

INCOME TAX ASSESSMENT.

No. 37 of 1922.

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

[Assented to 18th October, 1922.]

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Income Tax Assessment Act* 1922. Short title.

2. The Acts set forth in the Schedule to this Act are repealed. Repeal.

3. This Act shall be divided into Parts, as follows :— Parts.

PART I.—Preliminary.

PART II.—Administration.

PART III.—Liability to Taxation.

PART IV.—Returns and Assessments.

PART V.—Objections and Appeals.

PART VI.—Collection and Recovery of Tax.

PART VII.—Penal Provisions.

PART VIII.—Taxation Prosecutions.

PART IX.—Miscellaneous.

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

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

“ Agent ” includes every person who in Australia, for or on behalf of any person out of Australia (in this section called “ the principal ”), holds or has the control receipt or disposal of any money belonging to the principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act ;

"Assessable income" means the gross income which is not exempt from taxation ;

"Assistant Commissioner" means the Assistant Commissioner of Taxation ;

"Australia" includes the Territory of Papua ;

"Business" includes any profession, trade, employment, vocation or calling ;

"Commissioner" means the Commissioner administering this Act ;

"Company" includes all bodies or associations corporate or unincorporate, but does not include partnerships ;

"Income" includes—

(a) interest upon money secured by mortgage of any property in Australia ; and

(b) in the case of a co-operative company or society—all sums received from members in payment for commodities supplied or animals or land sold to them or received in respect of commodities animals or land sold by the company or society whether on its own account or on account of its members, but does not include—

(c) any rebate received by a member of a co-operative company based on his purchases from that company where the Commissioner is satisfied that ninety per centum of its sales is made to its own members ; and

(d) in the case of an annuity which has been purchased—that part of the annuity which represents the purchase price ;

"Income from personal exertion" or "income derived by any person from personal exertion" means income derived from sources in Australia consisting of earnings, salary, wages, commission, fees, bonuses, pensions, superannuation allowances, retiring allowances and gratuities not paid in a lump sum, allowances received in the capacity of employee, and the proceeds of any business carried on by the taxpayer either alone or as a partner with any other person, and any income from any property where the income forms part of the emoluments of any office or employment of profit held by the individual, but does not include interest, unless the taxpayer's principal business consists of the lending of money, and does not include rents and dividends ;

"Income from property" or "income derived from property" means all income derived from sources in Australia and not derived from personal exertion ;

"Income tax" means the income tax imposed as such by any Act as assessed under this Act ;

"Mortgage" includes any charge, lien, or encumbrance to secure the repayment of money upon which interest is payable ;

"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;

"Shareholder" includes stockholder;

"Taxable income" means the amount of income remaining after all deductions allowed by this Act have been made;

"Taxpayer" means any person chargeable with income tax;

"Trading Stock" means anything produced, manufactured, acquired or purchased for purposes of manufacture, sale or exchange;

"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.

5. This Act shall extend to the Territory of Papua, but shall not apply to any income derived from sources in Papua by a resident of Papua nor to any income earned in Papua by personal exertion by any person while there. Act to extend to Papua.

PART II.—ADMINISTRATION.

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

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

7. The Assistant Commissioner of Taxation shall have and may exercise such powers and functions as are prescribed, or as are delegated to him by the Commissioner. Assistant Commissioner.

8. The Deputy Commissioners of Taxation shall, subject to the control of the Commissioner, have such powers and functions as are prescribed, or as the Commissioner directs. Deputy Commissioners.

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

of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

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

Report by the
Commissioner.

10.—(1.) The Commissioner shall furnish to the Treasurer annually for presentation to the 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.

Governor-
General may
make
arrangements
with Governor
of State.

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

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

Officers to
observe
secrecy.

12.—(1.) Every person executing any power or duty conferred or imposed on an officer under this Act or the Regulations shall, before entering upon his duties or exercising any power under this Act, make before a Justice of the Peace or a Commissioner for taking Affidavits or a Commissioner for Declarations, a declaration in the form prescribed.

(2.) Any person who acts in the execution of any duty under this Act or the Regulations before he has made the prescribed declaration or who after making the declaration makes a record of or divulges any information relating to the affairs of a person except in the performance of any duty under this Act shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

(3.) Any person who has been an officer or has performed any duty under this Act or under any Act repealed by this Act, and who communicates any information acquired by him in the performance of any duty under this Act or the Regulations or under any Act repealed by this Act or under any Regulations made under any such repealed Act to any person other than a person to whom he is authorized by the Commissioner to communicate it shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

(4.) Notwithstanding anything contained in this section, the Commissioner, the Assistant Commissioner or a Deputy Commissioner may communicate any matter which comes to his knowledge in the performance of his official duties, to the Commissioner of Income Tax for any State, or the officer or authority administering any Act

of a State relating to Stamp Duties or Succession Duties (who is authorized by law to afford similar information to the Commissioner, the Assistant Commissioner or a Deputy Commissioner) or to the Commissioner of Pensions or the Repatriation Commission for the purpose of the administration of any law of the Commonwealth relating to pensions.

(5.) 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 under this Act or any Act repealed by this Act, except as may be necessary for the purpose of carrying into effect the provisions of this Act.

PART III.—LIABILITY TO TAXATION.

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

(2.) In assessments of tax for the financial year beginning on the first day of July One thousand nine hundred and twenty-two and subsequent years, the rate to be applied to the taxable income shall be calculated under the Act by which the rates of income tax are declared as if the taxable income were the average of the income derived by the taxpayer in the years (in this section called "average years") beginning with the first average year and ending with the year next preceding the financial year for which the tax is payable.

(3.) The first average year shall be the fifth year before the financial year for which the tax is payable—except in the cases in which the subsequent provisions of this section provide for the first average year being a later year.

(4.) The first average year shall not be earlier than the year beginning on the first day of July One thousand nine hundred and twenty.

(5.) Where the taxable income of the taxpayer ascertained from the income of the year which would otherwise be the first average year was greater than his taxable income of the next succeeding year, the first average year shall be the first year, subsequent to the first-mentioned year, in which the taxable income of the taxpayer was less than his taxable income in the next subsequent year.

(6.) Any year in which the taxpayer was not carrying on business and was not in receipt of a taxable income shall not be counted as a first average year.

(7.) Any year in which the taxpayer was carrying on business but had no taxable income shall be capable of being a first average year.

(8.) In the case of a taxpayer who is carrying on business, the excess of allowable deductions over assessable income in any year which is an average year shall be taken into account in calculating the average.

(9.) Where a taxpayer establishes that, owing to his retirement from his occupation, or from any other cause, his taxable income has been permanently reduced to an amount which is less than two-thirds of the average taxable income by reference to which his rate of tax would be calculated, apart from the provisions of this sub-section, he shall be assessed as if he had never been a taxpayer in a previous year.

(10.) Where there are not at least two average years for the purpose of calculating the rate under the foregoing provisions of this section, the rate of income tax to be applied in a year to the taxable income of a taxpayer shall be the rate applicable in that year, under the Act by which the rates of income tax are declared, to a taxable income of that amount.

Exemptions.

