

## INCOME TAX ACT 1928.

An Act to consolidate the Law relating to the  
Imposition of Income Tax.

19 GEORGE V.  
No. 3701.

[12th February, 1929.]

**B**E it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

*Income Tax Act*  
1915.

1. This Act may be cited as the *Income Tax Act 1928*, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Parts as follows:—

PART I.—Preliminary ss. 3-4.

PART II.—Administration ss. 5-7.

PART III.—Nature of the Taxation ss. 8-20.

PART IV.—Exemptions and Deductions ss. 21-41.

PART V.—Special Provisions relating to Income of Companies ss. 42-45.

PART VI.—Public Officers of Companies.—Agents and Trustees ss. 46-50.

PART VII.—Assessment of Income.—Taxpayers' Returns ss. 51-62.

PART VIII.—Notice of Assessments and Objections to Assessments ss. 63-67.

PART IX.—Liability to Payment of Tax ss. 68-70.

PART X.—Enforcement of Taxation ss. 71-74.

PART XI.—Offences.—Legal Proceedings.—Evidence &c. ss. 75-87.

PART XII.—General Provisions and Regulations ss. 88-96.

2. The Acts mentioned in the Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed. Such repeal shall not affect any appointment regulation or assessment made or any notice given or any tax or liability to tax imposed or any obligation or any liability civil or criminal incurred or right accrued or any matter or thing done or suffered under the said repealed Acts or any of them:

Repeal.  
Schedule.

Provided also that with respect to any tax or liability to tax imposed by the said repealed Acts or by any of them all the provisions

*Income Tax Act 1915.*

of such repealed Acts in force at the commencement of this Act which would have enabled such tax to be charged levied collected and paid shall apply as fully and effectually as if none of such provisions had been repealed.

#### PART I.—PRELIMINARY.

Continuation of  
Income Tax  
Acts until 31st  
December, 1929.  
*Id.* s. 3.

3. This Act shall continue in force until the thirty-first day of December One thousand nine hundred and twenty-nine and shall apply to the tax to be charged levied collected and paid under the *Income Tax Act 1928* (No. 3591) or under any other Act hereafter passed relating to income tax unless the contrary is otherwise provided; but its expiration shall not affect the past operation thereof or the validity or invalidity of anything done or suffered or the payment or recovery of any tax which has become payable to His Majesty nor interfere with the institution or prosecution of any proceeding in respect of any offence committed or the recovery of any penalty or forfeiture incurred.

Interpretation.  
*Id.* s. 4.  
*Income Tax Acts Amendment Act 1928* s. 5.

4. In this Act unless inconsistent with the context or subject-matter—

“Agent” includes any company acting as agent:

“Assessable income” means the gross income which is not exempt from taxation:

“Assessment” means an estimate of the amount of any income liable to taxation under this Act as well as the amount of tax imposed thereon respectively and includes all matters comprised in any return required by or under this Act:

“Company” includes every corporate body howsoever incorporated and whether under the laws of Victoria or any other country and whether its head or principal office or principal place of business is in Victoria or elsewhere:

“Income derived by any person from personal exertion” or “income from personal exertion” means all income consisting of earnings salaries wages allowances pensions superannuation or retiring allowances or stipends earned in or derived from Victoria and all income arising or accruing from any trade carried on in Victoria although the same income has not arisen or accrued or been earned derived or received by or from the taxpayer’s own personal exertion or trade: (a)

(a) Primarily, “income” means everything that comes in, but the court has placed certain limitations on that meaning. The first limitation is that it shall not include moneys received by accident, such as gifts. The second is that to be taxable it must be in its nature probably recurring—something that would happen yearly. “It is something not given as a present and it is also something which would probably recur.”—*Per Hood, J., In re the Income Tax Acts* (No. 2), 27 V.L.R., at page 41. But see section 16 and notes.

A bequest to trustees during the life of a son, to be held by them in their absolute discretion as to the time of payment, amount, and purposes of application, such son to acquire no right and every payment to be voluntary, is subject to taxation so far as the amount is applied in any year.

For instances of gifts, &c., see *Commissioner of Taxes v. Everitt*, 21 V.L.R., 451; *In re Paterson*,

2 A.L.R., 152; *In re A.B., In re the Income Tax Act*, 2 A.L.R., 199; and *In re Income Tax Act* 25 V.L.R., 258 (railway pass held to be gift).

*Quare*, whether an annuity paid to a wife by her husband in pursuance of a deed of separation is income of the wife within the meaning of the *Income Tax Act*. “It is something like a sale of certain of her rights in return for certain payments.”—*Per Hodges, J., In re Income Tax Acts*, 10 A.L.R., 65; 25 A.L.T., 196.

The meaning of the terms “mining investor” and “mining speculator,” in relation to the question whether benefits gained were income or accretions to capital, discussed.—*Kelly v. The King*, 27 V.L.R., 622.

For a case of income from personal exertion, held not earned within Victoria, see *In re the Income Tax Acts*, 4 A.L.R. (C.N.), 37.

