal notes throughout this Act to "I.T.A." are references to the "Income Tax Assessment Act 1922-1934".

continue, and be deemed to have at all times continued, in force for all purposes in connexion with income tax payable for any financial year prior to that commencing on the first day of July, One thousand nine hundred and thirty-six :

Provided further that no alteration or addition in or to any assessment made under any Act relating to income tax which was in force prior to the commencement of the Acts so repealed shall be made after the expiration of three years from the date when the tax payable on the assessment was originally due and payable, unless the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance was due to fraud or evasion.

Saving.

3. Nothing in this Act shall affect the operation of the *Commonwealth Debt Conversion Act* 1931 or of sub-section (2.) of section fifty-two B of the *Commonwealth Inscribed Stock Act* 1911-1932

Tax payable  
on interest  
on certain  
Treasury Bills.

4 The application of section twenty of the *Commonwealth Debt Conversion Act* 1931 shall extend to such Commonwealth Treasury Bills issued to banks in Australia, on or after the thirty-first day of July, One thousand nine hundred and thirty-one, as the Australian Loan Council, constituted in pursuance of the Schedule to the *Financial Agreement Validation Act* 1929, determines.

Parts.  
Cf. I.T.A., s. 3.

5. This Act is divided into Parts and Divisions, as follows :—

PART I.—PRELIMINARY.

PART II.—ADMINISTRATION.

PART III.—LIABILITY TO TAXATION.

Division 1.—General.

Division 2.—Income—

*Subdivision A—Assessable income generally.*

*Subdivision B—Trading Stock.*

*Subdivision C—Business carried on partly in and partly out of Australia.*

*Subdivision D—Dividends.*

Division 3.—Deductions.

Division 4.—Leases.

Division 5.—Partnerships.

Division 6.—Trustees.

Division 7.—Private Companies.

Division 8.—Life Assurance Companies.

Division 9.—Co-operative and Mutual Companies.

Division 10.—Mining.

Division 11.—Interest paid by Companies.

Division 12.—Oversea Ships.

Division 13.—Australian Business controlled abroad.

Division 14.—Film Business controlled abroad.

Division 15.—Insurance with Non-residents.

Division 16.—Averaging of Incomes.

Division 17.—Rebates on Income taxed abroad and on **business income.**

**PART IV.—RETURNS AND ASSESSMENTS.****PART V.—OBJECTIONS AND APPEALS.**

Division 1.—Constitution of Boards of Review.

Division 2.—Reviews and Appeals.

**PART VI.—COLLECTION AND RECOVERY OF TAX.****PART VII.—PENAL PROVISIONS AND PROSECUTIONS.****PART VIII.—MISCELLANEOUS.****6. In this Act, unless the contrary intention appears—**

“agent” includes—

(a) every person who in Australia, for or on behalf of any person out of Australia holds or has the control, receipt or disposal of any money belonging to that person; and

(b) every person declared by the Commissioner to be an agent or the sole agent of any person for any of the purposes of this Act;

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

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

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

“Australia” includes the Territory of Papua;

“business” includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee;

“Commissioner” means the Commissioner of Taxation;

“company” includes all bodies or associations corporate or unincorporate, but does not include partnerships;

“dividend” includes any distribution made by a company to its shareholders, whether in money or other property, and any amount credited to them as shareholders, and includes the paid-up value of shares distributed by a company to its shareholders to the extent to which the paid-up value represents a capitalization of profits; but does not include a return of paid-up capital or a reversionary bonus on a policy of life-assurance;

“exempt income” means income which is exempt from income tax and includes income which is not assessable income;

“friendly society” means a society duly registered as a friendly society under any Act or State Act or under any law in force in a Territory being part of the Commonwealth;

“income from personal exertion” or “income derived from personal exertion” means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered,

**Definitions.**  
Cf. I.T.A., s. 4.

the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying out of any profit-making undertaking or scheme, but does not include—

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

(b) rents or dividends;

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

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

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

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

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

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

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

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

“person” includes a company;

“previous Act” means the *Income Tax Assessment Act 1922*, and when considered in relation to any time means that Act, or, if it has been amended, that Act as amended as in force at that time;

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

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

“resident” 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 year of income, unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia ; 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 ;

“shareholder” includes member or stockholder ;

“special property tax” means the further income tax, if any, imposed as a percentage of that part of the taxable income of any person which is attributable to income derived by him—

(a) from property ;

(b) by way of interest, dividends, rents or royalties, whether derived from personal exertion or from property ; and

(c) in the course of carrying on a business, if the income is of such a class that, when it is derived otherwise than in the course of carrying on a business, it is income from property ;

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

“taxpayer” means a person deriving income ;

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

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

(a) an executor or administrator, guardian, committee, receiver, or liquidator ; and

(b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the income of a person under any legal or other disability ;

“ year of income ” means—

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

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

Taxpayer  
resident in  
Territories.  
Cf. I.T.A., s. 5.

7.—(1.) This Act shall extend to the Territories of Papua, Norfolk Island and New Guinea, but shall not apply to any income derived by a resident of those Territories from sources within those Territories.

(2.) Any taxpayer who is resident in a Territory specified in this section shall, for the purposes of assessment and payment of income tax on income derived from sources in Australia, be deemed to be a resident of Australia.

#### PART II.—ADMINISTRATION.

Commissioner.  
Cf. I.T.A., s. 6.

8.—(1.) For the purposes of this Act, there shall be a Commissioner of Taxation who shall have the general administration of this Act.

(2.) The person for the time being holding office as Commissioner of Taxation under the *Estate Duty Assessment Act* 1914–1928 shall be the Commissioner of Taxation under this Act.

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

Second  
Commissioner.  
Cf. I.T.A., s. 7A.

9.—(1.) For the purposes of this Act, there shall be a Second Commissioner of Taxation (in this Act referred to as “ the Second Commissioner ”).

(2.) Any person for the time being holding office as Second Commissioner of Taxation under the *Estate Duty Assessment Act* 1914–1928 shall be the Second Commissioner under this Act.

Powers of  
Second  
Commissioner.  
Cf. I.T.A., ss. 7,  
7A (2).

10.—(1.) Subject to this section, the Second Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act.

(2.) Where in this Act the exercise of any power or function by the Commissioner or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Second Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of the Second Commissioner in relation to that matter.

(3.) Nothing in this section shall be deemed to confer upon the Second Commissioner any power or function of the Commissioner under sub-section (1.) of section eight, or under section twelve or fourteen of this Act or to prevent the exercise of any power or function by the Commissioner under this Act, and the Commissioner shall have, in relation to any act of the Second Commissioner, the same power as if that act were done by himself.

Deputy  
Commissioners.  
Cf. I.T.A., s. 8.

11. For the purposes of this Act, 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.

**12.—**(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.  
*Cf. I.T.A., s. 9.*

(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.

(3.) Any delegation under this section may be made subject to a power of review and alteration, within the period specified in the instrument of delegation, by the Commissioner of any act done in pursuance of the delegation and the decision given upon any such review or alteration shall be deemed to be that of the Commissioner.

**13.** Any reference in this Act to the Commissioner shall be deemed to include—

References to  
Commissioner.  
*Cf. I.T.A., s. 9A*

(a) in respect of matters as to which the Second Commissioner has exercised any power or function conferred upon him by this Act—a reference to the Second Commissioner; and

(b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation under this Act—a reference to that Deputy Commissioner.

**14.—**(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;  
*Cf. I.T.A., s. 10.*

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

**15.—**(1.) The Governor-General may make arrangements with the Governor in Council of a State for the collection by the Commonwealth on behalf of the State of income tax at rates to be fixed by the Parliament of the State on a taxable income ascertained in accordance with this Act or an Act of that State.

Governor-  
General may  
make  
arrangements  
with Governor  
of State.  
*Cf. I.T.A., s. 11.*

(2.) The Governor-General may make regulations for carrying into effect any arrangement made under the provisions of this section.

(3.) Any arrangement made under the previous Act by the Governor-General with the Governor in Council of a State for the collection by the Commonwealth, on behalf of the State, of income tax at rates fixed by the Parliament of the State on a taxable income ascertained in accordance with the previous Act or with any Act of that State shall, until terminated in the manner provided by that arrangement, continue in force as if it were an arrangement made under this section for the purposes of the collection of income tax on behalf of that State.

Officers to  
observe  
secrecy.  
Cf. I.T.A., s. 12.

16.—(1.) For the purposes of this section, “officer” means a person who is or has been appointed or employed by the Commonwealth or by a State, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person, disclosed or obtained under the provisions of this Act or of any previous law of the Commonwealth relating to Income Tax.

(2.) Subject to this section, an officer shall not either directly or indirectly, except in the performance of any duty as an officer, and either while he is, or after he ceases to be an officer, make a record of, or divulge or communicate to any person any such information so acquired by him.

(3.) An officer shall not be required to produce in Court any return, assessment or notice of assessment, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or of any previous law of the Commonwealth relating to Income Tax.

(4.) Nothing in this section shall be deemed to prohibit the Commissioner, Second Commissioner, or a Deputy Commissioner, or any person thereto authorized by him, from communicating any information to—

- (a) any person performing, in pursuance of any appointment or employment by the Commonwealth or by a State, any duty arising under any act administered by the Commissioner of Taxation or the Commissioner of Land Tax, for the purpose of enabling that person to carry out any such duty ;
- (b) a Board of Review appointed under this Act ;
- (c) the Commissioner of Income Tax for any State, or the authority administering any Act of a State relating to Stamp Duties or Succession Duties if that authority is authorized by law to afford similar information to the Commissioner, the Second Commissioner or a Deputy Commissioner ;
- (d) the Commissioner of Pensions or the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions ;
- (e) the Commissioner for Maternity Allowances for the purpose of any law relating to maternity allowances ; or
- (f) the Director-General of Health for the purpose of the administration of any law of the Territory for the Seat of Government which is administered by the Minister of State for Health.

(5.) Any person to whom information is communicated under the last preceding sub-section, and any person or employee under his control shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under sub-sections (2.) and (3.) of this section, as if he were an officer.



(6.) Any officer shall, if and when required by the Commissioner, Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

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

### PART III.—LIABILITY TO TAXATION.

#### Division 1.—General.

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

Income Tax.  
Cf. I.T.A., s. 13  
(1), (1A).

18.—(1.) Any person may, with the leave of the Commissioner, adopt an accounting period being the twelve months ending on some date other than the thirtieth day of June. His accounting period in each succeeding year shall end on the corresponding date of that year, unless with the leave of the Commissioner some other date is adopted.

Accounting period.  
Cf. I.T.A., ss.  
13 (1), 32 (3),  
(4).

(2.) Where the Commissioner has accepted returns from any person based on an accounting period as defined in the previous Act for the purposes of assessment for the last financial year to which that Act applied, that person shall be deemed to have adopted a corresponding accounting period under this section.

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

Money credited  
reinvested, &c.,  
to be income.  
Cf. I.T.A., ss.  
19, 25 (d).

20. For all the purposes of this Act, income wherever derived and any expenses wherever incurred shall be expressed in terms of Australian currency.

Income to be  
expressed in  
Australian  
currency.

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

Where  
consideration  
not in cash.

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

Income arising  
from past  
transactions.

23. The following income shall be exempt from income tax :—

Exemptions.  
Cf. I.T.A., s. 14  
(1) (g), (h), (p)

(a) the official salary of, and the income derived from sources out of Australia by, any person being—

(i) the Governor-General or the Governor of a State ;

- (ii) the representative in Australia of the government of another country ;
- (iii) a foreign consul ;
- (iv) a trade commissioner of any part of the British Empire other than Australia ;
- (v) a member of the staff of any such representative, foreign consul or trade commissioner if the member is domiciled in the country represented by the representative, foreign consul or commissioner, and is temporarily resident in 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 ; or
- (vi) an officer of the government of any country outside Australia which is part of the British Empire, who is 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 ;

*Cf. I.T.A., s. 14*  
(1) (d).

- (b) the remuneration paid by the government of the Commonwealth or of a State to a non-resident for expert advice to that government or as a member of a Royal Commission ;

*Cf. I.T.A., s. 14*  
(1) (e).

- (c) income derived—

- (i) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting Australia in that capacity for the purpose of engaging in contests in Australia in that sport or game ;
- (ii) by any club or association in any other part of the British Empire as its share of the proceeds of cricket, football or similar matches played in 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 ;
  - (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
  - (vii) as director's fees or salary by a non-resident during a visit to Australia during which he acts as a director, manager or other administrative officer of a manufacturing, mercantile or mining business or of a business of primary production, if the visit of the non-resident to Australia does not exceed six months ;
- (d) the revenue of a municipal corporation or other local governing body or of a public authority constituted under any Act or State Act, or under any law in force in a Territory being part of the Commonwealth ; *Cf. I.T.A., s. 14 (1) (e).*
- (e) the income of a religious, scientific, charitable or public educational institution ; *Cf. I.T.A., s. 14 (1) (d).*
- (f) the income of a trade union and the income of an association of employers or employees registered under any Act or State Act, or under any law in force in a Territory being part of the Commonwealth relating to the settlement of industrial disputes ; *Cf. I.T.A., s. 14 (1) (e).*
- (g) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, and being a friendly society, or a society or association established for musical purposes, or for the encouragement of music, art, science or literature ; *Cf. I.T.A., s. 14 (1) (b), (k).*

- Cf. I.T.A., s. 14*  
(1) (j). (h) the income of a society or association not carried on for the purposes of profit or gain to the individual members thereof, established for the purpose of promoting the development of aviation or of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia;
- Cf. I.T.A., s. 14*  
(1) (u). (i) the income of a savings bank conducted exclusively for the benefit of depositors;
- Cf. I.T.A., s. 14*  
(1) (f), (g). (j) the incomes of the following funds, provided that the particular fund is being applied for the purpose for which it was established—
- (i) a provident, benefit or superannuation fund established for the benefit of employees;
  - (ii) a fund established by will or instrument of trust for public charitable purposes; and
  - (iii) a fund established for the purpose of enabling scientific research to be conducted by or in conjunction with a public university or public hospital;
- Cf. I.T.A., s. 14*  
(1) (g). (k) pensions paid under the *Australian Soldiers' Repatriation Act* 1920-1934, and wounds and disability pensions of the kinds specified in sub-section (2.) of section sixteen of the *Finance Act* 1919 of the United Kingdom;
- Cf. I.T.A., s. 14*  
(g). (l) the income received by way of periodical payments in the nature of alimony or maintenance, by a woman from her husband or former husband: Provided that for the purpose of making such payments the husband, or former husband, has not divested himself of any income producing assets, or diverted from himself income upon which he would otherwise have been liable to tax;
- Cf. I.T.A., s. 5A.* (m) income derived prior to the first day of July, One thousand nine hundred and thirty-seven, directly and in the first place from primary production, mining or fisheries in the Northern Territory of Australia by a resident of that Territory;
- Cf. I.T.A., s. 14*  
(1) (n). (n) the income derived by a resident of any Territory or Island in the Pacific Ocean, other than New Zealand, which is governed, controlled, or held under mandate by the Government of any part of the British Empire, or by a condominium in which any part of the British Empire is concerned, from the sale in Australia, by or on behalf of that person, of produce of the Territory or Island of which he is a resident;
- Cf. I.T.A., s. 14*  
(1) (o). (o) the income derived by a person from the working of a mining property in Australia or in the Territory of New Guinea principally for the purpose of obtaining gold, or gold and copper, provided that in this case the value of the output of gold is not less than forty per centum of the total value of the output of the mine;

- (p) income derived by a *bona fide* prospector from the sale, transfer or assignment by him of his rights to mine for gold in a particular area in Australia or in the Territory of New Guinea. For the purpose of this paragraph, "*bona fide* prospector" means a person, other than a company, who has personally carried out the whole or major part of the field work of prospecting for gold in the particular area, or who has contributed to the expenditure incurred in the work of prospecting and development in that area, and includes a company which has itself carried out the whole or major part of such work; Cf. I.T.A., s. 14 (1) (e).
- (q) income derived by a resident from sources out of Australia, where that income is not exempt from income tax in the country where it is derived, or where the taxpayer is liable to pay royalty or export duty in any country outside Australia in respect of goods from the sale of which the income is derived. For the purposes of this paragraph, a taxpayer shall be deemed to be liable to pay royalty or export duty in any country outside Australia if he satisfies the Commissioner that he sold the goods in that country to another person for export from that country, and that the price for which the goods were sold was less, by the amount of the royalty or the export duty, as the case may be, than the price which the taxpayer could have obtained from the sale of the goods outside that country; Cf. I.T.A., s. 14 (1) (g).
- (r) income derived by a non-resident from sources wholly out of Australia;
- (s) the income of—
- (i) any fund or association maintained by a religious institution; or
  - (ii) any company the whole of the shares of which are held by or on behalf of a religious institution, where the fund or association is maintained, or the company was formed and is carried on, for the sole purpose of insuring property belonging to the religious institution, and where the profits arising from the fund, or derived by the association or company, are devoted to that sole purpose or to the purposes of the religious institution.