14.—(1.) The following incomes, revenues and funds shall be exempt from income tax :—

- (a) the revenue of a municipal corporation or other local governing body or of a public authority ;
- (b) the income of a society registered under a Friendly Societies Act of the Commonwealth or a State and not carried on for the purposes of profit or gain to the individual members thereof ;
- (c) the income of a trade union or of an association of employers or employees registered under any Act of the Commonwealth or a State relating to the settlement of industrial disputes ;
- (d) the income of a religious, scientific, charitable or public educational institution ;
- (e) the income derived from the bonds, debentures, stock or other securities of the Commonwealth issued for the purpose of Commonwealth War Loans the interest on which is declared by the prospectus to be free from Commonwealth income tax ;
- (f) the income of a provident, benefit or superannuation fund established for the benefit of the employees in any business or class of business and the income of a fund established by any will or instrument of trust for public charitable purposes if the Commissioner is satisfied that the particular fund is being applied to the purposes for which it was established ;
- (g) the salary of the Governor-General and the salaries of the Governors of the States ;
- (h) the official salaries of foreign consuls and the trade commissioners of any part of the British Dominions ;
- (i) pensions paid under the *Australian Soldiers' Repatriation Act* 1920-1921.

- (j) the income of any 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 the agricultural, pastoral, horticultural, viticultural, stock-raising, manufacturing or industrial resources of Australia ;
- (k) the income of any society or association established for musical purposes, or for the encouragement of music, art, science or literature, and not carried on for the purposes of profit or gain to the individual members thereof ; and
- (l) the remuneration paid by the Government of the Commonwealth or of a State to a person residing outside Australia for expert advice to that Government or as a member of a Royal Commission.

(2.) If a company, which has derived income from the bonds, debentures, stock or securities specified in paragraph (e) of sub-section (1.) of this section, pays in any year any portion of that income in dividends to its shareholders, the exemption under that paragraph shall extend to the proportion of the dividend for that year which has been paid out of such income.

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

16. The assessable income of any person shall include—

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

What is included as income.

Provided that for the purpose of computing such profits the value of all live stock (not being live stock used as beasts of burden or as working beasts), and trading stock (not being live stock), not disposed of at the beginning and end of the period in which the income was derived shall be taken into account :

For the purposes of this paragraph " Value " means—

- (i) in the case of live stock (not being live stock used as beasts of burden or as working beasts)—the values as prescribed ; and
- (ii) in the case of trading stock (not being live stock)—the actual cost price or market selling value of each article of trading stock, or the price at which each article of trading stock can be replaced, at the option of the taxpayer in respect of each article ;

- (b) in the case of a member, shareholder, depositor or debenture-holder of a company which derives income from a source in Australia or of a company which is a shareholder in a company which derives income from a source in Australia—

- (i) dividends, bonuses or profits (but not including a reversionary bonus issued on a policy of life assurance) credited, paid or distributed to the member or shareholder from any profit derived from any source by the company :

Provided that where a company derives income from a source in Australia and from a source outside Australia a taxpayer shall only be taxable on so much of the dividend as bears to the whole dividend the same proportion that the profits derived by the company from a source in Australia bears to the total profits of the company :

Provided further that where a company distributes to its members or shareholders any undistributed income accumulated prior to the first day of July One thousand nine hundred and fourteen the sum so received by the member or shareholder shall not be included as part of his income. For the purposes of this proviso amounts carried forward by a company in its profit and loss account, appropriation account, revenue and expenses account or any other account similar to any of the foregoing accounts shall not be deemed to be accumulated income ;

Provided also that where a dividend or bonus is paid wholly and exclusively out of the profits arising from the sale of capital assets a member or shareholder shall not be liable to tax on that dividend or bonus.

- (ii) the face value of shares distributed by a company to its members or shareholders in consequence of the capitalization of the whole or any part of the assessable income of the company which it is liable to include in its return for the purposes of its current assessment :

Provided that nothing in this section shall render liable to taxation the value of shares issued by a company to its members or shareholders in consequence of the capitalization of any other of its profits ;

- (iii) interest credited or paid to any depositor or debenture-holder of a company ;

- (c) beneficial interests in income derived under any will, settlement, deed of gift or instrument of trust ;
- (d) money derived by way of royalty or bonuses, and premiums fines or foregifts or consideration in the nature of premiums fines or foregifts demanded and given in connexion with leasehold estates, and the amount of any payment received by a lessee upon the assignment or transfer of a lease to another person after deducting therefrom—

- (i) the part (if any) which, in the opinion of the Commissioner, is properly attributable to the transfer of any tangible assets belonging to the lessee ; and
- (ii) so much of any fine, premium or foregift paid by the lessee or any amount paid by the lessee for the assignment or transfer of the lease as is properly attributable to the period of the lease unexpired at the time of the assignment or transfer by the lessee :

Provided that paragraph (d) shall not apply to the proceeds of the sale, transfer or assignment of the lease of a mining property (other than coal mining) where the Commissioner is satisfied that the lease has been sold, assigned or transferred—

- (i) by a *bonâ fide* prospector ; or
 - (ii) by a person, partnership, syndicate or company who or which does not make a business of buying and selling mining properties and who or which purchased the lease from a *bonâ fide* prospector and worked the property in a proper and efficient manner ;
- (e) five per centum of the capital value of land and improvements thereon owned and used or used rent free by the taxpayer for the purpose of residence or enjoyment and not for the purpose of profit or gain : Provided that when the taxpayer is an employee and premises are occupied by him for purposes of residence in connexion with his employment, the taxpayer's income shall include the annual rental value to him of the premises or part thereof used by him for the purpose of residence ;
 - (f) five per centum of the capital amount of a retiring allowance or gratuity which is paid in a lump sum ;
 - (g) all allowances, gratuities (except retiring allowances and gratuities paid in lump sums), bonuses and premiums whether in money or goods or sustenance or land allowed, given or granted to a person in respect of or for or in relation, directly or indirectly, to any employment or service of such person to the amount of the value of such allowances, gratuities, bonuses and premiums respectively ; and
 - (h) prizes in lotteries paid in cash or by means of inscribed stock or bonds or other negotiable instruments.

Income arising
from sale of
trading stock.

17.—(1.) The proceeds derived from the sale, after the thirtieth day of June One thousand nine hundred and twenty-one, whether on the sale of the business as a going concern, or in any other manner whatsoever, of the trading stock or part of the trading stock of any business, shall be assessable income derived from carrying on a business.

(2.) Where any trading stock is sold together with other assets of the business, the part of the consideration attributable to the trading stock shall be determined by the Commissioner, Assistant Commissioner or Deputy Commissioner (as the case requires), and the part of the consideration so determined shall be deemed to be the price paid for the trading stock by the purchaser.

(3.) For the purposes of this section any trading stock which has been disposed of otherwise than by sale shall be deemed to have been sold, and any trading stock so disposed of and any trading stock which has been sold for a consideration other than cash shall be deemed to have realized the market price of the day on which it was so disposed of or sold, but, where there is no market price, trading stock shall be deemed to have realized such price as the Commissioner determines.

(4.) In this section—

(a) the expression “trading stock” does not include live stock which in the opinion of the Commissioner, Assistant Commissioner or Deputy Commissioner are ordinarily used as beasts of burden or as working beasts or for breeding purposes; and

(b) references to disposal of trading stock do not include disposal by way of testamentary disposition.

(5.) Any taxpayer who is dissatisfied with the decision of the Commissioner, Assistant Commissioner or Deputy Commissioner under this section may require the Commissioner to refer his case to a Board of Appeal, and the Commissioner shall refer the case accordingly.

