INCOME TAX MANAGEMENT ACT.

Act No. 48, 1941.

An Act to provide for the assessment and collection of a tax on incomes; to make certain provisions for and in relation to the discontinuance of the Unemployment Relief Tax (Management) Act, 1939-1941, and the Social Services Tax (Management) Act, 1939-1941; to amend the Income Tax (Management) Act, 1936, and certain other Acts; and for purposes connected therewith. [Assented to, 24th October, 1941.]
B
E it enacted by the King's Most Excellent Majesty, 
by and with the advice and consent of the Legis­
lative Council and Legislative Assembly of New South 
Wales in Parliament assembled, and by the authority of 
the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Income Tax 
Management Act, 1941."

(2) This Act with the exception of Part IX shall 
commence upon the first day of November, one thousand 
nine hundred and forty-one.

2. (1) The Income Tax (Management) Act, 1912, as 
amended by subsequent Acts, including this Act, shall 
continue in force for all purposes in connection with 
income tax payable in respect of the income which has 
been received prior to the year ended on the thirtieth 
day of June, one thousand nine hundred and twenty-

(2) The Income Tax (Management) Act, 1928, as 
amended by subsequent Acts, including this Act, shall 
continue in force for all purposes in connection with 
income tax payable in respect of the income which has 
been derived prior to the year ended on the thirtieth 
day of June, one thousand nine hundred and thirty-six, 
or prior to such other period as may be or may have 
been accepted by the Commissioner in lieu of that year, 
other than the income referred to in subsection one of 
this section.

(3) The Income Tax (Management) Act, 1936, as 
amended by subsequent Acts, including this Act, shall 
continue in force for all purposes in connection with 
income tax payable in respect of the income which has 
been derived prior to the year of income ended on the 
thirtieth day of June, one thousand nine hundred and 
forty-one, or the accounting period if any adopted under 
the said Act as so amended, in lieu of that year, other 
than the income referred to in subsections one and two 
of this section.

3.
3. (1) All existing rules, regulations and forms made or prescribed under the Income Tax (Management) Act, 1936, as amended by subsequent Acts, or continuing in force by virtue of such Acts shall continue in force and shall apply to proceedings under this Act, so far as such rules, regulations and forms may be applicable until rules, regulations and forms are made and prescribed under this Act.

(2) All notices given and returns made during the year one thousand nine hundred and forty-one under the Income Tax (Management) Act, 1936, as amended by subsequent Acts, in respect of income derived during the year of income ended on the thirtieth day of June, one thousand nine hundred and forty-one, or the accounting period if any adopted under the said Act as so amended, in lieu of that year, shall (without prejudice to the power of the Commissioner to give any notices which may be given or require any returns which may be required in respect of income derived during such year or accounting period under this Act) be deemed to have been made or given also under this Act.

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

PART I.—Preliminary—ss. 1-5.
PART II.—Administration—ss. 6-10.
PART III.—Liability to Taxation—ss. 11-205.

DIVISION 1.—General—ss. 11-20.
DIVISION 2.—Income—ss. 21-55.
SUBDIVISION A.—Assessable income generally—ss. 21-23.
SUBDIVISION B.—Trading stock—ss. 24-32.
SUBDIVISION C.—Business carried on partly in and partly out of this State—ss. 33-52.
SUBDIVISION D.—Dividends—ss. 53-55.
DIVISION 3.—Deductions—ss. 56-91.
DIVISION 4.—Leases—ss. 92-103.
DIVISION 5.—Casual profits—ss. 104-117.
DIVISION 6.—Partnerships—ss. 118-122.
DIVISION 7.—Trustees—ss. 123-132.
DIVISION 8.—Assessment of income of husband and wife—ss. 133-137.

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DIVISION 9.—Further tax on undistributed income of a company—ss. 138-140.
DIVISION 10.—Private companies—ss. 141-149.
DIVISION 11.—Banks—ss. 150-155.
DIVISION 12.—Life assurance companies—ss. 156-162.
DIVISION 13.—Co-operative and mutual companies—ss. 163-168.
DIVISION 14.—Interest and dividends paid by companies—ss. 169-175.
DIVISION 15.—Oversea ships—ss. 176-182.
DIVISION 16.—Businesses with a foreign relationship—ss. 183-186.
DIVISION 17.—Insurance with non-residents of Australia—ss. 187-194.
DIVISION 18.—Averaging of incomes of primary producers—ss. 195-203.
DIVISION 19.—Rebates of tax on income—ss. 204, 205.

PART IV.—RETURNS AND ASSESSMENTS—ss. 206-223.
PART V.—OBJECTIONS AND APPEALS—ss. 224-258.
PART VI.—COLLECTION AND RECOVERY OF TAX—ss. 259-298.
  DIVISION 1.—General—ss. 259-275.
  DIVISION 2.—Collection of income tax by instalments—ss. 276-298.
PART VII.—PENAL PROVISIONS AND PROSECUTIONS—ss. 299-316.
PART VIII.—MISCELLANEOUS—ss. 317-335.
PART IX.—REGISTRATION OF TAX AGENTS—ss. 336-344.

SCHEDULES.

5. In this Act, unless the contrary intention appears—“A State” means a State of the Commonwealth. “Agent” includes—
   (a) every person who in this State for or on behalf of any person out of this State holds or has the control, receipt or disposal of any money belonging to that person; and
   (b)
(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.

"Assistant Commissioner" means Assistant Commissioner of Taxation.

"Australia" includes the whole of the Commonwealth of Australia.

"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.

"Dependant" means a person who resides in Australia and who is wholly maintained by the taxpayer and who—

(a) is the spouse of the taxpayer; or
(b) is a child under the age of sixteen years; or
(c) is a child, brother or sister of the taxpayer of the age of sixteen years or over and is an invalid; or
(d) is a parent of the taxpayer; or
(e) is a female relative of the taxpayer having the care of any children under the age of sixteen years who are wholly maintained by the taxpayer.

For the purposes of this definition a spouse or a female relative referred to in paragraph (e) shall be deemed to be wholly maintained by the taxpayer.
taxpayer if the net income from all sources derived by such spouse or female relative during the year of income did not exceed one hundred pounds.

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

“Exempt income” means income which is exempt from income tax.

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

“Income”, without in any way limiting the ordinary meaning of the word, includes all amounts which, under this Act, are included in the assessable income.

“Income from personal exertion” or “income derived from personal exertion” means income consisting of earnings, salaries, wages, commissions, fees, bonuses, pensions, superannuation allowances, retiring allowances and retiring gratuities, allowances and gratuities received in the capacity of employee or in relation to any services rendered, the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, any amount received as a bounty or subsidy in carrying on a business, the income from any property where that income forms part of the emoluments of any office or employment of profit held by the taxpayer, and any profit arising from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale or from the carrying on or carrying
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 trade debt; 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.

"Mutual life assurance company" means a life assurance company none of the divisible profits of which are payable to persons other than policy-holders.

"Net assessable income" means the amount remaining after deducting from any assessable income the allowable deductions incurred in gaining or producing that assessable income.

"Net exempt income" means the amount remaining after deducting from any exempt income the losses and outgoings incurred in gaining or producing that exempt income which would be allowable deductions if that exempt income were assessable income.

"Net income" means the amount remaining after deducting from any gross income the losses and outgoings incurred in gaining or producing that gross income which would be allowable deductions if that gross income were assessable income.
"Net income from all sources" means the total income of the taxpayer less the losses or outgoings incurred in gaining or producing that income which would be allowable deductions if that income were assessable income.

"Net loss" means the amount by which any gross income is less than the losses and outgoings incurred in gaining or producing that gross income which would be allowable deductions if that gross income were assessable income.

"Non-resident" means a person who is not a resident.

"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.

"Prescribed" means prescribed by this Act or by any rules or regulations made or in force under this Act, or the Income Tax (Management) Act, 1912, as amended by subsequent Acts, or the Income Tax (Management) Act, 1928, as amended by subsequent Acts, or the Income Tax (Management) Act, 1936, as amended by subsequent Acts.

"Previous Act" means the Income Tax (Management) Act, 1936, 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.

"Previous Acts" means all Acts passed prior to the commencement of this Act relating to the assessment and collection of income tax in this State; and when any such Act is considered in relation to any time, means such Act, or if it has been amended, such 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, poultry or bees for the purpose of selling them or their bodily produce including
including natural increase and includes the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

"Rateable income" means the amount remaining after deducting from the assessable income all allowable deductions except allowable gifts and the concessional deductions.

"Relative" means a husband or wife or a relation by blood, marriage or adoption.

"Resident" means—

(a) a person other than a company, who resides in this State, and includes a person—

(i) whose domicile is in this State, unless the Commissioner is satisfied that his permanent place of abode is out of this State, or

(ii) who has actually been in this State, continuously or intermittently, during more than one-half of the year of income, unless the Commissioner is satisfied that his usual place of abode is out of this State and that he does not intend to take up residence in this State; and

(b) a company which is incorporated in this State or which, not being incorporated in this State, carries on business in this State and has either its central management and control in this State, or its voting power controlled by shareholders who are residents of this State.

"Shareholder" includes member or stockholder.

"Taxable income" means the amount remaining after deducting from the assessable income all allowable deductions.

"Taxpayer" means a person deriving income.

"The Commonwealth" means the Commonwealth of Australia.

"This
"This Act" includes the regulations in force thereunder.

"This State" means the State of New South Wales.

"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 year beginning on the first day of July and ending on the thirtieth day of June during which the income was derived; or
(b) the accounting period, if any, adopted under this Act in lieu of that year.

PART II.
ADMINISTRATION.

6. (1) For the due administration of this Act and the previous Acts, the Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a Commissioner of Taxation, who may sue and be sued by that name.

(2) Any reference to the Commissioner of Taxation in the previous Acts, and the rules and regulations thereunder,
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thereunder, shall be read and construed as a reference to the Commissioner of Taxation charged with the administration of this Act.

(3) The Governor may, subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint two Assistant Commissioners of Taxation, one of whom may be appointed to act as the deputy of the Commissioner.

(4) The Assistant Commissioners shall, under the control of the Commissioner, perform such general official duties as they are required to perform by this Act or by the Commissioner.

(5) Such other persons may be appointed under the Public Service Act, 1902, as amended by subsequent Acts, as may be deemed necessary for the carrying out of this Act and the previous Acts.

(6) In the event of the absence, incapacity, or suspension of the Commissioner, his powers, authorities, duties, and functions may be exercised and performed during such absence, incapacity, or suspension, by the Assistant Commissioner appointed as deputy of the Commissioner, and in the event of the absence, incapacity, or suspension of both the Commissioner and that Assistant Commissioner, the powers, authorities, duties and functions of the Commissioner may be exercised and performed during the absence, incapacity, or suspension of the Commissioner and that Assistant Commissioner by the other Assistant Commissioner.

(7) The Commissioner may, by writing under his hand, delegate to an Assistant Commissioner or any other person, any powers, authorities, duties, and functions conferred or imposed upon him by this Act, or the previous Acts, or the rules or regulations under any of such Acts (except this power of delegation). Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power, authority, duty, or function by the Commissioner.

(8) A notification in the Gazette that any person has been appointed as Commissioner, Assistant Commissioner, or other person for the purposes of this Act, or the previous Acts, shall be conclusive evidence of such appointment.

(9)
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(9) Where in or under this Act the exercise or discharge of any power, authority, duty 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, authority, duty, or function may be exercised or discharged by the Assistant Commissioner appointed as deputy of the Commissioner when authorised to act by a delegation as aforesaid or during the absence, incapacity, or suspension of the Commissioner, or by the other Assistant Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant Commissioner appointed to act as the deputy of the Commissioner, or that provision may operate (as the case may be) upon the opinion, belief or state of mind in relation to that matter of the Assistant Commissioner appointed as the deputy of the Commissioner when so authorised to act, or during the absence, incapacity, or suspension of the Commissioner, or upon the opinion, belief, or state of mind in relation to that matter of the other Assistant Commissioner during the absence, incapacity, or suspension of the Commissioner and the Assistant Commissioner appointed to act as the deputy of the Commissioner.

7. (1) The Commissioner shall furnish to the Colonial Treasurer annually for presentation to Parliament a report on the working of this Act.

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

8. (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 the previous Acts.

(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.
An officer shall not be required to produce in any 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 the previous Acts.

(4) Nothing in this section shall be deemed to prohibit the Commissioner, or an Assistant Commissioner, or any person thereto authorised by him, from communicating any information to—

(a) any person performing, in pursuance of any appointment or employment by this State or by the Commonwealth, any duty arising under any Act administered by the Commissioner of Taxation of the Commonwealth or the Commissioner of Land Tax of the Commonwealth for the purpose of enabling that person to carry out any such duty;

(b) the Commissioner of Income Tax for a State, or the authority administering any Act of a State relating to stamp duties, succession duties, or estate duties, if that authority is authorised by law to afford similar information to the Commissioner or an Assistant Commissioner; or

(c) a Board of Appeal under this Act.

(5) Any person to whom information is communicated under subsection four of this 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 subsections two and three of this section, as if he were an officer.

(6) Any officer shall, if and when required by the Commissioner or an Assistant 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.
9. (1) Notwithstanding anything contained in this Act, the Commissioner may furnish to the Government Statistician for New South Wales any information disclosed by the returns under section two hundred and nine of this Act.

(2) Before any such information is so furnished, the Government Statistician and every officer or employee of the Bureau of Statistics and Economics shall take and subscribe before a justice of the peace such oath of fidelity and secrecy as may be prescribed.

(3) The Government Statistician or any such officer or employee shall not act in the execution of his office in relation to any such return before he has taken the prescribed oath.

Penalty: Not less than ten and not more than one hundred pounds.

(4) The Government Statistician or any such officer or employee shall not without lawful excuse make a record of or reveal the name of any employer who has furnished a return pursuant to section two hundred and nine of this Act, or the particulars contained in any such return.

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

(5) A person who has held the office of Government Statistician, or who has been an officer or employee of the Bureau of Statistics and Economics, or who has performed any duty under this Act in the said Bureau shall not reveal any information as to any employer who has furnished a return pursuant to section two hundred and nine of this Act, or as to any of the particulars contained in any such return, to any person other than a person to whom he has been authorised by the Commissioner to communicate it.

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

(6) The Government Statistician shall not, nor shall the Commissioner or any officer or employee of the Bureau of Statistics and Economics, or any officer appointed to act in the administration of this Act, be required to produce in any Court any return made pursuant to section two hundred and nine of this Act, or
to divulge or communicate to any Court the name of any employer who has made any such return, or any of the particulars contained in any such return, except as may be necessary for the purpose of carrying into effect the provisions of this Act.

(7) Nothing in this section shall prevent the Government Statistician from compiling from such returns, and publishing statistics based on the particulars contained in such returns; but such statistics shall not disclose the name of any employer who has made any such return nor the particulars contained in any particular return.

10. (1) Nothing in this Act shall affect the operation or continuance of the Income Tax (Commonwealth) Collection Act, 1923, or of the Commonwealth Taxation Collection Act, 1941.

(2) (a) Where, by any Act of the Parliament of the Commonwealth, provision is made for the collection of income tax by instalments, this State may enter into an agreement with the Commonwealth for the deduction, by this State or by any authority of this State, from periodical payments of wages or salaries paid to any employee of this State or of such authority of any tax payable by the employee on those salaries or wages, and for the payment to the Commonwealth of any amount deducted in pursuance of such agreement in such manner and at such times as are provided by the agreement.

(b) Expressions used in paragraph (a) of this subsection shall have the meanings which those expressions bear in the Act of the Parliament of the Commonwealth referred to in that paragraph.

(c) Any agreement made under section 9A of the previous Act and in force immediately before the commencement of this Act shall continue in force in all respects as if it had been made under this subsection.

PART
PART III.

LIABILITY TO TAXATION.

DIVISION 1.—General.

11. (1) Subject to this Act income tax at such rates as may be fixed by any Act shall be levied and paid to the Commissioner upon the taxable income derived by any person whether a resident or a non-resident during the year of income ended on the thirtieth day of June, one thousand nine hundred and forty-one (or the accounting period, if any, accepted by the Commissioner in lieu of that year) and for each year of income thereafter.

(2) Where a company is wound up, or an individual person dies or ceases to be a taxpayer, in any year, and the same income of that company or person has, under the provisions of this Act or the previous Acts, been included in the assessable income of that company or person for more than one year of income, and no adjustment in regard thereto has previously been made, the Commissioner shall make such adjustment as is just if he is satisfied that over-taxation has resulted.

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

(2) Where the Commissioner has under the previous Act accepted returns from any person made up to a date other than the thirtieth day of June for the purpose of assessment for the last year to the income of which that Act applied that person shall be deemed to have adopted an accounting period under this section ending on the corresponding date.

13. 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.

14.
14. For all the purposes of this Act income wherever derived, and any expense wherever incurred, shall be expressed in terms of Australian currency.

15. 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.

16. Where any income is received in the year of income as a result of a transaction entered into before the commencement of this Act, and that income would have been assessable income under the previous Act if it had been received in the year in which the transaction was entered into, that income shall be assessable under this Act notwithstanding that the transaction was entered into before such commencement.

17. For the purposes of this Act where any property is sold together with other assets, the amount of the consideration attributable to that property shall, subject to subsection three of section thirty-one and subsection three of section sixty-eight of this Act, be—

(a) where a separate amount is allocated to that property in any contract of sale or arrangement and the Commissioner is satisfied that that separate amount is fair and reasonable—the amount so allocated; or

(b) where no separate amount is so allocated or the Commissioner is not satisfied that the amount allocated is fair and reasonable—the amount determined by the Commissioner.

18. Notwithstanding anything contained in this Act, where any business carried on by a taxpayer is carried on in such manner or in such circumstances that in the opinion of the Commissioner—

(a) the acquisition of profit is not the primary object of that business; or

(b)
(b) a profit is not likely to arise, under normal conditions, from the carrying on of that business,

any income derived from the carrying on of that business shall not be included in the assessable income of the taxpayer, and any expenditure incurred in the carrying on of that business shall not be an allowable deduction.

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

(a) the official salary of any person being—

(i) the Governor-General or the Governor of this 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 this State by direction of the government of the country so represented for the purpose of performing his official duties, and if the official salary of officials (if any) of the Government of this State temporarily resident for similar purposes in the country so represented is exempted from income tax by that country; or

(vi) an officer of the government of any country outside Australia which is part of the British Empire, who is temporarily in this State to render service on behalf of that country or the Commonwealth in this State in accordance with...
any arrangement between the governments of that country and of the Commonwealth or of this State, if the salaries of officers of the Government of this State temporarily in that country for similar purposes in accordance with a similar arrangement are exempted from income tax by that country;

(b) the remuneration paid by the Government of the Commonwealth or of this State to a person who is not a resident of Australia for expert advice to that Government or as a member of a Royal Commission;

(c) income derived—

(i) in the capacity of representative of an association or club established in any country for the control of any out-door athletic sport or game in that country by any person visiting Australia in that capacity for the purpose of engaging in contests in Australia in that sport or game;

(ii) by any club or association in any other part of the British Empire as its share of the proceeds of cricket, football, or similar matches played in Australia by a team controlled by that club or association visiting Australia from that part of the British Empire, and recognised 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
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 subparagraphs (i), (ii), (iii), and (iv) 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 Colonial 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 remuneration during a visit to Australia by a non-resident who is a director, manager or other administrative officer for some place outside Australia of a manufacturing, mercantile or mining business or of a business of primary production, where the visit of the non-resident to Australia does not exceed six months and the remuneration is not an allowable deduction in any assessment under this Act of the person paying it, and such non-resident satisfies the Commissioner that during such visit he did not act as a director, manager, or other administrative officer for or in relation to the conduct of such business in this State;

(d) the revenue of a municipal corporation or other local governing body or of a public authority;
(e) the income of a religious, scientific, charitable or public educational institution;  
N.S.W. Act, 1936, No. 41, s. 16 (e).  
Cth. Act, 1936, No. 41, s. 23 (e).

(f) the income of a trade union and the income of an association of employers or employees registered under any Act of the Commonwealth or of a State, or under any law in force in a territory being part of the Commonwealth, relating to the settlement of industrial disputes;  
N.S.W. Act, 1936, No. 41, s. 16 (f).  
Cth. Act, 1936, No. 27, s. 23 (f).

(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;  
N.S.W. Act, 1936, No. 41, s. 36 (g).  
Cth. Act, 1936, No. 27, s. 23 (g).

(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;  
N.S.W. Act, 1936, No. 41, s. 16 (h).  
Cth. Act, 1936, No. 27, s. 23 (h).

(i) the income of the Rural Bank of New South Wales;  
N.S.W. Act, 1936, No. 41, s. 16 (i).  
Cth. Act, 1936, No. 27, s. 23 (i).

(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 puposes; 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;  
N.S.W. Act, 1936, No. 41, s. 16 (j).  
Cth. Act, 1936, No. 27, s. 23 (j).