24.—(1.) Where any income is exempt from income tax, the exemption shall be limited to the specified or original recipient of the income, and shall not extend to persons receiving payments from that recipient, although the payments may be made wholly or in part out of that income. Limitation of exemption. Cf. I.T.A., s. 15

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

## Division 2.—Income.

*Subdivision A.—Assessable Income Generally.*

Gross income  
from certain  
sources.

25.—(1.) The assessable income of a taxpayer shall include—

- (a) where the taxpayer is a resident—  
the gross income derived directly or indirectly from all sources whether in or out of Australia; and
- (b) where the taxpayer is a non-resident—  
the gross income derived directly or indirectly from all sources in Australia,

which is not exempt income.

*Of I.T.A., s. 4.*

(2.) Interest (except interest paid outside Australia to a non-resident on debentures issued outside Australia by a company) upon money secured by mortgage of any property in Australia shall be deemed to be derived from a source in Australia.

Certain items of  
assessable  
income.

*Of I.T.A., s. 4.*

26. The assessable income of a taxpayer shall include—

- (a) profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any profit-making undertaking or scheme;

*Of I.T.A., s. 16  
(c).*

- (b) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust;

*Of I.T.A., s. 4.*

- (c) the amount of any annuity, excluding, in the case of an annuity which has been purchased, that part of the annuity which represents the purchase price to the extent to which that price has not been allowed or is not allowable as a deduction in assessments for income tax under this Act or any previous law of the Commonwealth;

*Of I.T.A., s. 16  
(f).*

- (d) five per centum of the capital amount of any allowance, gratuity or compensation where that amount is paid in a lump sum in consequence of retirement from, or the termination of, any office or employment, and whether so paid voluntarily, by agreement or by compulsion of law: Provided that this paragraph shall not apply in respect of any amount paid or credited by a private company which under any provision of this Act is deemed to be a dividend paid to the recipient;

*Of I.T.A., s. 16  
(g).*

- (e) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by him, whether so allowed, given or granted in money, goods, land, meals, sustenance, the use of premises or quarters or otherwise: Provided that this paragraph shall not apply to any allowance, gratuity or compensation which is included in the last preceding paragraph or which under any provision of this Act is deemed to be a dividend paid to the recipient;

*Of I.T.A., s. 16  
(h).*

- (f) any amount received as or by way of royalty;

- (g) any bounty or subsidy received in or in relation to the carrying on of a business, and such bounty or subsidy shall be deemed to be part of the proceeds of that business ;
- (h) the amount of any fee or commission received for procuring a loan of money ;
- (i) any amount received as or by way of bonus other than a reversionary bonus on a policy of life assurance ; and Cf. I.T.A., s. 16 (d).
- (j) any amount received by way of insurance or indemnity for or in respect of any loss— Cf. I.T.A., s. 25 (c).
- (i) of trading stock which would have been taken into account in computing taxable income ; or
- (ii) of profit or income which would have been assessable income,
- if the loss had not occurred, and any amount so received for or in respect of any loss or outgoing which is an allowable deduction.

27.—(1.) The interest on loans raised in Australia, after the thirty-first day of December, One thousand nine hundred and twenty-three, by the government of any country or dominion out of Australia, or by any authority constituted by or under any law of any such country or dominion, and received directly or indirectly by a resident, shall be deemed to be derived by him from a source in Australia, and shall be included in his assessable income. Interest on loans raised in Australia by governments - outwards - Australia.

(2.) For the purposes of this section, a loan shall be deemed to have been raised in Australia if subscriptions to the loan were invited in Australia by public advertisement, by the issue of a prospectus, or otherwise.

*Subdivision B.—Trading Stock.*

28.—(1.) Where a taxpayer carries on any business, the value, ascertained under this subdivision, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income. Trading stock to be taken into account. Cf. I.T.A., s. 16 (e).

(2.) Where the value of all trading stock on hand at the end of the year of income exceeds the value of all trading stock on hand at the beginning of that year, the assessable income of the taxpayer shall include the amount of the excess.

(3.) Where the value of all trading stock on hand at the beginning of the year of income exceeds the value of all trading stock on hand at the end of that year, the amount of the excess shall be an allowable deduction.

29. The value of live stock and of each article of other trading stock to be taken into account at the beginning of the year of income shall be its value as ascertained under this or the previous Act at the end of the year immediately preceding the year of income. Value at beginning of year of income. Cf. I.T.A., s. 16 (f).

30.—(1.) Where the value of live stock at the beginning of the year of income, as ascertained for the purpose of assessment to income tax under the law of a State, differs from its corresponding value as Where Commonwealth and State values differ.

ascertained under the last preceding section, and it appears to the Commissioner that, if those values were equal, the corresponding values would remain equal in subsequent years, the taxpayer may, subject to this section, take his live stock into account at the beginning of the year of income at a value equal to its corresponding value under the law of the State.

(2.) Where the value at which that live stock is taken into account at the beginning of the year of income exceeds the value as ascertained under the last preceding section, amounts in the aggregate equal to the excess shall be included in the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.

(3.) Where the value of live stock as ascertained under the last preceding section exceeds its value as taken into account at the beginning of the year of income, amounts in the aggregate equal to the excess shall be deducted from the assessable income of the taxpayer of one or more of the years being the year of income and the four years next succeeding that year.

(4.) The amounts referred to in sub-sections (2.) and (3.) of this section and the years in respect of which they are to be taken into account, shall be such amounts and years as are agreed upon by the taxpayer and the Commissioner, and unless and until those amounts and years are so agreed upon, this section shall not apply to the assessment of that taxpayer.

Value at end of year of income.  
Cf. I.F.A., s. 16 (a).

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

Value of live stock at end of year of income.  
Cf. I.T.A., s. 16 (a).

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

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

Changes in basis of valuation of live stock.  
Cf. I.T.A., s. 16 (a).

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

Cost price of natural increase.  
Cf. I.T.A., s. 16 (a).

34.—(1.) The cost price per head of natural increase of any class of live stock of a taxpayer shall be—

(a) where the cost price of natural increase of that class has been previously taken into account under this Act by the taxpayer—the cost price per head at which natural increase



of that class was last taken into account unless, with the leave of the Commissioner, the taxpayer selects another cost price; and

- (b) where the cost price of natural increase of that class has not been previously taken into account under this Act by the taxpayer—the cost price selected by him within the limits prescribed in respect of live stock of that class.

(2.) Where a taxpayer does not so select within the time and in the manner prescribed he shall be deemed to have selected, as the cost price, the lower of the prescribed limits.

35.—(1.) Where under the previous Act, a taxpayer elected to omit from the account of his stock-in-trade the value of natural increase of his live stock, the value of the natural increase omitted in pursuance of that election and on hand at the beginning of the first year to the income of which this Act applies, shall be taken into account in ascertaining the value of trading stock on hand at the beginning of that year.

Omission of natural increase under previous Act.

*Cf. I.T.A., s. 114 (aa).*

(2.) The value at which natural increase shall be so taken into account shall be—

- (a) where the taxpayer had exercised under the previous Act an option to value live stock at market selling price—the market selling price as at the beginning of the year;

- (b) where the taxpayer had exercised under the previous Act an option to value live stock at cost price—a value per head selected by the taxpayer, within the limits prescribed, as cost price for natural increase under the previous Act, by regulations in force immediately preceding the commencement of this Act, or where he does not so select within the time and in the manner prescribed—the lower of those prescribed limits.

(3.) The value per head ascertained as the cost price of natural increase under paragraph (b) of sub-section (2.) of this section shall, unless altered with the leave of the Commissioner, apply also to natural increase of the first year of income to which this Act applies and of all subsequent years:

Provided that the value per head of natural increase of the first year of income to which this Act applies and of all subsequent years shall not be less than the lower of the limits prescribed under this Act in respect of the value to be selected as the cost price of natural increase.

36.—(1.) Subject to this section, where the whole or any part of the assets of a business carried on by a taxpayer is disposed of by sale or otherwise howsoever, whether for the purpose of putting an end to the business or any part thereof or not, and the assets disposed of include any property being trading stock, standing or growing crops or crop-stools, the value of that property shall be included in his assessable income, and any person acquiring that property shall be deemed to have purchased it at the amount of that value.

Disposal of assets of a business.

*Cf. I.T.A., ss. 16 (h), 16A, 17.*

(2.) Where a taxpayer, after the beginning of the first year to the assessment of the income of which this Act applies, sells the whole of a business carried on by him—

- (a) for the purpose of putting an end to that business; or
- (b) in consequence of the acquisition or resumption of land, used by him for that business, under the provisions of any Act or State Act which contains provisions for the compulsory acquisition or resumption of land,

the value of any live stock included in the sale, being natural increase bred by him which was on hand at the beginning of that first year, and which was, in the opinion of the Commissioner, ordinarily used by him in that business for breeding purposes, shall not be included in his assessable income, and no deduction shall be allowed to him in respect of any such live stock, and no such live stock shall be taken into account in computing his taxable income.

(3.) For the purposes of this section, the value of any property or live stock shall be—

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

Devolution on death.

37.—(1.) Where the assets of a business carried on by a taxpayer devolve by reason of his death, and those assets include any property being trading stock, standing or growing crops, or crop-stools, the value of that property shall, subject to this Act, be included in the assessable income derived by the deceased up to the date of his death, and the person upon whom the property devolves shall be deemed to have purchased it at that value.

(2.) For the purpose of the last preceding sub-section, the value of the property so to be included shall be the amount which would have been included in respect of that property in the assessable income of the deceased person, under the last preceding section, if he had not died but had disposed of the property on the day of his death for the purpose of putting an end to the whole of a business carried on by him and without any price being specified in any contract or arrangement:

Provided that, if the trustee of the estate of the deceased and the beneficiaries (if any) who are liable to be assessed in respect of the income of the business, or of a share in that income, unanimously so agree and give notice of their agreement to the Commissioner at the time and in the manner prescribed, that value shall be the value, if any,

at which that property would have been taken into account at the date of the death of the deceased person if he had not died, but an assessment had been made in respect of the income derived by him up to that date.

*Subdivision C.—Business Carried on Partly in and Partly Out of Australia.*

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

Sales by  
manufacturers.

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

Sales by  
merchants.

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

Determination  
by  
Commissioner.

41. Where a person sells goods by means of anything done by himself when in Australia, or by means of an agent or representative in Australia, and those goods are in Australia or are to be brought into Australia for the purpose, or in pursuance or in consequence, of such sale, he shall be deemed to have sold them in Australia. A sale as deemed to be made by means of a person or of something done when such person or thing done is instrumental in bringing about the sale.

Goods deemed  
to be sold in  
Australia.

42. In any case, not specified in the preceding sections of this subdivision, where—

Ex-Australian  
profits.  
Cf. I.T.A., s.  
160.

- (a) by reason of the manufacture, production, or purchase of goods in one country and their sale in another;
- (b) by reason of successive steps of production or manufacture in different countries; or
- (c) by reason of the making of contracts in one country and their performance in another,

or for any other reason whatever, a question arises whether any, and if so what part, of any profit is derived by a person from sources in Australia, the question shall be determined in accordance with the regulations, or if there is no regulation applying to the case, shall be determined by the Commissioner.

Assessable  
income to  
include certain  
profits.

43.—(1.) The assessable income of a taxpayer shall include any profit derived by him in the year of income which, under the provisions of this subdivision, is derived or deemed to be derived in Australia and the proceeds of any sale to which this subdivision applies shall not otherwise be included in his assessable income.

(2.) No amount taken into account in ascertaining any such profit, and no expenditure incurred directly or indirectly in or in relation to any such sale, shall be an allowable deduction.

*Subdivision D.—Dividends.*

Dividends.  
Cf. I.T.A., s.  
16AA.

44.—(1.) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) shall, subject to this section—

- (a) if he is a resident—include dividends paid to him by the company out of profits derived by it from any source; and
- (b) if he is non-resident—include dividends paid to him by the company to the extent to which they are paid out of profits derived by it from sources in Australia.

(2.) The assessable income of a shareholder shall not include dividends—

- (a) received from a company that does not carry on business in, or derive income from sources in, Australia;

- (b) paid wholly and exclusively out of one or more of the following:—

- (i) income derived from sources outside Australia, not being income which under this or the previous Act is or has been assessable income of the company;

- (ii) profits arising from the sale or compulsory resumption for public purposes of assets not acquired for the purpose of resale at a profit;

- (iii) profits arising from the re-valuation of assets not acquired for the purpose of re-sale at a profit or from the issue of shares at a premium, if the dividends paid from such profits are satisfied by the issue of shares of the company declaring the dividend; or

- (iv) undistributed income accumulated before the first day of July, One thousand nine hundred and fourteen, not being income carried forward by the company in its profit and loss account, appropriation account, revenue and expenses account, or any account similar to any of the foregoing accounts, where the dividends are paid before the first day of July, One thousand nine hundred and thirty-six; or

- (c) paid out of exempt income derived by a company from the working of a mining property in Australia or in the Territory of New Guinea, to the extent to which the dividends are paid out of such income.

45. Where a company has derived income from interest to which section twenty of the *Commonwealth Debt Conversion Act* 1931 applies, or from interest to which sub-section (2.) of section fifty-two B of the *Commonwealth Inscribed Stock Act* 1911-1932 applies, and has paid in the year of income any portion of that income in dividends to its shareholders, the proportion of each dividend for that year which has been so paid out of such income shall be free from income tax to the same extent as interest to which section twenty of the *Commonwealth Debt Conversion Act* 1931 applies.

Extent of liability to tax of certain dividends.  
Cf. I.T.A., s. 14 (4).

46.—(1.) Subject to this section, a shareholder shall be entitled to a rebate in his assessment of the amount obtained by applying to that part of the dividends which is included in his taxable income a rate equivalent to—

Rebate on dividends.  
Cf. I.T.A., s. 16A.

(a) the rate of tax payable by him on income from property; or

(b) the rate of tax payable by companies for the year of tax,

whichever is the less.

(2.) In determining the rate of rebate any special property tax shall not be taken into account.

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

(4.) A shareholder in a company which is a co-operative company within the meaning of Division 9 of this Part shall not be entitled to a rebate in his assessment in respect of dividends paid to him by that company.

47.—(1.) Distributions to shareholders of a company by a liquidator in the course of winding up the company, to the extent to which they represent income derived by the company (whether before or during liquidation) other than income which has been properly applied to replace a loss of paid up capital, shall, for the purposes of this Act, be deemed to be dividends paid to the shareholders by the company out of profits derived by it.