Rebates in
cases of
double and
treble taxation.

18.—(1.) Any person who has an amount of income which is liable to income tax for any year of assessment—

(a) under this Act and in the United Kingdom, or

(b) under this Act and in the United Kingdom and in a State of the Commonwealth of Australia,

and who satisfies the Commissioner as to—

(c) the amount of the income which is so liable; and

(d) the amounts of taxes to which the income is so liable, together with the rate or rates of those taxes,

shall be entitled to a rebate of tax upon that amount of income at a rate which shall be ascertained as follows :—

- (i) In the case where the amount of income is liable to tax under this Act and in the United Kingdom, and the Commonwealth rate is greater than one-half of the British rate—

(a) where the Commonwealth rate is greater than the British rate, the rate of rebate shall be one-half of the British rate ;

(b) where the Commonwealth rate is not greater than the British rate, the rate of rebate shall be the excess of the Commonwealth rate over one-half of the British rate :

Provided that no rebate shall be claimable under this paragraph with respect to any amount of income to which the next following paragraph is applicable ;

- (ii) In the case where the amount of income is liable to tax under this Act and in a State and in the United Kingdom, and the sum of the Commonwealth and State rates is greater than one-half of the British rate, the proportion which the Commonwealth rate bears to the sum of the Commonwealth and State rates shall be ascertained, and the rate of rebate shall be that proportion of the following rates :—

(a) Where the sum of the Commonwealth and State rates is greater than the British rate—one-half of the British rate ;

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

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

- (a) “ Commonwealth rate ” means the rate ascertained by dividing the total amount of income tax paid or payable for the year by the taxpayer (before the deduction of rebate granted under this section) by the amount of the total taxable income in respect of which the tax paid or payable under this Act has been charged for that year ; except that, where the tax is charged on an amount other than the ascertained amount of actual profits, the rate of tax shall be as determined by the Commissioner ;
- (b) “ State rate ” has a corresponding meaning in relation to the income tax paid or payable on the amount of income under the law of a State ; and
- (c) “ British rate ” means the appropriate rate of the tax in the United Kingdom upon the amount of income.

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

- (a) what is the appropriate rate of United Kingdom tax, and
- (b) the particular amount of income which is liable to tax under this Act and in the United Kingdom.

Money credited,
re-invested,
accumulated,
&c., to be
income.

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

Taxation of
companies.

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

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

(2.) In addition to any other income tax payable by it, a company shall also pay income tax on—

- (a) so much of the assessable income of the company as is distributed to the members, shareholders, or stockholders of the company who are absentees ; and
- (b) the interest paid or credited by the company to any person, who is an absentee, on money raised by debentures of the company and used in Australia or on money lodged at interest in Australia with the company ; and
- (c) interest or dividends distributed in respect of debentures or share stock payable to bearer the names and addresses of the holders of which are not supplied to the Commissioner by the company as if the total amount so distributed were the income of an individual :

Provided that a company shall be entitled to deduct and retain for the use of the company from the amount payable to any of the persons referred to in paragraphs (a) and (b) of this sub-section such amount as is necessary to pay the tax which becomes due in respect of that amount :

Provided also that a company shall be entitled to deduct and retain for the use of the company from the interest or dividend payable to any person who is a holder of debentures or share stock payable to bearer an amount which bears the same proportion to the amount paid by the company under paragraph (c) of this sub-section as the interest or dividend payable to that person bears to the total interest or dividend payable in respect of those debentures or that share stock :

Provided further that, where the Commissioner is satisfied that the holder of debentures or share stock payable to bearer is a person who is not liable to furnish a return, the Commissioner may refund to that person the amount of the tax paid by the company in respect of the debentures or share stock of that person :

Provided further that where a company pays tax under this sub-section on any dividend or interest, and the member, shareholder or person includes that dividend or interest in his return, the proportionate amount of tax paid by the company in respect of the dividend or interest shall be deducted from the total tax payable by the member, shareholder or person.

(3.) A company, notwithstanding any contract, agreement, or arrangement entered into by it, may, with the approval of the Commissioner, charge *pro rata* the amount of the tax actually paid by it against those beneficially interested in the income of the company.

(4.) Where a company has paid income tax on undistributed income and that income is in any year subsequent to that in which it was derived by the company distributed to the members or shareholders of the company, a member or shareholder who is a taxpayer shall be entitled to a rebate in his assessment of the lesser of the two following amounts :—

- (a) the part of the tax so paid by the company which bears the same proportion to the total tax so paid by the company as the amount so distributed to the member or shareholder bears to the total amount so distributed to the members or shareholders of the company ; or
- (b) the part of the tax payable by the member or shareholder in his individual assessment which bears the same proportion to the tax payable by him on his income from property as the amount so distributed to him bears to his total income from property remaining after allowing all the deductions allowed by this Act from that income, except the deduction under section twenty-four.

21.—(1.) Where in any year a company has not distributed to its members or shareholders at least two-thirds of its taxable income, the Commissioner shall determine whether a sum or a further sum (not exceeding the excess of two-thirds of the taxable income of the company over the amount distributed by it to its members or shareholders) could reasonably have been distributed by the company to them, such determination in the case of any financial year prior to that beginning on the first day of July One thousand nine hundred and twenty-two to be made not later than the thirtieth day of June One thousand nine hundred and twenty-three and in the case of other financial years within six months after the date of the issue to the company of its ordinary assessment.

Taxation of
company where
distribution
not reasonable.

(2.) The Commissioner shall calculate the additional tax, if any, which would have been payable by the shareholders if the sum or further sum determined by the Commissioner in accordance with sub-section (1.) of this section had been distributed to them in proportion to their interests in the paid-up capital of the company, and the company shall pay to the Commissioner the amount by which the additional tax, if any, exceeds the tax payable by the company on the sum or further sum so determined by the Commissioner.

(3.) In addition to any other facts which the Commissioner may consider in exercising the powers conferred upon him by sub-section (1.) of this section, the Commissioner shall take into consideration the relation between the distributable income of the company and its taxable income and the fact of the retention by the company of taxable income for the following purposes :—

- (a) to restore unrecouped losses of paid-up capital or of accumulated trading profits which had been invested in the business ;
- (b) to meet losses which the directors consider were certain to arise during subsequent accounting periods of the business ;
- (c) to provide an annual sinking fund calculated at five per centum per annum compound interest to repay debentures used by the company for the purposes of its business ; and
- (d) in the case of a company dealing with exported butter, for the purpose of insuring regularity of price on any consignment.

(4.) For the purposes of this section “ taxable income ” means the assessable income after deducting all the deductions allowed by this Act except the deduction allowed by sub-section (1.) of section twenty of this Act.

(5.) A taxpayer who is dissatisfied with the decision of the Commissioner under this section may require the Commissioner to refer his case to a Board of Appeal, and the Commissioner shall refer the case accordingly.