- “Income derived by any person from the produce of property” <sup>*Income Tax Act 1915.*</sup> or “income the produce of property” means all income derived in or from Victoria<sup>(a)</sup> and not derived from personal exertion although such income has not been derived from the taxpayer’s own property<sup>(b)</sup> and notwithstanding anything in this Act all income subject to tax earned derived or received by or arising or accruing to a trustee in his representative capacity or received or receivable from the trustee by a taxpayer as a beneficiary shall be deemed and taken to be income the produce of property and be liable to tax accordingly<sup>(c)</sup>.
- “Income tax” means the tax on income from personal exertion and the tax on income the produce of property :
- “Land” includes all lands tenements and hereditaments (whether corporeal or incorporeal) and also includes all chattel and other interests in land :
- “Local authority” means the council of the city of Melbourne the city of Geelong or any municipal district :
- “Notice” means a notice in writing given by causing the same to be personally served on any person or by leaving the same at his usual or last known place of abode or business in Victoria or by sending the same by post addressed to such usual or last known place of abode or business ; and in the case of a company means a notice given by being served upon or sent by post or delivered to “the public officer” of such company at the address for service given under this Act, or if there is no such address for service then by serving leaving or sending the same as aforesaid at or to any office or place where the company carries on business in Victoria :
- “Person” includes every company except a company registered under Part II. of the *Companies Act 1928* and carrying on mining operations in Victoria :
- “Prescribed” means prescribed by this Act or any regulations under this Act or any Act hereby repealed :
- “Publicly notified” “public notice” means notice published in the *Government Gazette* or in some newspaper circulating in the locality where anything is required to be so notified or notice thereof to be given :

(a) Money was lent in Victoria upon deposit of title deeds to land in Queensland by a person resident in Victoria to a company registered in and whose head office was in Victoria, but whose assets were entirely in Queensland, where it carried on a pastoral business. Interest was paid in Victoria. *Held*, that as the interest arose out of the debt and not out of the security, it was assessable to tax.—*Webb v. Campbell*, 25 V.L.R., 508.

Money received in Melbourne by the agent of a shipping firm for freights and fares to the United Kingdom is taxable, though none of the members of the firm are resident in Victoria.—*In re the Income Tax Acts*, 4 A.L.R. (C.N.), 85.

Where there is no proof that the debt, of which the interest paid to the alleged taxpayer is the

produce, is a debt within Victoria, or that the interest is derived in or from Victoria, no income tax is payable in respect of such interest.—*In re Income Tax Acts* (No. 3), 27 V.L.R., 304.

As to the liability of Commonwealth officers under the Income Tax Acts, see *In re the Income Tax Acts* (No. 4), *Wollaston's case*, 28 V.L.R., 357 ; *Deakin v. Webb and Lyne v. Webb*, 1 C.L.R., 535 ; *Webb v. Outtrim*, 1907 A.C., 81 ; *Commissioner of Taxation (N.S.W.) v. Baxter*, 4 C.L.R., 1037 ; and see now the Commonwealth Act (No. 7. of 1907) and *Chaplin v. Commissioner of Taxes for South Australia*, 12 C.L.R., 375.

(b) See note *supra* to definition of “Income derived by any person from personal exertion.”

(c) For a case decided before the passing of this provision, see *Webb v. Syme*, 1914 V.L.R., 600.

*Income Tax Act 1915.*

“Tax” means income tax or any additional rate of tax or additional amount charge percentage penalty or interest in respect thereof to be assessed collected enforced or recovered under the provisions of this Act or any instalment or portion of tax :

“Taxable income” means the amount of income remaining after all the deductions allowed by this Act have been made :

“Taxpayer” means every person and company liable to pay tax whether in his or its own behalf or in a representative capacity and in reference to any return with regard to a taxpayer’s own income includes every person required by this Act to furnish such return :

“This Act” includes any regulations made under the provisions thereof :

“Trade” includes every profession vocation trade business calling employment and occupation :

“Trading stock” means anything produced manufactured acquired or purchased for purposes of manufacture sale or exchange :

“Trustee” includes trustee executor administrator or guardian committee or receiver the Master-in-Equity the Curator of the Estates of Deceased Persons and any officer company or person having or taking upon himself or itself the possession administration or control of any income affected by any express or implied trust, or having the possession administration or control of any income of a person under any legal disability :

“Year” means year ending on the thirtieth day of June.

*Income Tax Act 1915 (No. 2) s. 2.*

## PART II.—ADMINISTRATION.

### *Appointments &c.*

*Power to appoint Commissioner and Deputy Commissioner. Income Tax Act 1915 s. 5.*

5. (1) For the due administration of this Act the Governor in Council may subject to the *Public Service Act 1928* appoint a fit and proper person to be called the Commissioner of Taxes (hereinafter referred to as “the Commissioner”), and two or more deputy commissioners of taxes (one of whom is hereinafter referred to as “the Deputy Commissioner”); and subject to the said Act the Governor in Council may remove or suspend any commissioner or deputy commissioner.

*Powers of Deputy Commissioner.*

(2) The Deputy Commissioner shall under the control of the Commissioner perform such general official duties as he is required to perform by this Act or by the Commissioner, and shall act as the deputy of the Commissioner in case of the illness absence or other temporary incapacity of the Commissioner, and while so acting shall have and may exercise all the powers duties and functions of such Commissioner under this Act, and shall act in his name and behalf.

*Power to appoint other officers.*

(3) Subject to the *Public Service Act 1928* the Governor in Council may also appoint suspend or remove such assessors clerks receivers and other officers as may be necessary for carrying out the provisions of this Act.