(k) interest on bonds, debentures, stock or other securities issued by the Government of New South  
N.S.W. Act, 1936, No. 41, s. 16 (k).
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South Wales or the Government of the Commonwealth and interest on bonds, debentures, stock or other securities issued by the Rural Bank of New South Wales prior to the commencement of this Act where such interest was exempt under the previous Acts, or issued by that bank after the commencement of this Act where, with the approval of the Governor, such interest has been declared to be free of State income tax:

Provided that this paragraph shall not extend to interest on any bonds, debentures, stock or other securities in cases where by this Act, or any Act of the Parliament of the Commonwealth or of this State, such interest is made liable to the payment of income tax;

(l) income which is—

(i) a pension or payment of a like nature paid under the Australian Soldiers' Repatriation Act 1920-1940, or the Seamen's War Pensions and Allowances Act 1940, of the Parliament of the Commonwealth;

(ii) a wounds and disability pension of the kind specified in subsection two of section sixteen of the Finance Act, 1919, of the United Kingdom;

(iii) a pension paid under the Widows' Pensions Act, 1925, as amended by subsequent Acts;

(iv) a pension paid to a non-resident who is a resident of Australia to the extent to which such pension is liable to income tax under the law of any other State of Australia;

(v) a pension derived by any person domiciled in this State whose net income from all sources during the year of income does not exceed two hundred pounds;

(m)
(m) income which is—

(i) a payment in respect of any children under the Child Endowment Act 1941, of the Parliament of the Commonwealth;

(ii) a payment made in respect of children under the Child Welfare Act, 1939;

(iii) a payment made to any person as charitable relief by any Government department or agency;

(n) the income received by way of periodical payments in the nature of alimony or maintenance by a woman from her husband or former husband provided that for the purpose of making such payments the husband, or former husband, has not divested himself of any income-producing assets or diverted from himself income upon which he would otherwise have been liable to tax;

(o) the income of a co-operative building society, and the income of a rural society registered as such under the Co-operation Act, 1923-1941, as amended by subsequent Acts, if the principal business of that rural society is the manufacture, treatment or disposal of the agricultural products (as defined in that Act) or livestock of its members;

(p) 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 this State by or on behalf of that person of produce of the territory or island of which he is a resident;

(q) the income derived prior to the first day of July, one thousand nine hundred and forty-two, by a person from the working of a mining property in Australia or in the territories of Papua and New Guinea principally for the purpose of obtaining gold, or gold and copper, provided...
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;

(r) 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 territories of Papua and 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;

(s) interest received from a company by a non-resident of Australia on money raised out of Australia and secured by debentures of the company;

(t) interest received from any municipal corporation or other local governing body or from a public authority by a non-resident of Australia on money raised out of Australia and secured by stock or debentures which have been issued by such corporation, body, or authority, where such interest is payable out of Australia;

(u) in the case of any person enlisted in or appointed to the naval, military or air forces of the Commonwealth or any part of the King's dominions or of any Ally of Great Britain for service outside Australia during the present war between His Majesty the King and Germany and her Allies—the pay and allowances earned by him as a member of those forces during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, or on the date of his enlistment or appointment (whichever is the later date) and terminating on the date of his discharge or the termination of his appointment:

Provided
Provided that this paragraph shall not apply to any pay or allowance so earned during the year of income by a member of the forces who does not at any time during the period commencing on the third day of September, one thousand nine hundred and thirty-nine, and terminating one year after the close of that year of income—

(i) in the case of a member of the naval forces of the Commonwealth—serve in a sea-going ship; or

(ii) in the case of a member of the military or air forces of the Commonwealth—embark for service outside Australia.

The exemption provided by this paragraph shall continue in force until twelve months after the date of the issue of a proclamation that the war between His Majesty the King and Germany and her Allies has ceased, and no longer;

(v) in the case of any person enlisted in or appointed or called to the naval, military or air forces of the Commonwealth for service in Australia during the present war between His Majesty the King and Germany and her Allies—the pay derived by him as a member of those forces, where his total income from all sources during the year of income does not exceed two hundred pounds;

(w) income derived by a non-resident from sources wholly out of this State;

(x) the income of any person (other than a company or a trustee) domiciled in this State whose net income from all sources during the year of income does not exceed one hundred and fifty-six pounds or where the person has a dependant does not exceed two hundred and fifty pounds.

20. (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.
(2) The exemption of any income from income tax shall not exempt any person from furnishing any return or information which may be required by the Commissioner, or from including in his return such information as is prescribed or as is required by the Commissioner.

DIVISION 2.—Income.

SUBDIVISION A.—Assessable income generally.

21. (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 this State, and

(b) where the taxpayer is a non-resident—the gross income derived directly or indirectly from all sources in this State.

(2) (a) Subject to paragraph (b) of this sub-section interest on money loaned in this State shall be deemed to be income derived in this State.

(b) In the case of money loaned in this State upon the security of a mortgage of property, the following provisions shall apply:

(i) where the whole of such property is out of this State but in Australia the interest on the money so loaned shall be deemed to be income derived out of this State;

(ii) where part of such property is out of this State but in Australia, a proportionate part of the interest on the money so loaned shall be deemed to be income derived out of this State.

(3) (a) Subject to paragraph (b) of this sub-section interest on money loaned out of this State shall be deemed to be income derived out of this State.

(b) In the case of money loaned out of this State upon the security of a mortgage of property, the following provisions shall apply:

(i) where the whole of such property is in this State the interest on the money so loaned shall be deemed to be income derived in this State;

(ii) where part of such property is in this State, a proportionate part of the interest on the money so loaned shall be deemed to be income derived in this State.
Income Tax Management Act.

(4) Notwithstanding anything contained in this Act, exempt income shall not be included in the assessable income of a taxpayer.

22. The assessable income of a taxpayer shall, subject to subsection one of section twenty-one of this Act, include—

(a) the gross profit derived from any business. In ascertaining the amount thereof the value of trading stock shall be taken into account as provided in Subdivision B of this Division;

(b) 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;

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

(d) 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 the previous Acts;

(e) five per centum of the capital amount of an allowance or gratuity paid in a lump sum upon retirement from any office or employment: Provided that this paragraph shall not apply in respect of any amount which, under any provision of this Act, is deemed to be a dividend paid to the recipient;

(f) any sum (in this paragraph referred to as "compensation") paid by way of compensation or damages in consequence of the termination of any office or employment (held for a fixed or indeterminate period) otherwise than by retirement pursuant to any understanding, arrangement or contract regulating the tenure of such office or employment, and whether so paid voluntarily, by agreement, or by compulsion of law: Provided that where such compensation

N.S.W. Act, 1936, No. 41, s. 19 (1) (b).
compensation is paid in a lump sum, and the office or employment so terminated was for a fixed period, and the part of such period unexpired at the date of such termination is not less than twenty-five complete months, the rate of tax to be applied to the taxable income of the taxpayer (except where the provisions of Division 18 of this Part are applied in his assessment) shall be—

(i) where the rateable income exceeds the amount of that compensation—the rate which is applicable to a rateable income equal to the amount obtained by deducting such compensation from the rateable income and adding to the result the amount ascertained by dividing such compensation by one twenty-fourth of the number of complete months in such unexpired part of the period of the office or employment, or by five, whichever is the less;

(ii) where the rateable income does not exceed the amount of that compensation—the rate which would be applicable to a rateable income equal to the amount ascertained by dividing the actual rateable income by one twenty-fourth of the number of complete months in such unexpired part of the period of the office or employment, or by five, whichever is the less:

Provided further that this paragraph shall not apply to any compensation which under any provision of this Act is deemed to be a dividend paid to the recipient;

(g) the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of or for or in relation directly or indirectly to any employment of or services rendered by him, whether so allowed, given or granted
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23. (1) The interest on loans raised in this State after the thirty-first day of December, one thousand nine hundred and twenty-three, by the Government of any country or dominion out of Australia or by any authority constituted by or under any law of any such country or dominion and received directly or indirectly by

N.S.W. Act, 1856, No. 41, s. 19 (1) (c).

Grantham Act, 1939, No. 27, s. 26 (j).

N.S.W. Act, 1936, No. 41, s. 19 (1) (i).

Grantham Act, 1939, No. 27, s. 26 (k).

N.S.W. Act, 1936, No. 41, s. 19 (1) (b).

Grantham Act, 1939, No. 27, s. 26 (l).

N.S.W. Act, 1936, No. 41, s. 19 (1) (a).

Grantham Act, 1939, No. 27, s. 26 (m).

N.S.W. Act, 1936, No. 41, s. 19 (1) (c).

Grantham Act, 1939, No. 27, s. 26 (n).

N.S.W. Act, 1936, No. 41, s. 19 (1) (d).

Grantham Act, 1939, No. 27, s. 26 (m).
by a resident shall be deemed to be derived by him from a source in this State and shall be included in his assessable income.

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

**Subdivision B.—Trading stock.**

24. (1) Where a taxpayer carries on any business the value, ascertained under this Subdivision, of all trading stock on hand at the beginning of the year of income, and of all trading stock on hand at the end of that year shall be taken into account in ascertaining whether or not the taxpayer has a taxable income.

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

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

25. Subject to this Act 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.

26. (1) Where the value of live stock at the beginning of the year of income as ascertained for the purpose of assessment to income tax under the law of the Commonwealth differs from its corresponding value as ascertained under section twenty-five of this Act, and it appears to the Commissioner that if those values were equal the corresponding values would remain equal in subsequent years, the taxpayer may, subject to this section, take his live stock into account at the beginning of the year of income at a value equal to its corresponding value under the law of the Commonwealth.

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

(4) The amounts referred to in subsections two and three 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.

Unless and until those amounts and years are so agreed upon this section shall not apply to the assessments of that taxpayer.

27. 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.

28. 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.

29. 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.

30.
30. (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 or the previous 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 or the previous 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.

31. (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 timber (where the growing of or dealing in timber formed part of the business of the taxpayer), standing or growing crops or crop-stools, the value of that property shall be included in his assessable income, and any person acquiring that property shall be deemed to have purchased it at the amount of that value.

(2) Where a taxpayer sells the whole of the 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 law of this State or of the Commonwealth 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 the first year to the assessment of the income of
of which the previous Act applied 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 market value of the property or live stock on the day of the disposal; or

(b) 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.

(4) For the purposes of this section "sale" includes a change of ownership of or the distribution of the assets of a business owing to—

(a) the dissolution of a partnership; or

(b) a variation of the members constituting a partnership:

Provided that if such of the persons interested as at the time have capacity so to do unanimously agree and give notice of their agreement to the Commissioner at the time and in the manner prescribed the property or live stock may be valued at the amount which would have been included in respect of that property or live stock if no change or distribution had taken place and the new owners of the assets shall be deemed to have purchased them at that value.

32. (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 timber (where the growing of or dealing in timber formed part of the business of the taxpayer), 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 subsection one of this 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 section thirty-one of this Act, 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 the business carried on by him:

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 this State.

33. In this Subdivision—

"Goods" includes wares, merchandise and any substance, product or commodity.

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

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

36. A sale is deemed to be made by means of a person or of something done when such person or thing done is instrumental in bringing about the sale.
37. Except as otherwise provided in this Subdivision—

(a) where goods are sold in this State by any person, the whole of the profit arising from the sale, or where such person is the producer or manufacturer of the goods, the whole of the profit arising from the production or manufacture and sale, shall be deemed to be income derived in this State;

(b) where goods are sold out of this State but in Australia by any person, the whole of the profit arising from the sale, or where such person is the producer or manufacturer of the goods, the whole of the profit arising from the production or manufacture and sale, shall be deemed to be income derived out of this State.

38. Where goods produced, manufactured or partly manufactured out of Australia are sold in this State by the producer or manufacturer of the goods, and the profit arising from the production or manufacture and sale is deemed to be income derived in this State, the Commissioner shall ascertain the profit from the sale of the goods on the basis of the actual cost of the production or manufacture of the goods and in any case where it appears to the Commissioner to be difficult to ascertain such actual cost he may adopt as the cost any amount which he considers reasonable arrived at in such manner and by such means as he considers just and the Commissioner shall, if he is satisfied that portion of the profit from the sale is attributable to the operations of production or manufacture carried on out of this State, and that such profit is liable to income tax in the country of production or manufacture, allow a rebate as follows:—

(a) where the goods are wholly produced or manufactured out of Australia—a rebate of one-half of the tax otherwise payable under this Act on the profit; or

(b) where the goods are subject to further processes of manufacture in Australia—a rebate of an amount determined by the Commissioner not exceeding one-half of the tax otherwise payable under this Act on the profit.

39.
39. (1) Where goods manufactured out of this State but in Australia are sold in this State by the manufacturer, the profit arising from the manufacture and sale shall be deemed to be income derived in this State.

(2) In respect of that part of his income which is equivalent to two-thirds of the profit referred to in this section a taxpayer shall be entitled to a rebate in his assessment of an amount equal either to the tax payable on that part under the laws of the State in which the goods are manufactured or to the tax payable on that part under this Act, whichever is the less.

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

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

(2) In respect of that part of his income which is equivalent to one-half of the profit referred to in this section a taxpayer shall be entitled to a rebate in his assessment of an amount equal either to the tax payable on that part under the laws of the State in which the business is carried on or to the tax payable on that part under this Act, whichever is the less.

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

43. Notwithstanding anything contained in this Subdivision, the following provisions shall in the cases therein mentioned apply to the profit derived from the sale anywhere in Australia of goods which are the produce of a business of primary production or of coal-mining carried on in Australia:

(a) where the goods are produced in this State and are sold by or on behalf of a person carrying on the
the business of which the goods are the produce, the profit shall be deemed to be income derived in this State;

(b) where the goods are produced out of this State and are sold by or on behalf of a person carrying on the business of which the goods are the produce, the profit shall be deemed to be income derived out of this State.

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

45. The assessable income of a taxpayer shall include any profit or net income derived by him in the year of income which under the provisions of this Subdivision—

(a) where the taxpayer is a resident—is deemed to be derived in or out of this State; and

(b) where the taxpayer is a non-resident—is deemed to be derived in this State,

and no amount which is taken into account in ascertaining the amount of any such profit or net income shall otherwise be an allowable deduction.

46. (1) Sections thirty-four to forty-five (both inclusive) of this Act shall not apply for the purpose of determining the income derived or deemed to be derived from a source in or out of this State by any person from the carrying on of a business of mining (other than coal mining).

(2) Where, for any of the reasons stated in section forty-seven of this Act, the source of any profit from the carrying on of any such business as is referred to in subsection one of this section is not exclusively in this State, the part of the profit deemed to be derived from a source in this State and the part of the profit deemed to be derived from a source out of this State, shall be determined in accordance with section forty-seven of this Act.
47. Where goods are exported from this State and either before or after export are sold out of Australia and—

(a) by reason of the manufacture, extraction from the earth, winning, production or purchase of such goods in this State; or
(b) by reason of successive steps of extraction, winning, production, or manufacture in and out of this State; or
(c) by reason of the making of contracts out of this State; or
(d) for any other reason whatever;

the source of any profit is not exclusively in this State, the part of the profit deemed to be derived from a source in this State and the part of the profit deemed to be derived from a source out of this State shall be determined in accordance with the regulations, or, if there are no regulations applying to the case, shall be determined by the Commissioner.

48. (1) Where a person carries on business (other than a business to which Division 11, Division 12, or Division 15 of this Part applies) in and out of this State, and the net income derived from sources in this State is not kept separate and apart from the net income derived from sources out of this State that person shall furnish the Commissioner with a return setting out the net income from all sources. Such return shall be accompanied by a statement setting out—

(a) the part of the net income from all sources which can be definitely ascertained as having been derived from sources in this State; and
(b) the part of the net income from all sources which can be definitely ascertained as having been derived from sources out of this State; and
(c) the part of the net income from all sources which consists of profit on the sale of goods and which is not capable of being set out under paragraph (a) or paragraph (b) of this subsection, together with an apportionment of that profit to sources in this State and sources out of this State determined in accordance with the preceding provisions of this Subdivision; and
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(d) an apportionment of the remainder of such net income to sources in this State and sources out of this State together with full particulars of the manner in which and the basis upon which such apportionment is made.

(2) The return referred to in subsection one of this section shall also be accompanied by a full and complete statement of income and expenditure and assets and liabilities in connection with the business in and out of this State.

49. (1) The Commissioner may, subject to such alterations as he considers necessary, accept any statement referred to in section forty-eight of this Act or may, without limitation of any of his powers under this Act, allocate to a source in or out of this State any part of the net income from all sources which, in his opinion, can be so allocated.

Any part of the net income from all sources derived from sales shall be apportioned between sources in and out of this State in accordance with the preceding provisions of this Subdivision and the balance may be apportioned between sources in and out of this State according to the remaining income in this State as compared with the remaining income from all sources.

The part of the net income from all sources allocated or apportioned to a source in this State shall be deemed to be net income derived from a source in this State, and the part of the net income from all sources allocated or apportioned to sources out of this State shall be deemed to be net income derived from sources out of this State.

(2) Notwithstanding anything contained in this section, the Commissioner may apportion the net income from all sources between sources in and out of this State upon the basis of the assets used in this State in the production of assessable income as compared with the total assets employed in the production of the net income from all sources.

50. Where, in the opinion of the Commissioner, it is difficult or impracticable to determine whether income is assessable under one section or under another section of this Act, or where, in the opinion of the Commissioner, the income is assessable under more than one section of this Act, or where, in the opinion of the Commissioner, the income is assessable under more than one section of this Act.
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this Act, he may at his option assess the income under the provisions of the section or sections which is or are the most appropriate to the circumstances of the case.

51. Where the net assessable income cannot to the satisfaction of the Commissioner be ascertained under the preceding provisions of this Subdivision it shall be deemed to be such amount of the assessable income as the Commissioner determines.

52. Where in the year of income a taxpayer incurs a net loss in a business or transaction of such a nature that had the business or transaction yielded a profit or net assessable income the whole or part of that profit or net assessable income would under this Subdivision have been included in his assessable income, the whole or part of that net loss shall to a corresponding extent be an allowable deduction:

Provided that where any net loss which is an allowable deduction under this section is incurred out of this State such net loss shall be deducted in the first place from net assessable income, if any, derived out of this State.

Subdivision D.—Dividends.

53. (1) The assessable income of a shareholder in a company (whether the company is a resident or a non-resident) shall—

(a) if he is a resident—include all dividends paid to him by the company; and

(b) if he is a non-resident—include dividends paid to him by the company out of profits derived by it from sources in this State.

(2) Where a company derives income from sources in this State, and from sources out of this State, a dividend shall be deemed to be paid out of profits derived by the company from sources in this State to the extent of so much of the dividend as bears to the whole dividend the same proportion as the profits derived by the company from sources in this State bear to the total profits of the company.

54. (1) A shareholder, being a company which is a resident, or is incorporated in Australia and has its central management and control in Australia, shall be entitled to a rebate in its assessment of the amount obtained
obtained by applying to that part of the dividends included in its taxable income the rate of tax payable for the year of income by companies which are residents.

(2) For the purposes of subsection one of this section the rate of tax to be applied in accordance with that subsection shall be the rate of tax payable by a company which is not liable to tax under Division 9 or Division 10 or Division 14 of this Part of this Act.

(3) Subsection one of this section shall not apply to allow a rebate to a company (in this subsection referred to as the shareholder company) in respect of any dividend paid by another company out of any profit or income derived by such other company prior to the acquisition by the shareholder company of the shares in respect of which the dividend is paid where the consideration given by the shareholder company for such shares is satisfied directly or indirectly by the issue of shares of the shareholder company, except to the extent to which the shareholder company has, not later than six months after the close of the year of income, distributed that dividend by way of a dividend to its shareholders.

(4) Where a shareholder (other than a company) who is a non-resident but is a resident of Australia has paid tax under the laws of the State in which he resides in respect of the part of any dividends included in his taxable income, he shall be entitled to a rebate in his assessment of an amount equal either to the tax so paid or to the tax payable under this Act on the part of those dividends so included, whichever is the less.

(5) The part of the dividends included in the taxable income of the shareholder shall for the purposes of subsections one and four of this section be the amount remaining after deducting from the amount of dividends included in such shareholder’s assessable income deductions allowable to such shareholder under this Act from income from dividends.

(6) For the purposes of this section—
(a) where the allowable deductions of the year of income from income from personal exertion exceed the amount of that income the excess shall be deemed to be allowable proportionately from the net assessable income from dividends and from the net assessable income from property other than dividends;
(b) where there is a net loss from any class of income from property other than dividends that net loss shall be deemed to be allowable proportionately from the net assessable income from dividends and from the net assessable income from property other than dividends;

(e) where expenditure which is an allowable deduction is not directly applicable to any class of income that expenditure shall be deemed to be allowable proportionately from the net assessable income from dividends and from the net assessable income other than dividends except where an amount applicable to the net assessable income from dividends is otherwise fixed by the Commissioner.

55. 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, which has not been created by a revaluation of assets shall for the purposes of this Act be deemed to be dividends paid to the shareholders by the company.

DIVISION 3.—Deductions.

56. 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.

57. Where by this Act it is provided that any deduction shall be made successively from two 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.

58. (1) Where the assessable income is derived from more than one class of income, that is to say, income from personal exertion, and income from property, the following provisions shall apply to all allowable deductions:—

(a) where a deduction relates directly to the income from property, it shall be made successively from that income, and from the income from personal exertion;

(b)
(b) in all other cases the deduction shall be made successively from the income from personal exertion, and from the income from property.

(2) Where any net loss incurred out of this State during the year of income is an allowable deduction the deduction shall be made successively from net assessable income derived out of this State and from income derived in this State in the order provided in subsection one of this section.

59. (1) All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are 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.

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

61. (1) Any loss incurred by the taxpayer in the year of income from the sale of any property acquired by him for the purpose of profit-making by sale, or from the carrying on or carrying out of any undertaking or scheme, the profit (if any) from which sale, undertaking or scheme would, under paragraph (b) of section twenty-two of this Act have been included in his assessable income, shall be an allowable deduction.

(2) Subsection one of this section shall not apply to any loss incurred out of this State prior to the first year to the assessment of the income of which this Act applies.

62.
62. (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.

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

(2) In this section “plant” includes animals used as beasts of burden or working beasts in a business other than a business of primary production, and machinery, implements, utensils and rolling stock.

64. 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.

65. (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 section sixty-four of this Act or under the previous Acts of the depreciated value of that unit at the beginning of the year of income; or

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

66. 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 section sixty-five of this Act, be the same as that applied in the last preceding calculation.

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

(2) Where subsection one of this 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 Commonwealth Act equal.

(3) Where depreciation has been allowed under this section in respect of any property in any assessment of a taxpayer, depreciation shall be allowed under this section in all future assessments of that taxpayer in which depreciation in respect of that property is allowable until the depreciated values under this Act and the Commonwealth Act are equal.
68. (1) Where any property of a taxpayer in respect of which depreciation has been allowed or is allowable under this or the previous Acts is disposed of, lost or destroyed at any time in the year of income, the depreciated value of the property at that time, less the amount of any consideration receivable in respect of the disposal, loss or destruction shall be an allowable deduction.

(2) If that consideration exceeds the depreciated value, the excess shall be included in his assessable income of that year:

Provided that where the person who acquired the property was a company in which the transferror was at or about the date of the transfer substantially interested as a shareholder or where the person who acquired the property and the transferror were companies the shareholdings in which were, at or about the date of the transfer, in substantially the same hands, the Commissioner may determine that this subsection shall not apply.

(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.

(4) Notwithstanding anything contained in this Act where a calculation under this section is based upon the consideration receivable and for any reason the whole or any part of that consideration is not received by the taxpayer the Commissioner may, at any time, amend the assessment on the basis of the consideration received.