(6.) Where in any year by virtue of sub-section (2.) of section sixteen of the *Income Tax Assessment Act 1915*, or of that sub-section, as amended by the *Income Tax Assessment Act 1918*, any part of the income of a company not actually distributed has been deemed to be distributed to any member or shareholder of the company, his taxable income shall be reduced—

- (a) by one-third of the total amount of the income of the company actually distributed to him and of the income of the company so deemed to be distributed to him ; or
- (b) by the amount of the income of the company so deemed to be distributed to him,

whichever is the less ; and the Commissioner shall refund to him the tax over-paid, and the company shall repay to the Commissioner the tax previously refunded to it or dealt with as it directed in

respect of the total amount of income to be excluded from the assessments of the shareholders of the company under this sub-section.

(7.) This section shall also apply to all assessments hereafter to be made in respect of any financial year prior to that beginning on the first day of July One thousand nine hundred and twenty-two.

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

Taxation of a
mining
company.

- (a) the return required by this Act to be made by the person deriving the income in the first place shall show the total income so derived during the accounting period in respect of which the return is compiled ;
- (b) the capital expended by the person carrying on the mining operations in necessary plant and development of a mining property from which income has been received (less the distributed and undistributed income derived by that person prior to the financial year for which income tax is being levied) shall be divided by the estimated number of years during which payable mining operations may be expected to continue under normal conditions, and the quotient thus obtained shall, in addition to any other deductions allowed by this Act, be deducted from the income ;
- (c) as an alternative to the deduction allowable by the last preceding paragraph, there shall, at the option of the taxpayer, be deducted so much of the income of the accounting period as is expended in that year for development or is appropriated for development (the cost of which is not deductible under section twenty-three of this Act) and for new plant :

Provided that any of the money so appropriated which has not been expended for that purpose at the end of the year in which it was appropriated shall be liable to tax as income of that year :

Provided further that no deduction under paragraph (c) of sub-section (1.) of section twenty-three of this Act shall be allowed on any new plant to which this paragraph applies ;

- (d) where separate and distinct mining operations are carried on by the same person either alone or in association with any other person and a profit is made on some and a loss is made on others, that person shall be entitled to deduct the sum of the losses from the sum of the profits, and the balance of profits (if any) shall be included in the income of that person.

Deductions.

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

- (a) all losses and outgoings (not being in the nature of losses and outgoings of capital) including commission, discount, travelling expenses, interest and expenses actually incurred in gaining or producing the assessable income ;

Provided that where a company carries on the business of insurance (other than life insurance) in Australia and re-insures risks with a person or company carrying on a similar business but not in Australia, the company carrying on business in Australia shall be entitled to deduct—

- (i) so much of the premiums received on those risks as is credited or paid to that person or company ; and
(ii) only so much of the losses on those risks as relates to the risks or part of the risks which have not been so re-insured :

- (b) all rates and taxes (including State and Federal land taxes and State income tax) actually paid in Australia by the taxpayer during the year in which the income was derived, but not including any tax paid under this Act :

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

- (c) every premium or sum paid by the taxpayer during the year in which the income was derived on the insurance on his own life or that of his wife or children or for a deferred annuity or other like provision for his wife or children or in respect of any fidelity guarantee or bond which the taxpayer is required to provide in the exercise of his business :

Provided that in no case shall any deduction be allowed under this paragraph beyond the sum of Fifty pounds in the aggregate or for any premium or sum paid in respect of any insurance, annuity or other provision effected outside Australia ;

- (d) sums expended by the taxpayer during the year in which the income was derived for repairs to or on that part of any property occupied for the purpose of producing income or from which income is derived or is deemed to have been derived, and for the repair of machinery, implements, utensils, rolling-stock and articles employed by the taxpayer for the purpose of producing income ;

- (e) such sum as the Commissioner thinks just and reasonable as representing the diminished value per centum by wear and tear during the year in which the income was derived of

any machinery, implements, utensils, rolling-stock and articles (including beasts of burden and working beasts) used by the taxpayer for the purpose of producing income; such wear and tear not being of a kind that may be made good by repairs :

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

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

- (f) the sum actually expended by the taxpayer during the year in which the income was derived for food and for rent of quarters provided for an employee (other than a member of the taxpayer's own family under the age of sixteen years) who is employed exclusively in a business yielding an income to the taxpayer :

Provided that where a taxpayer provides quarters for such employees in any property in respect of which the taxpayer returns as income five per centum on the capital value of the property the proportion of such income found by the Commissioner to be applicable to the quarters so provided shall be deducted ;

- (g) payments not exceeding One hundred pounds in the aggregate made for the personal benefit of the taxpayer or his wife or children during the year in which the income was derived by a taxpayer who is in receipt of salary, wages, allowances, stipends or annuity, or whose taxable income does not exceed Eight hundred pounds, to superannuation, sustenance, widows' or orphans' fund established in Australia or any society duly registered under any Friendly Societies Act of the Commonwealth or a State ;
- (h) (i) contributions made to the Department of Repatriation or to any public authority for the purpose of being handed over to the Department of Repatriation :

Provided that the value of the contribution if in kind shall be verified to the satisfaction of the Commissioner ;
and

- (ii) gifts exceeding Five pounds each made, during the year in which the income was derived, to public charitable institutions in Australia, if the gifts are verified to the satisfaction of the Commissioner ;

- (i) so much of the assessable income as is paid in calls on shares in a mining company or syndicate carrying on mining operations in Australia for gold, silver, base metals or rare minerals;
- (j) so much of the assessable income as is set aside or paid by an employer of labour as or to a fund to provide individual personal benefits, pensions or retiring allowances for employees:

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

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

- (k) the sum of Forty pounds in respect of each child who is under the age of sixteen years at the beginning of the financial year in which the income was received, wholly maintained by any taxpayer who is not an absentee;
- (l) sums paid by way of commission for collecting the assessable income;
- (m) the interest paid by the taxpayer during the year in which the income was derived on a mortgage of land to which section sixteen, paragraph (e), of this Act applies, if the taxpayer satisfies the Commissioner that the mortgage was entered into in good faith; and
- (n) the annual sum necessary to recoup the expenditure covenanted to be made on improvements on land by a lessee who has no tenant rights in the improvements. The deduction under this paragraph shall be ascertained by dividing the amount (not exceeding the sum specified in the covenant) expended on the improvements by the lessee by the number of years in the unexpired period of the lease at the date the improvements were effected.

(2.) Where, by this Act, any sum is allowed to be deducted from any taxpayer's total income and the total income consists partly of income from personal exertion and partly of income from property the sum may in the first place, subject to section twenty-four of this Act, be deducted—

- (a) in the case of the deductions allowed by paragraphs (c), (g), (h) and (k) of sub-section (1.) of this section—from that class of income which is the greater, and

- (b) in the case of the remaining deductions—from that class of income to which it, in the opinion of the Commissioner, relates,

but if the income of the class from which the deduction is in the first place to be made does not amount to the sum to be deducted, the difference shall be deducted from the income of the other class.

(3.) A taxpayer who is dissatisfied with the determination of the Commissioner under paragraph (e) of sub-section (1.) of this section may require the Commissioner to refer his case to a Board of Appeal, and the Commissioner shall refer the case accordingly.

24.—(1.) In the case of a person (other than a company or an absentee) there shall be deducted, in addition to the sums set forth in the last preceding section, the sum of Two hundred pounds less One pound for every Three pounds by which the income exceeds Two hundred pounds.

Special deduction.

(2.) When the income consists partly of income from personal exertion and partly of income from property the deduction under this section shall be made in the first place from the income from property, and when the deduction exceeds that income the excess shall be deducted from the income from personal exertion.