*Appointments to be made from public service or from superannuated officers if any suitable.*

(4) Every person appointed to any office under this Act shall be a person who is a member of the public service or a person who having been in the public service is in receipt of a superannuation or retiring allowance unless the Public Service Commissioner certifies in writing

that there is no person already in the public service or receiving a superannuation or retiring allowance available and competent to fulfil the duties of such office. Income Tax Act 1915.

(5) Any office under this Act may be held in conjunction with any other office in the public service.

(6) In this section the expression "public service" includes railway service police and service in any office of Parliament or in any office or employment whatever in Victoria for which payment is provided by the Crown out of any special or annual appropriation of the consolidated revenue. Meaning of "public service"

(7) All courts and all persons having by law or by consent of parties authority to hear receive and examine evidence shall take judicial notice of the signature of every person who is or has been the Commissioner or a deputy commissioner provided such signature is attached or appended to any official document. Signature of Commissioner &c.

6. (1) Every person appointed under this Act—

(a) Shall maintain and aid in maintaining the secrecy of all matters which may come to his knowledge in the performance of his official duties, and shall not communicate any such matter to any person whomsoever except for the purpose of carrying into effect the provisions of this Act; and Secrecy to be maintained. *Ib.* s. 3.

(b) Shall before he commences to act in the execution of this Act take and subscribe such oath of fidelity and secrecy as may be prescribed, which oath may be administered by a judge of the Supreme Court or county courts or by the Commissioner or Deputy Commissioner or by any police magistrate or justice. Oath of office.

(2) Every person who wilfully acts in contravention of the true intent of such oath shall be guilty of an offence and shall on summary conviction before a court of petty sessions if he elects to be tried before such court, and if he does not so elect then on conviction before the Supreme Court or a court of general sessions be liable to a penalty of not more than Five hundred pounds or to imprisonment with or without hard labour for a term of not more than twelve months or to both such penalty and imprisonment. Penalty for contravening intent of oath.

(3) Every person who acts in the execution of this Act before he has taken and subscribed the oath as aforesaid shall be liable to a penalty of not more than Two hundred pounds.

(4) Notwithstanding anything in this section the Commissioner may communicate any matter which may come to his knowledge in the performance of his official duties to the Commissioner or Deputy Commissioners of Taxation for the Commonwealth of Australia or to the Commissioner or Commissioners of Income Tax for any other State of the said Commonwealth or any other person or persons occupying a corresponding position in any such State with reference to the collection of duties of income tax. Power to Commissioner to supply information to Income Tax Commissioners &c. of Commonwealth and other States. *Income Tax Act 1915 (No. 2) s. 7.*

7. (1) The State may arrange with the Commonwealth for the collection by State officers of the whole or part of the income tax payable in the State under Commonwealth law.

(2) Any agreement relating to any such arrangement may make provision for any other matters necessary or convenient to be provided Arrangement with Commonwealth for collection of Commonwealth Income Tax. *Income Tax Act Amendment Act 1923 s. 3.*

*Income Tax Acts  
Amendment Act  
1928.*

for carrying out the arrangement, including the transfer of officers from the service of the Commonwealth to the service of the State and their re-transfer from the service of the State to the service of the Commonwealth, and the rights and obligations of such officers.

(3) Any such provision shall be valid and effectual for all purposes.

(4) Notwithstanding anything in the *Public Service Act 1928*—

Appointment  
of transferred  
officers.

(a) the Governor in Council on the recommendation of the Public Service Commissioner may if he thinks fit appoint to an office on the permanent staff of the Taxation Branch of the Department of the Treasurer any person so transferred to the service of the State and on such terms and conditions as are necessary to give effect to any such agreement, and every person so appointed shall, so far as the special terms of his appointment are not inconsistent therewith, be subject to the *Public Service Act 1928*; and

Classification of  
transferred  
and other  
officers.

(b) for the purpose of giving effect to any such agreement the Public Service Commissioner shall so soon as practicable determine the classification of the officers in the said Branch (including officers transferred to the service of the State as aforesaid) and the relative seniority of such officers, and shall issue any necessary certificates under the *Public Service Act 1928* for the approval of the Governor in Council.

Commissioner of  
Taxes  
authorized to  
hold office  
under the  
Commonwealth.

(5) The Commissioner of Taxes may for the purpose of carrying out any such arrangement hold office under any laws of the Commonwealth relating to the imposition assessment and collection of income tax as deputy commissioner of taxation for the State of Victoria or as such other officer as may at any time perform in Victoria the functions of such deputy commissioner and may have and exercise all the powers functions duties and authorities appertaining to such office.

Forms &c. for  
joint collection  
of income tax.

(6) Any return or form prescribed by regulations under this Act may contain such matters as are required by the Commissioner of Taxes for the purpose of the administration of the laws of the Commonwealth relating to the imposition assessment and collection of income tax.

Coming into  
operation of  
section.  
Comp. Com.  
No. 28 of 1923  
s. 2.

(7) This section shall be deemed to have come into operation on the thirtieth day of June One thousand nine hundred and twenty-three.

(8) In this section "State" means the State of Victoria.

Meaning of  
"State."

### PART III.—NATURE OF THE TAXATION.

Rates of income  
tax.

*Income Tax Act  
1915 s. 7.*

8. Subject to this Act there shall be charged levied collected and paid for the use of His Majesty in aid of the consolidated revenue for each year duties of income tax at such rates in respect of income the produce of property and in respect of income from personal exertion as may for each year be declared by an Act of Parliament.