69.
69. (1) Where either before or after the commence-
ment of this Act, a person has acquired any property in respect of which depreciation has been allowed or is allowable under this or the previous Acts, he shall not be entitled to any greater deduction for depreciation than that which would have been allowed to the person from whom the property was acquired if that person had retained it:

Provided that where under section sixty-eight of this Act or under section sixty-nine of the previous Act, or under paragraph (1) of subsection one of section nineteen of the Income Tax (Management) Act, 1928, 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 amount paid by him for the property.

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

70. 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 deductions otherwise allowable under section sixty-three or section sixty-eight of this Act in respect of that property as in the opinion of the Commissioner is proper shall be an allowable deduction.

71. (1) In this Division "depreciated value" of any unit of property at any time means—

(a) where depreciation has been allowed, or is allowable, under this Act, or the previous Acts in respect of that unit in assessments for any periods prior to that time—the cost of the property less the amount of all depreciation so allowed or allowable less also the amount of all depreciation which was an allowable deduction in ascertaining the amount of any net assessable income or net loss as defined in this Act, for any such periods; and

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

(2) Where there has been a change of ownership and the owner for the time being of the property is by virtue
(1) Debts which are bad debts and are written off as such during the year of income, and—
   (a) have been brought to account by the taxpayer as assessable income of any year; or
   (b) are in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business;
and no other bad debts, shall be allowable deductions.

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

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

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

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

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

75. (1) 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 (but not including any amount so set apart or paid by a taxpayer which is a private company within the meaning of Division 10 of this Part, in respect of an employee who is a director of or shareholder in that company) 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.

(2) Where a taxpayer in the year of income receives any payment or other benefit by way of refund of any amount included in a sum so set apart or paid which amount or a part thereof has been allowed or is allowable as a deduction to him under this section or has been allowed or is allowable as a deduction to him in any assessment for income tax under the previous Acts, his assessable income shall include that amount.

76. (1) 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.

(2) Where the period for which the money was borrowed is not fixed, 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.

(3) The deduction allowable under this section shall not exceed the amount remaining after deducting
from such expenditure all amounts allowed as deductions in respect of that expenditure in assessments under this Act or the previous Acts.

77. 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.

78. 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.

79. 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.

80. 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.

81. (1) Sums paid by the taxpayer in the year of income for rates or for State or Federal land tax, shall, to the extent to which they are charged or levied in respect of property held by him for the purpose of producing assessable income, 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 the previous Acts, his assessable income shall include that amount.

(3) Sums paid by the taxpayer for any rates or taxes of any kind whatsoever, not allowed as a deduction under subsection one of this section, shall not be allowable deductions except to the extent to which they are incurred in gaining or producing assessable income.
82. Any periodical subscription, not otherwise an allowable deduction, paid by the taxpayer in the year of income in respect of his membership of a bona fide industrial union of employers or employees, trade or professional association, whether corporate or unincorporate, or agricultural society approved by the Commissioner, shall, to an extent not exceeding ten pounds ten shillings to any one union, association or society in the year of income, be an allowable deduction.

83. The sum of two hundred pounds in respect of travelling and incidental expenses incurred in the year of income by a taxpayer in the capacity of a New South Wales member of the Parliament of the Commonwealth or of a member of the Legislative Council or the Legislative Assembly of New South Wales shall be an allowable deduction.

84. (1) Expenditure incurred in the year of income by the taxpayer in being elected as a New South Wales member or in contesting an election for membership of the Parliament of the Commonwealth or of the Legislative Assembly of New South Wales shall be an allowable deduction.

(2) When a deduction has been allowed or is allowable under subsection one of this 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 organisation the assessable income of the taxpayer of the year in which the amount is so reimbursed or paid shall include that amount.

85. Expenditure incurred by the taxpayer in grassing grazing lands, in suckering, in eradicating seedlings, noxious plants and noxious weeds, or in the destruction of noxious animals on lands owned, held or occupied by the taxpayer for the purpose of producing his assessable income shall be an allowable deduction.

86. Expenditure incurred during the year of income by any taxpayer carrying on mining operations in this State for labour and materials employed in sinking shafts in a producing mine shall where the proceeds of the sale of the product of the mine are included in the assessable income be an allowable deduction.

87.
Income Tax Management Act.

87. (1) (a) 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, be allowable deductions—

(i) 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;

Provided that no deduction shall be allowed under this subparagraph of any amount so set apart or paid by a taxpayer which is a private company within the meaning of Division 10 of this Part in respect of an employee who is a director of or shareholder in that company or the dependants of any such employee;

(ii) 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.

(b) Where a taxpayer in the year of income receives any payment or other benefit by way of refund of any sum referred to in subparagraph (i) of paragraph (a) of this subsection and such sum has been allowed or is allowable as a deduction to him under this subsection or has been allowed or is allowable as a deduction to him in any assessment for income tax under the previous Acts, his assessable income shall include that sum.

(2) (a) Gifts (in this Act called “allowable gifts”) made by the taxpayer in the year of income shall be
be an allowable deduction where those gifts are of the value of ten shillings and upwards and are made to any of the following funds, authorities, or institutions in this State:

(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 this State, or for the establishment of such hospitals or institutions or for the relief of persons in this State 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, public library, public museum, or public art gallery;
(vi) a residential educational institution affiliated under statutory provisions with the Sydney University or a public educational institution not carried on for the profit of individuals;
(vii) a public fund established and maintained for providing money for the construction or maintenance of a public memorial in this State relating to the war which commenced on the fourth day of August, one thousand nine hundred and fourteen;
(viii) an institution or public fund for the benefit of persons who are returned soldiers within the meaning of Part III of the Australian Soldiers’ Repatriation Act 1920-1934 of the Parliament of the Commonwealth;
(ix) a public institution or public fund established and maintained for the comfort, recreation or welfare of members of the naval, military or air forces of the Commonwealth; and
(x) the Commonwealth or this State, when made for purposes of defence.

(b) The total sum which shall be allowable by way of deduction in respect of allowable gifts shall not exceed one hundred pounds.

(3)
income Tax Management Act.

No. 48, 1941.

(3) For the purposes of this section, the value of property other than money shall be the value of the property at the time of the making of the gift or the amount paid by the taxpayer for the property whichever is the less.

88. (1) The following amounts (in this Act called "the concessional deductions") shall be allowable deductions. Where the taxpayer is domiciled in this State—

(a) the sum of sixty pounds in respect of the spouse of the taxpayer, or in respect of a female relative having the care of any children in respect of whom a deduction is allowed to the taxpayer under paragraph (b) of this subsection if the spouse or relative is a resident of Australia 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 from all sources derived by the spouse or relative in the year of income (other than income derived by the spouse prior to marriage or by the relative prior to having the care of such children) does not exceed one hundred 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 sixty pounds as, in the opinion of the Commissioner, is reasonable in the circumstances;

(b) the sum of sixty pounds in respect of each child who is a resident of Australia and is under the age of sixteen years at the beginning of the year of income and is wholly maintained by the taxpayer apart from payments received under the Child Endowment Act 1941 of the Parliament of the Commonwealth in respect of such child:

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
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) the sum of sixty pounds in respect of each dependant, who is a resident of Australia and is wholly maintained by the taxpayer and is a parent of the taxpayer or is a child, brother or sister of the taxpayer of the age of sixteen years or over and is an invalid:

Provided that, where the dependant 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 sixty pounds as, in the opinion of the Commissioner, is reasonable in the circumstances;

(d) 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 any dependant or any of his children under the age of twenty-one years if such child is a resident of Australia;

(e) 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 any dependant, or of any of his children under the age of twenty-one years, if the child was at the time of death a resident of Australia,—to the extent to which those expenses are not recouped to him by any society or association;

(f) 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

(ii)
(ii) payments to superannuation, sustenta-
tion, widows’ or orphans’ funds, or to any 
friendly society, for the personal benefit 
of the taxpayer or of his spouse or 
children; and

(g) payments made by the taxpayer in the year of 
income to any registered dentist in respect of 
the provision by such dentist of dental treat­
ment to the taxpayer or any dependant or any 
of his children under the age of twenty-one 
years, if the child is a resident of Australia.

The deductions mentioned in this paragraph 
are to be allowed only when the taxable income 
of the taxpayer does not exceed four hundred 
pounds.

(2) Notwithstanding anything contained in sub­
section one of this section, where a taxpayer, who is 
domiciled in another State of the Commonwealth, does 
not, by reason of the insufficiency of his income in that 
State, receive the full benefit of the concessional deduc­
tions allowable under the law of that State, the 
Commissioner may allow either the whole or such part 
of the deductions allowable under this section as in his 
opinion is just having regard to the taxpayer’s net 
assessable income in this State as compared with his net 
income from all sources.

89. (1) For the purposes of this section, a loss shall 
be deemed to be incurred in any year when the allowable 
deductions (other than allowable gifts, 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.

(2) So much of the losses incurred by a taxpayer 
in any of the three years next preceding the year of 
income as has not been allowed as a deduction from his 
income of any of those years shall be allowable as a 
deduction 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),
(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 the assessable income is derived partly in and partly out of this State any deduction allowable under this section from assessable income shall be deemed to be allowed proportionately from the net assessable income derived in this State and the net assessable income derived in each State or country out of this State;

(d) 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.

(3) Nothing in this section shall apply to or in respect of any loss incurred out of this State by a taxpayer prior to the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, or the accounting period accepted by the Commissioner under the previous Act in lieu of that year.

(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, as amended by subsequent Acts, of the Parliament of the Commonwealth, no loss incurred by him prior to that adjudication or release shall be an allowable deduction.

90. Notwithstanding any other provision of this Act expenditure incurred by a company in the year of income by way of interest on money raised out of Australia and secured by debentures of the company shall not be an allowable deduction.

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

DIVISION 4.—Leases.

92. In this Division—

"Lease," when used in relation to a premium, means the lease granted, assigned or surrendered, or where the premium is for or in connection with any goodwill or license, means the lease of the land to which such goodwill or license is attached or connected.

"Lessor," when used in relation to any time, means the person at that time entitled to the reversion.

"Net premium" means the amount ascertained by deducting from a premium the allowable deductions directly relating thereto.

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

"Term of the lease" means the length of time which the lease has to run from the date when the premium is received, and in the case where the premium is received for or in connection with the surrender of a lease, the length of time which the
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.

93. (1) The assessable income of a taxpayer shall subject to subsection one of section twenty-one of this Act include, in addition to rent, any amount received by him in the year of income being—

(a) a premium for or in connection with the grant of a lease; or

(b) the net premium for or in connection with the assignment or surrender of a lease; or

(c) a consideration for or in connection with his assent to any grant or assignment of a lease.

(2) Where a lease (other than a lease of premises in respect of which a publican’s license or an Australian wine license is for the time being in force) assigned or surrendered was acquired by the taxpayer before the sixth year prior to the year of income in which the lease is assigned or surrendered the amount of net premium (or if in respect of the transaction there are more net premiums than one,—the sum of the net premiums) to be included as assessable income shall not be greater than the total of the amounts of deductions allowed to the taxpayer under this Act and the previous Acts in respect of the lease.

94. Where a loss is incurred by a taxpayer upon the assignment or surrender of a lease the following provisions shall apply:—

(a) any loss incurred in the year of income or in any of the three years next preceding that year shall (to the extent to which it has not previously been allowed as a deduction) be allowable as a deduction from the amount, if any, which would otherwise be included in his assessable income under paragraph (b) of subsection one of section ninety-three of this Act;

(b) the amount of the loss shall be calculated by deducting the consideration for such assignment or surrender from the sum of the amounts referred to in paragraphs (a), (b) and (c) of subsection one of section ninety-five of this Act;
(c) a loss shall not be allowable as a deduction under this section where the lease (other than a lease of premises in respect of which a publican's license or an Australian wine license is for the time being in force) assigned or surrendered was acquired by the taxpayer before the sixth year prior to the year of income in which the lease is assigned or surrendered, or where a lease out of this State was assigned or surrendered prior to the first year to the assessment of the income of which this Act applies;

(d) where two or more losses are allowable as a deduction they shall be taken into account in the order in which they were incurred.

95. (1) Where the whole of the consideration for the assignment or surrender of a lease is received in the year of income the allowable deductions in ascertaining the net premium shall be the sum of—

(a) the expenses of sale or surrender;

(b) the amount paid by the taxpayer for the lease less all amounts which, under this Act and the previous Acts, were allowable as deductions in respect of the amount so paid;

(c) any other expenditure by the taxpayer, including interest on borrowed money, incurred in connection with the acquisition, improving and holding of the lease, which was not allowable as a deduction from the assessable income of the taxpayer under this Act or the previous Acts;

(d) any loss upon the sale or surrender of a lease allowable as a deduction under section ninety-four of this Act.

(2) Where part only of that consideration is received in the year of income the allowable deductions shall be the amount which bears to that sum the same proportion as that part bears to the whole of that consideration.

(3) Where any premium is paid to a taxpayer for or in connection with the grant by him of a sub-lease, or for or in connection with the goodwill or license attached to or connected with land the subject of a sub-lease so granted, and is included in the assessable income of the taxpayer
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 license, so much of the total deductions to which he would but for this 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 license shall be an allowable deduction, and he shall not during that period be entitled to any further deduction in respect of that amount otherwise than under this section.

96. Where any premium is included in the assessable income of a taxpayer in respect of the grant of a sub-lease out of or the assignment or surrender of a lease 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 section ninety-five of this Act if he had lived and the premiums had been included in his assessable income and there had been allowed or were allowable as deductions in assessments for income tax, under any other provisions of this Act or under the previous Acts, 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.

97. (1) Where a premium which exceeds the sum of the allowable deductions directly relating thereto, and in respect of which the term of the lease is not less than twenty-five complete months, is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall be ascertained in accordance with this section.

In this subsection "premium" means a premium for or in connection with the grant of a lease.

(2) Where the rateable income exceeds the net premium, or the sum of the net premiums, if there are more than one of the premiums so included, the rate of tax shall be the rate which is applicable to a rateable income equal to the amount obtained by deducting the net premium or the sum of the net premiums, as the case may be, from the rateable income and adding to the result the amount

Deductions where lease involves on death.

N.S.W. Act, 1906, No. 41, s. 96.

Cth. Act, 1906, No. 27, s. 83 (6).
amount or amounts ascertained by dividing each of the net premiums by one twenty-fourth of the number of complete months in the term of the lease.

(3) Where the rateable income does not exceed the net premium, or the sum of the net premiums if there are more than one of the premiums so included, the rate of tax shall be—

(a) where there is only one of those premiums—the rate which would be applicable to a rateable income equal to the amount ascertained by dividing the actual rateable income by one twenty-fourth of the number of complete months in the term of the lease; and

(b) where there are more than one of those premiums—the rate which would be applicable to a rateable income equal to the sum of the amounts ascertained by apportioning the actual rateable income among the net premiums in proportion to their amounts, and dividing the amount so apportioned to each net premium by one twenty-fourth of the number of complete months in the term of the lease.

(4) 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 section one hundred and eleven of this Act or of Division 18 of this Part are applied in the assessment of the taxpayer; or

(c) where the premium is assessable under paragraph (b) of subsection one of section twenty-two of this Act; or

(d) where the consideration for the lease is payable in each of three or more years of income.

98. Where the net premium received for or in connection with the assignment or surrender of a lease is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall except where such net premium is assessable under paragraph (b) of subsection one of section twenty-two of this Act, be ascertained in accordance with section one hundred and eleven of this Act as if the net premium were a casual profit under that section.

99.
99. (1) Where, either before or after the commencement of this Act, 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, subject to subsection one of section twenty-one of this Act, 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, a proportionate part of the estimated value to the lessor of such improvements as at the expiration of the lease arrived at by distributing that value proportionately over the period of the lease unexpired at the date the improvements were made.

(b) Where in the opinion of the Commissioner the estimated value cannot, at the date the improvements were made, 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 in any of the cases specified in subsection two of section one hundred and one of this Act.

100. (1) Where a taxpayer has paid any premium in respect of land, premises or machinery used for the purpose of producing assessable income, 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)
Income Tax Management Act.

No. 48, 1941.

(2) In any case where a company (in this subsection referred to as the "taxpayer company") is a taxpayer who has paid a premium in respect of the assignment to it of a lease of premises or machinery used for the purpose of producing assessable income, and where the assignor of the lease was, at or about the date of the assignment, substantially interested as a shareholder in the taxpayer company, or was a company the shareholding interests in which were, at or about the date of the assignment, in substantially the same hands as those of the taxpayer company, the following provisions shall have effect:

(a) Where, under this Act or the previous Acts, the assignor was liable to include in his assessable income the whole of the net premium for the assignment by him of the lease to the taxpayer company, a proportionate part of the amount of the premium paid, 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.

(b) Where the lease was acquired by the assignor before the sixth year prior to the year of income in which it was assigned to the taxpayer company, and the assignor was, either under this Act or the previous Act, liable to include in his assessable income a part only of the net premium for the assignment by him of the lease to the taxpayer company this section shall not be construed as entitling the taxpayer company to an allowable deduction in respect of the premium greater than the amount, if any, ascertained by dividing the amount of any premium paid by the assignor for the lease by the number of years of the period of the lease unexpired when such payment of premium by the taxpayer company was made.

(c) In any case not provided for by paragraph (a) or paragraph (b) of this subsection this section shall not be construed as entitling the taxpayer company to an allowable deduction in respect of the premium greater than the amount, if any, of
of the deduction to which the assignor would have been entitled in respect of any premium paid by him for the lease if he had not assigned the lease.

101. (1) 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 this Act or of the lease, incurred expenditure in making improvements not subject to tenant rights on that land, and such improvements—

(a) have been made as consideration for the grant to him of that lease, or

(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,

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.

(2) This section shall not apply—

(a) where the lease is a lease of land (granted either before or after the commencement of this Act) to a company from an individual or from a company to an individual and the individual directly or indirectly controls or controlled 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 was at or about the date of the lease or consent (as the case may be) in substantial control of the operations of the lessee.
102. Where any taxpayer succeeds to any lease or share therein upon the death of any person who has paid a premium or expended money in making improvements referred to in section one hundred and one of this Act, or in section one hundred and one of the previous Act, 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 either section one hundred or section one hundred and one of this Act had he lived.

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

DIVISION 5.—Casual profits.

104. In this Division—

“Acquire” means acquire property by purchase or exchange or by gift, devise or bequest or by any other means whatsoever, and includes the acquisition of shares by the issue thereof.

“Casual profit” means the net profit arising from the sale of property.

“Casual loss” means the net loss incurred upon the sale of property.

“Real property” means any estate or interest (including a lease referred to in section one hundred and three of this Act) in land, including the goodwill of any business carried on on the land, but does not include any premises owned and solely used by the taxpayer before the sale as his principal place of abode for any period of or exceeding four years.

“Sale” includes an exchange of property and a statutory resumption.

105. (1) Where the proceeds of the sale by a taxpayer of any real property are not included in his assessable income under any other provision of this Act, and the real property was acquired by the taxpayer in the year of income or in any of the six years next preceding that
that year, his assessable income shall, subject to sub-
section one of section twenty-one of this Act, include the
casual profit, if any, arising from the sale.

(2) Where the property is situated in this State
the casual profit shall be deemed to arise from a source
in this State. Where the property is situated out of this
State the casual profit shall be deemed to arise from a
source out of this State.

(3) For the purposes of this section where the
real property sold was bought by the taxpayer from the
Crown, and prior to the purchase was held by him under
a lease from the Crown with a right of purchase, he shall
be deemed to have bought the land on the date on which
he acquired the lease.

106. (1) Where the proceeds of the sale by a tax-
payer of any property other than real property are not
included in his assessable income under any other pro-
vision of this Act, and the property was acquired by the
taxpayer in the year of income or in any of the two years
next preceding that year, his assessable income shall,
subject to subsection one of section twenty-one of this
Act, include the casual profit, if any, arising from the
sale.

(2) Where the sale is effected in this State the
casual profit shall be deemed to arise from a source in
this State. Where the sale is effected out of this State
the casual profit shall be deemed to arise from a source
out of this State.

(3) This section shall not apply to the sale of
any property (other than shares or securities) where the
aggregate value of the property sold in the year of
income does not exceed two hundred pounds.

107. Where the proceeds of the sale by a taxpayer
of the goodwill of any business carried on by him are
not included in his assessable income under any other
 provision of this Act and the goodwill was acquired or
 created by him in the year of income or in any of the
 six years next preceding that year, his assessable income
 shall, subject to subsection one of section twenty-one of
 this Act, include the casual profit, if any, arising from the
 sale.

108.
108. (1) The amount of the casual profit to be included in the assessable income under this Division shall be calculated by deducting from the sale price or amount realised by the sale the following amounts:—

(a) the expenses of sale;

(b) the cost of the property to the taxpayer (less all amounts in respect of that cost or of depreciation of the property which have been allowed or are allowable as deductions in the assessments under this Act and the previous Acts of the taxable income of the taxpayer);

(c) any other expenses (including interest on borrowed money and also including death duty, estate duty, and any other duties or charges attributable or apportionable to such property) incurred in connection with the acquisition, improving or holding of the property, which have not been allowed and are not allowable as deductions in the assessments under this Act or the previous Acts of the taxable income of the taxpayer; and

(d) any casual loss allowable in accordance with section one hundred and twelve of this Act.

(2) Where the property sold represents part only of the property acquired the deductions under paragraphs (a), (b) and (c) of subsection one of this section shall be such part of the amounts set out in those paragraphs as is properly attributable to the part of the property sold.

109. The amount of a casual loss shall be calculated by deducting the sale price or amount realised by the sale of property from the amounts set out in paragraphs (a), (b) and (c) of subsection one of section one hundred and eight of this Act or subsection two of that section, as the case may be.

110. Where in the case of any sale coming under this Division or under Division 5 of the previous Act or under section twelve of the Income Tax (Management) Act, 1928, the payment of the purchase price extends over a period of years the following provisions shall have effect:—

(a) the amount of the casual profit which would have been derived if the sale had been for cash shall
shall be ascertained, and there shall be included as a casual profit in the assessable income of each year of income in which a payment is received, so much of that amount as bears to that amount the same proportion as the payments received in that year bear to the total purchase price;

(b) the amount of the casual loss which would have been incurred if the sale had been for cash shall be ascertained and so much of that amount as bears to that amount the same proportion as the payments received in any year of income bear to the total purchase price shall be the casual loss attributable to that year of income.

The casual loss attributable to a year of income shall be an allowable deduction to the extent provided in section one hundred and twelve of this Act.