Distributions by liquidator.  
Cf. I.T.A., s. 16B.

(2.) Those distributions shall, to the extent to which they are made out of any profits or income, be deemed to have been paid wholly and exclusively out of those profits or that income.

#### Division 3.—Deductions.

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

Allowable deductions.  
Cf. I.T.A., s. 23 (1).

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

Successive deductions.  
Cf. I.T.A., s. 23A.

Deductions  
in case of  
composite  
incomes.  
Cf. I.T.A., s.  
23b.

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

- (a) where a deduction relates directly to the income from dividends, it shall be made successively from that income, from the other income from property, and from the income from personal exertion ;
- (b) where a deduction relates directly to the income from property other than dividends, it shall be made successively from that income, from the income from dividends, and from the income from personal exertion ;
- (c) in all other cases, the deduction shall be made successively from the income from personal exertion, from the income from property other than dividends, and from the income from dividends.

Losses and  
outgoings.  
Cf. I.T.A., s. 23  
(1), 25.

**51.—(1.)** All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.

(2.) Expenditure incurred or deemed to have been incurred in the purchase of stock used by the taxpayer as trading stock shall be deemed not to be an outgoing of capital or of a capital nature.

Loss on  
property  
acquired for  
profit-making.  
Cf. I.T.A., s. 26  
(1) (c).

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

Repairs.  
Cf. I.T.A., ss. 23  
(1) (d), 25 (f).

**53.—(1.)** Expenditure incurred by the taxpayer in the year of income for repairs, not being expenditure of a capital nature, to any premises, or part of premises, plant, machinery, implements, utensils, rolling stock, or articles held, occupied or used by him for the purpose of producing assessable income, or in carrying on a business for that purpose, shall be an allowable deduction.

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

Depreciation.  
Cf. I.T.A., s. 23  
(1) (e).

**54.—(1.)** Depreciation during the year of income of any property, being plant, or articles owned by a taxpayer and used by him during that year for the purpose of producing assessable income, and of any property being plant or articles owned by the taxpayer which has been installed ready for use for that purpose and is during that year held in reserve by him shall, subject to this Act, be an allowable deduction.

(2.) In this section, "plant" includes—

- (a) animals used as beasts of burden or working beasts in a business other than a business of primary production, and machinery, implements, utensils and rolling stock; and
- (b) fences, dams and other structural improvements on land which is used for the purposes of agricultural or pastoral pursuits but does not include improvements used for domestic or residential purposes.

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

**Basis of depreciation.**  
Cf. I.T.A., s. 23  
(1) (e).

56.—(1.) Subject to this section, the depreciation allowable under this Act in respect of any unit of property shall be—

- (a) the percentage fixed under the last preceding section, or under the previous Act, of the depreciated value of that unit at the beginning of the year of income; or
- (b) at the option of the taxpayer (to be exercised within the time, in the manner, and subject to the conditions prescribed), the percentage so fixed of the cost of that unit.

**Calculation of depreciation.**  
Cf. I.T.A., s. 23  
(1) (e).

(2.) The deduction allowable in respect of any unit of property shall not exceed the depreciated value of that unit.

(3.) Where any property has been bought by the taxpayer, no amount paid by him, which has been allowed or is allowable under this or the previous Act as a deduction to him from the assessable income of any year otherwise than on account of depreciation, shall be deemed to be part of the cost of the property.

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

**Alteration of method of calculation.**  
Cf. I.T.A., s. 23  
(1) (e).

58.—(1.) Where the depreciated value under this Act of any property at the beginning of the year of income is higher than its depreciated value at that time under a State Act relating to Income Tax, and the Commissioner is satisfied that if those values were equal the corresponding values in each subsequent year would remain equal, the Commissioner may allow, in lieu of the depreciation otherwise allowable, an amount of depreciation calculated as if the depreciated value at the beginning of the year of income under the State Act had been substituted for the depreciated value at that time under this Act.

**Depreciation under Commonwealth and State Acts.**

(2.) Where the last preceding sub-section is applied in any assessment, a further amount of depreciation shall also be an allowable deduction in that assessment, being an amount determined by the Commissioner, which shall not be less than one-tenth part of the difference between those depreciated values at the beginning of the year to the assessment of the income of which this section is first applied, provided that the further amount shall not in any case exceed the amount required to make the depreciated values of the property under this and the State Act equal.

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

Disposal, loss or destruction of depreciated property.  
Cf. I.T.A., s. 23  
(1) (e).

59.—(1.) Where any property of a taxpayer, in respect of which depreciation has been allowed or is allowable under this or the previous Act, is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction, shall be an allowable deduction.

(2.) If that consideration exceeds that depreciated value, the excess, to the extent of the sum of the amounts allowed and allowable in assessments for income tax under this Act and any previous law of the Commonwealth in respect of depreciation, shall be included in his assessable income of that year.

(3.) The consideration receivable in respect of the disposal, loss or destruction means—

- (a) in the case of a sale of the property—the sale price less the expenses of the sale of the property;
- (b) in the case of loss or destruction of the property—the amount received or receivable under a policy of insurance or otherwise in respect of the loss or destruction;
- (c) in the case where the property is sold with other assets and no separate value is allocated to the property—the amount determined by the Commissioner;
- (d) in the case where property is disposed of otherwise than by sale—the value, if any, of the property at the date of disposal.

Acquisition of depreciated property.  
Cf. I.T.A., s. 23  
(1) (e).

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

Provided that, where under the last preceding section an amount is included in the assessable income of the person selling the property, the person acquiring the property shall be allowed



depreciation calculated on the sum of that amount and the depreciated value of the property under this Act at the time of the sale.

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

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

Property used partly for producing assessable income.

62. In this Division "depreciated value" of any unit of property at any time means—

Definition of depreciated value.

(a) where depreciation has been allowed or is allowable, under this Act or any previous law of the Commonwealth, in respect of that unit in assessments for any period prior to that time—the cost of the property less the amount of all depreciation so allowed or allowable; and

(b) where depreciation has not been allowed or is not so allowable—the cost of the property.

63.—(1.) Debts which are bad debts and are written off as such during the year of income, and—

Bad debts.  
Cf. I.T.A., ss. 23  
(1) (r), 25 (g).

(a) have been brought to account by the taxpayer as assessable income of any year; or

(b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business,

and no other bad debts, shall be allowable deductions.

(2.) If a debtor, after incurring a debt so brought to account, or in respect of money so lent, is adjudicated bankrupt, or executes a deed of assignment or arrangement for the benefit of his creditors, the debt (where, in the opinion of the Commissioner, no amount will be paid on account of the debt) or the amount by which, in his opinion, the amount which will be received on account of the debt will be less than the debt, shall be deemed to be a bad debt.

(3.) Where in the year of income a taxpayer receives an amount in respect of a debt for which a deduction has been allowed to him under this or the previous Act, his assessable income shall include that amount.

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

Commission.  
Cf. I.T.A., s. 23  
(1) (l).

65.—(1.) Subject to this section, payments becoming due in the year of income by a taxpayer to a relative shall be allowable deductions only to the extent to which, in the opinion of the Commissioner, they are reasonable in amount and *bona fide* made in the production of assessable income.

Payments to relatives.  
Cf. I.T.A., ss. 23  
(1) (f), 25 (a), (k).

(2.) Expenditure incurred, and payments becoming due, by the taxpayer in the year of income in or for the maintenance of his wife

or of any member of his family under the age of sixteen years, shall not, whether or not the expenditure was incurred in the production of assessable income, be an allowable deduction.

Contributions  
to pension  
funds.  
Cf. I.T.A., s. 23  
(1) (j).

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

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

Expenses of  
borrowing.

67. So much of the expenditure incurred by the taxpayer in borrowing money used by him for the purpose of producing assessable income as bears, to the whole of that expenditure, the same proportion as that part of the period for which the money was borrowed which is in the year of income, bears to the whole of that period, shall be an allowable deduction :

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

Expenses of  
preparing lease.

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

Timber felled  
upon acquired  
land.  
Cf. I.T.A., s. 23  
(1B).

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

Timber felled  
under right.  
Cf. I.T.A., s. 23  
(1B).

70. So much of the amount paid for a right to fell timber for sale as is attributable to the timber felled during the year of income shall be an allowable deduction.

Losses by  
embezzlement,  
&c.

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

Rates and taxes.  
Cf. I.T.A., s. 23  
(1) (b).

72.—(1.) Sums paid in Australia by the taxpayer in the year of income for rates which are annually assessed or for State or Federal land tax or for 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 shall be allowable deductions.

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

73.—(1.) Where the carrying on of a business from which assessable income is derived by the taxpayer is conditional upon membership of any association, any periodical subscription paid by him in the year of income in respect of that membership shall be an allowable deduction.

Subscriptions to associations.  
Cf. I.T.A., s. 25 (ca).

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

(a) ten pounds ten shillings ;

(b) so much of the subscriptions, levies or contributions as bears to the whole, the same proportion as the losses and outgoings incurred by the association in that year in carrying out that activity bear to its total losses and outgoings in that year, not being losses or outgoings of capital or of a capital nature.

(3.) Any periodical subscription, to which the foregoing provisions of this section do not apply, paid by the taxpayer in the year of income in respect of his membership of any trade, business or professional association, shall be an allowable deduction :

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

74.—(1.) Expenditure incurred in the year of income by the taxpayer in being elected as a member, or in contesting an election for membership, of the Parliament or of the Parliament of a State shall be an allowable deduction.

Election expenses of candidates for Parliament.

(2.) When a deduction has been allowed or is allowable under the last preceding sub-section in respect of any expenditure and that expenditure or any part of it is reimbursed to the taxpayer or paid for him by any other person or by any organization the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount.

Expenses of  
eradication of  
pests, &c.  
Cf. I.T.A. s. 23  
(1) g).

75. Expenditure incurred in the year of income by a taxpayer engaged in primary production on any land in Australia in—

- (a) the eradication or extermination of animal or vegetable pests from the land ;
  - (b) the destruction and removal of timber, scrub or undergrowth indigenous to the land ;
  - (c) the destruction of weed or plant growth detrimental to the land ;
  - (d) the preparation of the land for agriculture ;
  - (e) ploughing and grassing the land for grazing purposes ; and
  - (f) the draining of swamp or low-lying lands where that operation improves the agricultural or grazing value of the land,
- shall be an allowable deduction.

Wire and  
wire netting.  
Cf. I.T.A., s. 23  
(1A).

76. Where any taxpayer proves to the satisfaction of the Commissioner that—

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

the following amount shall be an allowable deduction :—

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

Loss in deriving  
exempt income.

77.—(1.) Where a loss is incurred in the year of income by a taxpayer in carrying on in Australia a business the income from which, if any, would be exempt income (which business is, in this section, called “ the exempt business ”) that loss shall be an allowable deduction.

(2.) In calculating the amount of that loss, no deduction may be made which would not have been an allowable deduction if the income (if any) had been assessable income.

(3.) Notwithstanding any other provision of this Act, where a deduction allowable under this section has been made from the income of any of the three years next preceding the year of income,

profits derived by the taxpayer from the exempt business in the year of income shall be included in his assessable income, provided that the amount so included shall not exceed the amount, if any, by which the deductions so made from the income of those three years exceed the profits included under this sub-section in the assessable income of those years in respect of those deductions.

**78.—(1.)** The following shall, to an extent in the aggregate not exceeding the amount of income remaining after deducting from the assessable income all other allowable deductions except the deduction of losses of previous years and of the statutory exemption, be allowable deductions:—

Gifts and contributions.

(a) Gifts of the value of one pound and upwards made by the taxpayer in the year of income to any of the following funds, authorities or institutions in Australia:—

*Cf. I.T.A., s. 23 (1) (b) (p).*

- (i) a public hospital ;
- (ii) a public benevolent institution ;
- (iii) a public fund established and maintained for the purpose of providing money for public hospitals or public benevolent institutions in Australia, or for the establishment of such hospitals or institutions, or for the relief of persons in Australia who are in necessitous circumstances ;
- (iv) a public authority engaged in research into the causes, prevention or cure of disease in human beings, animals or plants, where the gift is for such research, or a public institution engaged solely in such research ;
- (v) a public university or a public fund for the establishment of a public university ;
- (vi) a residential educational institution affiliated under statutory provisions with a public university, or established by the Commonwealth ; and
- (vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the war which commenced on the fourth day of August, One thousand nine hundred and fourteen.

(b) Sums which are not otherwise allowable deductions and which are set apart or paid by the taxpayer in the year of income as or to a fund to provide individual personal benefits, pensions or retiring allowances for employees who are residents and are engaged in his or any business or class of business, or dependants of such employees, if the rights of the employees or dependants to receive the benefits, pensions or retiring allowances are fully secured.

*Cf. I.T.A., s. (1) (j).*

(c) Sums which are not otherwise allowable deductions, and which are paid by the taxpayer during the year of income

as retiring allowances or pensions to persons who are or have been employees or dependants of employees, where such persons are residents, to the extent to which in the opinion of the Commissioner those sums are paid *bona fide* in consideration of the past services of the employees in any business of the taxpayer.

*Cf. I.T.A., s. 23  
(1)(i).*

- (d) Calls on shares in a mining company or syndicate carrying on mining operations in Australia for gold, silver, base metals, rare minerals or oil, or in any company carrying on afforestation in Australia as its principal business.

*Cf. I.T.A., s. 23  
(1)(h).*

(2.) For the purposes of this section "gift" shall not include a gift in kind—

- (a) unless it was purchased by the taxpayer within twelve months immediately preceding the making of the gift; or  
(b) to an extent greater than the sum paid by him for the gift.

Concessional deductions.

79. The following amounts (in this Act called "the concessional deductions") shall be allowable deductions where the taxpayer is a resident :—

- (a) The sum of fifty pounds in respect of the spouse of the taxpayer, or where the taxpayer is a widower, in respect of a female relative having the care of any of his children who are under sixteen years of age, if the spouse or relative is a resident and is wholly maintained by the taxpayer. For the purpose of this paragraph, the spouse or relative shall be deemed to be wholly maintained by the taxpayer if the separate net income derived from all sources by the spouse or relative in the year of income does not exceed fifty pounds and the taxpayer contributes to the maintenance of the spouse or relative, and not otherwise:

Provided that, if that spouse or relative is wholly maintained by the taxpayer during part only of the year of income, the deduction allowable shall be such part of the sum of fifty pounds as, in the opinion of the Commissioner, is reasonable in the circumstances;

*Cf. I.T.A., s. 23  
(1)(k).*

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

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

- (c) Payments not exceeding fifty pounds in the aggregate made by the taxpayer in the year of income to any legally qualified medical practitioner, nurse or chemist, or public or private hospital, in respect of any illness of or operation upon the taxpayer or his spouse or any of his children under the age of twenty-one years, if the spouse or child is a resident ; Cf. I.T.A., s. 23  
(1) (c), (1c).
- (d) Payments not exceeding twenty pounds in the aggregate made by the taxpayer in the year of income for funeral and burial or cremation expenses arising out of the death of his spouse, or of any of his children under the age of twenty-one years, if the spouse or child was, at the time of death, a resident, to the extent to which those expenses are not recouped to him by any society or association ; and Cf. I.T.A., s. 23  
(1) (c), (1c).
- (e) Payments made by the taxpayer in the year of income, not exceeding in the aggregate One hundred pounds, and being—
- (i) premiums or sums for insurance on the life of the taxpayer or of his spouse or children, or for a deferred annuity or other like provision for his spouse or children ; or Cf. I.T.A., s. 23  
(1) (c), (1c).
  - (ii) payments to superannuation, sustentation, widows' or orphans' funds, or to any friendly society, for the personal benefit of the taxpayer or of his spouse or children. Cf. I.T.A., s. 23  
(1) (g), (1c).