Tax to be levied  
&c. on  
assessments to  
be made under  
this Act.  
*Ib. s. 8.*

*Income Tax Acts  
Amendment Act  
1923 s. 18.*

9. The tax shall be charged levied collected paid and enforced upon assessments made under the provisions of this Act; and wherever in this or any Act any reference is made to any income or any person as being "chargeable" or "liable" under this Act such reference shall unless inconsistent with the context be deemed to relate to incomes or to persons assessed or liable to be assessed under this Act.

10. Every person shall be liable to tax in respect of income the produce of property and also in respect of income from personal exertion.

*Income Tax Act 1915 s. 9.*  
Taxable income.

11. Every married woman entitled to any income shall be chargeable with and liable to pay tax in like manner as if she was sole and unmarried.

Married women liable to tax.  
*Id.* s. 10.

12. (1) The assessable income of any taxpayer shall include—

(a) the interest accruing to any taxpayer on any loan raised (after the date of the coming into operation of this section) by the Government of Victoria or by any authority constituted by or under any law of Victoria; and

Interest on State and Commonwealth loans taxable.  
*Income Tax Act Amendment Act 1923 s. 4.*  
Comp. Com. No. 30 of 1923 ss. 2, 3, 4.

(b) the interest accruing to any taxpayer ordinarily resident in Victoria on any loan raised (after the date fixed by proclamation for the commencement of section four of the Commonwealth Act known as the *Taxation of Loans Act 1923*) by the Commonwealth or by any authority constituted by or under any law of the Commonwealth.

(2) Paragraphs (g) (h) and (i) of section twenty-one of this Act shall not apply to the interest accruing on any loan mentioned in paragraph (a) of sub-section (1) of this section.

(3) In this section "loan" includes a conversion loan and a loan raised for the redemption or repayment of an existing loan.

"Loan."

(4) This section shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Commencement of section.

13. The assessable income of any taxpayer shall include—

(a) 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—

Assessable income.  
*Id.* s. 6.  
Comp. Com. I.T.A. 1922 No. 37 s. 16 (d), (f).

(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; and

(b) five per centum of the capital amount of a retiring allowance or gratuity which is paid in a lump sum.

14. (1) The proceeds derived from the sale, 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.

Income arising from sale of trading stock.  
*Id.* s. 7.  
Comp. Com. I.T.A. 1922 No. 27 s. 17.

*Income Tax  
Acts Amendment  
Act 1923.*

(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, 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 are ordinarily used as beasts of burden or as working beasts; and

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

(5) Any taxpayer dissatisfied with any determination of the Commissioner under this section shall have the like right of objection thereto as in the case of an assessment.

*As to land used  
for residence &c.  
Income Tax Act  
1915 s. 11.*

15. Whenever land with improvements thereon is used for the purpose of residence or enjoyment and not for the purpose of profit or gain by the owner or any person who would be liable to pay tax in respect of the income thereof if the same produced an income, such land shall be deemed to return to such owner or person an income of Four pounds per centum per annum on the actual capital value thereof and such income shall be subject to be taxed accordingly.<sup>(a)</sup>

*Quarters board  
extra salary  
bonus &c.  
Ib. s. 12.*

16. The estimated annual value of any residence quarters or board and residence and every amount received or receivable by way of extra salary bonus or emolument and every allowance benefit or advantage of any kind whether in money or otherwise or of a like nature or any modification or combination of any such benefit or advantage granted secured or allowed to any person shall be deemed to be part of the income of such person and be subject to be taxed accordingly.<sup>(b)</sup>

(a) Where a portion of land was used for the purposes of a trade, and a portion of the dwelling-house erected thereon was used for the purpose of doing the clerical and managerial work in connexion therewith, while the remaining portions both of the land and the dwelling-house were used for the purposes of residence and enjoyment:

*Held*, that the actual capital value, as estimated by the Commissioner of Taxes, of the portions used for the purposes of residence and enjoyment, was liable to income tax at the rate of 4 per cent. per annum.—*In re the Income Tax Acts*, 29 V.L.R., 298.

And cf. *O'Shea v. Commissioner of Taxes*, 1927 A.L.R., 137.

Deductions for repairs are not allowed.—*In re Income Tax Act 1915 (No. 1)*, 1918 V.L.R., 44.

(b) This section covers all payments in connexion with services rendered by personal exertion; and where such payments are of a recurring nature they are liable to income tax.—*In re the Income Tax Acts (No. 3)*, 29 V.L.R., 735.

As to bonuses, compare *In re the Income Tax Acts (No. 1)*, 1915 V.L.R., 74.



17. In any case in which profits derived from any trade have been converted into stock-in-trade or added to the capital of or in any way invested in such trade such profits or moneys so converted or added or invested shall be deemed to be income subject to tax.<sup>(a)</sup>

*Income Tax Act 1916 s. 19.*  
Profits converted into stock.

18. All profits or any part of capital credited to any member or shareholder of any company registered under Part II. of the *Companies Act 1928* and carrying on mining operations in Victoria shall be deemed part of the income of such member or shareholder and any company when requested by the Commissioner shall forward to him a correct statement of such profits or part of capital.