111. (1) Where a casual profit arising from the sale of property which had been held for not less than twenty-five complete months is included in the assessable income of a taxpayer, the rate of tax to be applied to his taxable income shall be ascertained in accordance with this section.

(2) Where the rateable income exceeds the casual profit, or the sum of the casual profits, if there are more than one of the casual profits so included, the rate of tax shall be the rate which is applicable to a rateable income equal to the amount obtained by deducting that casual profit or that sum, as the case may be, from the rateable income and adding to the result the amount or amounts ascertained by dividing each casual profit by one-twenty-fourth of the number of complete months during which the property had been held.

(3) Where the rateable income does not exceed the casual profit, or the sum of the casual profits if there are more than one casual profit so included, the rate of tax shall be—

(a) where there is only one of those casual profits—

the rate which would be applicable to a rateable income equal to the amount ascertained by dividing the actual rateable income by one twenty-fourth

Rate of tax where casual profit Incurred on assessable income. N.S.W. Act, 1909, No. 41, s. 110.
(b) where there are more than one of those casual profits—the rate which would be applicable to a rateable income equal to the sum of the amounts ascertained by apportioning the actual rateable income among the casual profits in proportion to their amounts, and dividing the amounts so apportioned to each casual profit by one twenty-fourth of the number of complete months during which the property had been held.

(4) Where the rate of tax to be applied to the taxable income of a taxpayer is ascertained in accordance with this section and the rateable income includes the whole or part of a net premium for or in connection with the grant of a lease the part only of the net premium which would be included in the rateable income for the purpose of ascertaining the rate of tax if section ninety-seven of this Act applied shall be included in the rateable income for the purpose of fixing the rate of tax in accordance with this section.

(5) This section shall not apply in any case—
(a) where the taxpayer is a company except where in respect of a premium or casual profit it is assessable as a trustee; or
(b) where the provisions of Division 18 of this Part are applied in the assessment of the taxpayer; or
(c) where the income is assessable under paragraph (b) of subsection one of section twenty-two of this Act; or
(d) where the proceeds of the sale are payable in each of three or more years of income.

(6) For the purposes of this section "casual profit" includes a net premium assessable under Division 4 of this Part, where that net premium is received for the assignment or surrender of a lease and the consideration for the lease is payable in not more than two years of income but does not include income assessable under section one hundred and thirteen of this Act.
112. (1) Any casual loss incurred by a taxpayer in the year of income or in any of the three years next preceding that year shall, to the extent to which it has not been allowed or is not allowable as a deduction in the assessments of the taxable income derived by the taxpayer in any year prior to the year of income, be an allowable deduction in arriving at the amount of casual profits to be included in the assessable income of the taxpayer.

(2) Where a deduction is allowable under paragraph (d) of subsection one of section one hundred and eight of this Act in respect of two or more casual losses they shall be taken into account in the order in which they were incurred.

(3) Where any loss incurred out of this State is an allowable deduction in arriving at the amount of casual profit to be included in the assessable income of a taxpayer, such loss shall be deducted successively from a casual profit derived out of the State and from a casual profit derived in this State.

(4) Nothing in this section shall apply with respect to any loss incurred out of this State by a taxpayer prior to the first year to the assessment of the income of which this Act applies or with respect to any loss incurred by a taxpayer from the sale of any property except to the extent to which the profit, if any, from the sale would, under section one hundred and five or section one hundred and six of this Act, have been included in his assessable income.

113. The assessable income of a taxpayer shall subject to subsection one of section twenty-one of this Act include—

(a) any amount derived by a shareholder in a company from the sale of rights to take up shares or debentures in a company;

(b) any consideration received at any time for the granting of an option to purchase or lease any property where the term of the option expires in the year of income and the option has not been exercised.

114.
Income Tax Management Act.

114. (1) Where a calculation of the amount of a casual profit or casual loss is based upon the consideration receivable and, for any reason, the whole or any part of that consideration is not received, the Commissioner may at any time amend the assessment on the basis of the consideration received.

(2) Where a property has reverted to the vendor the amount of casual profit or casual loss shall be recalculated and for that purpose the sale price shall be deemed to be an amount equal to the sum of all the amounts received by the vendor and the amount of the market value of the property on the date of the reversion.

(3) For the purpose of applying the provisions of this Division to any subsequent sale of property which has reverted to a vendor, such property shall be deemed to have been bought originally by him at that market value.

115. (1) Where a person has acquired property and assures it otherwise than by way of sale whether by delivery or otherwise to a person who sells it, the casual profit, if any, arising from the sale shall be included in the assessable income of the vendor if the casual profit from that sale would have been assessable income of the first-mentioned person under this Division had he continued to hold the property and made the sale.

The amount of casual profit shall be calculated in accordance with section one hundred and eight of this Act as if the vendor had acquired and held the property from the date of acquisition by the first-mentioned person until the date of sale.

(2) Where the trustee of the estate of a deceased person sells any property belonging to that estate, the casual profit, if any, arising from the sale shall be included in the assessable income of the trustee if the casual profit from that sale would have been assessable income of the deceased person under this Division had he lived and made the sale.

116. Where a person who has acquired real property assures it or causes it to be assured to a private company and he is at or about the date of the assurance substantially interested as a shareholder therein and he sells substantially the whole of his shares in that company the casual
casual profit, if any, arising from the sale shall be deemed to be assessable income of that person under section one hundred and five of this Act, if, had he continued to hold that real property and had he sold that real property at the time when he sold the shares, the casual profit on such sale of the real property would have been deemed to be assessable income of such person under section one hundred and five of this Act.

The amount of casual profit arising from that sale shall be calculated in accordance with this Division as if the real property had not been assured but had been sold by that person.

117. (1) Where there is an exchange of property, the value of the property at the time of the exchange shall be deemed to be the price paid or received for that property. Where consideration is given in addition to the property exchanged that consideration shall be added to the value of the property for the purpose of ascertaining the price paid or received.

(2) Where any property is acquired otherwise than by purchase or exchange the person so acquiring the property shall be deemed to have purchased the same, and the cost thereof to him shall be deemed to be the market value of the property on the day upon which the same was acquired, or, 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.

(3) Where any property is purchased in the exercise of an option of purchase any consideration paid or given to the vendor for the option shall be deemed to be part of the purchase price.

DIVISION 6.—Partnerships.

118. In this Division—

"Net income" in relation to a partnership means the assessable income of the partnership calculated as if the partnership were a taxpayer, less all allowable deductions except the concessional deductions, and losses of previous years.

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

119. A partnership shall furnish a return of the in­
come of the partnership, but shall not be liable to pay
tax thereon.

120. (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 in­
clude his individual interest in the exempt income of the
partnership of the year of income.

121. (1) Where a partnership is so constituted or
controlled, or its operations are so conducted that in the
opinion of the Commissioner any partner has not the real
and effective control and disposal of his proportionate
share in the income of the partnership, the proportionate
share of any such partner in the net income of the part­
ership of the year of income shall be deemed to have
been derived—

(a) where the partnership consists of two partners
—by the partner who has the real and effective
control of that share in the income of the part­nership; and

(b) where the partnership consists of more than
two partners—wholly by the partner who has,
or in such proportions as the Commissioner con­siders proper by the partners who have, the
real and effective control of that share in the
income of the partnership;

and shall be included in his or their assessable income.

(2) The proportionate share of any such part­
er in a partnership loss of the year of income shall be
deemed to have been incurred—

(a) where the partnership consists of two partners
—by the partner who has the real and effective
control of that share in the income of the part­nership; and

(b)
(b) where the partnership consists of more than two partners—wholly by the partner who has, or in such proportions as the Commissioner considers proper by the partners who have, the real and effective control of that share in the income of the partnership;

and shall be an allowable deduction in arriving at his or their taxable income.

122. (1) Where a taxpayer carries on business in partnership with a relative or relatives and whether or not any other person is a partner, the share in the income of the partnership of a relative who is a minor and unmarried, or is the spouse of the taxpayer, shall, for the purposes of this Act, and subject to the provisions of subsection three of this section, be added to and be deemed to be part of the share of the taxpayer.

(2) Any amount which has been paid to any such relative for services performed by him in the business and is, in the opinion of the Commissioner, just and reasonable shall be an allowable deduction in arriving at the net income of the partnership.

(3) Where any such relative has introduced capital into the partnership (not being capital derived directly or indirectly from or through the instrumentality of the taxpayer) and has been actively engaged in the production of the assessable income of the business during the major portion of the year of income, an amount ascertained in accordance with subsection four of this section shall, if such relative has the real and effective control of that amount, be included in the assessable income of such relative and shall not be added to the share of the taxpayer.

(4) The amount referred to in subsection three of this section shall be such part of the sum of the shares of the taxpayer and of such relative in the income of the partnership as bears to that sum the same proportion as the amount of capital introduced into the partnership by such relative (not being capital derived directly or indirectly from or through the instrumentality of the taxpayer) bears to the total amount of capital introduced into the partnership by the taxpayer and such relative.
123. In this Division "the net income of a trust estate" means the total assessable income of the trust estate calculated under this Act as if the trustee were a taxpayer in respect of that income, less all allowable deductions—

(a) except the concessional deductions; and

(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.

124. 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.

125. (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, subject to subsection one of section twenty-one of this Act, include that share of the net income of the trust estate.

(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.

126. 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.

127. (1) Where the whole or any part of the net income of a trust estate is not liable to be included in the assessable income of any beneficiary under this Division, the trustee shall, subject to section one hundred and thirty-one of this Act, be assessed and liable to pay tax on the net income of the trust estate, or on that part of
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.

(2) Where the net income or a part of the net income of a deceased estate which is assessable to a trustee under subsection one of this section includes income upon which a presumptive beneficiary, being a living person, would be assessed if he were presently entitled to his share of that income the trustee shall be separately assessed in respect of that share as if it were the income of an individual and were not subject to any deductions. The amount of tax assessed to a trustee under this subsection shall not be less than the amount which would be payable on that share of the income by the presumptive beneficiary if he were presently entitled to that share.

128. (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.

129. For the purpose 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.

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

(2) Where, in the opinion of the Commissioner, that amount includes an amount which accrued due to the deceased person prior to the year of income and the tax
tax payable under this section exceeds the tax which would have been payable if the income had been received on its due date he shall make such adjustment as is just.

131. (1) Where either before or after the commence­ment of this Act 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 trust 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 net income of the trust estate, or part thereof attributable to that beneficial interest, as the case may be, shall, if the Commissioner so determines, be deemed to be income of that person, if living.

(2) Where by virtue or in consequence of any disposition made, directly or indirectly, by any person, either before or after the commencement of this Act, any income is payable to or accumulated, or applicable for the benefit of a child of that person, such income shall, if and so long as the child is a minor and unmarried, be deemed for the purposes of this Act to be the income of the person, if living, by whom the disposition was made.

(3) Any income tax which by virtue of this section is chargeable on and is paid by the person creating the trust or by the person by whom the disposi­tion was made, may be recovered by that person from any trustee or other person to whom the income is payable by virtue or in consequence of the creation of the trust or of the disposition.

(4) For the purposes of this section—
(a) the expression “child” includes a step-child or adopted child; and
(b) the expression “disposition” includes any trust, covenant, agreement, or arrangement.

132. (1) Where under the terms of an agreement in writing a taxpayer carrying on a business has under­taken to pay part of the proceeds of his business to the trustees of a fund out of which payments may be made by the trustees to persons carrying on a similar business who are engaged in war service as defined in the Defence Act 1903, as amended by subsequent Acts, of the Par­liament of the Commonwealth, during the present war between His Majesty and Germany and her Allies, the provisions of this section shall apply.

(2)
An amount equal to the part of the assessable income of the taxpayer for the year of income which under such agreement is paid to the trustees shall be deemed not to be income of the taxpayer.

The assessable income of any such person for the year of income shall include such amounts as are paid in the year of income to such person by the trustees in pursuance of the agreement.

The trustees shall not, except as provided in this subsection, be liable to be assessed and taxed in respect of any amounts received by them as payments into the fund during the currency of the present war between His Majesty and Germany and her allies.

Where, at the close of the year of income within which is published the declaration of peace in the present war, any amount is held by the trustees as part of the fund, such amount shall be deemed to be the net income of that year of income of a trust estate to which no person is presently entitled.

Division 8.—Assessment of income of husband and wife.

133. In this Division—

"Post-nuptial settlement" includes any conveyance, delivery or transfer of property, but does not include a post-nuptial settlement in writing made in pursuance of a written ante-nuptial agreement for such settlement entered into by the husband and the wife in consideration of the marriage.

"The income derived from a post-nuptial settlement" includes the income from property substituted for the property settled or being a conversion thereof.

134. Where the net assessable income derived by a taxpayer under a post-nuptial settlement made by his or her spouse after the thirteenth day of September, one thousand nine hundred and fifteen, exceeds one hundred pounds that income shall, subject to section one hundred and thirty-six of this Act, be deemed to be assessable income of the settlor.

135.
135. Where a private company—
(a) in which a taxpayer is a substantial shareholder; or
(b) in which the spouse of a taxpayer is a substantial shareholder by virtue of shares comprised in a post-nuptial settlement made by the taxpayer after the thirteenth day of September, one thousand nine hundred and fifteen,
pays or credits to the spouse of that taxpayer any sum as a bonus, fee, salary, commission or allowance in excess of what the Commissioner decides is a reasonable amount, the excess shall, subject to section one hundred and thirty-six of this Act, be deemed to be assessable income of the taxpayer.

136. Where the taxpayer establishes to the satisfaction of the Commissioner that the post-nuptial settlement referred to in section one hundred and thirty-four of this Act or the payment referred to in section one hundred and thirty-five of this Act was not made directly or indirectly or wholly or in part with a view to avoiding or evading liability to tax under this Act or any other Act imposing a tax upon income on the part of the spouse or the taxpayer as the case may be the provisions of those sections shall not apply.

137. (1) Where section one hundred and thirty-four of this Act applies, the Commissioner may recover from the taxpayer in receipt of the income referred to in that section a sum which bears to the total tax payable by the settlor referred to in the said section the same proportion as that income bears to the total income included in the assessment of the settlor.

(2) Where section one hundred and thirty-five of this Act applies, the Commissioner may recover from the spouse in receipt of the excess payments referred to in that section a sum which bears to the total tax payable by the taxpayer referred to in the said section the same proportion as that excess bears to the total income included in the assessment of the taxpayer.

(3) This section shall apply only where the Commissioner is of opinion that it is impracticable to recover from the spouse or the taxpayer, as the case may be, the tax assessed.
138. Where a company, which is a resident, has not before the expiration of six months after the close of the year of income distributed as dividends at least fifty per centum of its taxable income of that year further tax at such rate as may be fixed by any Act shall be levied and paid to the Commissioner on such part of the taxable income as is ascertained in accordance with section one hundred and thirty-nine of this Act.

139. (1) For the purpose of the further tax imposed on a part of the taxable income of a company under this Division that part shall be ascertained by deducting from that taxable income of the company—

(a) an amount equal to fifty per centum of that taxable income; and

(b) the amount of dividends paid out of that taxable income before the expiration of six months after the close of the year of income.

(2) Where the annual accounting period of any such company adopted for the purpose of the presentation of its profit and loss account to its shareholders differs from the year of income of that company for the purposes of this Act, the Commissioner may, for the purpose of ascertaining the amounts to be deducted from the taxable income of the company in accordance with paragraph (b) of subsection one of this section (but not for the purpose of ascertaining the taxable income) treat that annual accounting period as being identical with the year of income which, in his opinion, is most appropriate.

(3) Where dividends are paid either wholly or in part out of the net profits of a company of the year of income and those profits are partly liable to and partly exempt from income tax under this Act the amount of dividends paid out of the taxable income of that year shall, for the purposes of this Division, be deemed to be the amount which bears the same proportion to the total amount of dividends paid out of those profits as that portion of the net profits of the year of income which is liable to income tax under this Act bears to the total net profits of the company of the year of income.
140. The Commissioner shall make an assessment of that part of the taxable income of a company upon which further tax shall be levied and paid under this Division, and of the further tax payable thereon.

DIVISION 10.—Private Companies.

141. (1) In this Act, unless the contrary intention appears—

"Distributable income" means the amount obtained—

(1) by deducting from the taxable income of a company—

(a) the amount of tax (other than private company tax) payable under this Act in respect of the taxable income of the company for the year of income; and

(b) a proportionate part of—

(i) any tax (except private company tax or a tax payable by a private company under any enactment of the Commonwealth or of any place out of this State which tax is, in the opinion of the Commissioner, reasonably comparable in its nature to private company tax) payable in respect of the income of the company for the year of income;

(ii) any expenditure incurred by the company in the course of gaining or producing any income or profit derived during the year of income, not being expenditure of capital or of a capital, private or domestic nature, and not being expenditure which is an allowable deduction, or, where the income or profit
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profit is not included in the assessable income, which would have been an allowable deduction if that income or profit had been assessable income;

(iii) the amount necessary to restore unrecouped losses of paid up capital;

(iv) any net loss (except to the extent to which it is a loss of capital or of a capital nature, or to the extent to which it is an allowable deduction in arriving at the taxable income) incurred by the company in the year of income in carrying on its business out of this State;

(v) any deduction allowed under section one hundred and forty-five of this Act;

arrived at by distributing that tax or expenditure or amount or loss or deduction, as the case may be, proportionately between the net assessable income and any net exempt income and any exempt profit derived by the company during the year of income; and

(2) by adding to the taxable income any amount which is an allowable deduction in arriving at that taxable income and which would be allowed as a deduction in arriving at the distributable income of any previous year whether under this or the previous Act.

"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
"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.

"Private company tax" means the tax imposed on a private company under this Division.

"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 falls 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—

(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 not to have made a sufficient distribution of its income of the year of income unless, before the expiration of six months after the close of that year, it has paid in dividends, out of the taxable income of that year—

(i) where the whole of its income is derived from investments—the whole of its distributable income;

(ii) where no part of the income is derived from investments—two-thirds of its distributable income;

(iii) where the income is derived partly from investments and partly otherwise than from investments—the whole of its distributable income from investments, together with two-thirds of the remainder;

(f) where dividends are paid either wholly or in part out of the net profits of a company of the year of income and those profits are partly liable to and partly exempt from income tax under this Act the amount of dividends paid out of the taxable income of that year shall be deemed to be the amount which bears the same proportion to the total amount of dividends paid out of those profits as that portion of the net profits of the year of income which is liable to income tax under this Act bears to the total net profits of the company of the year of income;

(g) where, under section one hundred and thirty-one of this Act, a dividend if received by a shareholder of a private company would or may be deemed to be income of some other person such other person, in lieu of the shareholder, shall be deemed to be the shareholder.

142. (1) Where a private company has not, before the expiration of six 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
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 as private company tax 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 six 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.

(3) Any tax paid by the company under Division 9 of this Part shall be deducted from the amount otherwise payable under this Division.

(4) The Commissioner may apply the preceding provisions of this section where an order has been made or a resolution passed for the winding up of a private company, and the order was made or the resolution was passed during the year of income or before the expiration of six months after the close of the year of income, and the company has not before the date of the order or resolution made a sufficient distribution of its income of that year or of its income for that portion of the year of income ending on the date of the order or resolution.

(5) Any tax payable under this section shall be assessed to the company not later than three years after the date upon which the tax assessed to the company under its ordinary assessment for the year of income became due and payable.

(6) In any case where it is shown to the satisfaction of the Commissioner that a company is in such circumstances that the exaction of the additional amount of tax under this section would entail serious hardship he may determine that an assessment of that tax shall not issue.

143. (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
144. (1) Where the total amount of dividends paid by a private company out of its taxable income of the 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 private company tax, or tax under section thirty-one of the Income Tax (Management) Act, 1928, or under Division 9 of the previous 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.

145. (1) Where the Commissioner is satisfied that it was necessary for a company to retain profit of the year of income to meet losses which, at the expiration of six months after the close of that year, appeared certain to
to arise, he may make such allowance from the distribut­ able income of that year as he considers just having regard to the total profit of the company for the year of income and to the undistributed profits of the company.

(2) Subsection one of this section shall not apply where an election under subsection three of this section is in force.

(3) Where a company carrying on an agricul­ tural or pastoral pursuit elects within the time and in the manner prescribed that subsection one of this section shall not apply in respect of the income from such pur­ suit, the company shall in lieu of any allowance under that subsection be allowed an amount equal to fifteen per centum of the taxable income derived by the company from the carrying on of the agricultural or pastoral pursuit.

Where a company makes an election under this sub­ section that election shall continue to apply for sub­ sequent years unless and until altered with the leave of the Commissioner, and where it is so altered a further election under this section may be made only with the leave of the Commissioner.

146. The following provisions shall apply for the purpose of assessing the aggregate additional amount of tax which would have been payable by the shareholders—

(a) in the case of a company with a small paid-up capital if the Commissioner is of opinion that the company is so constituted or controlled that the shareholders holding a majority of the shares have not the real and effective control of the company, the private company tax payable by the company upon the undistributed amount shall be assessed as if the shareholders would have been liable to tax upon that amount at a rate of tax equal to that fixed for every pound of taxable income from property in ex­ cess of the sum of five thousand two hundred and fifty pounds;

(b) where the Commissioner is unable to ascertain the identity of the shareholders of a company, or
or the amounts which they would have received, he may assess the aggregate additional amount of tax payable by that company upon the undistributed amount as if that company had one shareholder only and the company shall be liable to pay as private company tax the tax so assessed.

147. (1) The assessable income of a shareholder shall not include dividends paid wholly and exclusively out of income upon which tax has been assessed and paid under this Division or under Division 9 of Part III of the previous Act or under section thirty-one of the Income Tax (Management) Act, 1928.

Distributions to shareholders in the course of the winding-up of a private company which pursuant to section fifty-five of this Act are deemed to be dividends shall, to the extent to which they are made out of income upon which tax has been so assessed and paid, be deemed to be dividends paid wholly and exclusively out of that income.

(2) In respect of dividends so paid after the commencement of this Act any tax so assessed and paid and any tax payable by a private company under any enactment of the Commonwealth which tax is, in the opinion of the Commissioner, reasonably comparable in its nature to private company tax shall be deducted in ascertaining the amount of income out of which dividends may be so paid.