(3.) For the purposes of this section “income” means the income of a taxpayer after allowing the deductions allowed by any other section of this Act.

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

Deductions not to be allowed in certain cases.

- (a) the cost incurred in the maintenance of any taxpayer, his family, or establishment other than as specified in section twenty-three of this Act;
- (b) domestic or private expenses ;
- (c) any loss or expense which is recoverable under any contract of insurance or indemnity ;
- (d) income carried to any reserve fund or capitalized in any way ;
- (e) money not wholly and exclusively laid out or expended for the production of assessable income ;
- (f) rent, or value of or cost of repairs to any premises or part of premises not occupied for the purpose of producing income ;
- (g) any bad debts, except bad debts proved to be such to the satisfaction of the Commissioner and to have been incurred in and actually written off by the taxpayer in the year in which the income was derived, but the Commissioner may allow a deduction for bad debts claimed in respect of any year if he is satisfied that the taxpayer has in that or any previous year included those debts as income in his return :

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

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

- (h) any loss not connected with or arising out of the production of income, or any capital withdrawn from any business producing income, or any sum used or intended to be used as capital in any business, or any capital used in the improvement of premises occupied for the purpose of any business ;
- (i) any wastage or depreciation of lease or in respect of any loss occasioned by the expiration of any lease :

Provided that where it is proved to the satisfaction of the Commissioner that any taxpayer (being the lessee under a lease or the assignee or transferee of a lease) has paid any fine, premium or foregift, or consideration in the nature of a fine, premium or foregift for a lease, or a renewal of a lease, or an amount for the assignment or transfer of a lease of premises or machinery used for the production of income, the Commissioner may allow as a deduction, for the purpose of arriving at the income, the amount obtained by dividing the sum so paid by the number of years of the unexpired period of the lease at the date the amount was so paid, but so that the aggregate of the deductions so allowed shall not exceed the sum so paid if paid on or after the thirtieth day of June, One thousand nine hundred and fourteen, or the part of the sum so paid which is proportionate to the unexpired period of the lease from the thirtieth day of June, One thousand nine hundred and fourteen if the sum were paid prior to that date ;

- (j) interest which might have been earned on any capital employed in the production of income, if lent out at interest ; and
- (k) payments made by husband to wife or by wife to husband unless the Commissioner is satisfied that the payments have been made *bonâ fide* in the course of business and for services rendered.

26. Where a taxpayer makes a loss in any year in carrying on a business either alone or as a partner with other persons, he shall be entitled to deduct the loss from any assessable income derived by him in that year from other sources. The loss shall be deducted in the first place from any income from personal exertion of the taxpayer, but if that income does not amount to the loss to be deducted, the difference

shall be deducted from the taxpayer's income, if any, derived from property in the year mentioned.

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

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

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

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

(5.) A Collector of Customs for the State—

(a) shall not grant a clearance to a ship in respect of the earnings of which an assessment is made under this section, and

(b) may detain the ship,

until he is satisfied that the tax has been paid, or that arrangements, to the satisfaction of the Commissioner or Deputy Commissioner, for the payment of the tax have been made.

28.—(1.) When any business which is carried on in Australia is controlled principally by persons resident outside Australia, and it appears to the Commissioner that the business produces either no taxable income or less than the ordinary taxable income which might be expected to arise from that business, the person carrying on the business in Australia shall be assessable and chargeable with income tax on such percentage of the total receipts (whether cash or credit) of the business, as the Commissioner in his judgment thinks proper. Taxation of Australian business controlled abroad.

(2.) The provisions of section twenty of this Act shall not apply in any case in which the person assessed under this section is a company.

(3.) A taxpayer who is dissatisfied with the decision of the Commissioner under this section may require the Commissioner to refer his case to a Board of Appeal, and the Commissioner shall refer the case accordingly.

Partners.

29. A partnership shall be liable to furnish a return in respect of the income of the partnership but shall not, except as provided in this section, be liable to pay tax, but each partner shall be assessed in his individual capacity in respect of—

- (a) his individual interest in the income of the partnership which, if the partnership were liable to pay tax, would have been the income of the partnership remaining after allowing all the deductions under this Act, except the deduction under section twenty-four, together with
- (b) any other income derived by him separately, and
- (c) his individual interests in the income derived by any other partnership :

Provided that where in a partnership formed after the thirteenth day of September One thousand nine hundred and fifteen any partner is not a taxpayer and the Commissioner is not satisfied that that partner is in receipt and control of his share of the income, the partnership shall be assessed and liable, on behalf of that partner, for income tax on his individual interest in the income of the partnership under paragraph (a) of this section, at the rate which would be applicable to a taxable income equal to the income of the partnership remaining after allowing the deductions allowed under this Act.

Rebate in respect of business income.

30.—(1.) Where an individual derives income from a business carried on by himself or in partnership with other persons, and his rate of tax on that income exceeds two shillings and fivepence in the pound, he shall be entitled to a rebate in his assessment of a sum equal to the amount by which his tax on fifteen per centum of that income exceeds the tax that would be payable at two shillings and fivepence in the pound on that percentage of that income.

(2.) In this section “business” means a business which from its nature and character requires for its efficient working the retention in the business of some part of the income of each year.

Trustees.

31.—(1.) A trustee shall not be liable to pay tax as trustee, except as provided by this Act, but each beneficiary who is not under a legal disability and who is presently entitled to a share of the income of the trust estate shall be assessed in his individual capacity in respect of—

- (a) his individual interest in the income of the trust estate, which if the trustee were liable to pay the tax in respect of the income of the trust estate, would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deduction under section twenty-four; together with
- (b) any other income derived by him separately; and
- (c) his individual interests in the income derived from any other source.

(2.) A trustee shall be separately assessed and liable to pay tax in respect of that part of the income of the trust estate which if the

trustee were liable to pay tax in respect of the income of the trust estate, would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deduction under section twenty-four, and

- (a) which is proportionate to the interest in the trust estate of any beneficiary who is under a legal disability ; or
 - (b) to which no other person is presently entitled and in actual receipt thereof and liable as a taxpayer in respect thereof.
- (3.) A 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 be assessed in his individual capacity in respect of—
- (a) his individual interest, upon which the trustee is liable to be assessed under sub-section (2.) of this section, in the income of each trust estate ;
 - (b) any other income derived by him separately ; and
 - (c) his individual interests in the income derived from any other source :

Provided that there shall be deducted from the tax assessed against the beneficiary the tax paid by any trustee in respect of the beneficiary's interest in the income of a trust estate.

(4.) For the purposes of this section, where by any deed, will or settlement a trustee is required to hold the income of a trust fund in trust for the beneficiaries specified therein in such manner as he in his absolute discretion thinks fit, a beneficiary in whose favour the trustee exercises his discretion shall be deemed to be presently entitled to the amount of the income of the year paid to him by the trustee in the exercise of his discretion under the deed, will or settlement.

PART IV.—RETURNS AND ASSESSMENTS.

32.—(1.) For the purpose of assessment and levy of income tax, every person shall, when called upon by the Commissioner by notice published in the *Gazette*, furnish to the Commissioner in the prescribed manner a return setting forth a full and complete statement of the income derived by him from sources in Australia during the financial year ending on the preceding thirtieth day of June if—

Persons to
furnish returns.