Profits of mining companies credited to shareholders.  
*Id. s. 14.*

19. (1) Where a company the head or principal office or the principal place of business of which is out of Victoria or a person permanently or temporarily out of Victoria (herein termed "the principal") by means of a company registered in Victoria or carrying on business therein or by means of any person in Victoria (herein termed "the agent") sells or disposes of in Victoria any property for the principal (whether the moneys arising therefrom are paid to or received by the principal directly or otherwise) then the taxable amount of the income derived therefrom by the principal shall be assessed at an amount equal to Five pounds per centum upon the total amount for which such property has been sold or disposed of and in each of such cases the amount so assessed shall be deemed to be income derived by the agent and be subject to be taxed accordingly.

Assessment of companies or persons outside Victoria carrying on business in Victoria by agent.  
*Id. s. 15.*

(2) The agent shall as regards such income make the returns, be assessed, be liable to income tax, and otherwise be subject to the provisions of this Act and to do all acts and things thereunder, as if such income was actually the income of the agent. Nothing herein contained shall exempt or discharge the principal from liability to pay income tax upon such income.

20. (1) Every person whose principal place of business is out of Victoria and who either as owner or charterer of any ship carries passengers live stock mails or goods shipped in Victoria shall by himself or his agent or other representative in Victoria within the prescribed time make a return of the full amount payable to him (whether such amount is payable in Victoria or beyond Victoria) in respect of the carriage of such passengers live stock mails and goods as required or provided by the terms under which the same are carried or agreed to be carried to a final destination; and such person agent or representative shall be assessed thereon and be liable to pay tax on Five pounds in every One hundred pounds so payable as aforesaid.

Ship-owners &c. whose business is out of Victoria.  
*Id. s. 16.*

(2) When such person has no recognised agent or representative in Victoria other than the master of such ship or when such person agent or representative fails to make any return the Commissioner may assess such master and such master shall be liable to pay tax computed as aforesaid.

(a) Share of profits of a trading partnership was, in pursuance of the partnership deed, credited to the share of a deceased partner after his death, and would, were received by his executor, be required for the payment of his debts. Testator's

widow was entitled to the income of his estate for life with remainder to her children. *Held*, that these profits were not assessable to tax, not being the income of any person.—*In re the Income Tax Acts (No. 3)*, 25 V.L.R., 554.

*Income Tax Act 1916.*

(3) The Commissioner shall give notice of every such assessment as last aforesaid to the master and such master shall thereupon pay the tax upon the same prior to the clearance of such ship, and subject to any law of the Commonwealth the Collector of Customs shall have power to detain the ship until such payment is made.

#### PART IV.—EXEMPTIONS AND DEDUCTIONS.

##### *Exemptions.*

Exemptions from income tax.  
*Ib. s. 17.*

21. Subject to the provisions of this Act there shall be exempt from income tax all income derived or received—

- (a) By His Majesty or any Minister of the Crown as such Minister or the Board of Land and Works the Victorian Railways Commissioners the Marine Board of Victoria the Melbourne Harbor Trust Commissioners the Melbourne and Metropolitan Board of Works the Metropolitan and Country Fire Brigades Boards the Commissioners of the State Savings Bank of Victoria the University of Melbourne or any public college affiliated to the said University the Working Men's College in Melbourne or any school of mines or other technical school or any commissioners or trust under the *Water Act 1928* or any trustees under the *Agricultural Colleges Act 1928* or any local authority in so far as such income is official and not personal;<sup>(a)</sup>
- (b) By the Governor of the State of Victoria so far as respects the emolument of his office as Governor;
- (c) By all bodies formed solely for the promotion of religion (including any companies incorporated under the *Companies Act 1928* or any corresponding previous enactment whose profits can be distributed only to bodies formed solely for the promotion of religion);
- (d) By all registered friendly societies provident societies or industrial and provident societies building societies and trade unions and by all trusts<sup>(b)</sup> societies associations institutions and public bodies not carrying on any trade or not being engaged in any trade for the purposes of gain to be divided among the shareholders or members thereof;<sup>(c)</sup> provided however that no income from trade derived by any such bodies societies unions trusts associations or institutions shall be exempt from income tax;

*Income Tax Acts Amendment Act 1926 s. 2 (1).*

(a) See *Deakin v. Webb, Lyne v. Webb*, 1 C.L.R., 585; and other cases cited in note to section 4.

(b) A testator directed his trustees to accumulate the income from his estate for twenty years, and then to pay the same to the clergyman of a particular church to apply it for the benefit of the church. *Held*, that the clergyman represented a body formed solely for the promotion of religion, and that, as no individual could be entitled to the rents and profits of the estate, they were not assessable to tax as income.—*Crowley v. The Commissioner of Taxes*, 21 V.L.R., 593.

(c) See note to section 42 *In re Income Tax Act (No. 1)*, 1907 V.L.R., 185.

Where a foreign life assurance society issued policies, the holders of which did not participate in the profits of the society, and issued policies of re-insurance and also granted annuities, but within Victoria merely lent money upon mortgages, such institution was *held* not to be within the exemption of section 7 (1) of the *Income Tax Act 1895* corresponding with the first part of this sub-section.

Where by means of certain acts of directors, even if *ultra vires* their powers, the shareholders of a life assurance society receive profits, such profits are taxable as income.—*Webb v. England*, 23 V.L.R., 260; 1898 A.C., 758.