80.—(1.) For the purposes of this section, a loss shall be deemed to be incurred in any year when the allowable deductions (other than the concessional deductions and the deduction allowable under this section) from the assessable income of that year exceed the sum of that income and the net exempt income of that year, and the amount of the loss shall be deemed to be the amount of such excess. Losses of  
previous years.  
Cf. I.T.A., s. 26.

(2.) So much of the losses incurred by a taxpayer in any of the four years next preceding the year of income as has not been allowed as a deduction from his income of any of those years shall be allowable as a deduction in accordance with the following provisions :—

- (a) where he has not in the year of income derived exempt income, the deduction shall be made from the assessable income ;
- (b) where he has in that year derived exempt income, the deduction shall be made successively from the net exempt income and from the assessable income ;
- (c) where a deduction is allowable under this section in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred :

Provided that, if the Governor-General by proclamation so directs, the period of three years shall, as on and after such date as is specified in the proclamation, be substituted for the period of four years specified in this sub-section.

(3.) In this section "net exempt income" means—

- (a) where the taxpayer is a resident—the amount by which his exempt income derived from all sources exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income, and any taxes payable in respect of that income in any country outside Australia; and
- (b) where he is a non-resident—the amount by which his exempt income derived from sources in Australia exceeds the sum of the expenses (not being expenses of a capital nature) incurred in deriving that income.

(4.) Notwithstanding any other provision of this section, where a taxpayer has prior to the year of income been adjudicated bankrupt, or, not having been adjudicated bankrupt, has been released from any debts by the operation of the *Bankruptcy Act* 1924–1933, no loss incurred by him prior to that adjudication or release shall be an allowable deduction.

**Statutory exemption.**  
Cf. I.T.A., s. 24.

81.—(1.) The following amount (in this Act called "the statutory exemption") shall be an allowable deduction to any person other than a company:—

- (a) the sum of Two hundred and fifty pounds, less One pound for every Two pounds by which the income exceeds Two hundred and fifty pounds, or
- (b) where the income does not exceed Two hundred and fifty pounds, the amount of the income.

In this sub-section "income" means the residue after deducting from the assessable income all other allowable deductions.

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

(3.) The preceding provisions of this section shall not be applied in calculating the amount of the taxable income subject to special property tax, but, for the purpose of making that calculation, there shall be deducted (where the taxpayer is not a company) from that part of the assessable income derived from those sources which remains after all other deductions allowable under this Act have been made, the amount of that part or the sum of Two hundred and fifty pounds whichever is the less.

**Double deductions.**  
Cf. I.T.A., s. 25A.

82.—(1.) Where in respect of any amount, a deduction would but for this section be allowable under more than one provision of this Act, and whether it would be so allowable from the assessable income of the same or different years, the deduction shall be allowable only under that provision which in the opinion of the Commissioner is most appropriate.

(2.) Where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, and any expenditure



incurred by him in connexion with that property is an allowable deduction under this Act or has been allowed or is allowable as a deduction in assessments under the previous Act, that expenditure shall not be deducted in ascertaining the amount of the profit or loss.

Division 4.—Leases.

**83.** In this Division—

Definitions.

“lease” when used in relation to a premium means the lease granted, assigned or surrendered, or where the premium is for or in connexion with any goodwill or licence means the lease of the land to which such goodwill or licence is attached or connected ;

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

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

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

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

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

**84.**—(1.) The assessable income of a taxpayer shall, except in cases in which the next succeeding sub-section applies, include, in addition to rent, any premium received by him in the year of income, and any consideration so received for or in connexion with his assent to any grant or assignment of a lease.

Premiums  
included in  
assessable  
income.  
Cf. I.T.A., s. 16  
(d).

(2.) Where a lease from the Crown of land used for primary production is assigned or surrendered by the taxpayer, and the lease was acquired by him before the sixth year prior to the year of income in which it is so assigned or surrendered, the amount of the net premium received by the taxpayer as consideration for or in connexion with the assignment or surrender shall be included in his assessable income :

Provided that the amount of any net premium (or if, in respect of the transaction, there are more net premiums than one—the sum of the net premiums) so included shall not exceed the total of the amounts of deductions allowed under this Act and any previous law of the Commonwealth to the taxpayer in respect of the lease.

**Deductions.**  
*Cf. I.T.A., s. 16*  
*(d).*

**85.—(1.)** Where any premium is, under sub-section (1.) of section eighty-four of this Act, included in the assessable income of a taxpayer of the year of income, and—

(a) the premium is received for or in connexion with the assignment or surrender of a lease, or for or in connexion with the goodwill or a licence attached to or connected with land the subject of a lease assigned or surrendered, and the taxpayer has paid any amount—

(i) to acquire that lease or the goodwill or licence attached to or connected with that land; or

(ii) where the lease assigned or surrendered is a lease of land—in effecting improvements on that land; or

(b) the taxpayer has paid any amount for the surrender to him of a lease, goodwill or licence for the purpose of granting or assigning the lease, goodwill or licence for or in connexion with which the premium was derived,

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

(2.) Where any premium is, under sub-section (1.) of section eighty-four of this Act, included in the assessable income of a taxpayer in respect of property to which he has succeeded upon the death of another person, the taxpayer shall be entitled to the deduction to which that other person would have been entitled, under this section, if he had lived and the premium had been included in his assessable income and there had been allowed or were allowable as deductions in assessments for income tax, under any other provisions of this Act or under any previous law of the Commonwealth the same deductions as have been so allowed or are so allowable to the taxpayer in addition to any deductions that in fact have been or are so allowed or allowable to that other person.

(3.) Where any premium is paid to a taxpayer for or in connexion with the grant by him of a sub-lease, or for or in connexion with the goodwill or licence attached to or connected with land the subject of a sub-lease so granted, and is, under sub-section (1.) of section eighty-four of this Act, included in the assessable income of the

taxpayer of the year of income, and he has paid any amount to acquire the lease of the premises the subject of the sub-lease or the goodwill or licence, so much of the total deductions to which he would but for this sub-section be entitled in respect of that amount during the period for which that sub-lease is granted as bears to those deductions the same proportion as the premium included in his assessable income bears to the total of the premiums received or to be received by him for the grant of that sub-lease or for the goodwill or licence shall be an allowable deduction, and he shall not during that period be entitled to any further deduction in respect of that amount otherwise than under this sub-section.

(4.) Where a net premium is, under sub-section (2.) of section eighty-four of this Act, included in the assessable income of a taxpayer, the deductions which would have been allowable under this section had the full amount of the premium been included under sub-section (1.) of that section in the assessable income of the taxpayer, shall be taken into account only for the purpose of ascertaining the amount of the net premium.

86.—(1.) Where a premium which exceeds the sum of the allowable deductions directly relating thereto, and in respect of which the term of the lease is not less than twenty-five complete months, is included in the assessable income of a taxpayer, the following provisions shall apply for the determination of a notional income, for the purpose of any Act whereby a rate of tax upon the taxable income of a taxpayer is fixed by reference to a notional income :—

Notional income  
of a taxpayer  
deriving a  
premium.

- (a) Where the taxable income exceeds the net premium, or the sum of the net premiums, if there are more than one of the premiums so included, the notional income of the taxpayer shall be the amount obtained by deducting the net premium or the sum of the net premiums, as the case may be, from the taxable income, and adding to the result the amount or amounts ascertained by dividing each of the net premiums by one twenty-fourth of the number of complete months in the term of the lease.
- (b) Where the taxable income is less than the net premium, or the sum of the net premiums if there are more than one of the premiums so included, the notional income shall be—
- (i) where there is only one of those premiums—the amount ascertained by dividing the taxable income by one twenty-fourth of the number of complete months in the term of the lease ; and
  - (ii) where there are more than one of those premiums—the sum of the amounts ascertained by apportioning the taxable income among the net premiums in proportion to their amounts, and dividing the amount so apportioned to each net premium by one twenty-fourth of the number of complete months in the term of the lease.

(2.) This section shall not apply in any case—

- (a) where the taxpayer is a company, except where, in respect of the premium, it is assessable as a trustee; or
- (b) where the provisions of Division 16 of this Part are applied in the assessment of the taxpayer.

Value of  
improvements  
included in  
assessable  
income.

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

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

Provided that, where in the year of income, a person is the lessor for part only of a year, a proportionate part of the instalment shall be included in his assessable income.

- (b) Where, in the opinion of the Commissioner, the instalment cannot be satisfactorily determined, the value of the improvements at the expiration of the lease shall be included in the lessor's assessable income of the year in which the lease expires.

(2.) This section shall not apply where the agreement under which improvements were made as consideration for the grant of a lease was entered into before the commencement of this Act or where the lessee is required to make the improvements under the terms of a lease entered into before such commencement, or where the improvements are made in pursuance of a consent given before such commencement or in any of the cases specified in sub-section (3.) of the next succeeding section.

Deductions to  
lessee.

Cf. I.T.A., ss. 23  
(1.) (a), 25 (i).

88.—(1.) Where a taxpayer has paid any premium in respect of land, premises or machinery used for the purpose of producing assessable income, and in the year of income—

- (a) he is the lessee of the land, premises or machinery; or
- (b) in the case of a premium paid for the surrender of the lease, he would have been the lessee had the lease been transferred to him and he had not been entitled to the reversion,

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

(2.) Where a taxpayer, who in the year of income is a lessee of land used for the purpose of producing assessable income has, either before or after the commencement of the lease, incurred expenditure in making improvements not subject to tenant rights on that land, and such improvements—

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

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

(3.) The provisions of the last preceding sub-section shall not apply in any case—

- (a) where the lease is a lease of land to a company from an individual or from a company to an individual, and the individual directly or indirectly controls the voting power of the company ;
- (b) where the lessor is a trustee of the land for the lessee, or the lessee is a trustee of the land for the lessor ; or
- (c) where the Commissioner is of the opinion that, in consequence of the terms and conditions of the lease or of any other circumstances, the lessor is in substantial control of the operations of the lessee.

(4.) Where any taxpayer succeeds to any lease or share therein upon the death of any person who has paid such premium or expended such money, he shall be entitled to the same deduction, or part thereof proportionate to his share in the lease, as that person would have been entitled to under this section had he lived.

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

Not to apply to certain leases.  
Cf. I.T.A., s. 25 (i).

#### Division 5.—Partnerships.

90. In this Division—

Definitions.

“ net income ” in relation to a partnership, means the assessable income of the partnership, calculated as if the partnership

were a taxpayer, less all allowable deductions except the concessional deductions, the statutory exemption, and losses of previous years ;

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

**Partnerships.**  
*Cf. I.T.A., s. 29*  
*(1.)*

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

**Income of partner,**  
*Cf. I.T.A., s. 29*  
*(1.)*

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

**(2.)** The exempt income of a partner shall include his individual interest in the exempt income of the partnership of the year of income.

**Options of partners in respect of live stock.**

**93.—(1.)** In calculating the net income of a partnership or a partnership loss for the purpose of assessing any partner's share, the partnership shall be deemed to have exercised or failed to exercise all options and rights to select a value for live stock under this Act in the same manner as the partner has in fact exercised or failed to exercise those options and rights, and the partnership shall not, as a partnership, be entitled to exercise any such option or right.

**(2.)** The fact that a taxpayer has entered into a partnership, or that any variation has taken place in the membership of any partnership of which the taxpayer is a member shall not—

- (a)** affect any option or any right to select a value for live stock previously exercised by him under this Act ; or
- (b)** confer upon him any right to alter any such option or value without the leave of the Commissioner.

**(3.)** Where, in respect of a partnership formed before the commencement of this Act, a basis of valuation of live stock of the partnership had, before that commencement, been accepted by the Commissioner for the purposes of the previous Act, nothing in this section shall be deemed to vary, or require the variation of, that basis of valuation unless or until there is an alteration in the membership of that partnership.

**Partner not in receipt and control of share.**  
*Cf. I.T.A., s. 29.*

**94.—(1.)** Where a partnership is so constituted or controlled, or its operations are so conducted, that any partner has not the real and effective control and disposal of his share of the net income of the partnership, the Commissioner may assess the additional amount of tax that would be payable if the share of that partner, or of all such partners if more than one, had been received by the other partner if only one, or divided between the other partners, if more than one

in proportion to their respective interests in the partnership, and had been added to and included in his or their assessable income, and the partnership shall be liable to pay the tax so assessed.

(2.) Where the provisions of this section are applied to a share of the net income of a partnership, that share shall not be included in the assessable income of any partner.

(3.) For the purpose of this section, but without limiting its application, a partner shall be deemed not to have the real or effective control and disposal of any money received by him which is applied to meet the private or domestic obligations of any other partner.

#### Division 6.—Trustees.

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

Net income  
of trust  
estate.  
Cf. I.T.A., s. 31.

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

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

Trustees.  
Cf. I.T.A., s. 31  
(1.).

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

Beneficiary  
not under any  
disability.  
Cf. I.T.A., s. 31  
(1.).

(2.) The exempt income of any such beneficiary shall include his individual interest in the exempt income of the trust estate, except to the extent to which that exempt income is taken into account in calculating the net income of the trust estate.

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

Beneficiary  
under  
disability.  
Cf. I.T.A., s. 31  
(2.).

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

Where no  
person  
presently  
entitled.  
Cf. I.T.A., s. 31  
(2.).

Beneficiary  
under  
disability  
deriving income  
from other  
sources.

*Cf. I.T.A., s. 31  
(3).*

**100.—(1.)** The assessable income of any beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall include his individual interest in the net income of the trust estate or estates.

(2.) There shall be deducted from the income tax assessed against such beneficiary the tax paid or payable by any trustee in respect of that beneficiary's interest in the net income of the trust estate.

Discretionary  
trusts.

*Cf. I.T.A., s. 31  
(4).*

**101.** For the purposes of this Division, where a trustee has a discretion to pay or apply income of a trust estate to or for the benefit of specified beneficiaries, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount paid to him or applied for his benefit by the trustee in the exercise of that discretion.

Revocable  
trusts.

**102.—(1.)** Where a person has created a trust in respect of any income or income-producing assets, and he has a power, whenever exercisable, to revoke or alter the trusts so as to acquire a beneficial interest in the income derived during the year of income, or the assets producing that income or any part of that income or of those assets, the Commissioner may assess the trustee to pay income tax, under this section, and the trustee shall be liable to pay the tax so assessed.

(2.) The amount of such tax shall be the amount by which the tax actually payable on his own taxable income by the person who created the trust is less than the tax which would have been payable by him if he had received so much of the net income of the trust estate as is attributable to the beneficial interest which he had power so to acquire, in addition to any other income derived by him.

(3.) Where this section is applied to the assessment of the income of a trust estate or part thereof derived in the year of income, no beneficiary shall be assessed in his individual capacity in respect of his individual interest in the income or part to which this section has been so applied, and the trustee shall not be assessed in respect of that income or part otherwise than under this section.

#### Division 7.—Private Companies.

Definitions.

*Cf. I.T.A., s. 31A  
(1).*

**103.—(1.)** In this Act, unless the contrary intention appears—  
“distributable income” means the amount obtained by deducting from the taxable income of a company all taxes, which, in the year of income, are paid under this or the previous Act, or paid in any country out of Australia in respect of income of the company which is taxable income under this or the previous Act;

“investment company” means a company the income of which, other than dividends from private companies, is ordinarily derived solely or principally from such sources that income derived from those sources by an individual would be income from property;



“nominee” of any person means one who may be required to exercise his voting power at the direction of, or holds shares directly or indirectly on behalf of, that person and includes a relative of that person ;

“private company” means a company which is under the control of not more than seven persons, and which is not a company in which the public are substantially interested or a subsidiary of a public company ;

“undistributed amount” means—

(a) the amount by which the dividends paid by a private company out of its taxable income of the year of income fall short of a sufficient distribution ;  
or

(b) where no dividends have been so paid, the amount which would have been a sufficient distribution.