- (a) in the case of a person, not an absentee, the total income from all sources in Australia amounts to the sum of Two hundred pounds or upwards ;
- (b) in the case of a company or an absentee, the total income from all sources in Australia exceeds the sum of One pound.

(2.) The first assessment of income tax under this Act shall be for the financial year commencing on the first day of July One thousand nine hundred and twenty-two, and each subsequent assessment shall be for the succeeding financial year :

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

(3.) When the income of any person cannot be conveniently returned as for the year fixed by this Act, the Commissioner may accept returns made up to the date of the annual balance of the accounts of that person (in this Act referred to as "the accounting period"), and in such case the person shall not be entitled, without the consent of the Commissioner, to alter the period for which his returns are made.

New or
further and
fuller returns.

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

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

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

Returns
deemed to be
duly made.

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

Assessments
to be made.

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

Assessment in
case of default
or unsatisfactory
return.

36. If—

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

(c) the Commissioner has reason to believe that any person (though he may not have furnished any return) is a taxpayer, the Commissioner may make an assessment of the amount upon which, in his judgment, income tax ought to be levied, and the person assessed shall be liable to income tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

Alterations of
assessment.

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

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

Provided further that an alteration or addition shall not be made in or to an assessment after the expiration of three years from the date when the tax payable on the assessment was originally due and payable, unless the Commissioner has reason to believe that there has been an avoidance of tax owing to fraud or attempted evasion.

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

Provided that where the alteration in the assessment is due to an application by the taxpayer no refund shall be given if the application has not been made within three years after the tax was originally due and payable.

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

39.—(1.) The production of any notice of assessment or of any document under the hand of the Commissioner, Assistant Commissioner, or a Deputy Commissioner purporting to be a copy of a notice of assessment shall— Copies as evidence.

(a) be conclusive evidence of the due making of the assessment; and

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

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

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

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

PART V.—OBJECTIONS AND APPEALS.

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

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

(3.) A Board of Appeal holding office at the commencement of this Act shall continue to hold office as if appointed under this Act.

(4.) The members of a Board shall hold office for a term of seven years, but shall be eligible for re-appointment.

Officers of
Public Service
appointed to
Board.

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

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

Illness or
suspension
of Chairman
or member.

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

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

Powers of
Board.

44.—(1.) A Board of Appeal shall have power to hear such cases as are prescribed, or are referred to it by the Commissioner under this Act.

(2.) The provisions of sections fifty-one, fifty-two, and fifty-three of this Act shall apply, so far as applicable, to references by the Commissioner to the Board as if those references were appeals.

Quorum and
voting.

45.—(1.) For the conduct of the business of a Board any two members shall form a quorum.

(2.) At a meeting of a Board the decision of the majority shall prevail.

(3.) The Chairman of a Board shall have a deliberative, but not a casting vote.

Board may
not be sued.

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

Remuneration
of members.

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

Removal or
suspension of
member.

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

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

(3.) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting,

then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant, and the office shall thereupon become and be vacant.

49. A member of a Board shall be deemed to have vacated his office if— Vacation of
office of
member.

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

50.—(1.) A taxpayer who is dissatisfied with the assessment made by the Commissioner under this Act may, within forty-two days after service by post of the notice of assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies. Objections.

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

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

(4.) A taxpayer who is dissatisfied with the decision of the Commissioner may, within thirty days after the service by post of notice of the decision of the Commissioner, in writing request the Commissioner to treat his objection as an appeal and to forward it, as required by the taxpayer, either to the High Court or the Supreme Court of a State (where the objection raises questions of law only), or to the High Court or a Supreme Court or a Board of Appeal (where the objection raises questions of fact).

(5.) Objections which are treated as appeals to a Board of Appeal shall, if the taxpayer's written request is accompanied by a deposit of such amount as is prescribed for the particular class of case, be forwarded to the Board of Appeal by the Commissioner not later than thirty days after receipt by him of the written request.

(6.) A taxpayer shall be limited on the hearing of his appeal to the grounds stated in his objection.

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

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

Powers of Court
and Board
on hearing
of appeals.

51.—(1.) On the hearing of the appeal, the Court or Board of Appeal may make such order as it thinks fit, and may either reduce or increase the assessment.

(2.) An order of the Board on questions of fact shall be final and conclusive on all parties.

(3.) An order by the Court shall be final and conclusive on all parties except as provided in this section.

(4.) The costs of the appeal shall be in the discretion of the Court or the Board, as the case may be.

(5.) The Board shall, if it considers an appeal to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount mentioned in sub-section (5.) of the last preceding section.

(6.) On the hearing of the appeal the Board shall, on the request of a party, and the Court may, if the Court thinks fit, state a case in writing for the opinion of the High Court upon any question arising in the appeal which in the opinion of the Board or of the Court, as the case may be, is a question of law.

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

(8.) An appeal shall lie to the High Court, in its appellate jurisdiction, from any order made under sub-section (1.) of this section, except a decision by the Board on a question of fact.

Pending appeal
not to delay
payment of tax.

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

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

Rules of Court
or Board of
Appeal.

53.—(1.) The Governor-General shall make rules for regulating the practice and procedure in relation to appeals dealt with by a Board of Appeal, and a Board shall not be bound in its consideration of any question by any rules of evidence, but in forming its decision shall be guided by good conscience and the facts of the case.

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

(3.) All rules by Boards of Appeal or by the Justices of the High Court shall—

(a) be notified in the *Gazette*;

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

(c) be laid before both Houses of the Parliament within thirty days of the making thereof, or if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

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

PART VI.—COLLECTION AND RECOVERY OF TAX.

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

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

(3.) When the Commissioner has reason to believe that a taxpayer may leave Australia before the tax on an assessment or the additional tax on an amended assessment becomes due and payable, the tax or additional tax shall be due and payable on such date as the Commissioner fixes and notifies to the taxpayer.

(4.) The Commissioner, Assistant Commissioner or Deputy Commissioner may issue to a taxpayer who is about to leave Australia a certificate signed by the Commissioner, Assistant Commissioner or Deputy Commissioner, certifying that all income tax payable by the taxpayer has been paid or that satisfactory arrangements have been made for payment, and unless the taxpayer produces the certificate to the person authorized to issue passports, that person shall not issue a passport to the taxpayer:

Provided that this sub-section shall not apply to—

- (a) the representatives of an association or club established in any country for the control of any outdoor athletic sport or game in that country visiting Australia for the purpose of engaging in contests in Australia;
- (b) the representatives of any Government visiting Australia in an official capacity and their entourage;
- (c) the representatives of any society or association established for educational, scientific, religious or philanthropic purposes visiting Australia for the purpose of attending international or Empire conferences or for the purpose of carrying on investigation or research for such society or association;
- (d) the representatives of the press outside Australia visiting Australia for the purpose of reporting the proceedings relating to any of the matters referred to in the preceding paragraphs (a), (b) and (c); or
- (e) any person visiting Australia and deriving an income in respect of the occupation carried on by him while in Australia, whose visit, in the opinion of the Treasurer, is primarily or principally directed to assisting the Commonwealth Government or a State Government in the settlement or development of Australia.

(5.) Whenever the Commissioner has reason to believe that any taxpayer establishing or carrying on business in Australia intends to carry on that business for a short time only, he may at any time and from time to time require the taxpayer to give security by way of bond or deposit or otherwise to the satisfaction of the Commissioner for the due return of, and payment of income tax on, the income derived from the business.