- (e) From any dividends from any company ; *Income Tax Act 1915.*
- (f) By any company person or firm of persons whether corporate or unincorporate taking out an annual licence under the *Stamps Act 1928* so far only as regards any fire fidelity guarantee or marine assurance or insurance business of such company person or firm ;
- (g) By any person from interest accruing from any stock sold by the Commissioners of the State Savings Bank or from any debentures or mortgage bonds issued by the said Commissioners after the commencement of the *Savings Bank Act 1912* that is to say on or after the twenty-fourth day of September One thousand nine hundred and twelve, or from any *Crédit Foncier* debenture stock under the *State Savings Bank Act 1928* or the *State Savings Banks Act 1915* or the *Savings Banks Act 1913* substituted after the commencement of the last-mentioned Act for debentures issued or to be issued under the *Savings Banks Acts* or the *State Savings Bank Act 1915* or the *State Savings Bank Act 1928*; *Exemption of interest on debenture stock.*
- (h) From interest accruing to any person from any stock debentures or Treasury bonds of the Government of Victoria ;
- (i) From interest accruing to any person not resident in Victoria from any stock debentures or bonds issued by any public or municipal trust body or corporation pursuant to any Act of Parliament of Victoria ;
- (j) The income of every taxpayer not being a company so far only as regards income to the extent of Two hundred pounds :<sup>(a)</sup> Provided however that the income chargeable with tax does not exceed the sum of Five hundred pounds; *Income Tax Act 1924 s. 3.*
- (k) from pensions paid under any Commonwealth Act relating to war pensions. *Exemption of war pensions. Income Tax Act 1920 s. 3.*

22. (1) Notwithstanding anything in this Act a taxpayer shall be allowed a rebate from the amount of income tax payable by him with respect to his total income from live stock, wool, meat, milk, dairy produce, fruit, grain, fodder, and other crops arising or accruing to him from land of which on the thirtieth day of June in the year immediately preceding the year of assessment he was entered as owner on the assessment roll under the *Land Tax Act 1928* if the unimproved value of the land from which the said total income has arisen or accrued does not exceed Three thousand five hundred pounds. *Provision for rebate in case of income derived from agriculture &c. Income Tax Act 1921 s. 4.*

(2) Such rebate shall be at the rate of one half-penny for every pound of the unimproved value of the land from which the said income has so arisen or accrued, but the total amount of such rebate shall not exceed the income tax payable with respect to the said income. *Rate of rebate. Ib. s. 4.*

(a) See section 33.

*Deductions.*

*Income Tax  
Acts Amendment  
Act 1923 s. 8.  
Deductions.  
Income Tax  
Acts Amendment  
Act 1927 s. 2.  
Comp. Com.  
I.T.A. 1922  
No. 37 s. 23.*

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

- (a) all losses and outgoings<sup>(a)</sup> (not being in the nature of losses and outgoings of capital) including commission, discount, travelling expenses, interest, rent and expenses which losses and outgoings were actually incurred in gaining or producing the assessable income;<sup>(b)</sup>
- (b) all rates and taxes actually paid during the year preceding the year of assessment by the taxpayer under any Act of the Parliament of Victoria except this Act; and all Commonwealth land tax to the extent to which in the opinion of the Commissioner the said tax refers to land in Victoria;
- (c) so much of the assessable income as is paid in calls on shares in any mining company registered under Part II. of the *Companies Act 1928* and carrying on mining operations in Victoria; and
- (d) 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:

Comp. Ib. s. 23  
(1) (n).

Ib. s. 3.

For what  
matters no  
deduction to be  
allowed.

*Income Tax Act  
1916 s. 19 (2).*

*Income Tax  
Acts Amendment  
Act 1927 s. 2.*

Provided that no amount shall be deductible in any case where there is a lease of land to a company from any person or company who or which directly or indirectly controls the voting power of the lessee company or in any other case in which the Commissioner is of opinion that in consequence of the terms and conditions of the lease or of any circumstances associated with the lease the lessor is in substantial control of the operations of the lessee.

(2) In calculating the taxable income as aforesaid no sum shall be deducted therefrom for—

- (a) Any sum expended for repairs of premises occupied for the purposes of the trade nor for the supply of or repairs to

(a) Where a taxpayer has purchased for a lump sum a medical practice, his vendorentering into the usual covenants to introduce him and refrain from competing with him within certain limits, he is not entitled to deduct such sum in estimating the amount of his taxable income.—*In re the Income Tax Acts (1898)*, 24 V.L.R., 337 (as to deducting amount paid for seat on Stock Exchange), overruled. *In re the Income Tax Acts (No. 5)*, 28 V.L.R., 431.

(b) Land tax paid under the Land Tax Acts of the Commonwealth by a person who carried on the business of a grazier, in respect of land in Victoria on which he carried on that business, was held under the Acts formerly in force to be an "out-

going actually incurred by" him "in production of income," and also to be a "disbursement" of "money wholly and exclusively laid out or expended for the purposes of such trade," and therefore, for the purpose of assessing the income tax payable by him, he was entitled to deduct the sum paid for such land tax from his gross income, and that in assessing such income tax, no distinction could be drawn between land acquired for the purpose of carrying on the business of grazing thereon and land already in possession which was applied to that purpose.—*Moffatt v. Webb*, 16 C.L.R., 120. But see the case cited to section 23 (2) (g).