(2.) For the purposes of this Division—

*Cf. I.T.A., s. 31A  
(2.).*

(a) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per centum of the voting power, have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year of income beneficially held by, the public (not including a private company) and any such shares have in the course of that year been quoted in the official list of a stock exchange ;

(b) a company shall be deemed to be a subsidiary of a public company if, by reason of the beneficial ownership of the shares, the control of the company is in the hands of one or more companies none of which is a private company ;

(c) a company shall be deemed to be under the control of any persons where the major portion of the voting power or the majority of the shares is held by those persons or is held by those persons and nominees of those persons or where the control is, by any other means whatever, in the hands of those persons ;

(d) persons in partnership and persons interested in the estate of a deceased person or in property held in trust shall respectively be deemed to be a single person ;

(e) a private company shall be deemed to have made a sufficient distribution of its income of the year of income if, before the expiration of nine months after the close of the year, it has paid in dividends out of the taxable income of that year—

(a) where it is an investment company—the whole of its distributable income ; or

(b) where it is not an investment company—

- (i) if the whole or part of its distributable income consists of dividends received from other private companies—that whole or part, together with two-thirds of the remainder, if any, of the distributable income ; and
- (ii) in any other case—two-thirds of its distributable income.

Assessment of additional tax.  
Cf. I.T.A., s. 31B.

**104.**—(1.) Where a private company has not, before the expiration of nine months after the close of the year of income, made a sufficient distribution of its income of the year, the Commissioner may assess the aggregate additional amount of tax which would have been payable by its shareholders if the company had, on the last day of the year of income, paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive it, and the company shall be liable to pay the tax so assessed.

(2.) Where there is more than one class of shareholders of the company, then for the purpose only of determining which shareholders would have been so entitled, dividends paid within nine months after the close of the year of income out of the taxable income of that year shall be deemed to have been paid in the order in which they were actually paid, but before the last day of that year.

Interposition of companies, trustees and partnerships.  
Cf. I.T.A., s. 31B.

**105.**—(1.) Where, in relation to any private company, there is an undistributed amount, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of that amount if there had been successive distributions of the relative parts of that amount to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may also, in addition to any other tax assessable under this Division, assess the additional amount of tax, if any, which would in that event have been payable by that person, and the private company shall be liable to pay the tax so assessed.

(2.) If any company so interposed between the private company and that person is not incorporated in Australia, and the Commissioner is unable to ascertain the identity of that person, or the part of the amount which he would have received, the Commissioner may assess the additional amount of tax, if any, which would have been payable if the company so interposed had only one shareholder, and the private company shall be liable to pay the tax so assessed.

Excess distribution of previous years.  
Cf. I.T.A., s. 31E.

**106.**—(1.) Where the total amount of dividends paid by a private company out of its taxable income of the period of four years next preceding the year of income exceeds the aggregate of the smallest amounts that would have been a sufficient distribution in each of

those years, the excess shall, for the purpose of calculating the undistributed amount, be deemed to be a dividend paid out of the taxable income of the year of income.

(2.) For the purpose of calculating the excess—

- (a) any part of the company's taxable income of that period upon which it has paid or is liable to pay tax under this Division, or under section twenty-one of the previous Act, or under Division 2 of Part III. of that Act, shall be deemed to be a dividend paid by the company during that period; and
- (b) any dividend or part of a dividend paid out of that part of the company's taxable income shall be deemed not to be a dividend.

**107.** A person shall be entitled to a rebate of the amount by which his income tax is increased by the inclusion in his assessable income of—

*Rebates.*  
*Cf. I.T.A., s. 31F.*

- (a) dividends paid to him by a company; or
- (b) amounts in respect of dividends paid by a company to any company, trustee or partnership interposed between that person and the company paying the dividends,

where the dividends are paid wholly and exclusively out of any amount or amounts in respect of which, under this Division, under section twenty-one of the previous Act or under Division 2 of Part III. of that Act, the company paying the dividends has paid or is liable to pay tax.

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

*Loans to shareholders.*  
*Cf. I.T.A., s. 31G.*

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

**109.** So much of any sum paid or credited by a private company and being, or purporting to be—

*Payments to shareholders and directors.*  
*Cf. I.T.A., s. 31H.*

- (a) remuneration for services rendered by any person being a shareholder or director of the company or being a relative of any such shareholder or director: or

(b) an allowance, gratuity or compensation in consequence of the retirement of that person from any office or employment held by him in that company, or upon the termination of any such office or employment,

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

Division 8.—Life Assurance Companies.

Definitions.

Cf. I.T.A., s. 20A (2.).

110. In this Division—

“future premiums” means such premiums as, according to the rate of interest and the rate of mortality assumed in the company’s actuarial valuation, are sufficient to provide for the risk incurred by the company in issuing the policies in force on the date in respect of which the valuation is made, exclusive of any addition thereto for office expenses and other charges ;

“life assurance company” means a company the sole or principal business of which is life assurance ;

“valuation of liabilities” means a valuation of the amount which, together with the future premiums payable, if accumulated at the rate of interest stated as assumed in the company’s actuarial valuation, would provide the amount required to pay in full on the respective dates of their maturity, according to the rates of mortality assumed in such valuation, the liabilities under policies in force on the date in respect of which the valuation is made.

Premiums, &c., not assessable income.

Cf. I.T.A., s. 20A (1.).

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

Deductions not allowed.

Cf. I.T.A., s. 20A (1.).

112. Expenditure incurred by a life assurance company exclusively in gaining such premiums or considerations shall not be an allowable deduction.

Expenses of general management.

Cf. I.T.A., s. 20A (1.).

113.—(1.) So much only of the expenditure incurred in the year of income in the general management of the business of a life assurance company, as bears to that expenditure the same proportion as its assessable income bears to its total income, shall be an allowable deduction.

(2.) For the purposes of this section, the expenditure exclusively incurred in gaining or producing assessable income, or exclusively incurred in gaining or producing income which is not assessable, shall be deemed not to be expenditure incurred in such general management.

114.—(1.) Where an actuarial valuation of liabilities is made as at the end of the year of income, the “calculated liabilities” at that date shall be—

Meaning of  
calculated  
liabilities.

Cf. I.T.A., s. 20A  
(2.).

- (a) where the basis of the valuation is compound interest at the rate of four per centum per annum or over—the amount of that valuation ;
- (b) where such basis is compound interest at a rate less than four and not less than three and one-half per centum per annum—ninety-five per centum of that valuation ;
- (c) where such basis is compound interest at a rate less than three and one-half and not less than three per centum per annum—ninety per centum of that valuation ;
- (d) where such basis is compound interest at a rate less than three per centum per annum—eighty-five per centum of that valuation.

(2.) Where an actuarial valuation of liabilities is not made as at the end of the year of income, a calculation shall be made of the proportion which the last preceding actuarial valuation of liabilities, as at some other date, bears to the value of all the assets of the company at that date. The amount which bears that proportion to the value of all the assets of the company at the end of the year of income shall be deemed to be an actuarial valuation of liabilities made as at the end of that year on the same basis as that last preceding valuation.

115. An amount equal to four per centum of that part of the calculated liabilities of a life assurance company at the end of the year of income, which bears to such calculated liabilities the same proportion as the value at that date of the assets from which the company derives assessable income bears to the value at that date of all the assets of the company, shall be an allowable deduction.

Deduction of  
four per centum  
of calculated  
liabilities.

Cf. I.T.A., s. 20A  
(1.) (c).

116. When the calculated liabilities at the end of the year of income exceed the value at that date of all the assets of the company, the company shall not be liable to pay income tax in respect of the income derived in that year from the business of life assurance.

When  
calculated  
liabilities  
exceed assets.

Cf. I.T.A., s. 20A  
(3.).

#### Division 9.—Co-operative and Mutual Companies.

117. In this Division, “co-operative company” means a company the rules of which limit the number of shares which may be held by, or by and on behalf of, any one shareholder, and prohibit the quotation of the shares for sale or purchase at any stock exchange or in any other public manner whatever, and includes a company which has no share capital, and which in either case is established for the purpose of carrying on any business having as its primary object or objects one or more of the following :—

Co-operative  
companies.

Cf. I.T.A., s. 2B  
(1A.).

- (a) the acquisition of commodities or animals for disposal or distribution among its shareholders ;
- (b) the acquisition of commodities or animals from its shareholders for disposal or distribution ;

- (c) the storage, marketing, packing or processing of commodities of its shareholders ;
- (d) the rendering of services to its shareholders ;
- (e) the obtaining of funds from its shareholders for the purpose of making loans to its shareholders to enable them to acquire land or buildings to be used for the purpose of residence or of residence and business.

Company not co-operative if less than ninety per cent. of business with members.  
Cf. I.T.A., s. 20 (1A.).

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

Sums received to be taxed.  
Cf. I.T.A., s. 4.

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

Deductions allowable to co-operative company.  
Cf. I.T.A., s. 20.

120.—(1.) So much of the assessable income of a co-operative company as—

- (a) is distributed among its shareholders as rebates or bonuses based on business done by shareholders with the company ;
- (b) is distributed among its shareholders as interest or dividends on shares ; or
- (c) in the case of a company having as its primary object that specified in paragraph (b) of section One hundred and seventeen of this Act—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,

shall be an allowable deduction :

Provided that the deduction under paragraph (c) of this sub-section 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.

(2.) No such rebate or bonus based on purchases made by a shareholder from the company shall be included in his assessable income except where the price of such purchases is allowable as a deduction in ascertaining his taxable income of any year. *Cf. I.T.A., s. 4.*

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

#### Division 10.—Mining.

**122.** Where a taxpayer derives income from carrying on mining operations in Australia (other than coal mining) the capital expended by him in necessary plant and development of the mining property from which such income is derived (less the profits derived by him prior to the year of tax) 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 be an allowable deduction. *Deduction of expenditure. Cf. I.T.A., s. 22.*

**123.—(1.)** As an alternative to the deduction allowable by the last preceding section, so much of the assessable income of the year of income as is expended in that year or appropriated for development (the cost of which is not otherwise an allowable deduction) of such mining property and for new plant shall, at the option of the taxpayer, be an allowable deduction. *Alternative deduction. Cf. I.T.A., s. 22.*

(2.) So much of any money so appropriated as has not been expended for that purpose at the end of the year in which it was appropriated shall be included in the assessable income of the taxpayer of that year.

**124.** No deduction for depreciation shall be allowed on plant to which this Division applies. *Deductions not allowable. Cf. I.T.A., s. 22.*

#### Division 11.—Interest Paid by Companies.

**125.—(1.)** Where interest is paid or credited by a company to any person who is a non-resident— *Interest paid by a company to a non-resident.*

(a) on money secured by debentures of the company and used in Australia, or used in acquiring assets for use or disposal in Australia; or *Cf. I.T.A., s. 22 (2.) (b).*

(b) on money lodged at interest in Australia with the company, the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay at the rate declared by the Parliament—

(i) where the person to whom the interest is paid or credited is a company—income tax upon that interest; and

(ii) where the person to whom the interest is paid or credited is not a company—income tax upon so much of that interest paid or credited in the year of income as exceeds Two hundred and fifty pounds.

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

(3.) Where a company establishes, to the satisfaction of the Commissioner, that a person can enforce payment, without any deduction under this section, of interest on any such money secured by debentures, or on money lodged at interest with it, this section shall not apply in respect of the interest paid or credited to that person.

(4.) This section shall not apply to interest paid or credited to a company which is carrying on business in Australia, and which has a public officer duly appointed under this Act, unless the Commissioner, by notice in writing to the company paying or crediting the interest, directs that the section shall so apply.

Interest paid by  
a company on  
bearer  
debentures.  
Cf. I.T.A., s. 20  
(2.).

126.—(1.) Where interest is paid or credited by a company in respect of debentures payable to bearer the names and addresses of the holders of which are not supplied to the Commissioner by the company, the company shall be liable, without affecting its liability (if any) in respect of other income tax payable by it, to pay income tax upon the total amount so paid or credited in respect of those debentures at the rate of tax which would be applicable if that amount were the taxable income of one individual.

(2.) The company may deduct and retain for its own use from the amount payable to any person who is a holder of any of those debentures an amount bearing the same proportion to the amount of tax payable by the company under this section as the interest payable to that person bears to the total interest payable in respect of those debentures.

(3.) Where the Commissioner is satisfied that that person is not liable to furnish a return, he shall refund to him the amount of tax paid by the company in respect of his debentures.

Rebate of tax  
paid by  
company.  
Cf. I.T.A., s. 20  
(2.).

127. Where the company pays tax under this Division on any interest, and that interest is included in the assessment of the person to whom it was paid or credited, the proportionate amount of tax paid by the company in respect of the interest shall be deducted from the total tax payable by that person.

Tax on interest.  
Cf. I.T.A., s. 20  
(2.), (3.).

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

#### Division 12.—Oversea Ships.

Taxable income  
of ship-owner  
or charterer.  
Cf. I.T.A., s. 27.

129. Where a ship belonging to or chartered by a person whose principal place of business is out of Australia carries passengers, livestock, mails or goods shipped in Australia, five per centum of



the amount paid or payable to him in respect of such carriage, whether that amount is payable in or out of Australia, shall be deemed to be taxable income derived by him in Australia.

130. The master of the ship, or the agent or other representative in Australia of the owner or charterer, shall, when called upon by the Commissioner by notice in the *Gazette* or by any other notice to him, make a return of the amount so paid or payable.

Master or agent to make return.  
Cf. I.T.A., s. 27

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

Determination by Commissioner.  
Cf. I.T.A., s. 27 (3.).

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

Assessment of tax.  
Cf. I.T.A., s. 27 (3.).

133.—(1.) Where the assessment is made on the agent or representative, and the tax is not paid forthwith upon receipt of notice of the assessment, the master shall be liable to pay the tax.

Master liable to pay.  
Cf. I.T.A., s. 27 (4.).

(2.) This section shall not, so long as any tax for which the master becomes liable under this section remains unpaid, relieve any other person to whom notice of assessment has been given in respect of that tax, from liability to pay the tax remaining unpaid.

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

Notice of assessment.  
Cf. I.T.A., s. 27 (4A.).

135. A collector or officer of customs for any State or Territory of the Commonwealth shall not grant a clearance to the ship until he is satisfied that any tax which has been or may be assessed under this Division has been paid, or that arrangements for its payment have been made to the satisfaction of the Commissioner.

Clearance of ship.  
Cf. I.T.A., s. 27 (5.).

#### Division 13.—Australian Business Controlled Abroad.

136. Where any business carried on in Australia—

- (a) is controlled principally by non-residents ;
- (b) is carried on by a company a majority of the shares in which is held by or on behalf of non-residents ; or
- (c) is carried on by a company which holds or on behalf of which other persons hold a majority of the shares in a non-resident company,

Australian business controlled abroad.  
Cf. I.T.A., s. 28.

and it appears to the Commissioner that the business produces either no taxable income or less than the amount of taxable income which might be expected to arise from that business, the person carrying on the business in Australia shall, notwithstanding any other provision of this Act, be liable to pay income tax on a taxable income of such amount of the total receipts (whether cash or credit) of the business as the Commissioner determines.

#### Division 14.—Film Business Controlled Abroad.

137. Where any non-resident 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

Film business controlled abroad.  
Cf. I.T.A., s. 28A (1.).

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 that business—

- (a) is controlled principally by non-residents ;
- (b) is carried on by a company a majority of the shares in which is held by or on behalf of non-residents ; or
- (c) is carried on by a company which holds, or on behalf of which other persons hold, a majority of the shares in a non-resident company,

the non-resident deriving that income shall be liable to pay income tax thereon.