Time to pay
extensions and
instalments.

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

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

Penal tax.

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

Provided that the Commissioner may in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax imposed by way of penalty or any part thereof.

Recovery of
tax.

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

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

Substituted
service.

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

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

service of any process in the proceedings may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

Liquidator to
give notice.

59.—(1.) Where a company is being wound up the liquidator of the company shall give notice to the Commissioner within fourteen days after the approval of the shareholders for the winding up has been given, or the order for the winding up has been made, and shall set aside such sum out of the assets of the company as appears to the Commissioner to be sufficient to provide for any income tax that becomes payable.

(2.) A liquidator who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any income tax that becomes payable in respect of the company.

60.—(1.) Where an agent for an absentee principal has been required by his principal to wind up the business of his principal, he shall, before taking any steps to wind up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any income tax that becomes payable.

Agent for
absentee
principal
winding up
business.

(2.) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any income tax that becomes payable in respect of the business of the principal.

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

When tax not
paid during
lifetime.

- (a) the Commissioner shall have the same powers and remedies against the executors and administrators of the taxpayer in respect of the taxable income of the taxpayer as he would have had against the taxpayer in his lifetime ;
- (b) the executors and administrators shall make such returns as the Commissioner requires for the purpose of an accurate assessment ;
- (c) the assessment shall be at the rates payable in respect of years for which the income tax ought to have been paid and the amount shall (where the taxpayer's default was intentional) be double the amount of the difference between the income tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the hands of the executors and administrators ;
- (d) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section and recovering the double tax as in the case of ordinary assessments and taxation.

62.—(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 executors and administrators as he would have had against that person, if that person were alive.

Provision for
payment of tax
by executors or
administrators.

(2.) The executors or administrators 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 executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the amount on which, in his judgment, tax ought to be charged.

(4.) This section shall not apply to the income derived by a person from—

(a) the thirtieth day of June ; or

(b) the end of the accounting period (where the returns lodged were for an accounting period)

immediately preceding his death to the date of his death, if his estate is liable to estate duty under the *Estate Duty Assessment Act 1914–1916*.

Recovery of
tax paid on
behalf of
another person.

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

Contributions
from joint
taxpayers.

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

(a) a person who has paid the tax in respect of any of the taxable income may recover by way of contribution from any other owner thereof a sum which bears the same proportion to the tax as the share of the taxable income of such other person bears to the whole of the taxable income ;

(b) every person entitled to contribution in respect of income tax under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request ; or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

Commissioner
may collect tax
from person
owing money
to taxpayer.

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

(a) any person by whom any money is due or accruing due to a taxpayer ;

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

(c) any person who holds money on account of some other person for payment to a taxpayer ; or

(d) any person having authority from some other person to pay money to a taxpayer,

to pay to him, forthwith, or within such further time as the Commissioner, Assistant Commissioner, or Deputy Commissioner allows, the money or so much thereof as is sufficient to pay the tax due by the taxpayer or the fines and costs (if any) imposed by a Court on him in respect of an offence against this Act.

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

Penalty : Fifty pounds.

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

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

(5.) If the tax due by the taxpayer, or the fine and costs (if any) imposed by a court on him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.

(6.) In this section—

“Tax” means income tax and includes additional tax imposed by this Act or by any Act incorporated with this Act, and any judgment debt and costs in respect of tax ;

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

PART VII.—PENAL PROVISIONS.

66.—(1.) Any person who—

Offences.

(a) fails or neglects to duly furnish any return or information or give the security required by sub-section (5.) of section fifty-four of this Act or to comply with any requirement of the Commissioner as and when required by this Act or the regulations, or by the Commissioner ; or

(b) without just cause shown by him refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer ; or

(c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing,

shall be guilty of an offence.

Penalty : Not less than Two pounds nor more than One hundred pounds.

(2.) A prosecution in respect of an offence against paragraph (a) or (c) of sub-section (1.) of this section may be commenced at any time.

(3.) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements of this Act, or of the regulations, or of the Commissioner, in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section sixty-nine of this Act.

(4.) It shall be a defence to a prosecution for an offence against paragraph (c) of sub-section (1.) of this section if the defendant proves that the false particulars were given or the false statement was made through ignorance or inadvertence.

Additional tax
in certain cases.

67.—(1.) Notwithstanding anything contained in the last preceding section, any person who—

- (a) fails or neglects to duly furnish any return or information as and when required by this Act or the regulations or by the Commissioner ; or
- (b) fails to include any assessable income in any return ; or
- (c) includes in any return as a deduction an amount which is in excess of that actually expended or incurred by him,

shall, if a taxpayer, be liable, except as provided by this section, to pay by way of additional tax an amount of One pound or ten per centum of the amount of tax assessable to him, whichever is the greater, in any case coming under paragraph (a) hereof, or, if the case comes under paragraph (b) or (c) hereof, shall be liable to pay by way of additional tax the amount of One pound or double the tax which would have been evaded if the assessment had been based on the return lodged, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-six of this Act :

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

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

Under-
statement of
income.

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

Penalty: Not less than Fifty pounds, nor more than Five hundred pounds, and in addition an amount equal to treble the amount of income tax which would have been avoided if the income stated in the return had been accepted as the correct income.

Avoiding
taxation.

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

Penalty: Not less than Fifty pounds nor more than Five hundred pounds and in addition treble the amount of tax payment whereof he has avoided or attempted to avoid.

Time for
commencing
prosecutions.

70. A prosecution in respect of an offence against either of the two last preceding sections may be commenced at any time within three years after the commission of the offence.

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

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

Penalty : Not less than One pound nor more than Fifty pounds.

PART VIII.—TAXATION PROSECUTIONS.

73. Proceedings by the Crown for the recovery of penalties under this Act are hereinafter referred to as "taxation prosecutions". Taxation prosecutions.

74. Taxation prosecutions may be instituted in the name of the Commissioner by action, information or other appropriate proceeding— How instituted.

(a) in the High Court of Australia ; or

(b) in the Supreme Court of any State,

and when the prosecution is for a pecuniary penalty not exceeding Five hundred pounds or the excess is abandoned, the taxation prosecution may be instituted in the name of the Deputy Commissioner—

(c) in a County Court, District Court, Local Court or Court of Summary Jurisdiction.

75.—(1.) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or Deputy Commissioner the prosecution shall, in the absence of evidence to the contrary be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be. Evidence of authority to institute proceedings.

(2.) The production of a telegram purporting to have been sent by the Commissioner or Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution or proceedings shall be admissible as evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner or Deputy Commissioner, as the case may be.

76. In any taxation prosecution where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant within seven days after service of process shall have the right in manner prescribed to elect to have the case tried in the option of the prosecutor either in the High Court of Australia or in the Supreme Court of the State in which the prosecution has been instituted and thereupon the proceedings shall stand removed accordingly and may be conducted as if originally instituted in the Court to which they are so removed. Defendant to have right of trial in High or State Court.

77. Every taxation prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with Prosecution in accordance with Practice Rules.

the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

State Court
practice.