148. (1) If any amount is advanced or any asset is distributed by a private company to any shareholder of the company by way of advance or loan or any payment is made by the company on behalf of, or for the individual benefit of, any shareholder of the company, so much, if any, of the advance loan or payment as in the opinion of the Commissioner represents a distribution of income shall for all purposes of this Act be deemed to be a dividend paid by the company to the shareholder.

(2) Where the amount of any advance, loan or payment is deemed, under subsection one of this section, to be a dividend paid by a company to a shareholder, 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
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.

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

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

(b) an allowance, gratuity or compensation in consequence of the retirement of that person from any office or employment held by him in that company or upon the termination of any such office or employment,
as exceeds an amount which, in the opinion of the Commissioner, is reasonable, shall not be an allowable deduction and the excess shall, for all the 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 11.—Banks.

150. (1) In this Division—

"Average value" in relation to any assets in or out of Australia means the average value of those assets for the year of income ascertained in the manner provided by section 60A of the Commonwealth Bank Act 1911-1932 as in force at the commencement of this Act for the preparation of the quarterly abstracts furnished by banks in accordance with that section:

Provided that nothing herein shall be held to bind the Commissioner as to the value of any asset at any time if in his opinion, formed before or after assessment, this State is prejudicially affected by the value adopted for such asset.

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

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

"Gross income from all sources" means the gross income derived from sources in and out of this State, including the profit, if any, derived from the sale, conversion or redemption of Government or other securities; but does not include discount derived from and upon the issue of Commonwealth Treasury Bills or interest derived from exempt assets, and save as aforesaid, does not include any profit assessable under Division 5 of this Part or which would be assessable under that Division if derived from a source in this State.

"Non-exempt assets" means assets other than exempt assets.

"Sale of a security" includes a sale after a foreclosure.

(2) For the purposes of this Division—

(a) interest accrued at the date of the sale of an exempt asset shall be deemed to be income derived by the vendor, and shall not be taken into account in determining the profit or loss upon the sale of the asset;

(b) interest paid or payable by a bank upon money invested in the purchase of a security shall not be taken into account in determining the profit or less upon the sale, redemption or conversion of the security;

(c) the value of any asset wherever situate and any amount involved in any calculation shall, subject to section one hundred and fifty-four of this Act, be expressed in terms of Australian currency, and for this purpose the rates of exchange to be used shall be respectively the rates at which exchange could have been effected by telegraphic transfer at the dates at which the asset is to be valued or at which the amount is to be ascertained;

(d) underwriting commission or brokerage on the issue of so much of a loan underwritten by a bank
bank as is taken up by it pursuant to an underwriting agreement shall be deemed to be a reduction of the cost of the loan so taken up;

(e) underwriting commission or brokerage on the issue of so much of a loan underwritten by a bank as is not so taken up by it shall be deemed to be income of the year in which the loan is issued.

151. (1) The net income of a bank from all sources shall be its gross income from all sources less the deductions allowable under subsection two of this section.

(2) The deductions so allowable from the gross income from all sources shall be—

(a) the deductions which would be allowable deductions if the gross income from all sources were derived from a source in this State, except—

(i) interest paid or payable; and

(ii) the deductions provided under section eighty-two and subsection two of section eighty-seven of this Act;

(b) the sum which bears to the total interest payable by the bank for the year of income the same proportion as the average value over that year of its non-exempt assets bears to the average value over that year of its total assets;

(c) where the gross income from all sources includes a profit arising from the sale, conversion or redemption of exempt assets, the sum which bears to the total amount of interest payable by the bank for the year of income the same proportion as the average value over that year of such exempt assets sold, converted or redeemed bears to the average value over that year of its total assets not exceeding the amount of the profit so included;

(d) any loss arising from the sale, conversion or redemption of Government or other securities.

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

152.
152. (1) The assessable income of a bank shall, subject to subsection one of section twenty-one of this Act, include the net income of the bank from all sources. So much of that net income as bears to that net income the same proportion as the average value over the year of income of its non-exempt assets in this State bears to the average value over that year of its non-exempt assets in and out of this State shall be deemed to be net income derived from a source in this State and the remainder shall be deemed to be net income derived from a source out of this State.

(2) Any amount which is included in the gross income from all sources of a bank shall not, except to the extent provided in this Division, be included in the assessable income of the bank, and any deduction which is taken into account in ascertaining the net income from all sources of the bank shall not, except to the extent so provided, be an allowable deduction.

(3) From the amount included under this section in the assessable income of a bank there shall be deducted any amounts which are allowable deductions under section eighty-two and subsection two of section eighty-seven of this Act.

153. (1) Sections one hundred and fifty-one and one hundred and fifty-two of this Act shall not apply in any case where—

(a) a bank has elected in the prescribed manner that those sections shall not apply with respect to the assessment of its income; and

(b) the Commissioner is satisfied that the laws of three States other than this State enable a similar election to be made, and is further satisfied that in all the other States of Australia in which the bank derives income and the laws of which enable a similar election to be made, the bank has made that election.

(2) Subject to subsection four of this section an election made under subsection one of this section within the period of six months after the end of a year of income shall apply to that year of income and subsequent years, and an election made after such period shall apply to the year of income in which it is made and subsequent years.
With respect to the years of income to which sections one hundred and fifty-one and one hundred and fifty-two do not apply by reason of an election as aforesaid and the Commissioner being satisfied as aforesaid the following provisions shall apply—

(a) the allowable deduction from the income derived in a State or in any country in respect of interest payable by a bank for the year of income shall be the sum which bears to the total interest payable by the bank for the year of income the same proportion as the average value over that year of its non-exempt assets in that State or country bears to the average value over that year of its total assets;

(b) notwithstanding section fifty-nine of this Act the expenditure (other than interest) incurred in relation to the gaining or production of income derived from exempt assets shall be an allowable deduction;

(c) for the purpose of determining the deduction for head office expenses the expression "total income" in section sixty of this Act shall not include income derived from exempt assets;

(d) outgoings incurred in this State in relation to funds employed out of this State shall be an allowable deduction and outgoings incurred out of this State in relation to funds employed in this State shall not be an allowable deduction from income derived in this State. For the purposes of this paragraph "outgoings" does not include interest or head office expenses.

Except with the previous written consent of the Commissioner, a bank shall not withdraw an election made under subsection one of this section.

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

(3) The conversion of such funds at the end of the year of income shall be made—

(a) in respect of so much of those funds as does not exceed the amount of the funds at the beginning of the year of income—at the rate or respective rates applied at that date pursuant to subsection two of this section; and

(b) in respect of the balance, if any—at the rate or respective rates arrived at by averaging separately the value of the whole of the funds of each country out of Australia acquired during the year of income according to the respective rates at which exchange could have been effected by telegraphic transfer at the respective dates of acquisition of such funds.

(4) In respect of transactions in exchange by a bank to which the preceding provisions of this section apply and which elects in the prescribed manner to come under this subsection the order in which any funds of the bank in a country out of Australia shall be deemed to have been disposed of shall be the order arrived at by treating funds in such country acquired as such in any year of income as having been disposed of before funds in such country acquired as such in an earlier year of income.

155. Any election made by a bank under Division 11 of Part III of the previous Act shall be deemed to have been made under this Division.

DIVISION 12.—Life assurance companies.

156. In this Division—

"Apportionable expenditure" means the amount remaining after deducting from a sum which would be equivalent to the total of the allowable deductions of a company if the premiums received in respect of policies of life assurance and considerations received in respect of annuities
annuities granted and exempt interest and interest on overdue premiums and dividends were assessable income, the following amounts:—

(a) the amount of expenditure exclusively incurred by a company in gaining or producing premiums received in respect of policies of life assurance;
(b) the amount of expenditure exclusively incurred by a company in gaining or producing considerations received in respect of annuities granted;
(c) the amount of expenditure exclusively incurred by a company in gaining or producing the gross assessable income from life assurance business; and
(d) the amount incurred as management expenses.

"Company" means a company to which this Division applies.

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

"Gross assessable income from life assurance business" means income derived from sources in and out of this State by the life assurance business of a company being interest, rents and other income from property (except exempt interest, interest on overdue premiums, dividends, and any casual profit), underwriting commission, profit on the purchase and sale or realisation of any reversionary interest under a will or other instrument of trust, profit arising from the sale or compulsory resumption of any property acquired for the purpose of profit making by sale or from the carrying on or carrying out of any profit making undertaking or scheme.

"Management
"Management expenses" means:

(a) fees and salaries of directors;
(b) travelling expenses of executive officers;
(c) audit fees;
(d) actuarial fees;
(e) license fees;
(f) rent paid for premises;
(g) sums paid for rates and for State or Federal Land Tax charged or levied in respect of property held for the purpose of gaining or producing assessable income; and
(h) deductions allowable under section seventy-five and section eighty-seven of this Act.

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

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

159. (1) Expenditure exclusively incurred by a company in gaining or producing those premiums or considerations shall not be an allowable deduction.

(2) Expenditure exclusively incurred by a company in gaining or producing the gross assessable income from life assurance business shall be an allowable deduction.

(3) Management expenses shall be an allowable deduction.

(4) So much of the apportionable expenditure of a company as bears to that expenditure the same proportion as the gross assessable income from life assurance business of the company bears to the sum of that gross assessable income and the premiums and considerations referred to in section one hundred and fifty-eight of this Act shall be an allowable deduction.
(1) The net income from all sources of a company shall be its gross assessable income from life assurance business less—

(a) the allowable deductions referred to in subsections two, three and four of section one hundred and fifty-nine of this Act;

(b) the amount which would be an allowable deduction in respect of depreciation of property used by the company for the purposes of its life assurance business if that business were wholly carried on in this State; and

(c) any deduction allowable under section one hundred or section one hundred and one of this Act.

(2) The net income from Australian sources of a company shall be so much of the net income from all sources of the company as bears to the net income from all sources the same proportion as the liabilities of the company under life assurance policies held by Australian policy holders bears to the liabilities of the company under all life assurance policies of the company.

(3) Any amount which is included in the gross assessable income from life assurance business of the company...
company or which is exempt interest or interest on overdue premiums or dividends shall not, except to the extent provided in this Division, be included in the assessable income of the company and any deduction which is taken into account in ascertaining the net income from all sources of the company shall not except to the extent so provided be an allowable deduction.

162. When the liabilities of a company under policies of life assurance in force at the end of the year of income after deducting from the amount of those liabilities the sum of all bonuses to holders of such policies declared by the company during the year of income and all previous years exceed the value at that date of the assets of the company applicable to its life assurance business, the company shall not be liable to pay income tax in respect of the income derived in the year of income from that business.

DIVISION 13.—Co-operative and mutual companies.

163. The assessable income of a co-operative company shall include all sums received by it from shareholders 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.

164. The assessable income of a mutual insurance company shall include all sums received by it from shareholders in payment of premiums of insurance against loss, damage or risk of any kind other than premiums received in respect of policies of life assurance or considerations received in respect of annuities granted.

165. The assessable income of a mutual building or investment company shall include all sums received by it from shareholders in payment of interest or other charges on loans made to the shareholders.

166. (1) So much of the assessable income of a co-operative company for any year of income as is before the expiration of nine months after the close of that year distributed among its shareholders as rebates or

\[ \text{Income Tax Management Act.} \]
(2) The assessable income of any such shareholder shall not include any such rebate or bonus which is based on any sum paid by him to the company for any of the purposes referred to in the preceding provisions of this Division except to the extent to which such sum is an allowable deduction in ascertaining his taxable income of any year.

(3) Where any rebate or bonus referred to in subsection one of this section is based on sales made by the company to its shareholders and the company makes sales to persons other than shareholders only so much of the total amount distributed as rebates or bonuses as bears to the total amount so distributed the same proportion as the amount of the sales to the shareholders bears to the total amount of the sales by the company shall be an allowable deduction.

167. The part of any sum payable by a co-operative company to its shareholders based on transactions with such company which is, in effect, offset by contributions levied on the shareholders shall not be an allowable deduction.

Any such part disallowed to the company shall not be included in the assessable income of its shareholders.

168. No deduction shall in any case be allowed in respect of the amount distributed by a co-operative company, a mutual insurance company or a mutual building or investment company among its shareholders as interest in respect of or as dividends on shares:

Provided that if, in the year of income, in the ordinary course of business of a society registered under the Co-operation Act, 1923-1941, the value of commodities and animals disposed of to its shareholders by the society is not less than ninety per centum of the total value of commodities and animals disposed of by the society, so much of the assessable income of the society as is distributed among its shareholders as interest or dividends on shares shall be an allowable deduction.
DIVISION 14.—Interest and dividends paid by companies.

169. (1) Where—

(a) interest is paid or credited by a company to any person who is a non-resident—

(i) on money secured by debentures of the company and used in this State, or used in acquiring assets for use or disposal in this State; or

(ii) on money lodged at interest in this State with the company; or

(b) a dividend is paid by a company to any person who is a non-resident out of profits derived by it from sources in this State,

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 that interest or dividend at such rates as may be fixed by any Act.

(2) The company may deduct and retain out of any moneys for the time being due or payable to that person or for the time being in its hands belonging to that person, so much as is necessary to pay the tax.

(3) Where a company establishes, to the satisfaction of the Commissioner, that a person resident out of Australia 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 any interest or dividend paid or credited to a company which is carrying on business in this State and which has a public officer duly appointed under this Act, unless the Commissioner, by notice in writing to the company paying or crediting the interest or dividend, directs that the section shall so apply.

(5) Where a company derives income from sources in this State, and from sources out of this State, a dividend shall be deemed to be paid out of profits derived by the company from sources in this State to the extent of so much of the dividend as bears to the whole...
whole dividend the same proportion as the profits derived by the company from sources in this State bear to the total profits of the company.

170. (1) Where interest is paid or credited by a company on bearer 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 such rate as may be fixed by any Act.

(2) The company may deduct and retain from the amount payable to any person who is a holder of any of those debentures so much as is necessary to pay the tax upon the interest paid or credited to that person.

(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.

171. (1) Where the company pays tax under this Division in respect of interest or dividend and that interest or dividend is included in the assessment of the person to whom it was paid or credited the amount of tax paid by the company in respect of the interest or dividend shall be deducted from the total tax payable by that person.

(2) Where that person is a resident of Australia and is not liable to pay income tax, or the tax paid by the company exceeds the amount of tax payable by that person, the amount of tax paid by the company or, as the case may be, the amount of the excess, shall be refunded to that person.

172. Where in any year of income any interest or dividend 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 or dividend to the extent to which it would have been so liable if an assessment had been made in respect of that interest or dividend at the date when it was paid.

173. This Division shall not apply in respect of any interest or dividend paid prior to the commencement of this Act except to the extent to which tax was payable under
under section one hundred and sixty-eight of the previous Act or to the extent to which under section thirteen of the Unemployment Relief Tax (Management) Act, 1939-1941, or under section thirteen of the Social Services Tax (Management) Act, 1939-1941, a company was liable to deduct and retain an amount sufficient to pay tax under those Acts.

174. (1) Where a company deducts and retains an amount to meet the tax payable under this Division in respect of any interest or dividend the company shall forward such amount to the Commissioner with the prescribed return within such time as may be prescribed:

Provided that where the company has previously paid to the Commissioner the amount of tax payable upon such interest or dividend the company may retain such amount for its own use.

(2) Where a company fails to forward to the Commissioner within the prescribed time any amount which it is required to forward by subsection one of this section it shall be liable to pay as additional tax an amount equal to ten per centum of the amount which it has failed to forward. The Commissioner may in any case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(3) Where a company does not deduct and retain tax on the total amount of interest and dividends in respect of which it is liable to pay tax under section one hundred and sixty-nine of this Act, the company shall furnish to the Commissioner in the prescribed return within such time as may be prescribed, such particulars as he may require of interest and dividends paid by the company to non-residents.

175. A person from the interest or dividend payable to whom an amount has been deducted and retained by a company in accordance with this Division shall not be entitled to make any claim against the company in respect of that amount and to the extent of its liability to tax under this Division on any interest or dividend paid or credited the company shall be completely acquitted and discharged from all liability to that person in respect of that interest or dividend.
DIVISION 15.—Oversea ships.

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

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

178. 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.

179. 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.

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

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

181. 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.

182. Subject to any law of the Commonwealth, a collector or officer of customs in this State shall have power to withhold 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.
DIVISION 16.—Businesses with a foreign relationship.

183. (1) In this Division—

"Business of the foreign taxpayer" means a business carried on out of this State by a foreign taxpayer and where that taxpayer is a company includes the business carried on by every associated, subsidiary and parent company.

"Business with a foreign relationship" means a business carried on in this State which—

(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.

"Foreign taxpayer" means the non-resident persons or any one or more of the non-resident persons controlling a business with a foreign relationship or holding (either directly or by means of the interposition of any other company) a majority of the shares in a company carrying on a business with a foreign relationship.

(2) For the purposes of this Division shares held by or in the names of persons who are relatives may be treated by the Commissioner as if they were held by any one of such persons.

184. Where a business carried on in this State is a business with a foreign relationship and—

(a) the person carrying on that business pays or credits, or agrees to pay or credit, to a foreign taxpayer any amount which is an allowable deduction to the person so carrying on that business and which, in the opinion of the Commissioner, is in excess of a reasonable amount; or

(b) the person carrying on that business receives or is entitled to receive from a foreign taxpayer any amount which is assessable income to the person so carrying on that business and which in the opinion of the Commissioner is less than a reasonable amount;
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that person shall, notwithstanding any other provision of this Act, be liable to pay tax on a taxable income of such amount of the total proceeds of the business as the Commissioner determines. If in his opinion, upon information subsequently obtained, the circumstances so warrant, the Commissioner may vary such amount either by way of increase or reduction, and amend the assessment accordingly.

185. Where an objection is lodged against, or application is made for review of, an assessment under section one hundred and eighty-four of this Act and such information as is necessary to permit of a determination being made in accordance with this section is furnished to the Commissioner the reasonable amount referred to in paragraphs (a) and (b) of the said section shall in respect of the matters dealt with in this section be determined as follows:—

(a) In respect of interest paid or credited to a foreign taxpayer the reasonable amount shall not exceed the sum which would be an allowable deduction in respect of interest paid or credited in the production of assessable income if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer.

(b) In respect of the cost of goods acquired from a foreign taxpayer the reasonable amount shall not exceed the sum which would reduce the profit derived in this State from the sale of the goods to an amount less than the sum which in accordance with Subdivision C of Division 2 of this Part would be deemed to be income derived in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business selling goods in this State. Where this paragraph is resorted to, any rebates of tax allowable under the said Subdivision C under similar circumstances shall be allowed under this Division, notwithstanding that the income tax in the country of production or manufacture may have been paid by the foreign taxpayer.

(c)
(e) In respect of any amount (other than the amounts specified in paragraphs (a) and (b) of this section) paid or credited to a foreign taxpayer, the reasonable amount shall not exceed the sum which would be an allowable deduction if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer. The allowable deduction ascertained in accordance with this paragraph may be increased by such amount as in the opinion of the Commissioner would be equivalent to the profit which would be attributable to any operations of manufacture or production carried on out of this State.

(d) In respect of the sale price of goods sold to a foreign taxpayer the reasonable amount shall not be less than the sum which would reduce the profit derived in this State from the sale of the goods to an amount less than the sum which, in accordance with Subdivision C of Division 2 of this Part, would be deemed to be income derived in this State if the business of the foreign taxpayer and the business with a foreign relationship were one business carried on by the foreign taxpayer, and the goods were sold to a person not interested directly or indirectly in the business of the foreign taxpayer.

186. Where a foreign taxpayer as defined in section one hundred and eighty-three of this Act is a company, every associated or subsidiary company of that company shall for the purposes of this Division be deemed to be a foreign taxpayer.

DIVISION 17.—Insurance with non-residents of Australia.

187. 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.

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“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 not being a resident of Australia who undertakes liability under an insurance contract.

188. (1) Where an insured person, whether a resident or not, 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 this State or the insured event is one which can happen only in this State, the premium paid or payable under the contract shall be included in the assessable income of the insurer and shall be deemed to be derived by him from sources in this State, and, unless the contract was made by a principal office or branch established by the insurer in this State, this Division shall apply to that premium.

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

189. (1) Subject to this section 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.

(2) Where an insurer elects within the time and in the manner prescribed that subsection one of this section shall not apply and where the actual profit or loss derived or made by the insurer in respect of such premiums
premiums is established to the satisfaction of the Com-
mmissioner, 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.

(3) Where an insurer makes an election under
subsection two of this section that election shall continue
to apply to assessments for subsequent years unless and
until altered with the leave of the Commissioner.

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

191. 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.

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

193. 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 year
of income 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.
194. Notwithstanding anything contained in this Act, where a person carrying on the business of insurance in this State reinsures the whole or part of any risk with another person carrying on a similar business, but not in Australia—

(a) the premiums paid or credited in respect of any such reinsurance shall not be—

(i) an allowable deduction to the person carrying on the business of insurance in this State; or

(ii) included in the assessable income of the person carrying on the business of insurance out of Australia; and

(b) the income of the person carrying on the business of insurance in this State shall not include sums recovered from the person carrying on business out of Australia in respect of a loss on any risk so reinsured.

DIVISION 18.—Averaging of incomes of primary producers.

195. (1) In this Division—

“Primary producer” means a person who carries on a business of primary production in this State but does not include a person whose sole business of primary production consists of the buying and selling of live stock.

(2) For the purposes of this Division a beneficiary who is presently entitled to a share of the income of a trust estate and who has a beneficial interest in the corpus of that estate shall to the extent of such share be deemed to be carrying on the business carried on by the trustees of the estate which produces that income.

196. The rate of tax payable by a primary producer to whom this Division applies shall be the rate fixed by any Act.

197. In this Division “average income” of a primary producer means the average of his rateable incomes of the years (in this Division called “average years”) beginning with the first average year and ending with the year of income.
198. 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.

The rateable income of any such year shall be ascertained in accordance with this Act.

199. 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 there is no taxable income or the taxable income is less than that of the next succeeding year. No year prior to that first average year shall in any calculation of the rate of tax be capable of being an average year.

200. If in any year whether under this or the previous Act the taxpayer was not 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.

201. Any year in which the taxpayer was a primary producer but had no taxable income shall be capable of being an average year.

202. (1) Except as provided in this section any excess of allowable deductions over the assessable income of a primary producer in any average year shall not be taken into account in calculating the average income.

(2) A loss incurred in a first average year shall be taken into account in calculating the average income.