**Taxable  
Income.**  
*Cf. I.T.A., s. 28A  
(2.).*

**138.** Where any non-resident has derived such income, an amount equal to thirty per centum of the gross income so derived shall be included in his taxable income :

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

**Liability of  
agent.**  
*Cf. I.T.A., s. 28A  
(4.).*

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

**Penalty.**  
*Cf. I.T.A., s. 28A  
(5.).*

**140.** Any person who makes any payment or transfers any income in contravention of the last preceding section shall be guilty of an offence.

**Penalty :** The amount of tax which is, or becomes, payable in respect of that income by the non-resident for whom the person paying or transferring the income is the agent, and in addition a fine not exceeding One hundred pounds.

#### Division 15.—Insurance with Non-Residents.

**Definitions.**

**141.** In this Division—

- “ insurance contract ” means a contract or guarantee whereby liability is undertaken, contingent upon the happening of any specified event, to pay any money or make good any loss or damage, but does not include a contract of life assurance ;
- “ insured event ” means an event upon the happening of which the liability under an insurance contract arises ;
- “ insured person ” means a person with whom any insurance contract is entered into by an insurer ;

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

“insurer” means any non-resident who undertakes liability under an insurance contract.

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

Income derived  
by non-resident  
insurer.  
Cf. I.T.A., s. 28B  
(1.).

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

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

Taxable income  
of non-resident  
insurer.  
Cf. I.T.A., s. 28B  
(2.).

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

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

Liability of  
agents of  
insurer.  
Cf. I.T.A., s. 28B  
(3.).

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

Deduction of  
premiums.  
Cf. I.T.A., s. 23  
(1.) (a).

Exporter to  
furnish  
information.  
Cf. I.T.A., s. 28B  
(4.).

146. 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 as is prescribed regarding the insurance of such goods.

Rate in special  
circumstances.  
Cf. I.T.A., s. 28B  
(5.).

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

Re-insurance  
with  
non-residents.  
Cf. I.T.A., s. 23  
(1.) (a).

148. Where a person carrying on the business of insurance (other than life assurance) in Australia reinsures risks with another person carrying on a similar business, but not in Australia—

(a) so much of the premiums received on those risks as is credited or paid to such other person ; and

(b) only so much of the losses on those risks as relates to the risks or part of the risks which have not been so reinsured,

shall, subject to this Division, be allowable deductions to the person carrying on business in Australia.

#### Division 16.—Averaging of Incomes.

Average income.  
Cf. I.T.A., s. 13  
(2A.).

149. In this Division, “average income” of a taxpayer means the average of his taxable incomes of the years (in this Division called “average years”) beginning with the first average year and ending with the year of income.

First average  
year.  
Cf. I.T.A., s. 13  
(3.), (4.).

150. Subject to this Division, the first average year shall be the fourth year before the year of income. A year the income of which was subject to assessment under the previous Act shall be capable of being a first or subsequent average year.

First  
calculation.  
Cf. I.T.A., s. 13  
(5.).

151.—(1.) For the purpose of making the first calculation of the rate of tax under this Division, the first average year shall be the first year which is otherwise capable of being an average year, and in which the taxable income is not greater than that of the next succeeding year. No year prior to that first average year shall, on any calculation of the rate of tax, be capable of being an average year.

Cf. I.T.A., s. 13  
(6.).

(2.) Any year in which the taxpayer was not carrying on business and was not in receipt of a taxable income shall not be counted as a first average year in making the first calculation of the rate of tax under this Division.

(3.) This section shall not apply to a taxpayer whose income has been or is liable to be assessed at an average rate of tax determined under the provisions of the previous Act.

152. Any year in which the taxpayer was not carrying on business and was not in receipt of assessable income shall not be counted as an average year, and the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.

Taxpayer not in receipt of assessable income.  
Cf. I.T.A., s. 13 (13.).

153. Any year in which the taxpayer was carrying on business but had no taxable income shall be capable of being an average year.

Taxpayer with no taxable income.  
Cf. I.T.A., s. 13 (7.).

154. Any excess of allowable deductions over the assessable income of the taxpayer in any average year shall not be taken into account in calculating the average income.

Excess of allowable deductions.  
Cf. I.T.A., s. 13 (8.).

155.—(1.) Where a taxpayer establishes that, owing to his retirement from his occupation, or from any other cause (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), his taxable income has been permanently reduced to an amount which is less than two-thirds of his average taxable income, he shall be assessed, and the provisions of this Division shall apply to the income thereafter derived by him, as if he had never been a taxpayer before that year.

Permanent reduction of income.  
Cf. I.T.A., s. 13 (9.).

(2.) For the purposes of this section, "average taxable income" means the average taxable income by reference to which the taxpayer's rate of tax would be calculated apart from the provisions of this section, if there were excluded from his assessable income of the average years any income received by him from sources from which he does not usually receive income.

156. The rates of tax payable by a taxpayer to whom this Division applies shall be the rates declared by the Parliament.

Rates of tax.

157.—(1.) In respect of income derived during the year ending on the thirtieth day of June, One thousand nine hundred and thirty-eight and during any subsequent year or during any accounting period adopted in lieu of any such year, the foregoing provisions of this Division shall not apply except in respect of income derived by a primary producer.

Application of Division to Primary Producers.

(2.) For the purposes of this section, "primary producer" means a person who carries on in Australia a business of primary production.

(3.) For the purpose only of determining whether a person is carrying on a business of primary production, a beneficiary in a trust estate shall, to the extent to which he is presently entitled to the income or part of the income of that estate, be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.

(4.) If in respect of any year in which this Division applies only to taxpayers who are primary producers, a taxpayer who has in previous years been a primary producer does not carry on business

as a primary producer, the provisions of this Division shall apply to the income thereafter derived by him as if he had never been a taxpayer before that year.

Application of  
Division.  
Cf. I.T.A., s. 13  
(10.), (11.), (12.).

158. This Division shall not apply in any case where there are not at least two average years, and shall not apply to the taxable income of a company except income in respect of which it is assessable as a trustee.

Division 17.—Rebates on Income Taxed Abroad and on  
Business Income.

Rebate to  
non-resident  
taxpayer.  
Cf. I.T.A., s. 18.

159.—(1.) Where an amount of income derived from sources in Australia is included in the taxable income of a non-resident taxpayer, and income tax is paid by the taxpayer on that amount of income under the law of the United Kingdom but not under the law of a State, and the Commonwealth rate is greater than one-half of the British rate, the taxpayer shall be entitled to a rebate of tax of the sum obtained by applying to that amount of income a rate which shall be—

- (a) where the Commonwealth rate is greater than the British rate—one-half of the British rate; and
- (b) where the Commonwealth rate is not greater than the British rate—the excess of the Commonwealth rate over one-half of the British rate.

(2.) Where an amount of income derived from sources in Australia is included in the taxable income of a non-resident taxpayer, and income tax is paid by the taxpayer on that amount of income under the law of the United Kingdom and under the law of a State, and the sum of the Commonwealth and State rates is greater than one-half of the British rate, the proportion which the Commonwealth rate bears to the sum of the Commonwealth and State rates shall be ascertained, and the taxpayer shall be entitled to a rebate of tax of the sum obtained by applying to that amount of income a rate which shall bear that proportion to the following—

- (a) where the sum of the Commonwealth and State rates is greater than the British rate—one-half of the British rate; and
- (b) where the sum of the Commonwealth and State rates is not greater than the British rate—the excess of the sum of the Commonwealth and State rates over one-half of the British rate.

(3.) In this section the following expressions, in relation to an amount of income, have the following meanings:—

- (a) "Commonwealth rate" means the rate ascertained by dividing the total amount of income tax paid or payable for the year by the taxpayer (before the deduction of rebate granted under this section) by the amount of the total taxable income in respect of which the tax paid or payable under this Act has been charged for that year;

except that, where the tax is charged on an amount other than the ascertained amount of actual profits, the rate of tax shall be as determined by the Commissioner ;

- (b) "State rate" has a corresponding meaning in relation to the income tax paid or payable on the amount of income under the law of a State ;
- (c) "British rate" means the rate at which tax is paid under the law of the United Kingdom on the amount of income.

(4.) In this section, a reference to a State shall be read as including a reference to a Territory which is part of the Commonwealth.

(5.) For the purposes of this section, a certificate issued by or on behalf of the Commissioners of Inland Revenue in the United Kingdom shall be receivable in evidence to show—

- (a) what is the rate at which tax has been paid under the law of the United Kingdom ; and
- (b) the particular amount of income which is liable to tax under this Act on which tax has been paid under the law of the United Kingdom.

160.—(1.) Where the taxable income of an individual includes income derived by him from a business carried on by him either alone or as a partner with any other person, and the rate of tax payable by him upon his income from personal exertion exceeds the rate of tax payable by companies for the year of tax, a rebate of tax shall be allowed in his assessment of the amount arrived at by applying a rate equal to the difference between those rates of tax to fifteen per centum of the income so included in his taxable income.

Rebate in respect of business income.  
Cf. I.T.A., s. 30.

(2.) In this section, "business" means a business which from its nature and character requires the retention in the business of not less than fifteen per centum of the taxable income of each year.

(3.) This section shall not apply in any case by reason only of the existence of any one or more of the following facts :—

- (a) The amount set aside, appropriated or written off the value of assets in the accounts of an individual in respect of depreciation, exceeds the amount, if any, allowable under this Act in respect of depreciation of those assets.
- (b) It is necessary to retain taxable income to meet expenditure of such a nature as would be, if and when incurred, a deduction under this Act from assessable income.
- (c) It is necessary to retain taxable income to repay borrowed money.
- (d) It is necessary to retain taxable income to increase capital.

#### PART IV.—RETURNS AND ASSESSMENTS.

161.—(1.) Every person shall, if required by the Commissioner by notice published in the *Gazette*, furnish to the Commissioner in the prescribed manner, within the time specified in the notice, or such extended time as the Commissioner may allow, a return signed by

Annual returns.  
Cf. I.T.A., s. 32.

him setting forth a full and complete statement of the total income derived by him during the year of income, and of any deductions claimed by him :

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

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

Further returns,  
&c.  
Cf. I.T.A., s. 33  
(1.), (2.).

**162.**—(1.) Every person shall, if required by the Commissioner, whether before or after the expiration of the year of income, furnish to the Commissioner, in the manner and within the time required by him, a return, or a further or fuller return, of the income or any part of the income derived by him in any year, whether on his own behalf or as agent or trustee, and whether a return has or has not previously been furnished by him for the same period.

(2.) If no income has been so derived by the person so required to furnish a return, he shall nevertheless furnish a return stating that fact.

Special returns.  
Cf. I.T.A., s. 33  
(8.).

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

Returns deemed  
to be duly made.  
Cf. I.T.A., s. 34.

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

Certificate of  
sources of  
information.

**165.**—(1.) Any person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return required by this Act or the regulations or by the Commissioner shall sign a certificate (in this Act called an "agent's certificate") in the prescribed form to be endorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.

(2.) Every person carrying on business who does not furnish with his return an agent's certificate shall furnish particulars in the prescribed form, endorsed on or annexed to the return, setting out such information as to the sources available for the compilation of the return as is prescribed.

Assessments.  
Cf. I.T.A., s. 35.

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

Default  
assessments.  
Cf. I.T.A., s. 36.

**167.** If—

- (a) any person makes default in furnishing a return; or
- (b) the Commissioner is not satisfied with the return furnished by any person; or



(c) the Commissioner has reason to believe that any person who has not furnished a return has derived taxable income, the Commissioner may make an assessment of the amount upon which in his judgment income tax ought to be levied, and that amount shall be the taxable income of that person for the purpose of the last preceding section.

168.—(1.) The Commissioner may at any time during any year, or after its expiration, make an assessment of the taxable income derived in that year or any part of it by any taxpayer, and of the tax payable thereon.

Special assessments.

(2.) Where the income, in respect of which such an assessment is made, is derived in a period less than a year, the assessment shall be made as if the beginning and end of that period were the beginning and end respectively of the year of income.

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

Assessments on all persons liable to tax.

170.—(1.) The Commissioner may, subject to this section, at any time amend any assessment by making such alterations therein or additions thereto as he thinks necessary, notwithstanding that tax may have been paid in respect of the assessment.

Amendment of assessments.  
Cf. I.T.A., s. 27 (1.), (1A.), (3.).

(2.) Where a taxpayer has not made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and the Commissioner is of opinion that there has been an avoidance of tax, the Commissioner may—

(a) where he is of opinion that the avoidance of tax is due to fraud or evasion—at any time; and

(b) in any other case—within six years from the date upon which the tax became due and payable under the assessment, amend the assessment by making such alterations therein or additions thereto as he thinks necessary to correct an error in calculation or a mistake of fact or to prevent avoidance of tax as the case may be.

(3.) Where a taxpayer has made to the Commissioner a full and true disclosure of all the material facts necessary for his assessment, and an assessment is made after that disclosure, no amendment of the assessment increasing the liability of the taxpayer in any particular shall be made except to correct an error in calculation or a mistake of fact; and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.

(4.) No amendment effecting a reduction in the liability of a taxpayer under an assessment shall be made except to correct an error in calculation or a mistake of fact; and no such amendment shall be made after the expiration of three years from the date upon which the tax became due and payable under that assessment.

(5.) Where an assessment has, under this section, been amended in any particular, the Commissioner may, within three years from the date upon which the tax became due under the amended assessment make, in or in respect of that particular, such further amendment

in the assessment as, in his opinion, is necessary to effect such reduction in the liability of the taxpayer under the assessment as is just.

(6.) Where an application for an amendment in his assessment is made by a taxpayer within three years from the date upon which the tax became due and payable under that assessment, and the taxpayer has supplied to the Commissioner within that period all information needed by the Commissioner for the purpose of deciding the application, the Commissioner may amend the assessment when he decides that application notwithstanding that that period has elapsed.

(7.) Nothing contained in this section shall prevent the amendment of any assessment in order to give effect to the decision upon any appeal or review, or its amendment by way of reduction in any particular in pursuance of an objection made by the taxpayer or pending any appeal or review.

(8.) Where—

(a) any provision of this Act is expressly made to depend in any particular upon a determination, opinion or judgment of the Commissioner; and

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

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

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

Where no  
notice of  
assessment  
served.

**171.—(1.)** Where a taxpayer has duly furnished to the Commissioner a return of income, and no notice of assessment in respect thereof has been served within twelve months thereafter, he may in writing by registered post request the Commissioner to make an assessment.

(2.) If within three months after the receipt by the Commissioner of the request a notice of assessment is not served upon the taxpayer, any assessment issued thereafter in respect of that income shall be deemed to be an amended assessment, and for the purpose of determining whether such amended assessment may be made, the

taxpayer shall be deemed to have been served on the last day of the three months with a notice of assessment in respect of which income tax was payable on that day.

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

Refund of tax overpaid.  
Cf. I.T.A., s. 37 (2).

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

Amended assessment to be an assessment.

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

Notice of assessment.  
Cf. I.T.A., s. 40.

175. 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.  
Cf. I.T.A., s. 38.

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

Judicial notice of signatures.

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

Evidence.  
Cf. I.T.A., s. 39.

(2.) The production of a *Gazette* containing a notice purporting to be issued by the Commissioner shall be conclusive evidence that the notice was so issued.

(3.) The production of a document under the hand of the Commissioner, Second Commissioner, or a Deputy Commissioner, purporting to be a copy of a document issued by either the Commissioner, Second Commissioner, or a Deputy Commissioner, shall be conclusive evidence that the document was so issued.

(4.) The production of a document under the hand of the Commissioner, Second Commissioner, or a Deputy Commissioner, purporting to be a copy of or extract from any return or notice of assessment shall be evidence of the matter therein set forth to the same extent as the original would be if it were produced.