- or alterations in any implements utensils or machinery employed or used for the purposes of such trade beyond the sum usually expended in any year for such purposes ; or beyond such sum as the Commissioner thinks reasonable for repairs for the three years immediately preceding the year of assessment except such of the said years for which a deduction has previously been allowed for repairs ; or
- (b) On account of loss not connected with or arising out of such trade, nor on account of any capital withdrawn therefrom, nor for any sum used or intended to be used as capital in such trade, nor for any capital used in the improvement of premises occupied for the purposes of such trade ; or
- (c) On account of any interest which might have been made on such sums if laid out at interest ; or
- (d) Any bad debts except debts proved to the satisfaction of the Commissioner to have become bad and to have been actually written off by the taxpayer in the year immediately preceding the year of assessment and which have not previously been allowed as a deduction : Provided however that all amounts at any time received on account of any such bad debt shall be credited as income in the year in which the same were received and be subject to tax ; or
- (e) Any average loss beyond the actual amount of loss after adjustment nor for any sum recoverable under any insurance or contract of indemnity ; or
- (f) Any disbursements or expenses of maintenance of the taxpayers their families or domestic establishments or any sums expended in any private purposes distinct from the purposes of such trade ; or
- (g) Any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade ;<sup>(a)</sup> or
- (h) The amount of any tax paid under this Act ; or
- (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 a lessee under a lease or the assignee or transferee of a lease) has

*Income Tax Act 1915.*

*Fines, premiums, foregifts, &c.*

*Income Tax Acts Amendment Act 1923 s. 9.*

(a) The expenses incurred by a taxpayer in periodically travelling backwards and forwards between one place, where he both resides and carries on business, and other places where he carries on business, solely for the purpose of earning the profit derived from the trade carried on at the latter places, may be deducted from the taxable income earned therefrom.

*Per Holroyd, a Beckett, and Hodges, JJ. (the latter doubting).—*The expenses incurred by a taxpayer in periodically travelling backwards and forwards between one place, where he both resides and carries on business, and another place for the purpose of attending meetings of directors at the latter place, and of earning fees payable to him periodically for acting as such director, may be deducted from the taxable income earned by him

as such director.—*In re the Income Tax Acts, 29 V.L.R., 298.*

In the return of his income for the purposes of income tax, a taxpayer deducted amounts which he had paid pursuant to his covenant to pay an annuity. Payment of the annuity was secured by a charge upon land owned by him and used in his business of a grazier.

*Held,* that the payments came within the meaning of the expression "any disbursements or expenses whatever not being money wholly and exclusively laid out or expended for the purposes of such trade" in this sub-section, and therefore were not deductible from the assessable income. *Moffatt v. Webb (1913), 18 C.L.R., 120, distinguished.—Calvert v. Commissioner of Taxation, 40 C.L.R., 142.*

*Income Tax  
Acts Amendment  
Act 1928.*

paid on or after the first day of July One thousand nine hundred and twenty-two 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.

*Allowance for  
wife.  
Income Tax  
Act 1924 s. 6  
(1), (4).*

24. Any taxpayer ordinarily resident in Victoria whose net income for the year immediately preceding the year of assessment apart from the operation of this and the two next succeeding sections, does not exceed Eight hundred pounds, may deduct from such net income the sum of Fifty pounds in respect of the wife of such taxpayer wholly maintained by him, and such deduction shall in the first place be made from income from personal exertion. If the wife of such taxpayer has not an income of her own exceeding One hundred pounds she shall be deemed for the purposes of this sub-section to be wholly maintained by him. In this and the two next succeeding sections "net income" means assessable income less all deductions and exemptions allowable under the Act with the exception of the exemption of Two hundred pounds provided in this Act.

*Allowance for  
children.  
Income Tax  
Act 1921 s. 3.  
Income Tax  
Act 1924 s. 6.*

25. Any taxpayer ordinarily resident in Victoria whose net income for the year immediately preceding the year of assessment, apart from the operation of this and the last preceding and next succeeding sections, does not exceed Eight hundred pounds may deduct from such net income the sum of Fifty pounds in respect of each child who is under the age of sixteen years at the beginning of the year immediately preceding the year of assessment and is wholly maintained by him and such deduction shall in the first place be made from income from personal exertion.

*Deduction of  
certain expenses  
incurred during  
illness &c. and  
of friendly  
society  
contributions.  
Income Tax  
Act 1922 s. 3.*

26. Any taxpayer ordinarily resident in Victoria whose net income for the year immediately preceding the year of assessment apart from the operation of this and the two last preceding sections does not exceed Eight hundred pounds may deduct from such taxable amount—

- (a) any payments in respect of the illness (including surgical treatment) of the taxpayer or his wife or any of his children under the age of twenty-one years—
- (i.) to any legally qualified medical practitioner or any public or private hospital :
  - (ii.) to any nurse :
  - (iii.) to any chemist :

Provided that no deduction shall be made pursuant to sub-paragraph (i.) or (ii.) or (iii.) of this paragraph in any case where the total amount of the payments authorized to be deducted pursuant to such sub-paragraph is less than Two pounds ;

(b) any payments made by the taxpayer not exceeding Twenty pounds to any undertaker for funeral and burial expenses of the wife or any children of the taxpayer under the age of twenty-one years ;

*Income Tax Act 1922.*

(c) any payment made by the taxpayer as a contribution to any society registered under the *Friendly Societies Act 1928*—

and such deductions shall in the first place be made from income from personal exertion.

27. Any taxpayer who has effected or hereafter effects an insurance on his own life for his own benefit or for the benefit of his wife and children or some or one of them with any company or association carrying on in Victoria the business of life insurance may deduct from his income as an outgoing the amount of premiums paid in any year in respect of such insurance. No greater deduction than Fifty pounds shall be allowed in any year in respect of all premiums paid for such insurance.