(3) In this section “loss” means a loss within the meaning of section eighty-nine of this Act to the extent to which it has not been deducted in accordance with the provisions of that section.

203. This Division shall not apply—

(a) in any case where there are not at least two average years; or

(b)
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(b) to the taxable income of a company except income in respect of which it is assessable as a trustee; or

e) to the income of a taxpayer in any year in which he is not a primary producer.

DIVISION 19.—Rebates of tax on income.

204. Where a resident derives income from a source out of this State and any tax other than tax imposed by the Parliament of the Commonwealth is paid by him out of this State and within the British Empire on that income he shall be entitled to a rebate in his assessment of an amount equal either to the tax (not being tax imposed by the Parliament of the Commonwealth) so paid or to the tax payable under this Act on that income, whichever is the less.

205. Where under this Act the allowance of any rebate in an assessment in respect of any income is dependent upon the amount of tax paid out of this State on that income and at the time of making such assessment tax has not been so paid, the Commissioner, if he is satisfied that tax will be paid out of this State on that income, may allow a rebate of such amount as he is satisfied will be paid. If in his opinion, upon information subsequently received by him the circumstances so warrant, the Commissioner may, subject to section two hundred and sixteen of this Act, vary the amount of such rebate either by way of increase or reduction, and amend the assessment accordingly.

PART IV.

RETURNS AND ASSESSMENTS.

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

Provided
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 this State or is unable from physical or mental infirmity to make such return, the return may be signed and delivered by some person duly authorised.

207. (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.

208. 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.

209. The Commissioner may, from time to time, by notice published in the Gazette, require every employer to furnish a return setting out such information as may be required relating to numbers, groups and earnings of employees, amounts of tax collected from employees or such similar matters as may be prescribed.

210. 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.

211. (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.
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(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.

212. 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.

213. 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; or

(d) the Commissioner has reason to believe that any person is about to leave this State; or

(e) any person who is resident out of this State has not, in the opinion of the Commissioner, a fixed and permanent place of business in this State, 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 section two hundred and twelve of this Act.

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

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

215.
215. Where under this Act any person is liable to pay tax, the Commissioner may make an assessment of the amount of such tax.

216. (1) The Commissioner may subject to this section amend any assessment by making such alterations therein or additions thereto as he thinks necessary, in order to ensure its completeness and accuracy, notwithstanding that tax may have been paid in respect of the assessment.

(2) An amendment may be made under this section—

(a) where the Commissioner is of opinion that there has been an avoidance of tax and that the avoidance is due to fraud or evasion—at any time;

(b) where the taxpayer escapes full taxation owing to—

(i) the omission of assessable income from the taxpayer's return; or

(ii) a claim in the taxpayer's return for a deduction of an amount not actually expended; or

(iii) a misdescription in the taxpayer's return of any item of income or expenditure; or

(iv) the withholding of information or the failure to supply information or the furnishing of incorrect or misleading information;

and the avoidance is not due to fraud or evasion—within six years from the date upon which the tax became due and payable under that assessment;

(c) where 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 within that period or such further period as the Commissioner
Commissioner may allow, the taxpayer has supplied to the Commissioner all information needed by him for the purpose of deciding the application—at any time;

(d) where, as the result of an amendment to an assessment, fresh liability in respect of any particular is imposed and application for further amendment is made by the taxpayer within three years from the date upon which the additional tax became due and payable under that amendment and within that period or within such further period as the Commissioner may allow, the taxpayer has supplied to the Commissioner all information needed by him for the purpose of deciding the application—at any time but only for the purpose of reducing the assessment by adjustment of that particular; and

(e) in any case not specified in this subsection—within three years from the date upon which the tax became due and payable under that assessment.

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

(4) 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 within three years after the date upon which the tax became due and payable under that assessment correct such determination, opinion or judgment and amend the assessment accordingly.

(5) Notwithstanding anything contained in this section, where 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 a 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.

217. (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 due and payable on that day.

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

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

220. 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.

221. The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with.
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222. 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 or an Assistant Commissioner, provided such signature is attached or appended to any official document.

223. (1) The production of a notice of assessment or of a document under the hand of the Commissioner or an Assistant 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.

(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 or an Assistant Commissioner, purporting to be a copy of a document issued by the Commissioner shall be conclusive evidence that the document was so issued.

(4) The production of a document under the hand of the Commissioner or an Assistant 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.

224. In this Part, unless the contrary intention appears—

"The Board" means the Board of Appeal constituted under this Part.

"The Court" means the Supreme Court of New South Wales.

225. (1) For the purposes of this Part there shall be a Board of Appeal.

(2) The Board shall consist of three members who shall be appointed by the Governor.

(3)
(3) One of the members shall be appointed by the Governor to be the chairman of the Board.

(4) One of the members of the Board shall be a barrister or solicitor of not less than seven years standing.

(5) One of the members of the Board shall be a public accountant of not less than seven years standing.

(6) The provisions of the Public Service Act, 1902, as amended, shall not apply to the appointment of the members of the Board nor to any such person in respect of his office as such member.

(7) Every member of the Board shall be appointed for such period (but in no case exceeding four years) as the Governor may determine, but if otherwise qualified shall be eligible for re-appointment.

(8) The members of the Board shall be paid such salary or fees as the Governor may determine or as may be prescribed.

(9) The members of the Board shall be entitled to receive such travelling allowances as the Governor may determine or as may be prescribed.

(10) In the case of the illness, suspension, absence, or inability to act of any member of the Board, the Governor may appoint a person as deputy-member of the Board (subject to his being, if the deputy of the member appointed as having the qualification referred to in subsection four of this section of this Act, qualified as provided in that subsection and to his being, if the deputy of the member appointed as having the qualification referred to in subsection five of this section, qualified as provided in that subsection) and every deputy-member appointed under this subsection shall, subject to the conditions or limitations referred to in his appointment, have the powers, duties and liabilities of a member of the Board.

(11) In the case of the illness, suspension, absence, or inability to act of the chairman of the Board, the Governor may appoint either of the other two members or the deputy-member of the Board to be the deputy-chairman of the Board. Every deputy-chairman shall (subject to the conditions or limitations referred to in
in his appointment as deputy-member or deputy-chairman, have the powers, duties and liabilities of the chairman of the Board.

226. No person shall act as a member or deputy-member of the Board in respect of any matter in which he is directly or indirectly interested either personally or as agent or servant or otherwise howsoever.

Penalty: Five hundred pounds.

227. No action or suit shall be brought or maintained against any person who is or has been a member or deputy-member of the Board for any nonfeasance or misfeasance in connection with his duties.

228. (1) The Governor may remove any member or deputy-member of the Board from office on a resolution for his removal being passed by each House of Parliament in the same session.

(2) The Governor may, without any such resolution having been passed, suspend or remove any member or deputy-member of the Board from office for misbehaviour or incapacity.

(3) Any member or deputy-member of the Board shall be deemed to have vacated his office if—

(a) he resigns his office by writing under his hand addressed to the Governor;

(b) he becomes bankrupt, or applies to take the benefit of any Act of the Commonwealth or the State of New South Wales for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of any part of his salary or fees or property for their benefit;

(c) he becomes an insane person or patient or incapable person within the meaning of the Lunacy Act of 1898 as amended;

(d) he is convicted of a breach of section two hundred and twenty-six of this Act, or is convicted upon indictment of any felony or misdemeanour.

229. Every member and every deputy-member of the Board shall, before proceeding to discharge the duties of his office, make an oath or declaration in the manner
manner and form prescribed by regulations made under this Act to faithfully and impartially perform the duties of his office and not contrary to his duty to disclose any evidence or other matter coming to his notice as such member or deputy-member as the case may be.

230. (1) The Governor may, upon the recommendation of the Public Service Board, appoint such officers of the Board as may be necessary and such officers shall be subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts.

(2) Officers of the Board may, during their employment, fill other offices under the State, if so decided by the Governor upon the recommendation of the Public Service Board.

(3) The officers of the Board shall have such powers and discharge such duties as may be directed by the Board or the chairman or as may be prescribed.

(4) Any officer of the Board shall, if and when directed by any member of the Board so to do, make an oath or declaration in the manner and form prescribed by regulations under this Act to maintain secrecy.

231. (1) The Board shall have such powers and authorities and perform such duties as are conferred or imposed upon it by or under this Part.

(2) At all sittings of the Board the decision of the majority shall prevail, and in all cases the determination of the majority of the Board shall be deemed to be the determination of the Board.

232. (1) Subject to regulations under this Act, the Board may sit at any time and at any place for the transaction of any part of the business of the Board and for the discharge of any duty or the exercise of any power or authority under this Part.

(2) The hearing, further hearing or determination of any proceeding commenced by the Board may be adjourned by the Board from time to time, and from place to place.

(3) On the application of the taxpayer or the Commissioner the Board may exclude from the hearing of an appeal or proceeding all or any persons other than the parties or their representatives.
(4) The Board may amend any order or determination of the Board in any appeal or proceeding to correct any error or to supply any omission therein.

(5) Every party to any appeal or proceeding before the Board may nominate a person to represent him at the hearing.

233. The Board, if of opinion that no injustice will be occasioned thereby, may in any case dispense with technical rules of evidence and may receive such evidence as it thinks fit whether receivable in accordance with law in other proceedings or not.

234. (1) For the purpose of exercising any power or authority or performing any duty conferred or imposed on the Board by or under this Act, the Board and the members of the Board and each of them shall have respectively the same powers and authority to administer oaths and affirmations to witnesses and to examine witnesses and to inspect, retain and copy documents, books and writings as are conferred by the Royal Commissions Act, 1923, as amended by subsequent Acts on a Commission, and the members of a Commission and any of them with respect to whom the provisions of Division 1 of Part II of that Act are applicable and the chairman of the Board shall have the same powers and authority to summon witnesses and otherwise as are conferred by the said Act on a chairman of such Commission.

(2) The provisions of the said Act (section thirteen and Division 2 of Part II excepted) shall, mutatis mutandis, apply to and with respect to any witness or person summoned under this section or appearing before the Board and to any evidence received by or given before the Board.

235. (1) The Governor may make regulations for any of the following purposes:

(a) for regulating the practice and procedure of the Board;

(b) for prescribing the duties of officers of the Board;

(c) for prescribing fees to be paid to the Board or any officer of the Board in relation to proceedings under this Part;
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(d) generally for any purpose necessary or convenient for the full or effective exercise or discharge of the powers, authorities or duties of the Board, including provisions as to allowances to witnesses and the service by post or otherwise of notices of hearings by or sittings of the Board.

(2) The provisions of subsection two of section three hundred and thirty-two of this Act shall apply to and in respect of any regulations made under subsection one of this section.

236. (1) The Governor of this State may, by arrangement entered into with the Governor-General of the Commonwealth of Australia,—

(a) provide that on and from a date specified in the arrangement (in this section referred to as the “appointed day”), a Board of Review constituted under the Income Tax Assessment Act 1936 of the Parliament of the Commonwealth, or any Act amending that Act, shall have and may exercise and discharge the powers, immunities, privileges, protections, authorities, duties and functions conferred and imposed upon the Board of Appeal under this Part of this Act;

(b) make such further provisions as may be necessary or expedient for carrying into effect any provision made under paragraph (a) of this subsection.

(2) A copy of any such arrangement shall be published in the Gazette and shall, on and after the appointed day, have force and effect according to its tenor.

(3) Upon the appointed day subsections two to eleven (both inclusive) of section two hundred and twenty-five, and sections two hundred and twenty-six, two hundred and twenty-eight and two hundred and twenty-nine of this Act, shall cease to have effect.

(4) Any person who, immediately before the appointed day, was the chairman or a member of the Board of Appeal, and who ceases to hold office as such in...
in consequence of an arrangement entered into under this section, shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than in accordance with law.

237. A taxpayer dissatisfied with any assessment under this Act may, within sixty days after service of the notice of assessment (or within such further time not exceeding twelve months after the date of such service as the Board may allow for cause shown or as the Commissioner may allow in writing) post to or lodge with the Commissioner from time to time an objection in writing against the assessment stating shortly the grounds or further grounds on which he relies:

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

The Board or the Commissioner may allow further time as aforesaid notwithstanding that the said period of sixty days has expired.

238. Notwithstanding anything contained in this Act a taxpayer who is dissatisfied with any opinion, decision or determination of the Commissioner given in the exercise of a discretion conferred upon him under this Act and who is dissatisfied with the assessment made pursuant to or involving such opinion, decision or determination shall, after the assessment has been made, have the same right of objection in respect of such opinion, decision or determination and assessment as is provided in this Part and also the same right of appeal as is provided in this Part against any decision of the Commissioner upon any such objection, except that such appeal shall be made to the Board only.

239. The Commissioner shall consider every such objection as aforesaid, 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.
240. A taxpayer dissatisfied with the decision may, within sixty days after such service of notice thereof (or within such further time not exceeding ninety days after such service as the Board may allow for cause shown or as the Commissioner may in writing allow), request in writing the Commissioner to treat his objection as an appeal and, subject to the provisions of this Act, to forward it to the Court or to the Board in order that it may be heard and determined. The Board or the Commissioner may allow further time as aforesaid notwithstanding that the said period of sixty days has expired.

241. (1) If the request is accompanied by a fee of one pound, the Commissioner shall, subject to the provisions of this Act, forward the objection to the Court or the Board in accordance with the request.

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

242. If within sixty days after receiving a request as aforesaid requiring the Commissioner to forward the objection to the Court or to the Board in accordance with the provisions of this Part and accompanied by the fee of one pound the Commissioner does not forward the objection, the taxpayer may at any time thereafter give him notice in writing to do so, and the Commissioner shall, within sixty days after receiving the notice, forward the objection to the Court or the Board as the case may be.

243. (1) At any time before the Commissioner has forwarded an objection to the Court or to the Board, subject to the provisions of this Part the taxpayer may give notice in writing to the Commissioner that he desires to have his objection forwarded to and determined by the Board in lieu of the Court or forwarded to and determined by the Court in lieu of the Board as the case may be and (subject as aforesaid) the Commissioner shall forward the objection as requested by such notice accordingly.

(2) Where in accordance with this Part an objection has been forwarded to the Court and before
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the hearing of the appeal by the Court the taxpayer desires to have the appeal determined by the Board in lieu of by the Court on the ground that matters appealable to the Board only under section two hundred and thirty-eight of this Act are involved in the appeal, the Court shall, on such conditions as to costs and otherwise as it thinks fit to impose, cause the appeal to be forwarded to the Board and be by it heard and determined under this Part.

244. (1) Upon every such appeal to the Court or to the Board the taxpayer shall be limited to the grounds stated in his objection.

(2) The Court or the Board may, upon application thereto by the taxpayer within twelve months after the service of the notice of assessment, give leave to add further grounds. In such a case the Commissioner shall have thirty days (after the furnishing by the taxpayer of any information required by the Commissioner in relation to such further grounds) within which to consider the further grounds.

(3) The Court or Board may grant such leave to add further grounds upon such conditions (if any) as it thinks fit to impose.

(4) Nothing in this section authorises the Court to give leave to add further grounds raising a matter appealable to the Board only under section two hundred and thirty-eight of this Act.

245. In the case of every appeal the burden of proving that any assessment is excessive and of establishing the correctness of the grounds of his objection shall lie upon the taxpayer.

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

247. Except as otherwise provided in this Act the Board shall have power to review every decision the subject of an objection forwarded to it under this Act.

248.
248. For the purpose of hearing and determining appeals the Board shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act and such assessments, determinations and decisions of the Board and its decisions upon appeals, shall for all purposes (except for the purpose of objections thereto and appeals therefrom) be deemed to be assessments, determinations or decisions of the Commissioner.

249. (1) Upon every appeal referred to it under this Act the Board shall give a decision in writing and may either confirm, reduce, increase or vary the assessment. Copies of the decision shall be forwarded to the Commissioner and the taxpayer.

(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 finding of fact and its reasons in law for the decision.

(3) The decision of the Board shall relate solely to the income the subject of the appeal and shall not affect the right of the Commissioner to assess any other income of the taxpayer.

250. Where the Board orders the costs of any appeal or proceedings to be paid, whether after any set off or taxation or otherwise, the order of the Board shall have the effect of and shall be deemed to be a judgment of the Court for the amount payable and judgment for such amount may be entered up in the Court by the person to whom it is payable against the person by whom it is payable, and the said amount may be recovered by process of the Court as in pursuance of such judgment.

251. Except as provided by this Part the decision of the Board shall be final and conclusive.

252. The Board may order the Commissioner to pay to the appellant his costs of an appeal from any assessment in respect of which the Commissioner may have acted unreasonably or oppressively towards the appellant and may order the appellant to pay to the Commissioner his costs of any frivolous or vexatious appeal.
The Board may assess any costs payable under any order made by it or may order that such costs be taxed by the proper officer of the Supreme Court in its common law jurisdiction, whereupon such costs shall be taxed by any such officer accordingly.

254. (1) Where, as hereinbefore provided, the Commissioner has treated the objection of a taxpayer as an appeal and forwarded it to the Court, the Court shall, for the purpose of hearing the appeal, consist of a single justice, and the jurisdiction of the Court to determine such appeals shall be exercised by a single justice.

(2) On the hearing of the appeal the Court may make such order as it thinks fit, and may confirm, reduce, increase or vary the assessment.

(3) An order of the Court shall be final and conclusive, and no appeal shall lie to the Full Court from the order.

(4) The costs of the appeal shall be in the discretion of the Court. Where the amount of tax in dispute on the appeal does not exceed ten pounds, costs shall not be allowed against either party unless the Court otherwise orders.

(5) The Court may amend any order to correct any error or to supply any omission therein.

(6) The Court, if of opinion that no injustice will be occasioned thereby, may in any case dispense with technical rules of evidence and may receive such evidence as it thinks fit whether receivable in accordance with law in other proceedings or not.

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

(8) The Full 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.

255. (1) The Commissioner or taxpayer may, upon filing in the office of the Prothonotary of the Court within the time hereinafter mentioned, a notice of intention so to do, appeal to the Court from any decision of the Board which involves—

(a) a question of law; or
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(2) For the purpose of hearing appeals under this section the Court shall consist of three justices.

(3) Upon the hearing of the appeal the Court may make such order as it thinks fit.

(4) The costs of the appeal shall be in the discretion of the Court. Unless by reason of possible benefit from the appeal to the taxpayer in connection with any other liability to tax or for any other reason the Court otherwise orders the Commissioner shall pay the costs of any appeal by him against a decision of the Board where the amount of tax involved in the appeal does not exceed three hundred pounds and the taxpayer has not appealed against that decision.

(5) The time for filing in the office of the Prothonotary the notice of intention to appeal referred to in subsection one of this section shall be the period of sixty days after the decision of the Board against which it is desired to appeal, or such further time as the Court before or after the expiration of such period may for cause shown allow.

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

257. If the assessment is altered on objection or appeal, a due adjustment shall be made for which purpose amounts paid in excess shall be refunded by the Colonial Treasurer, and amounts short paid shall be recoverable by the Commissioner as arrears.

258. Rules of Court may be made regulating the practice and procedure in relation to appeals to the Court from any decision of the Board and in relation to all other appeals to the Court under this Part and to cases stated to the Court under this Part, and in regard to taxation of costs ordered to be paid by the Board and in regard to entry of judgment in the Court in respect of costs ordered to be paid by the Board.
259. Income tax shall be due and payable to the Commissioner by the person liable to pay the tax on such day as shall be fixed in the notice of assessment.

260. 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.

261. (1) If any tax is not paid within thirty days after it becomes due and payable or within such further time as the Commissioner may allow the taxpayer shall be liable to pay additional tax of an amount equal to ten per centum upon the amount of tax unpaid:

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.

262. Any tax due to the Commissioner under this Act shall be deemed to be a debt due to the King, and shall be collected and received by the Commissioner on account of and shall be paid into the Consolidated Revenue.

263. Payment of tax by means of a cheque drawn by a taxpayer on a branch of a bank situated in any place in New South Wales where the taxpayer carries on his business need not include exchange.

264. Any tax unpaid may be sued for and recovered in any court of competent jurisdiction by the Commissioner suing in his official name.
265. Upon the application of any person about to leave Australia, the Commissioner or an Assistant Commissioner may issue a certificate—

(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.

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

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

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

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

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

Penalty: Not less than ten pounds or more than one hundred pounds.
268. (1) Where the Commissioner has reason to believe that any person establishing or carrying on business in this State intends to carry on that business for a limited period only, or intends to leave this State, 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 tax on, the income derived by that person.

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

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

269. 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.

270. (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 a receiver for any debenture-holdes, and has taken possession of any assets of a company; or

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

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

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

(3) The trustee—
   (a) shall not without the leave of the Commissioner part with any of the assets of the company or principal until he has been so notified by the Commissioner;
   (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 subsection three of this 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.

(6) Nothing in this section shall render a receiver for debenture holders liable for the payment of any tax payable in respect of income derived by a company prior to his taking possession of the assets of the company except to the extent to which the proceeds of the sale of the secured assets exceed the amount due to the debenture holders.

271. Every person who is trustee in the estate of any deceased person or who is trustee or official assignee or official receiver in the estate of any person whose property is being administered under the law relating to bankruptcy, or of any person who has in any manner assigned
assigned his estate or part thereof for the benefit of his creditors or any of them shall, within fourteen days after he has become trustee or official assignee or official receiver, give notice thereof to the Commissioner. Any trustee who fails to comply with this section shall be guilty of an offence.

Penalty: Not less than one pound or more than fifty pounds.

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

(a) the Commissioner shall have the same powers and remedies against the trustees of the estate of the taxpayer in respect of the taxable income of the taxpayer as he would have against the taxpayer if the taxpayer were still living;

(b) the trustees shall make such returns as the Commissioner requires for the purpose of an accurate assessment;

(c) the trustees shall be subject to 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.

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

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

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

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

(a) any person by whom any money is due or accru­
ing or may become due to a taxpayer; or

(b) any person who holds or may subsequently hold
money for or on account of a taxpayer; or

(c) any person who holds or may subsequently hold
money on account of some other person for pay­
ment to the taxpayer; or

(d) any person having authority from some other
person to pay money to a taxpayer,
to pay to him in satisfaction or in reduction of the amount
due by the taxpayer in respect of any tax and of any
fines and costs imposed upon him under this Act such
sum or sums at such times and out of such moneys
whether then due to or held for or thereafter to become
due to or held for the taxpayer as may be specified or
indicated in the notice.