#### PART V.—OBJECTIONS AND APPEALS.

##### Division 1.—Constitution of Boards of Review.

178.—(1.) For the purposes of this Part, there shall be a Board or Boards of Review.

Boards of Review.  
Cf. I.T.A., s. 41.

(2.) Each Board shall consist of a Chairman and two other members, who shall be appointed by the Governor-General.

(3.) The persons who, immediately prior to the commencement of this Act, held office as members of a Board of Review under the previous Act, shall, subject to this Act, continue to hold office as if appointed members of a Board of Review under this Act, for the remainder of the terms for which they were appointed under the previous Act.

(4.) The members of a Board shall hold office for a term not exceeding seven years, but shall be eligible for re-appointment.

Officers of  
Public Service  
appointed to  
Board.  
*Cf. I.T.A., s. 42.*

179.—(1.) If any officer of the Public Service of the Commonwealth is appointed a member of a Board, his service as member shall, for the purpose of determining his existing and accruing rights, be counted as public service in the Commonwealth.

(2.) If any member of the Public Service of a State is appointed a member of a Board, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Illness or  
suspension  
of Chairman  
or member.  
*Cf. I.T.A., s. 43.*

180.—(1.) In the case of the illness, suspension or absence of the Chairman, the Governor-General shall appoint one of the other members to act as Chairman during such illness, suspension or absence.

(2.) In the case of the illness, suspension or absence of any member of a Board, the Governor-General may appoint a person to act as the deputy of the member during his illness, suspension or absence, and the deputy shall, whilst so acting, have all the powers and perform all the duties of a member.

Board may  
not be sued.  
*Cf. I.T.A., s. 46.*

181. No action or suit shall be brought or maintained against any person who is or has been a member of a Board, for any nonfeasance or misfeasance in connexion with his duties.

Remuneration  
of members.  
*Cf. I.T.A., s. 47.*

182. The Chairman and each of the other members of a Board shall receive such remuneration and travelling allowance as the Governor-General determines, and the Consolidated Revenue Fund is, to the necessary extent, but not exceeding the sum of Ten thousand pounds per annum, hereby appropriated accordingly.

Removal or  
suspension of  
member.  
*Cf. I.T.A., s. 48.*

183.—(1.) The Governor-General may remove any member of a Board from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

(2.) The Governor-General may suspend any member of a Board from office for misbehaviour or incapacity.

(3.) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member to office, the member shall be restored

accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant, and the office shall thereupon become and be vacant.

184. A member of a Board shall be deemed to have vacated his office if—
- (a) he engages, during his term of office, in any paid employment outside the duties of his office ;
  - (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit ;
  - (c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months ; or
  - (d) he becomes permanently incapable of performing his duties.

Vacation of office of member.

*Cf. I.T.A., s. 49.*

#### Division 2.—Reviews and Appeals.

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

Objections.

*Cf. I.T.A., s. 50 (1).*

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

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

Decision of Commissioner.

*Cf. I.T.A., s. 50 (2.), (3).*

187. A taxpayer dissatisfied with the decision may, within sixty days after such service, in writing request the Commissioner either—

- (a) to refer the decision to a Board of Review for review ; or
- (b) to treat his objection as an appeal and to forward it either to the High Court or to the Supreme Court of a State.

Application for appeal or review.

*Cf. I.T.A., s. 50 (4.), (5).*

188.—(1.) If the request is accompanied by a fee of one pound, the Commissioner shall refer the decision or forward the objection to a Board or Court in accordance with the request.

Reference to Board or Court.

*Cf. I.T.A., s. 51 (1.), (5).*

(2.) The fee shall be refunded to the taxpayer if his assessment is reduced either by amendment or as a result of the decision of the Board or Court.

189. If within sixty days after receiving the request accompanied by the fee of one pound the Commissioner does not refer the decision or forward the objection, the taxpayer may at any time thereafter give

Notice to refer.

him notice in writing to do so, and the Commissioner shall within sixty days after receiving the notice refer the decision or forward the objection to a Board or Court accordingly :

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

Grounds of  
objection and  
burden of proof.  
Cf. I.T.A., ss. 51  
(2.), 51A (3.).

190. Upon every such reference or appeal—

- (a) the taxpayer shall be limited to the grounds stated in his objection; and
- (b) the burden of proving that the assessment is excessive shall lie upon the taxpayer.

Reduced  
assessments.  
Cf. I.T.A., ss. 51  
(3.), 51A (4.).

191. If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with on the reference or appeal.

Review by  
Board.  
Cf. I.T.A., s. 44.

192. A Board of Review shall have power to review such decisions of the Commissioner, Second Commissioner or a Deputy Commissioner as are referred to it under this Act.

Powers of  
Board.  
Cf. I.T.A., s. 44.

193.—(1.) For the purposes of reviewing such decisions, the Board shall, subject to this section, have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of the Board, and its decisions upon review, shall for all purposes (except for the purpose of objections thereto and review thereof and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner.

(2.) The Board shall not have power to review decisions of the Commissioner relating to the remission of additional tax except decisions relating to the remission of additional tax imposed by section two hundred and twenty-six of this Act where the additional tax payable, after the making by the Commissioner of his decision, exceeds—

- (a) in any case to which sub-section (1.) of that section applies—  
the greater of the following amounts, namely, the sum of One pound or an amount calculated, in respect of the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made whichever first happens, at the rate of ten per centum per annum of the tax assessable to the taxpayer; or
- (b) in any case to which sub-section (2.) of that section applies—  
the greater of the following amounts, namely, the sum of One pound or an amount calculated, in respect of the period commencing on the last day allowed for furnishing

the return and ending on the day upon which the assessment in respect of the omitted income or excessive deduction is made, at the rate of ten per centum per annum of the difference between the tax properly payable by the taxpayer and the tax that would be payable if it were assessed upon the basis of the return furnished by him.

**194. At all sittings of the Board—**

- (a) any two members shall form a quorum ;
- (b) the decision of the majority shall prevail ;
- (c) the Chairman shall have a deliberative, but not a casting vote.

Quorum and voting.  
Cf. I.T.A., s. 45.

**195.—(1.)** Upon every reference to the Board, it shall give a decision in writing and may either confirm, reduce, increase or vary the assessment.

Decision of Board.  
Cf. I.T.A., s. 51 (2.), (4A.).

**(2.)** Upon the request of the Commissioner or the taxpayer, made at the hearing, the Board when giving its decision shall state in writing its findings of fact and its reasons in law for the decision.

**196.—(1.)** The Commissioner or taxpayer may appeal to the High Court from any decision of the Board which involves a question of law.

Appeal or reference to High Court.  
Cf. I.T.A., s. 51 (6.).

**(2.)** The Board shall, upon the request of the Commissioner or taxpayer, refer to the High Court any question of law arising before the Board.

**(3.)** The decision of the High Court on such appeal or reference shall be final and conclusive.

**197.** Where, at the request of the taxpayer, the Commissioner has treated his objection as an appeal and forwarded it to the High Court or the Supreme Court of a State, the appeal shall be heard by a single Justice or Judge of the Court.

Constitution of Court on appeal.  
Cf. I.T.A., s. 51A (2.).

**198.—(1.)** The Court may, if it thinks fit, state a case in writing for the opinion of the High Court upon any question of law arising on the appeal.

Case stated to High Court.  
Cf. I.T.A., s. 51A (8.), (9.).

**(2.)** 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 the costs of the case stated as it thinks fit.

**199.—(1.)** The Court hearing the appeal may make such order as it thinks fit, and may by such order confirm, reduce, increase or vary the assessment. The costs of the appeal shall be in the discretion of the Court.

Order of Court on appeal.  
Cf. I.T.A., s. 51A (5.), (6.), (7.).

**(2.)** Every such order shall be final and conclusive except as hereinafter provided.

**200.** The Commissioner or taxpayer may appeal to the High Court in its appellate jurisdiction from any such order.

Appeal to High Court.  
Cf. I.T.A., s. 51A (10.).

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

Pending appeal not to delay payment of tax.  
Cf. I.T.A., s. 52 (1.).

Adjustment of  
tax after appeal.  
Cf. I.T.A., s. 52  
(2.).

202. If the assessment is altered on the appeal or reference 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.

Rules of Court.  
Cf. I.T.A., s. 53.

203.—(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 to a Court against assessments and decisions.

(2.) All Rules so made shall—

(a) be notified in the *Gazette* ;

(b) take effect from the date of notification or from a later date specified in the Rules ; and

(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 within fifteen sitting days after the Rules have been laid before the House passes a resolution of which notice has been given disallowing any Rule, that Rule shall thereupon cease to have effect.

#### PART VI.—COLLECTION AND RECOVERY OF TAX.

When tax  
payable.  
Cf. I.T.A., s. 54  
(1.), (2.).

204.—(1.) Subject to the provisions of this Part, any income tax assessed shall be due and payable by the person liable to pay the tax sixty days after the service of a notice of assessment.

(2.) Where a date is specified in the notice as the date upon which the tax is to be due and payable, that date shall be deemed to be the date upon which it is due and payable unless the contrary is proved.

Taxpayer  
leaving  
Australia.  
Cf. I.T.A., s. 54  
(3.).

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

Extension of  
time and  
payment by  
instalments.  
Cf. I.T.A., s. 55.

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

Penalty for  
unpaid tax.  
Cf. I.T.A., s. 56.

207.—(1.) If any tax remains unpaid after the time when it becomes due and payable, additional tax shall be due and payable at the rate of ten per centum per annum on the amount unpaid, computed from that time :

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

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

Tax a debt due  
to the King.  
Cf. I.T.A., s. 57  
(1.).

208. Income tax when it becomes due and payable shall 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.



**209.** Any tax unpaid may be sued for and recovered in any Court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

**Recovery of tax.**  
Cf. I.T.A., s. 57 (2.).

**210.** Upon the application of any person about to leave Australia, the Commissioner, Second Commissioner or a Deputy Commissioner may issue a certificate—

**Persons leaving Australia to obtain certificate.**  
Cf. I.T.A., s. 54 (4.).

(a) that that person is not liable to pay income tax ; or

(b) that arrangements have been made to the satisfaction of the Commissioner for the payment of all income tax that is or may become payable by that person.

**211.—(1.)** Unless and until such certificate has been presented to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship or aircraft by which that person intends to leave Australia at the port or place at which his passage is to be booked, an authority for that person to travel by that ship or aircraft shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

**Authority to travel not to issue without certificate.**  
Cf. I.T.A., s. 54 (4A.).

(2.) Any person who, in contravention of this section, issues an authority to any person to travel by the ship or aircraft shall be personally liable to pay the amount of tax, if any, which is or may become due and payable by such person, and shall be guilty of an offence.

Cf. I.T.A., s. 54 (4B.).

Penalty : Not less than Fifty pounds or more than Two hundred pounds.

**212.—(1.)** The owner or charterer, or the representative of the owner or charterer, of every ship or aircraft which takes passengers on board at any port or place shall, on the first working day after the departure of the ship or aircraft from that port or place, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port or place 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 or aircraft) who travelled on the ship or aircraft.

**Certificates and list of passengers to be lodged.**  
Cf. I.T.A., s. 54 (4C.).

(2.) Every owner or charterer, or his representative who fails to comply with this section shall be guilty of an offence.

Cf. I.T.A., s. 54 (4D.).

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

**213.—(1.)** Where the Commissioner has reason to believe that any person establishing or carrying on business in Australia intends to carry on that business for a limited period only, or where the Commissioner for any other reason thinks it proper so to do, he may at any time and from time to time require that person to give security by bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived by that person.

**Temporary business.**  
Cf. I.T.A., s. 54 (5.).

(2.) A person who fails to give security when required to do so under this section shall be guilty of an offence.

Penalty : Not less than Two pounds or more than One hundred pounds.

Substituted  
service.  
Cf. I.T.A., s. 58.

**214.** If a taxpayer—

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

Liquidator,  
&c.  
Cf. I.T.A., ss.  
59, 60.

**215.**—(1.) Every person (in this section called “ the trustee ”)—

- (a) who is liquidator of any company which is being wound up ;  
or
- (b) who is receiver for any debenture holders, and has taken possession of any assets of a company ; or
- (c) who is agent for a non-resident and has been required by his principal to wind up the business or realize the assets of his principal,

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

(2.) The Commissioner shall as soon as practicable thereafter, notify to the trustee the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company or principal, as the case may be.

(3.) The trustee—

- (a) shall not without the leave of the Commissioner part with any of the assets of the Company or principal until he has been so notified ;
- (b) shall set aside out of the assets available for the payment of the tax assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value ; and
- (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.

(4.) If the trustee fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under the last preceding sub-section), he shall, to the extent of the value of the assets of which he has taken possession and which were available at any time for the payment of tax, be personally liable to pay the tax, and shall be guilty of an offence.

Penalty : Not less than One pound or more than Fifty pounds.

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

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

When tax not paid during lifetime.  
Cf. I.T.A., s. 61.

- (a) The Commissioner shall have the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living
- (b) The trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment.
- (c) The trustees shall be subject to additional tax to the same extent as the taxpayer would be subject to additional tax if he were still living :

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

- (d) The amount of any tax payable by the trustees shall be a first charge on all the taxpayer's estate in their hands.

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

Provision for payment of tax by trustees of deceased person.  
Cf. I.T.A., s. 62 (1.), (2.), (3.).

(2.) The trustees shall furnish a return of any income derived by the deceased person in respect of which no return has been lodged by him.

(3.) Where the trustees are unable or fail to furnish a return, the Commissioner may make an assessment of the amount on which, in his judgment, tax ought to be levied and the trustees shall be liable to pay tax as if that amount were the taxable income of the deceased.

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

Commissioner may collect tax from person owing money to taxpayer.  
Cf. I.T.A., s. 65.

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

to pay to him, forthwith upon the money becoming due or being held, or within such further time as the Commissioner, Second Commissioner, or Deputy Commissioner allows, the money or so much thereof as is sufficient to pay the amount due by the taxpayer in respect of any tax and of any fines and costs imposed upon him under this Act.

(2.) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty : Fifty pounds.

(3.) Where the amount payable to the taxpayer by the person so notified is less than the amount due by the taxpayer, that person shall pay to the Commissioner in reduction of the amount so due the amount payable by that person to the taxpayer.

(4.) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the taxpayer and of all other persons concerned and is hereby indemnified in respect of such payment.

(5.) If the Commissioner receives any payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice thereof to that person.

(6.) In the foregoing provisions of this section—

“ tax ” includes any judgment debt and costs in respect of tax ;

“ person ” includes company, partnership, the Commonwealth, a State and any public authority (corporate or unincorporate) of the Commonwealth or a State.

(7.) Any notice to be given under this section to the Commonwealth or a State may be served upon such person as is prescribed, and any notice so served shall be deemed to have been served upon the Commonwealth or a State, as the case may be.

Consolidation  
assessments.

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

Where no  
administration.  
*Cf. I.T.A., s. 62*  
*(3A.)-(3C.).*

**220.—**(1.) Where, in respect of the estate of any deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death, and tax has not been assessed and paid on the whole of the income derived by that person up to the date of his death, the Commissioner may make an assessment of the amount of tax payable in respect of that income.

(2.) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State in which the taxpayer resided.

(3.) Any person claiming an interest in the estate of the taxpayer, may, within sixty days of the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the taxpayer.

(4.) Subject to any amendment of the assessment by the Commissioner, or by the Board of Review or by a Court, the published notice of the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(5.) The Commissioner may issue an order in the prescribed form authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein, to levy the amount of tax assessed, with costs, by distress and sale of any property of the deceased.

(6.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

(7.) Notwithstanding anything contained in the last three preceding sub-sections, if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by, a person, that person may, within sixty days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if that person were the taxpayer.