78. Subject to this Act the provisions of the law relating to summary proceedings before Justices in force in the State where the proceedings are instituted shall apply to all taxation prosecutions before a Court of Summary Jurisdiction in that State and an appeal shall lie from any conviction or order of dismissal to the Court, and in the manner, provided by the law of the State where such a conviction or order is made for appeals from convictions or orders of dismissal.

Information,
&c., to be valid
if in words of
Act.

79. All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

No objection
for informality.

80.—(1.) An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the Court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

(2.) If any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

Conviction not
to be quashed.

81. A conviction, warrant of commitment or other proceeding, matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of such defect.

Protection
to witnesses.

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

Averment of
prosecution
sufficient.

83. In every taxation prosecution the averment of the prosecutor or plaintiff contained in the information, declaration or claim shall be deemed to be proved in the absence of proof to the contrary, but so that when an intent to defraud the revenue is charged the averment shall not be deemed sufficient to prove the intent.

Minimum
penalties.

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

85. Where any pecuniary penalty is adjudged to be paid by any convicted person the Court—

Treat
convicted
offenders.

- (a) may commit the offender to gaol until the penalty is paid ; or
- (b) may release the offender upon his giving security for the payment of the penalty ; or
- (c) may exercise for the enforcement and recovery of the penalty any power of justice or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

86. The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge such person—

Release of
offenders.

- (a) on payment to him of the penalty adjudged ;
- (b) on a certificate by the Commissioner or the Deputy Commissioner that the penalty has been paid or released ;
- (c) if the penalty adjudged to be paid is not paid or released according to the following table :—

Amount of Penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under	7 days.
Over £2 and not more than £5	14 days.
Over £5 and not more than £20	1 month.
Over £20 and not more than £50	2 months.
Over £50 and not more than £100	3 months.
Over £100 and not more than £200	6 months.
Over £200	1 year.

87. In all taxation prosecutions the Court may award costs against any party and all provisions of this Act relating to the recovery of penalties except commitment to gaol shall extend to the recovery of any costs adjudged to be paid.

Parties may
recover costs.

PART IX.—MISCELLANEOUS.

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

Public officer
of company.

- (a) such person shall be called the public officer of the company for the purposes of this Act and shall, if not already appointed, be appointed within three months after the commencement of this paragraph or after the company commences to carry on business in Australia ;
- (b) the company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner ;

- (c) if the company fails or neglects to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

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

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

Agents and
trustees.

89. 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 the payment of income tax thereon;
- (b) he shall in respect of such income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) where as agent or trustee he pays income tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;

- (e) he is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the income tax which is or will become due in respect of the income;
- (f) he is hereby made personally liable for the income tax payable in respect of the income if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which income tax could legally be paid, but he shall not be otherwise personally liable for the tax :

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

- (g) he is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner ;
- (h) for the purpose of insuring the payment of income tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of income tax, and in as full and ample a manner.

90. With respect to every person who has the receipt control or disposal of money belonging to a person resident out of Australia, who derives income from a source in Australia or who is a shareholder, stock holder, debenture holder, or depositor in a company carrying on business in Australia, the following provisions shall, subject to this Act, apply :—

Person in receipt or control of money for absentee.

- (a) he shall when required by the Commissioner pay the income tax due and payable by the person on whose behalf he has the control receipt or disposal of money ;
- (b) where he pays income tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person ;
- (c) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the income tax which is or will become due by that person ;
- (d) he is hereby made personally liable for the income tax payable by him on behalf of the person resident out of Australia if after the Commissioner has required him to pay the tax he disposes of or parts with any fund or money then in

his possession or which comes to him from or out of which the income tax could legally be paid, but he shall not be otherwise personally liable for the tax :

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

- (e) he is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner.

Payment of
tax in respect
of lotteries.

91. In the case of prizes in lotteries, the Commissioner may, if he considers it necessary for the protection of the revenue so to do, appoint the person liable to pay a prize in a lottery as agent for the person entitled to receive the prize and may call upon the agent to pay income tax at such rate as is declared by the Parliament :

Provided that the agent shall not be entitled to any of the deductions allowed under this Act.

Payment of
tax in respect
of absentee's tax
by banker.

92. Where any income of any person outside Australia is paid into the account of that person with a banker, the banker shall be deemed the person's agent in respect of the money so paid so long as he is indebted in respect thereof, and shall be subject to the provisions of section eighty-nine of this Act and entitled to the benefits conferred by that section.

Contracts to
evade tax void.

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

- (a) altering the incidence of any income tax ; or
 - (b) relieving any person from liability to pay any income tax or make any return ; or
 - (c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act ; or
 - (d) preventing the operation of this Act in any respect ;
- be absolutely void, but without prejudice to its validity in any other respect or for any other purpose.

Covenant by
mortgagor
to pay tax.

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

- (a) if the mortgage was entered into on or before the thirteenth day of September One thousand nine hundred and fifteen—shall not be valid to impose on the mortgagor the obligation of paying income tax to any greater amount than the amount (if any) which would have been payable by the mortgagor if his taxable income consisted solely of a sum equivalent to the amount of interest to be paid under the mortgage without taking into account any income tax payable on that interest ; and

- (b) if the mortgage was entered into after that date—shall be absolutely void.

95.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs—

Release of taxpayers in cases of hardship.

- (a) that a taxpayer liable to pay income tax has become bankrupt or insolvent; or
- (b) that a taxpayer has suffered such a loss or is in such circumstances, or, owing to the death of a person, who, if he had lived, would have paid 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 executor or administrator 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.

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

Access to books, &c.

97.—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer or not—

Department to obtain information and evidence.

- (a) to furnish him with such information as he may require; and
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing and for that purpose he or the officer so authorized by him may administer an oath.

(3.) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

98. Notwithstanding anything contained in any Act repealed by this Act, a person who was on active service with or in any way attached to the Naval Forces of the Commonwealth during the war which commenced on the fourth day of August One thousand nine hundred and fourteen shall not, by reason of such service, be entitled to exemption in respect of income derived by him from personal exertion after the thirtieth day of June One thousand nine hundred and twenty-one.

Naval service.

99. Statutory Rules 1922, No. 150, shall have effect, and shall be deemed to have had effect, in relation to assessments for the financial

Validation of Statutory Rules 1922, No. 150.

year commencing on the first day of July One thousand nine hundred and twenty-one, as if they had been made on the first day of July One thousand nine hundred and twenty-one.

Regulations.

100. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act, and for prescribing penalties not less than One pound nor more than Twenty pounds for any breach of the regulations.

THE SCHEDULE.

Income Tax Assessment Act 1915.
Income Tax Assessment Act (No. 2) 1915.
Income Tax Assessment Act 1916.
Income Tax Assessment Act (No. 2) 1916.
Income Tax Assessment Act 1918.
Income Tax Assessment Act 1921.
Income Tax Assessment Act (No. 2) 1921.

INCOME TAX.

No. 38 of 1922.

An Act to Impose Taxes upon Incomes.

[Assented to 18th October, 1922.]

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

Short title.

1. This Act may be cited as the *Income Tax Act 1922*.

Incorporation.

2. The *Income Tax Assessment Act 1922* shall be incorporated and read as one with this Act.

Imposition of income tax.

3. Income tax is imposed at the rates and amounts declared in this Act.

Rates of income tax.

4.—(1.) The rate of the income tax in respect of income from personal exertion shall be as set out in the First Schedule to this Act.