(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 tax­
payer by the person so notified is less than the sum
specified or indicated in the notice as the sum payable out
of moneys then due to or held for the taxpayer that person
shall pay to the Commissioner the amount payable by
that person to the taxpayer.

(4) Any person making any payment in pursu­
anse of this section shall be deemed to have been acting
under the authority of the taxpayer and of all other per­
sons 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 pay­
ment 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 a company or partnership and, for the purpose of recovering tax due by a taxpayer, shall be deemed to include—
(a) the Crown in right of this State and any public authority or body (corporate or unincorporate) of this State; and
(b) subject to the Commonwealth Constitution and any law of the Commonwealth, the Commonwealth and any public authority or body (corporate or unincorporate) constituted under any law of the Commonwealth.

(7) Any notice to be given under this section to the Commonwealth or the Crown in right of this 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 the Crown in right of this State as the case may be.

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

Division 2.—Collection of income tax by instalments.

276. In this Division, unless the contrary intention appears—
“Employee” means any person who receives, or is entitled to receive, any salary or wages.
“Employer” means any person who pays or is liable to pay any salary or wages, and includes—
(a) in the case of an unincorporate body of persons other than a partnership—the manager or other principal officer of that body; and
(b)
In the case of a partnership—each partner,
and, except in relation to the imposition of any penalty also includes—
(c) the Crown in right of this State and any public authority or body (corporate or unincorporate) of this State;
(d) the Crown in right of the Commonwealth where an agreement under subsection one of section two hundred and seventy-seven of this Act has been entered into; and
(e) any person with whom an agreement has been entered into in accordance with subsection two or subsection three of section two hundred and seventy-seven of this Act.

"Salary or wages" means salary, wages, commission, bonuses, allowances or other remuneration paid (whether at piece-work rates or otherwise) to any employee as such, and, without limiting the generality of the foregoing, includes any payments made—
(a) under any contract for labour only or substantially for labour only;
(b) by a company by way of remuneration to a director of that company;
(c) by way of superannuation, pension or retiring allowance; or
(d) by way of commission to an insurance or time-payment canvasser or collector,
but does not include payments of exempt income.

"Tax payable by the employee" means any income tax which is or may become due and payable by an employee under any assessment made or to be made on any return which he has furnished or has been required to furnish, or may be required to furnish, or under any assessment made or to be made in default of any such return.

"Tax stamp" means any stamp which the Commissioner of Stamp Duties causes to be prepared in pursuance
pursuance of this Division and, when an arrangement has been made pursuant to section two hundred and ninety-one of this Act, includes any stamp prepared by the Commonwealth to which such arrangement relates.

277. (1) This State may enter into an agreement with the Commonwealth for the carrying out by the Commonwealth (including any authority of the Commonwealth) of the obligations imposed by this Division on employers.

The agreement may make provision for any other matters necessary or convenient to be provided for carrying out the agreement.

(2) The Commissioner may agree with any employer who is not bound to make deductions from the salary or wages of an employee that as from the dates specified in the agreement the employer shall assume the obligation of making deductions from the salary or wages of his employees.

(3) The Commissioner may agree with any person making payments to another person and which payments constitute emoluments of any office or employment that as from the date specified in the agreement the person making the payments shall assume the obligation of an employer to make deductions from such payments as if they were salary or wages and as from such date such payments shall be deemed to be salary or wages for the purposes of this Division.

278. (1) Subject to this Division where an employee is entitled to receive from an employer in respect of any week or part thereof salary or wages in excess of three pounds, the employer shall, at the time of making payment of the salary or wages, make deductions therefrom of such amounts or at such rates as are prescribed.

Penalty: Twenty pounds.

(2) Where salary or wages for any week or part of a week is or are paid in two or more separate sums, all sums so paid shall, for the purpose of computing the amount of deduction under this section, be treated as one sum and the employer may, at his option, make the deduction wholly from one sum or in part from each of any two or more sums.
(3) Where an employee receives from his employer, in addition to his salary or wages, meals, sustenance or the use of premises or quarters as part consideration for his services, he shall, for the purpose of computing the deduction under this section, be deemed to have received as salary or wages, in addition to any money actually payable to him—

(a) for each week or part thereof during which meals or sustenance are received by him—an amount calculated at the rate of fifteen shillings per week; and

(b) for each week or part thereof during which the use of premises or quarters is received by him—an amount calculated at the rate of five shillings per week.

279. (1) Notwithstanding anything contained in this Division, the Commissioner may vary the amounts to be deducted from any employee or class of employees—

(a) in any case where the Commissioner is of the opinion that deductions from the salary or wages of the employee or employees of the prescribed amounts or at the prescribed rates would be insufficient to pay the tax which is, or will become, payable by the employee or employees;

(b) in any case where the Commissioner is satisfied that deductions of the prescribed amounts or at the prescribed rates would impose serious hardship on the employee or employees;

(c) for the purpose of facilitating the carrying out of an arrangement with any employer under section two hundred and eighty-seven of this Act; or

(d) for the purpose of meeting the special circumstances of any particular case.

(2) Where the Commissioner so varies the amounts to be deducted, he shall notify the employer of the employee or class of employees, in writing, of the variation, and the employer shall thereafter make deductions from the salary or wages payable to the employee or employees in accordance with the amounts so notified.

Penalty: Twenty pounds.

280.
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280. Where an employee furnishes to his employer, in a form approved by the Commissioner and in the manner prescribed, a declaration that, on the first day of July immediately preceding the date or dates on which deductions are to be made, he was wholly maintaining one or more dependants, the amount or rate of the deductions which would otherwise be made shall, in the case of that employee, be reduced by such amount or rate as may be prescribed.

281. (1) Where an employer fails to make any deduction required to be made by this Division, he shall, in addition to any penalty for which he may be liable, be liable to pay to the Commissioner the amount which he has failed to deduct, and the Commissioner may sue for and recover that amount in any court of competent jurisdiction or the court before which any proceedings for an offence are taken may order the payment of that amount to the Commissioner. Any such order shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and shall be enforceable as such under the provisions of that Act.

The order may be entered in the records of such court exercising jurisdiction under that Act as is named in the order, or if no such court is named in the records of any court exercising such jurisdiction, within the district in which the order was made.

(2) The Commissioner shall apply any amount so recovered by or paid to him as payment of any tax payable by the employee.

(3) The employer may recover from the employee any amount which he has failed to deduct and which he has paid to the Commissioner in pursuance of subsection one of this section.

282. Every employer shall keep such records as are prescribed of all payments, amounts credited, or allowances made, by him to his employees.

283. At the time of paying to the employee any salary or wages from which a deduction in accordance with the provisions of this Division has been made, the employer,
Income Tax Management Act.

or person making the payment on his behalf, shall deliver to the employee adhesive tax stamps denoting the amount deducted.

Penalty: Twenty pounds.

284. (1) Every employee from whose salary or wages a deduction is required to be made under this Division shall—

(a) provide and keep a book of convenient size and shape for the purpose of affixing therein tax stamps issued to him by his employer; and

(b) forthwith after receiving tax stamps in accordance with this Division—

(i) securely affix the tax stamps to a clear space on a page of the book which has not already had a stamp affixed on the other side of the page; and

(ii) write in ink on every tax stamp so affixed his name or initials and the date of payment.

Penalty: Twenty pounds.

(2) Notwithstanding anything contained in subparagraph (ii) of paragraph (b) of subsection one of this section, an employer may, with the authority of the Commissioner, deliver to an employee tax stamps marked in such manner as the Commissioner approves, in which case the provisions of that subparagraph shall not apply.

285. (1) Every employee from whose salary or wages a deduction is made in accordance with this Division shall, after receipt of notice of his assessment and not later than the date specified in that notice as the last day for the payment of tax, produce to the Commissioner the pages of the book to which the tax stamps are affixed and the Commissioner shall forthwith deface the tax stamps and credit the amount represented by the face value of those stamps in payment or part payment of any tax payable by the employee.

(2) If there is no tax payable by the employee or if the amount represented by the face value of the stamps so produced is greater than the tax payable by the employee, the Commissioner shall pay to the employee an amount equal to the face value of the stamps or an amount
amount equal to the difference between that face value and the tax payable by the employee, as the case may be.

(3) If the amount represented by the face value of the stamps so produced is less than the amount of tax payable by the employee—

(a) the Commissioner shall apply the amount represented by the face value of the stamps in payment, so far as that amount extends, of such tax payable by the employee as the Commissioner determines and that amount shall be deemed to have been paid by the employee in satisfaction to that extent of that tax and not otherwise; and

(b) the employee shall be liable, or continue to be liable (as the case may be), to pay the balance of the tax payable by the employee on the date or dates specified in the notice or notices of assessment, and all the provisions of this Act relating to the collection and recovery of tax shall apply to that balance.

(4) The Commissioner shall retain all tax stamps produced to and defaced by him for such period as he thinks fit after which he shall cause them to be destroyed.

286. The Commissioner or any officer thereto authorised in writing by the Commissioner may, at any time, by notice in writing, require an employee to produce the book kept by him together with the stamps affixed, and the employee shall produce the book and stamps accordingly at the place and within the time specified in the notice.

Penalty: Twenty pounds.

287. (1) If an employer and his employees, or an employer and any class of his employees, desire to enter into any arrangement providing for deductions made under this Division to be dealt with otherwise than by delivering and affixing tax stamps as provided in this Division, the Commissioner may, in his discretion, notify the employer in writing that he approves of the terms of
of the arrangement, and thereafter, unless and until the Commissioner withdraws his approval, the employer, in lieu of delivering tax stamps in accordance with the provisions of this Division, shall deal with the deductions in accordance with the terms of the arrangement.

(2) If the Commissioner is of opinion that, owing to special circumstances connected with the nature of the employment of any class or classes of employees, it is not desirable that their employer should deliver to them tax stamps in accordance with the provisions of this Division, he may notify the employer in writing that, in lieu of delivering tax stamps in accordance with the provisions of this Division, the employer shall deal with deductions made under this Division in a manner specified in the notice, and thereafter, unless and until the Commissioner cancels the notice, the employer shall deal with those deductions accordingly.

Penalty: Twenty pounds.

(3) Where, by reason of the provisions of subsection one or subsection two of this section, an employer does not deliver tax stamps in respect of any deductions made under this Division, the amounts of those deductions shall be deemed to be debts due to the King on behalf of this State payable within such times or at such intervals as the Commissioner appoints and the employer shall, within seven days after any amount becomes payable, pay that amount to the Commissioner.

Penalty: One hundred pounds.

(4) The sum of the amounts so deducted from the salary or wages of any employee during any year of tax up to and including the date specified in the notice of assessment as the last day for the payment of tax payable by the employee, or, if no notice of assessment is issued, up to and including the last day of the year of tax, shall, for all the purposes of this Division, be treated as if it represented the face value of tax stamps produced by the employee in accordance with subsection one of section two hundred and eighty-five of this Act.

In this subsection “year of tax” means the year following the year of income in respect of which the tax is payable.
Every employer to whom the Commissioner has issued a notice in pursuance of subsection one or subsection two of this section—

(a) shall furnish to the Commissioner, at such times or intervals as the Commissioner directs, such statements, lists or other information in respect of the period during which the notice is in force as the Commissioner directs; and

(b) shall, at such times as the Commissioner directs, issue to any employee from whom any deduction has been made under this section a certificate showing the amount deducted during such period or periods as the Commissioner directs.

Penalty: Twenty pounds.

288. (1) The Commissioner may issue to any employee a certificate that no deductions for the purposes of this Division need, during the period specified in the certificate, be made from the salary or wages of that employee.

(2) During the period specified in the certificate the provisions of sections two hundred and seventy-eight and two hundred and seventy-nine of this Act shall not apply to an employer to whom the certificate is exhibited in respect of the employee named in the certificate.

(3) The Commissioner may, at any time, cancel any certificate issued under this section, and, within twenty-one days after the Commissioner has notified him of any such cancellation, the person named in the certificate shall return the certificate to the Commissioner.

Penalty: Twenty pounds.

(4) A person shall not—

(a) alter any certificate issued under this section or exhibit to any employer any such certificate which has been altered without the authority of the Commissioner;

(b) without lawful excuse, proof whereof shall lie upon him, have in his possession any colourable imitation of any such certificate; or

(c) falsely pretend to be the person named in any such certificate or cause any employer to refrain from making any deduction from his salary or wages
Income Tax Management Act.

wages by the production of any document other than a certificate issued to him under this section and for the time being in force.

Penalty: Fifty pounds.

289. Any taxpayer may, at any time, purchase tax stamps from any person for the time being authorised to sell tax stamps and the provisions of this Division shall, in respect of any tax stamps so purchased, apply to that taxpayer as if he were an employee and the tax stamps so purchased had been delivered to him in accordance with section two hundred and eighty-three of this Act.

290. (1) The Commissioner of Stamp Duties shall cause to be prepared and placed on sale tax stamps of such designs and denominations as he thinks fit.

(2) Such stamps shall be offered for sale or dealt in only by the Commissioner of Stamp Duties and by officers of such other Departments of this State and the Commonwealth as are approved of by him.

(3) Any person who purchases tax stamps other than from the Commissioner of Stamp Duties or from an officer of such other Department as aforesaid acting in his official capacity shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

(4) Any person other than the Commissioner of Stamp Duties or an officer of such other Department as aforesaid acting in his official capacity, who offers for sale or exchange or deals in tax stamps shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

(5) The regulations may apply, with such modifications and adaptations as the Governor thinks fit in respect of any tax stamps, all or any of the provisions (including penal provisions) of the Stamp Duties Act, 1920, as amended by subsequent Acts, or the Entertainments Tax (Management) Act, 1929-1937.

(6) This section shall not apply where an arrangement under section two hundred and ninety-one of this Act has been entered into.

291.
291. (1) Where the Parliament of the Commonwealth has enacted legislation which is similar to the foregoing provisions of this Division, and tax stamps are prepared and placed on sale by or on behalf of the Commonwealth for the purposes of that legislation, this State may enter into an arrangement with the Commonwealth—

(a) for the use for the purposes of the legislation of this State of tax stamps prepared by the Commonwealth as aforesaid; and

(b) for the affixing in one book of tax stamps delivered to an employee for the purposes of this Division and for the purposes of the legislation of the Commonwealth and for the allocation between the Commonwealth and this State of the amount represented by the face value of any tax stamps produced by the employee.

(2) The agreement relating to any such arrangement may make provision for any other matters necessary or convenient to be provided for carrying out the arrangement.

(3) The agreement relating to any such arrangement shall contain a provision for ascertaining what proportion of the proceeds of the sales of tax stamps in this State shall be deemed to be attributable to sales for the purposes of this Division, and what proportion shall be deemed to be attributable to sales for the purposes of the legislation of the Commonwealth, and the proceeds shall, in the first instance, be divided between this State and the Commonwealth accordingly.

(4) As soon as practicable after the close of each financial year, the Commonwealth and this State shall, in accordance with such method as is specified in the arrangement, determine what proportion of the proceeds of the sales of tax stamps in this State during that financial year was attributable to sales for the purposes of this Division and what proportion was attributable to sales for the purposes of the legislation of the Commonwealth, and the Commonwealth or this State, as the case requires, shall make such payment to the other party as is necessary in order that each shall receive the proportion to which, under the terms of the arrangement, it is entitled.
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(5) Where the face value of any tax stamps produced by an employee is less than the sum of the tax payable by that employee to the Commonwealth and of any income tax payable by him under the legislation of this State, the amount shall, notwithstanding any contrary direction of the employee, be allocated between the Commonwealth and this State in accordance with the terms of any arrangement between the Commonwealth and this State made in pursuance of subsection one of this section.

292. All moneys received in respect of sales of tax stamps, less such amounts as are received by the Commonwealth in accordance with the provisions of subsection three of section two hundred and ninety-one of this Act, shall form part of the Consolidated Revenue Fund, and there shall be payable out of that Fund (which is, to the necessary extent, hereby appropriated accordingly)—

(a) such amounts as this State becomes liable to pay to the Commonwealth in accordance with the provisions of subsection four of section two hundred and ninety-one of this Act; and

(b) such amounts as this State becomes liable to pay to any employee in accordance with the provisions of this Division.

293. (1) The Commissioner, or any officer authorised in that behalf by the Commissioner, may require any person to deliver to him any tax stamps which are in that person's possession and which are held by him on behalf of some other person, and any person so required shall deliver the tax stamps to the Commissioner or authorised person accordingly.

Penalty: Fifty pounds.

(2) Where any tax stamps are so delivered the Commissioner shall issue a receipt to the person delivering them and, upon the application of the employee to whom the tax stamps were delivered by his employer, shall either credit or pay to that employee, as the case requires, the amount represented by the face value of the stamps.

294.
294. If the Commissioner suspects that any tax stamps produced to him have been obtained in contravention of any provision of this Division, he may retain those stamps for such period as he thinks fit and shall not apply them in satisfaction of any tax or make any payment in respect of them unless and until he is satisfied as to the identity of the employee (if any) to whom the stamps were lawfully delivered by his employer.

295. If an employee satisfies the Commissioner that any tax stamps delivered to him by his employer have been destroyed, and as to the face value of those tax stamps, the Commissioner may apply an amount equal to that face value in satisfaction of any tax payable by the employee, or make a payment in respect thereof, in the same manner as if the stamps had been produced to and defaced by the Commissioner.

296. A person shall not—
(a) present any document under the hand of the Commissioner for the purpose of obtaining credit with respect to, or a payment of, the value of any tax stamps which have been delivered in respect of the salary or wages of some person other than the person named in the document;
(b) present any document under the hand of the Commissioner and pretend to be the person named therein for the purpose of obtaining credit with respect to, or a payment of, the value of tax stamps;
(c) endeavour to obtain for his own advantage or benefit credit with respect to, or a payment of, the value of tax stamps which have been delivered in respect of the salary or wages of some person other than himself;
(d) fraudulently remove or cause to be removed from the stamp book of any employee any tax stamps affixed therein or affix a tax stamp so removed to any other book; or
(e) utter any tax stamp which has to his knowledge been fraudulently removed from any book to which it has previously been affixed.

Penalty: Not less than two pounds or more than one hundred pounds, or imprisonment for twelve months.
297. (1) Charges against the same person for any number of offences against the foregoing provisions of this Division may be joined in one information if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.

(2) Where more than one such charge is included in the same information, particulars of each offence charged shall be set out in a separate paragraph.

(3) All charges so joined shall be tried together unless the court deems it just that any charge should be tried separately and makes an order to that effect.

(4) If a person is found guilty of more than one offence, the court may, if it thinks fit, inflict one penalty in respect of all offences of which he is found guilty, but that penalty shall not exceed the sum of the maximum penalties which could be inflicted if penalties were imposed for each offence separately.

298. Notwithstanding anything contained in this Division, a member of a partnership shall not be punished for any contravention of any of the foregoing provisions of this Division for which another member of that partnership has already been punished.

PART VII.

PENAL PROVISIONS AND PROSECUTIONS.

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

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

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

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

301.
Income Tax Management Act.

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

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

302. (1) Upon the conviction of any person for an offence against either section three hundred or section three hundred and one of this Act the court before which he is convicted may order him 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.

303. (1) Notwithstanding anything contained in section three hundred, section three hundred and one, or section three hundred and two of this Act, any taxpayer who fails duly to 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 not so incurred or 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.

304. (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 authorised by him, shall be guilty of an offence.

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

(2) In any prosecution for an offence under this section 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.

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

305. (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.

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.

306.
Any person who, in any declaration made under, or authorised 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.

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

Penalty: Not less than twenty-five pounds or more than five hundred pounds, and, in addition, the court may order the person or company 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.

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

Penalty: Not less than twenty-five pounds or more than five hundred pounds, and, in addition, the court may order the person or company 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.

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

Penalty: Not less than one pound or more than fifty pounds.
310. A witness on behalf of the Commissioner or an Assistant 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.

311. (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.

(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; or

(c) any matter relating to the income or deductions in a return of the defendant if he has produced to the Commissioner or to an officer authorised by the Commissioner in that behalf sufficient records to enable the assessable income and allowable deductions of the defendant to be readily ascertained.

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

312. (1) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner.
(2) The production of a telegram purporting to have been sent by the Commissioner and purporting to authorise 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.

313. (1) In any action, prosecution or other proceeding in any court by the Commissioner, he may appear either personally or by a barrister or solicitor, or by some officer in the public service of the State.

(2) The appearance of any such officer, and his statement that he appears by authority of the Commissioner shall be sufficient evidence of such authority.

314. (1) The penalty pecuniary or other set out—
(a) at the foot of any section of this Act; or
(b) at the foot of any subsection of any section of this Act but not at the foot of the section,
shall indicate that any contravention of the section or of the subsection respectively, whether by act or omission, shall be an offence against this Act punishable upon summary conviction by a penalty not exceeding the penalty mentioned:

Provided that where the penalty is expressed to apply to a part only of the section or subsection, it shall apply to that part only.

(2) 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.

(3) (a) Any order for the payment of money made under this Part by a court of petty sessions shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and shall be enforceable as such under the provisions of that Act.

(b) The order may be entered in the records of such court exercising jurisdiction under that Act as is named in the order, or if no such court is so named, in the records of any court exercising such jurisdiction within the district in which the order was made.

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315. Any person guilty of a breach of this Act for which no penalty is otherwise provided, shall be liable to a penalty not exceeding fifty pounds.

316. In any action against an officer or person for anything done in pursuance of this Act, or in the execution of the powers conferred thereby, or by the regulations, the defendant in such action may plead the general issue, and give the special matter in evidence at the trial.

PART VIII.
MISCELLANEOUS.

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

(a) The company, if it has not appointed a public officer before the commencement of this Act, shall appoint a public officer within three months after the commencement of this Act or after the company commences to carry on business or derive income in this State.

(b) The company shall keep the office of the public officer constantly filled.

(c) No appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, 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 appoint a public officer when and so 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
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
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 or deemed to be 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.

318. (1) With respect to every agent and with respect also to every trustee, the following provisions shall apply:—

(a) he shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity, or derived by the principal by virtue of his agency, and for the payment of tax thereon;

(b) he shall in respect of that income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other;

(c) if he is a trustee of the estate of a deceased person the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;

(d) he is hereby authorised 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 paragraph (d) of this subsection, 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)
(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.

(2) Nothing contained in subsection one of this section shall exempt or discharge any principal or beneficiary from liability to make returns or to pay tax upon the whole of his taxable income.