**221.** Nothing in sections two hundred and seventeen or two hundred and twenty shall apply to the income derived by a person during the period commencing on the first day of the year of income in which he dies and ending on the date of his death if his estate is liable to estate duty under the *Estate Duty Assessment Act 1914-1928*.

Sections 217 and 220 not to apply to certain income.  
Cf. I.T.A., s. 62 (4.).

#### PART VII.—PENAL PROVISIONS AND PROSECUTIONS.

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

Taxation prosecution.  
Cf. I.T.A., s. 78.

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

Failure to furnish returns or information, &c.  
Cf. I.T.A., s. 66 (1.), (2.).

Penalty : Not less than Two pounds or more than One hundred pounds.

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

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

Refusal to give evidence.  
Cf. I.T.A., s. 66 (1.).

Penalty : Not less than Two pounds or more than One hundred pounds.

**225.—(1.)** Upon the conviction of any person for an offence against either of the last two preceding sections, the Court may order him

Order to comply with requirement.  
Cf. I.T.A., s. 66 (3.).

within a time specified in the order to do the act which he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence.

Penalty: Not less than Ten pounds or more than Five hundred pounds.

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

Additional tax  
in certain  
cases.

*Cf. I.T.A., s. 67.*

**226.**—(1.) Notwithstanding anything contained in the last three preceding sections, any taxpayer who fails to duly furnish as and when required by this Act or the regulations, or by the Commissioner, any return or any information in relation to any matter affecting either his liability to tax or the amount of the tax, shall be liable to pay as additional tax an amount equal to the tax assessable to him or the amount of one pound whichever is the greater.

(2.) Any taxpayer who omits from his return any assessable income, or includes in his return as a deduction for expenditure incurred by him an amount in excess of the expenditure actually incurred by him, shall be liable to pay as additional tax an amount equal to double the difference between the tax properly payable by him and the tax that would be payable if it were assessed upon the basis of the return furnished by him, or the amount of One pound, whichever is the greater.

(3.) The Commissioner may in any case, for reasons which he thinks sufficient, and either before or after making any assessment, remit the additional tax or any part thereof.

(4.) If in any case in which a taxpayer is liable to pay additional tax under this section a taxation prosecution is instituted in respect of the same subject matter, the additional tax shall not be payable unless and until the prosecution is withdrawn.

False returns  
or statements.

*Cf. I.T.A., s. 68  
(1.)*

**227.**—(1.) Any person who makes or delivers a return which is false in any particular, or makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorized by him, shall be guilty of an offence.

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

*Cf. I.T.A. s. 68  
(4.)*

(2.) In any prosecution for an offence under this section of a person who has not previously been convicted of an offence against this Act, or against any law of the Commonwealth or of a State relating to Income Tax, it shall be a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
- (b) that the false return or false answer was made through ignorance or inadvertence.

*Cf. I.T.A., s. 68  
(2.)*

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

**228.**—(1.) Any person required by this Act to sign an agent's certificate who fails to do so or who signs an agent's certificate which is false in any particular shall be guilty of an offence. **Failure to sign or false certificate.**

Penalty : Not less than One pound or more than Fifty pounds.

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

**229.** Any person who, in any declaration made under, or authorized or prescribed by this Act or the regulations, knowingly and wilfully declares to any matter or thing which is false or untrue, shall be deemed to be guilty of wilful and corrupt perjury, and shall upon conviction be liable to imprisonment for a period not exceeding four years. **False declarations.**  
*Cf. I.T.A., s. 67A.*

**230.**—(1.) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company, in any return knowingly and wilfully understates the amount of any income or makes any misstatement affecting the liability of any person to tax or the amount of tax shall be guilty of an offence. **Understating income.**  
*Cf. I.T.A., s. 68.*

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

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

**231.**—(1.) Any person who, or any company on whose behalf the public officer, or a director, servant or agent of the company, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid assessment or taxation shall be guilty of an offence. **Fraudulent avoidance of tax.**  
*Cf. I.T.A., s. 69.*

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

(2.) A prosecution for an offence against this section may be commenced at any time within six years after the commission of the offence. *Cf. I.T.A., s. 70.*

**232.** 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. **Obstructing officers.**  
*Cf. I.T.A., s. 72.*

Penalty : Not less than One pound or more than Fifty pounds.

**233.**—(1.) A taxation prosecution may be instituted in the name of the Commissioner by action in the High Court or in the Supreme Court of any State. **Taxation prosecutions.**  
*Cf. I.T.A., s. 74.*

(2.) Where the penalty sought to be recovered does not exceed Five hundred pounds, or the excess is abandoned, the prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner by information in a court of summary jurisdiction.

**Defendant to have right of trial in Superior Court.**  
*Cf. I.T.A., s. 76.*

**234.** In any taxation prosecution instituted in a court of summary jurisdiction, where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant within seven days after service of process may elect in manner prescribed to have the case tried in the High Court or a Supreme Court, and thereupon the prosecution shall stand removed at the option of the Commissioner to the High Court or the Supreme Court of the State in which the prosecution has been instituted, and shall be conducted as if it had been originally instituted in the Court to which it is removed.

**Mode of trial.**

**235.** In any taxation prosecution in the High Court or a Supreme Court, the case shall be tried and the penalty, if any, adjudged by a Justice or Judge of the Court.

**Appeal.**  
*Cf. I.T.A., s. 78.*

**236.** In any taxation prosecution in a court of summary jurisdiction in a State, an appeal shall lie from any conviction or order of dismissal to such Court and in such manner as is provided by the law of that State for appeals from convictions or orders of dismissal.

**Prosecution in accordance with Practice Rules.**  
*Cf. I.T.A., s. 77.*

**237.** Every taxation prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

**Information, &c., to be valid if in words of Act.**  
*Cf. I.T.A., s. 79.*

**238.** All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

**No objection for informality.**  
*Cf. I.T.A., s. 80.*

**239.—(1.)** An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

(2.) If any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

**Conviction not to be quashed.**  
*Cf. I.T.A., s. 81.*

**240.** A conviction, warrant of commitment or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of such defect.



**241.** Any of the following offences, namely :—

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

shall be deemed to have been committed either—

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

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

Place where  
offence  
committed.

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

Protection  
to witnesses.  
Cf. I.T.A., s. 82.

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

Averment of  
prosecutor  
sufficient.  
Cf. I.T.A., s. 83.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given ; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given in support or rebuttal of a matter so averred shall be considered on its merits, and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) This section shall not apply to—

- (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.

**244.**—(1.) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be.

Evidence of  
authority to  
institute  
proceedings.  
Cf. I.T.A., s. 75.

(2.) The production of a telegram purporting to have been sent by the Commissioner or a Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution shall be sufficient evidence of the authority of the officer to institute the prosecution in the name of the Commissioner or Deputy Commissioner, as the case may be.

Appearance by  
Commissioner.

245.—(1.) In any action, prosecution or other proceeding in any Court by the Commissioner or a Deputy Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the Commonwealth or a State.

(2.) The appearance of any such officer, and his statement that he appears by authority of the Commissioner or Deputy Commissioner shall be sufficient evidence of such authority.

Minimum  
penalties.  
Cf. I.T.A., s. 84.

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

Treatment of  
convicted  
offenders.  
Cf. I.T.A., s. 85.

247. Where any pecuniary penalty is adjudged to be paid by any convicted person the Court shall—

- (a) commit the offender to gaol until the penalty is paid ;
- (b) release the offender upon his giving security for the payment of the penalty ; or
- (c) exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the Court for the enforcement and recovery of penalties or money adjudged to be paid in any other case.

Release of  
offenders.  
Cf. I.T.A., s. 86.

248.—(1.) The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge such person—

- (a) on payment to him of the penalty adjudged ;
- (b) on a certificate by the Commissioner or the Deputy Commissioner that the penalty has been paid or released ; or
- (c) if the penalty adjudged to be paid is not paid or released, according to the following table :—

Amount of Penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under .. .. .	7 days.
Over £2 and not more than £5 .. .. .	14 days.
Over £5 and not more than £20 .. .. .	1 month.
Over £20 and not more than £50 .. .. .	2 months.
Over £50 and not more than £100 .. .. .	3 months.
Over £100 and not more than £200 .. .. .	6 months.
Over £200 .. .. .	1 year.

(2.) Where any person is committed to gaol for non-payment of more than one penalty, the imprisonment of that person, for the period specified in the last preceding sub-section in respect of the amount of any one of those penalties, shall not relieve him from liability to imprisonment for the period so specified in respect of the

amount of any other such penalty, and the last-mentioned period of imprisonment shall commence at the expiration of the first-mentioned period of imprisonment.

**249.**—(1.) Where an order for the payment of a sum of money by any person to the Commissioner is made under this Part by a court of summary jurisdiction, a certificate of such order in the prescribed form and containing the prescribed particulars (which certificate the clerk or other proper officer of the court is hereby required to grant) may, in the prescribed manner and subject to the prescribed conditions, be registered in any court having jurisdiction to entertain civil proceedings to the amount of the order.

Enforcement of orders for payment.

(2.) From the date of registration the certificate shall be a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court and, subject to the prescribed conditions, the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of that court in favour of the Commissioner.

(3.) The Commissioner's costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions, be deemed to be payable under the certificate.

**250.** In all taxation prosecutions the court may award costs against any party, and all the provisions of this Act relating to the recovery of penalties, except commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

Costs.  
Cf. I.T.A., s. 87.

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

Penalties not to relieve from tax.  
Cf. I.T.A., s. 71.

#### PART VIII.—MISCELLANEOUS.

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

Public officer of company.  
Cf. I.T.A., s. 88.

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

- (d) If the company fails to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

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

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

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

**253.** A company which has paid or is liable to pay special property tax may, notwithstanding anything contained in its memorandum or articles of association, or in any other document or agreement, deduct from any dividends payable to the preference shareholders of the company an amount equal to the amount of special property tax which it has paid or is liable to pay upon taxable income distributed to its preference shareholders.

Deduction of special property tax from preference shareholders.  
Cf. I.T.A., s. 88A.

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

Agents and trustees.  
Cf. I.T.A., s. 89.

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon.
- (b) He shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is a trustee of the estate of a deceased person, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of the income.
- (e) He is hereby made personally liable for the tax payable in respect of the income to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph ; but he shall not be otherwise personally liable for the tax.
- (f) He is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.
- (g) Where as one of two or more joint agents or trustees he pays any amount for which they are jointly liable, the other or others shall be liable to pay him each his equal share of the amount so paid.
- (h) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of tax.

**255.—(1.)** With respect to every person having the receipt control or disposal of money belonging to a non-resident, who derives income

Person in receipt or control of money for non-resident.  
Cf. I.T.A. s. 90.

from a source in Australia or who is a shareholder, debenture holder, or depositor in a company deriving income from a source in Australia, the following provisions shall, subject to this Act, apply :—

- (a) he shall when required by the Commissioner pay the tax due and payable by the non-resident ;
- (b) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the non-resident so much as is sufficient to pay the tax which is or will become due by the non-resident ;
- (c) he is hereby made personally liable for the tax payable by him on behalf of the non-resident to the extent of any amount that he has retained, or should have retained, under the last preceding paragraph ; but he shall not be otherwise personally liable for the tax ;
- (d) he is hereby indemnified for all payments which he makes in pursuance of this Act or of any requirement of the Commissioner.

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

Person paying  
royalty to a  
non-resident  
taxpayer.

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

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

Payment of tax  
by banker.  
Of. I.T.A., s. 92.

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

Recovery of  
tax paid on  
behalf of  
another person.  
Of. I.T.A., s. 63.

258. Every person who, in pursuance of this Act, pays any tax for or on behalf of any other person may recover the same from that other person as a debt, together with the costs of recovery, in any court of competent jurisdiction, or may retain or deduct the same out of any money in his hands belonging or payable to that other person.

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

Contribution  
from joint  
taxpayers.  
Cf. I.T.A., s. 64.

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

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

Contracts to  
evade tax void.  
Cf. I.T.A., s. 93.

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

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

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

Covenant by  
mortgagor  
to pay tax.  
Cf. I.T.A., s. 94.

- (a) if the mortgage was entered into on or before the thirteenth day of September, One thousand nine hundred and fifteen—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 that date—shall be absolutely void.

(2.) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this sub-section, which has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the

mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

(3.) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

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

(5.) For the purposes of this section, "mortgage" includes any charge, lien or encumbrance to secure the repayment of money, and any collateral or supplementary agreement, whether in writing or otherwise, and whether or not it be one whereby the terms of any mortgage are varied or supplemented, or the due date for the payment of money secured by mortgage is altered, or an extension of time for payment is granted.

Periodical  
payments in the  
nature of  
income.  
Cf. I.T.A., s.  
93A.

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

Access to  
books, &c;  
Cf. I.T.A., s. 96.

**263.** 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 any of the purposes of this Act, and for that purpose may make extracts from or copies of any such books, documents or papers.



264.—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connexion with any department of a Government or by any public authority—

Department to obtain information and evidence.  
Cf. I.T.A., s. 97.

- (a) to furnish him with such information as he may require ; and
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.

(3.) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

265.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that—

Release of taxpayers in cases of hardship.  
Cf. I.T.A., s. 95.

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

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

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

(3.) Where an application is made for release in respect of an amount of tax if that amount is not less than Five hundred pounds, the Board shall, and if that amount is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review constituted under this Act and shall notify the applicant in writing of its having done so.

(4.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

(5.) The applicant may appear before the member of the Board of Review or the member of the Board of Review may require the applicant to appear before him, either in person or by a

representative, and the member of the Board of Review may examine the applicant or his representative upon oath concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.

(6.) The member of the Board of Review shall be assisted in his examination of the applicant by an officer of the Department of Taxation who is a qualified accountant.

(7.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

(8.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

(9.) The member of the Board shall submit a report to the Board constituted by this section upon the facts disclosed by his examination, and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the application for release from tax. The report shall be accompanied by the record mentioned in sub-section (8.) of this section.

Regulations,  
C. I.T.A., s.  
100.

266. 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, and for prescribing penalties not less than One pound or more than Twenty pounds for any breach of the regulations.

#### THE SCHEDULE.

FIRST COLUMN. Acts Repealed.	SECOND COLUMN. Extent of Repeal.
<i>Income Tax Assessment Act 1922</i> .. .. .	The whole
<i>Income Tax Assessment Act 1923</i> .. .. .	The whole
<i>Taxation of Loans Act 1923</i> .. .. .	Section five
<i>Income Tax Assessment Act 1924</i> .. .. .	The whole
<i>Income Tax Assessment (Live Stock) Act 1924</i> .. .. .	The whole
<i>Income Tax Assessment Act 1925</i> .. .. .	The whole
<i>Income Tax Assessment Act 1927</i> .. .. .	The whole
<i>Income Tax Assessment Act 1928</i> .. .. .	The whole
<i>Income Tax Assessment Act 1929</i> .. .. .	The whole
<i>Income Tax Assessment Act 1930</i> .. .. .	The whole
<i>Income Tax Assessment Act (No. 2) 1930</i> .. .. .	The whole
<i>Income Tax Assessment Act 1931</i> .. .. .	The whole
<i>Financial Relief Act 1932</i> .. .. .	Part III.
<i>Income Tax Assessment Act 1932</i> .. .. .	The whole
<i>Financial Relief Act 1933</i> .. .. .	Part III.
<i>Income Tax Assessment Act 1933</i> .. .. .	The whole
<i>Income Tax Assessment Act 1934</i> .. .. .	The whole
<i>Income Tax Assessment Act (No. 2) 1934</i> .. .. .	The whole
<i>Income Tax Assessment (Bonus Shares) Act 1926</i> .. .. .	The whole