319. (1) With respect to every person having the receipt, control or disposal of money belonging to a non-resident, who derives income from a source in this State or who is a shareholder, debenture holder, or depositor in a company deriving income from a source in this State, the following provisions shall, subject to this Act, apply:

   (a) he shall when required by the Commissioner pay the tax due and payable by the non-resident;

   (b) he is hereby authorised 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, 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,
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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.

320. (1) Every person who is liable under any contract to pay money as, or by way of, royalty to a non-resident who is not a resident of Australia shall, before making any payment to, or on behalf of, that non-resident, furnish to the Commissioner a statement of the amount of royalty due to the non-resident, whether such royalty became due either before or after the passing of this Act, and ascertain from the Commissioner the amount, if any, to be retained in respect of tax due, or which may become due, by the non-resident.

(2) The provisions of section three hundred and nineteen shall apply in respect of payments of royalty referred to in this section.

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

322. 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.

323. 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—

(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.
(1) Every taxpayer carrying on a business shall keep sufficient records in the English language of his income and expenditure to enable his assessable income and allowable deductions to be readily ascertained.

(2) Any taxpayer who fails to keep the records required by this section shall be guilty of an offence.

Penalty: Not less than one pound or more than fifty pounds.

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

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

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

(1) A covenant or a stipulation in a mortgage which has or purports to have the purpose or effect of imposing on the mortgagor the obligation of paying to or on behalf of or for the benefit of the mortgagee income tax on the interest to be paid under the mortgage—

(a) if the mortgage was entered into on or before the fourteenth day of December, one thousand nine hundred and twenty-eight, 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)
(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 subsection, 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 mortgagor 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.
327. 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.

328. The Commissioner, or any officer authorised 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.

329. (1) The Commissioner may by notice in writing require any person, whether a taxpayer or not, including any officer employed in or in connection with any department of a Government or by any public authority—

(a) to furnish him with such information as he may require; and

(b) to attend and give evidence before him or before any officer authorised 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 authorised 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.

330. (1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner and two other persons appointed by the Governor that—

(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 shall be chairman of the Board, and the decision of the majority shall prevail.

3) The Commissioner may exercise all the powers of the Board under this section and under section three hundred and thirty-one of this Act when the amount of tax involved in any one year does not exceed twenty pounds.

4) For the purposes of this section and of section three hundred and thirty-one of this Act tax includes any costs incurred in attempting to recover such tax.

331. (1) In any case where it is shown to the satisfaction of the Board referred to in section three hundred and thirty of this Act that every reasonable effort has been made to recover tax, or that it is impracticable without undue expense to recover that tax, it may direct the amount thereof to be written off.

(2) The taxpayer shall not be released from his liability in consequence of any action taken by the Board under this section, and the Commissioner may at any future time take such action to recover any such tax as he considers the circumstances warrant.

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

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and
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(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

333. Where in pursuance of the regulations any notice or other communication is required or authorised to be served upon any person by post, the service may be effected by prepaid letter post addressed to the person at his last known place of business or abode in New South Wales, and such service shall be deemed to have been effected at the time when it would in the ordinary course of post have arrived at the place to which it was addressed or at the post town or post office nearest to that place whether or not it has in fact been received by the addressee.

334. This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

335. (1) The Income Tax (Management) Act, 1912, as amended by subsequent Acts, is amended in the manner and to the extent set out in the First Schedule to this Act.

(2) The Income Tax (Management) Act, 1928, as amended by subsequent Acts, is amended in the manner and to the extent set out in the Second Schedule to this Act.

(3) The Income Tax (Management) Act, 1936, as amended by subsequent Acts, is amended in the manner and to the extent set out in the Third Schedule to this Act.
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(4) The Unemployment Relief Tax (Management) Act, 1939-1941, is amended in the manner and to the extent set out in the Fourth Schedule to this Act.

(5) The Social Services Tax (Management) Act, 1939-1941, is amended in the manner and to the extent set out in the Fifth Schedule to this Act.

PART IX.

REGISTRATION OF TAX AGENTS.

336. This Part shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

337. (1) In this Part "the Board" means a board consisting of three members as follows:—

(a) the Auditor-General or the Assistant Auditor-General as his delegate;

(b) the Under Secretary to the Treasury or the Assistant Under Secretary as his delegate;

(c) a person appointed by the Governor.

The Minister shall appoint one of such members to be the chairman of the Board.

(2) For the conduct of the business of the Board—

(a) any two members shall form a quorum;

(b) at a meeting of the Board the decision of the majority shall prevail;

(c) the chairman of the Board shall have a deliberative, but not a casting, vote.

(3) No action or suit shall be brought or maintained against any person who is or has been a member of the Board for any nonfeasance or misfeasance in connection with his duties.

338. (1) For the purposes of this section the Board may by notice in writing require any person—

(a) to furnish it with such information as it may require; and

(b) to attend and give evidence before it and produce all books, documents and other papers whatsoever in his custody or under his control relating to any matter before it.

The
The Board may require the information or evidence to be given on oath and either orally or in writing, and for that purpose the chairman of the Board may administer an oath.

(2) No person shall—
(a) in any particular fail to comply with any such notice; or
(b) knowingly furnish the Board with any false information; or
(c) refuse to be sworn or appear when so required by the Board; or
(d) refuse to answer any question put to him by the Board.

Penalty: Fifty pounds.

(3) Any person who on oath or affirmation wilfully gives any false evidence before the Board shall be guilty of perjury and may be prosecuted and punished for that offence in the Supreme Court.

339. (1) Registration as a tax agent may be obtained on application to the Board.

(2) Every application under this section shall be accompanied by a lodgment fee of one pound.

(3) If the applicant satisfies the Board that he is a fit and proper person to prepare income tax returns and transact business on behalf of taxpayers in income tax matters, the Board shall register him as a tax agent.

(4) Where a partnership carries on the business of tax agents it shall be sufficient if one partner is registered on behalf of the partnership. Where a company carries on the business of tax agents it shall be sufficient if a person appointed in writing by the company is so registered on behalf of the company: Provided that no partnership or company shall be entitled to carry on such business unless all work done by the partnership or company in connection with that business is done under the supervision or control of a person registered under this section.

340. (1) Registration as a tax agent shall remain in force until cancelled under this Act.

(2) The Board—
(a) may cancel the registration of any tax agent upon proof that the tax agent has prepared a return which is false in any material particular, or
or has neglected his principal’s business, or has been guilty of misconduct as a tax agent, or if in the opinion of the Board he is not a fit or proper person to be or remain registered;

(b) shall cancel the registration of a tax agent upon his death, or his permanently ceasing to carry on business as a tax agent.

(3) (a) Where the registration of a tax agent is cancelled an appeal shall lie to the District Court exercising jurisdiction in the district within which such tax agent was carrying on business.

(b) Every such appeal shall be in the nature of a rehearing.

(c) Rules of court of the District Court may be made prescribing all matters necessary or convenient to be prescribed for the purpose of regulating appeals under this subsection.

341. (1) No person other than a solicitor, or a person exempted under this section, shall demand, receive, or be entitled to recover or set-off, any fee for or in relation to the preparation of any income tax return for a taxpayer or for or in relation to the transaction of any business on behalf of a taxpayer in income tax matters unless he is registered by the Board as a tax agent: Provided that the Board may at its discretion exempt any person from this section upon being satisfied that the total income derived by that person as a tax agent during the period of twelve months preceding the date of his application for such exemption did not exceed twenty pounds per annum, and may grant to that person a certificate of exemption in that behalf which shall have a currency of one year, but may be annually renewed; but the Board shall not grant an application for exemption under this section unless it is satisfied that there is no registered tax agent within a reasonable distance of the place where the applicant for such exemption resides or carries on business.

(2) No person shall demand, receive, or set-off any fee contrary to this section.

Penalty: Not less than two pounds or more than one hundred pounds.
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342. If through the negligence of a solicitor or a registered tax agent a penalty or an additional tax is charged against a taxpayer, the solicitor or the registered tax agent shall be liable to pay to the taxpayer the amount of that penalty or additional tax, and that amount may be recovered by his principal from him in an action, but this provision shall not be construed so as to exonerate the taxpayer from his liability.

343. (1) A registered tax agent shall not allow any person, not being an employee or a registered tax agent—

(a) to prepare on his behalf, either directly or indirectly, any return; or

(b) to conduct on his behalf, either directly or indirectly, any business relating to any return or objection or income tax matter.

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

(2) Subsection one of this section shall not be construed as prohibiting the employment by a registered tax agent of solicitor or counsel for or in connection with the preparation of any such return or the conduct of any such business.

344. Any person who, directly or indirectly—

(a) describes himself as or represents himself to be a tax agent; or

(b) advertises in any manner whatsoever that income tax returns will be prepared by him or that any other matter in connection with this Act will be attended to by him,

shall, unless such person is a registered tax agent, or the holder of a certificate of exemption under section three hundred and forty-one of this Act, be guilty of an offence.

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

SCHEDULES.
SCHEDULES.

THE FIRST SCHEDULE.

The Income Tax (Management) Act, 1912, as amended by subsequent Acts, is amended by inserting after section forty-one the following new section:

42. (1) Notwithstanding anything contained in this Act or in any other Act, the provisions of—

(a) section two hundred and sixteen of the Income Tax Management Act, 1941, shall, as from the commencement of that Act, apply to all assessments made under this Act;

(b) section two hundred and sixty and section two hundred and sixty-one of the Income Tax Management Act, 1941, shall apply to any assessments which may after the commencement of that Act be made under this Act;

(c) section two hundred and seventy-four of the Income Tax Management Act, 1941, shall apply in respect of any tax assessed under this Act which, at the commencement of the Income Tax Management Act, 1941, had not been paid, and of any tax which may after such commencement be assessed under this Act;

(d) section three hundred and thirty and section three hundred and thirty-one of the Income Tax Management Act, 1941, shall apply in respect of any tax assessed under this Act which, at the commencement of the Income Tax Management Act, 1941, had not been paid, or which may after such commencement be assessed under this Act.

(2) “Tax” in this section includes any judgment debt and costs in respect of income tax, and all fines, penalties and costs imposed on the taxpayer by or under this Act.

THE SECOND SCHEDULE.

The Income Tax (Management) Act, 1928, as amended by subsequent Acts, is amended—

1. by omitting from section two the word and symbols “and 53A” and by inserting in lieu thereof the word and symbols “53A and 53B.”

2. by inserting at the end of section forty-four, the following new subsection:

(5) The provisions of section two hundred and sixteen of the Income Tax Management Act, 1941, shall, as from the commencement of that Act, apply to assessments made under this Act:

Provided that this section shall continue to apply in any case in which an alteration in an assessment would have
the effect of reducing a taxpayer's liability and application for an amendment was made by the taxpayer before the commencement of the Income Tax (Management) Act, 1936.

(3) by inserting in Part V after section 53(1) the following new section:—

53a. (1) The provisions of section 53A of this Act shall cease to have effect upon the commencement of this section except for the purpose of completely disposing of any appeal the hearing of which had been commenced by the Supreme Court or the Board of Appeal under those provisions before such commencement.

(2) The provisions of Part V of the Income Tax Management Act, 1941, shall apply to all assessments which may after the commencement of this section be made under this or the previous Acts and subject to this section to all assessments heretofore made under this or the previous Acts where the hearing of an appeal from the assessment has not been commenced by the Supreme Court or the Board of Appeal constituted under the Income Tax (Management) Act, 1936, before the commencement of this section.

(3) Where the Commissioner has decided an objection against an assessment made before the commencement of this section and forwarded it to the Supreme Court to be dealt with as an appeal and that Court has not commenced the hearing of the appeal, the appeal shall be dealt with by that Court under Part V of the Income Tax Management Act, 1941.

(4) Where the Commissioner has decided an objection against an assessment made before the commencement of this section and forwarded it to the Board of Appeal constituted under the Income Tax (Management) Act, 1936, to be dealt with as an appeal and that board has not commenced the hearing of the appeal, the appeal shall be dealt with by the Board of Appeal constituted under Part V of the Income Tax Management Act, 1941.

(5) If any documents relating to any matter which by this section is required to be dealt with by the Board of Appeal constituted under Part V of the Income Tax Management Act, 1941, are in the possession of the Board of Appeal constituted under the Income Tax (Management) Act, 1936, all such documents shall be forwarded to the first-mentioned Board of Appeal.

(6) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.
Tax Management Act, 1941, except in respect of notices given under the authority of that enactment before such commencement.

(2) The provisions of section two hundred and seventy-four of the Income Tax Management Act, 1941, shall apply in respect of any tax assessed under this Act, which at the commencement of the Income Tax Management Act, 1941, had not been paid and in respect of which a notice under the authority of section two hundred and sixty-eight of the Income Tax (Management) Act, 1936, had not, before such commencement, been given, and of any tax which may, after such commencement, be assessed under this Act.

(3) In this section the expression “tax” includes any judgment debt and costs in respect of tax.

(5) by inserting at the end of section eighty-nine the following subsection:

(5) The provisions of section three hundred and thirty and of section three hundred and thirty-one of the Income Tax Management Act, 1941, shall apply to any tax assessed under this Act which has not been paid before the commencement of the Income Tax Management Act, 1941, or which may after such commencement be assessed under the provisions of this Act and the provisions of section three hundred and one and two of the Income Tax (Management) Act, 1936, shall thereupon cease to have effect.

THE THIRD SCHEDULE.

The Income Tax (Management) Act, 1936, as amended by subsequent Acts, is amended—

(1) by inserting at the end of section two hundred and ten the following new subsection:

(5) The provisions of section two hundred and sixteen of the Income Tax Management Act, 1941, shall, as from the commencement of that Act, apply to assessments made under this Act.

(2) by inserting in Part V after section two hundred and fifty-two the following new section:

252A. (1) The preceding provisions of this Part of this Act shall cease to have effect upon the commencement of this section except for the purpose of completely disposing of any appeal the hearing of which had been commenced by the Supreme Court or the Board of Appeal under those provisions before such commencement.

(2) The provisions of Part V of the Income Tax Management Act, 1941, shall apply to all assessments which may
may after the commencement of this section be made under this or the previous Acts and subject to this section to all assessments heretofore made under this or the previous Acts where the hearing of an appeal from the assessment has not been commenced by the Supreme Court or the Board of Appeal before the commencement of this section.

(3) Where the Commissioner has decided an objection against an assessment made before the commencement of this section and forwarded it to the Supreme Court to be dealt with as an appeal and that Court has not commenced the hearing of the appeal, the appeal shall be dealt with by that Court under Part V of the Income Tax Management Act, 1941.

(4) Where the Commissioner has decided an objection against an assessment made before the commencement of this section and forwarded it to the Board of Appeal to be dealt with as an appeal and that Board has not commenced the hearing of the appeal, the appeal shall be dealt with by the Board of Appeal constituted under Part V of the Income Tax Management Act, 1941.

(5) If any documents relating to any matter which by this section is required to be dealt with by the Board of Appeal constituted under Part V of the Income Tax Management Act, 1941, are in the possession of the Board of Appeal appointed under this Act, all such documents shall be forwarded to the first-mentioned Board of Appeal.

(6) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) by inserting in Part VI next after section two hundred and sixty-eight the following new section:

268A. (1) The provisions of section two hundred and sixty-eight of this Act shall cease to have effect upon the commencement of the Income Tax Management Act, 1941, except in respect of notices given under the authority of that enactment before such commencement.

(2) The provisions of section two hundred and seventy-four of the Income Tax Management Act, 1941, shall apply in respect of any tax assessed under this Act, which at the commencement of the Income Tax Management Act, 1941, had not been paid and in respect of which a notice under the authority of section two hundred and sixty-eight of this Act had not, before such commencement, been given, and of any tax which may, after such commencement, be assessed under this Act.

(3) In this section the expression "tax" includes any judgment debt and costs in respect of tax.

(4) by inserting in Part VIII next after section three hundred and two the following new section:

302A. The provisions of section three hundred and thirty and of section three hundred and thirty-one of the Income Tax
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The Unemployment Relief Tax (Management) Act, 1939-1941, is amended—

(a) by inserting after section seven the following new sections:

7A. (1) This section shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-one.

(2) Upon the commencement of this section sections six and seven of this Act shall cease to have effect.

(3) Any debit or credit balance in the Unemployment Relief Fund immediately before such commencement shall be transferred to the debit or credit of the Consolidated Revenue Fund.

(4) All moneys received after such commencement which would have been paid to the credit of the Unemployment Relief Fund if this section had not been enacted shall be paid to the credit of the Consolidated Revenue Fund.

7B. (1) Unemployment Relief Tax paid by an employee in respect of income from employment derived after the thirtieth day of June, one thousand nine hundred and forty-one, and before the commencement of the Income Tax Management Act, 1941, shall be applied in payment or in part payment of any tax for which he is liable under any Act of this State imposing a tax upon income, and where he is not so liable, or where the amount of Unemployment Relief Tax so paid exceeds the amount of tax upon income for which he is so liable the Commissioner shall refund the amount of Unemployment Relief Tax so paid, or the amount of the excess, as the case may be.

(2) An employee who claims to be entitled to any credit or refund referred to in subsection one of this section shall furnish to the Commissioner such information as the Commissioner may require in relation to Unemployment Relief Tax so paid by the employee.

(b) by adding at the end of section seventeen the following new subsections:

(3) Every employer shall, if required by the Commissioner by notice published in the Gazette or upon notice in writing from the Commissioner, furnish to the Commissioner within the time specified in the notice, or within such extended time
(4) Every employer required by section twenty of this Act to affix tax stamps to his records shall furnish with the return furnished under subsection three of this section the Employers’ Schedule prescribed by regulations made under this Act in respect of such period as is covered by the return.

(c) by inserting after section twenty-one the following new section:

21A. (1) Where it is shown to the satisfaction of the Board referred to in section three hundred and thirty of the Income Tax Management Act, 1941, that by reason of his retirement from or loss of any employment the income from employment derived by an employee during the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, is appreciably greater than the income from employment, if any, derived by him during the next succeeding year, and that his income from employment has been permanently reduced and that serious hardship would result unless an adjustment is made in the amount of unemployment relief tax paid by him upon income from employment derived during the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, the Board may direct that the whole or part of the tax so paid shall be refunded to that employee or applied in payment or in part payment of any tax payable by him under any Act of this State imposing a tax upon income and the Commissioner may make such entries as are necessary for that purpose.

(2) Where, in the case of an employee to whom subsection one of this section does not apply, it is shown to the satisfaction of the Board referred to in section three hundred and thirty of the Income Tax Management Act, 1941, that serious hardship would result unless an adjustment is made in the amount of unemployment relief tax paid by him upon income from employment derived during the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, the Board may direct that the whole or part of the tax so paid shall be refunded to that employee or applied in payment or in part payment of any tax payable by him under any Act of this State imposing a tax upon income and the Commissioner may make such entries as are necessary for that purpose.
The Commissioner may exercise all the powers of the Board under this section where the amount of tax involved does not exceed twenty pounds.

THE FIFTH SCHEDULE.

The Social Services Tax (Management) Act, 1939-1941, is amended—

(a) by inserting after section seven the following new sections:

7A. (1) This section shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-one.

(2) Upon the commencement of this section sections six and seven of this Act shall cease to have effect.

(3) Any debit or credit balance in the Social Services Fund immediately before such commencement shall be transferred to the debit or credit of the Consolidated Revenue Fund.

(4) All moneys received after such commencement which would have been paid to the credit of the Social Services Fund if this section had not been enacted shall be paid to the credit of the Consolidated Revenue Fund.

7B. (1) Social Services Tax paid by an employee in respect of income from employment derived after the thirtieth day of June, one thousand nine hundred and forty-one, and before the commencement of the Income Tax Management Act, 1941, shall be applied in payment or in part payment of any tax for which he is liable under any Act of this State, imposing a tax upon income, and where he is not so liable, or where the amount of Social Services Tax so paid exceeds the amount of tax upon income for which he is so liable the Commissioner shall refund the amount of Social Services Tax so paid, or the amount of the excess, as the case may be.

(2) An employee who claims to be entitled to any credit or refund referred to in subsection one of this section shall furnish to the Commissioner such information as the Commissioner may require in relation to Social Services Tax so paid by the employee.

(b) by adding at the end of section seventeen the following new subsections:

(5) Every employer shall, if required by the Commissioner by notice published in the Gazette or upon notice in writing from the Commissioner, furnish to the Commissioner within the time specified in the notice, or within such extended time as the Commissioner may allow, a return for the period commencing on the first day of July, one thousand nine hundred and forty-one, and ending on the thirty-first day of October in that year, setting out such information:
information as may be required relating to names and addresses of employees, amounts of income from employment, amounts of tax collected upon income from employment, amounts of such tax paid to the Commissioner and such other matters as may be required by the notice.

(4) Every employer required by section twenty of this Act to affix tax stamps to his records shall furnish with the return furnished under subsection three of this section the Employers' Schedule prescribed by regulations made under this Act in respect of such period as is covered by the return.

(c) by inserting after section twenty-one the following new section:—

21A. (1) Where it is shown to the satisfaction of the Board referred to in section three hundred and thirty of the Income Tax Management Act, 1941, that by reason of his retirement from or loss of any employment the income from employment derived by an employee during the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, is appreciably greater than the income from employment, if any, derived by him during the next succeeding year, and that his income from employment has been permanently reduced and that serious hardship would result unless an adjustment is made in the amount of Social Services Tax paid by him upon income from employment derived during the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, the Board may direct that the whole or part of the tax so paid shall be refunded to that employee or applied in payment or in part payment of any tax payable by him under any Act of this State imposing a tax upon income and the Commissioner may make such entries as are necessary for that purpose.

(2) Where, in the case of an employee to whom subsection one of this section does not apply, it is shown to the satisfaction of the Board referred to in section three hundred and thirty of the Income Tax Management Act, 1941, that serious hardship would result unless an adjustment is made in the amount of social services tax paid by him upon income from employment derived during the year ended on the thirtieth day of June, one thousand nine hundred and forty-one, the Board may direct that the whole or part of the tax so paid shall be refunded to that employee or applied in payment or in part payment of any tax payable by him under any Act of this State imposing a tax upon income and the Commissioner may make such entries as are necessary for that purpose.

(3) The Commissioner may exercise all the powers of the Board under this section where the amount of tax involved does not exceed twenty pounds.