Deduction of amount paid as life insurance premium allowed.  
*Income Tax Act 1915 s. 20.*

28. Where a company<sup>(a)</sup> in which a taxpayer has shares is in liquidation all sums actually paid by such taxpayer by way of calls or contribution to such company in the year on the income of which the assessment is based may be deducted from the income of such taxpayer as an outgoing.

Company in liquidation.  
*Id. s. 22.*

29. Where pursuant to any of the three last preceding sections any sum is authorized to be deducted from income as an outgoing such sum shall be deducted from income the produce of property for such year, but if such income does not amount to the sum so to be deducted the difference or if there is no income the produce of property then the whole of such sum shall be deducted from income from personal exertion.

Mode of deduction.  
*Id. s. 23.*

30. If a taxpayer carries on more than one trade either alone or otherwise and makes a profit in one or more of such trades and a loss on the other trade or trades such loss shall be deducted from such profit in calculating the taxable amount of the income of such taxpayer.<sup>(b)</sup>

Taxpayer carrying on separate trades.  
*Id. s. 24.*

(a) The word "company" in this section is limited in meaning to such companies as have an office or place of business or have carried on business in Victoria, and therefore a taxpayer in making a return is not entitled under that section to deduct from his income moneys paid by him as calls in a foreign company in liquidation which has not any branch office in Victoria, and has not carried on business there.—*In the matter of the Income Tax Acts (No. 5)*, 23 V.L.R., 574.

A taxpayer held shares in a company registered in New South Wales, and having its head office there. The company had also a branch office in Victoria, where it carried on business until it was placed in liquidation by order of the Supreme Court of New South Wales in 1893. The office in Victoria was closed in 1894. Before the order for liquidation was made the company had purchased properties in Victoria, and, during the liquidation and after the *Income Tax Act 1895* had come into operation, rent and agistment fees from several of these properties were collected in Victoria. The company incurred various losses in

Victoria. Calls were made by the liquidator in New South Wales, which were by his direction paid by the Victorian shareholders to his credit at a bank in Victoria. During the year 1898 the taxpayer paid to the liquidator certain calls on his shares, which he claimed to deduct from the amount of his taxable income based on his return for that year.

*Held*, that the company was not a "company in liquidation" within the meaning of the corresponding section 9, sub-section (7), of the *Income Tax Act 1895*, and therefore the calls so paid could not be deducted.

A "company in liquidation" within the meaning of that sub-section is a company which may be wound up under the provisions of any Act relating to the winding-up of companies.—*In re the Income Tax Acts*; 25 V.L.R., 258.

(b) For cases under the Acts formerly in force, see *In re Income Tax Acts (No. 3)*, 1915 V.L.R., 600; and *In re Income Tax Acts (No. 3)*, 1907 V.L.R., 35.

*Income Tax  
Acts Amendment  
Act 1925 s. 10.  
Deductions for  
benefits &c. to  
employés.*

**31.** In estimating the income of a taxpayer who is an employer of labour there shall be deducted any sum set aside or paid by him as or to a fund to provide individual personal benefits, pensions or retiring allowances for employés :

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 employés 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 employés in any business or class of business, the person setting aside or paying the sum shall be entitled to deduct it.

*Taxpayer having  
income from  
property and  
losing by trade.  
Income Tax Act  
1915 s. 25.*

**32.** If a taxpayer having an income the produce of property carries on one or more trades either alone or otherwise and makes a loss thereon such loss shall be deducted from his income the produce of property in calculating the taxable amount of the income of such taxpayer.

*Mode of  
deducting  
exemption of  
£200.  
Ib. s. 26.  
Income Tax Act  
1924 s. 3.*

**33.** In the assessment of the income of a taxpayer in his sole individual right the exemption of Two hundred pounds as in this Act provided shall be deducted from income the produce of property, but if such income does not amount to Two hundred pounds the difference, or if there is no income the produce of property then the whole of the said Two hundred pounds of income shall be deducted from the income from personal exertion.

*Class of income  
from which  
deductions  
made.  
Income Tax Act  
1915 s. 27.*

**34.** Where by this Act any sum is allowed to be deducted from any taxpayer's income such sum may in the first place be deducted from the class of income whether from personal exertion or produce of property to which it in the opinion of the Commissioner relates ; but if the income of such class does not amount to the sum to be deducted, the difference or if there is no income of such class the whole of the sum to be deducted shall be deducted from the income of the class to which it does not relate.

*Deduction for  
payments into  
guarantee or  
provident funds  
&c.  
Ib. s. 28.*

**35.** Any taxpayer who is in receipt of salary wages allowances or stipend and makes into any guarantee or provident fund any payment which is required to enable him to exercise his vocation or makes into any superannuation sustentation or widows' or orphans' fund any payment may in estimating the balance of his income liable to tax deduct the amount of such payment as an outgoing from his income. The total amount which may be so deducted by any taxpayer shall not exceed Fifty pounds in the whole in any year.

*Deductions for  
certain gifts.  
Ib. s. 29.  
Income Tax Acts  
Amendment Act  
1926 s. 3.*

**36.** In estimating the income for any year of any taxpayer liable to tax there shall be deducted from the gross amount of such taxpayer's income any gift of any sum over Twenty pounds paid by him and the value of any gift in kind (the value of which is verified to the satisfaction of the Commissioner to be over Twenty pounds) made by him during such year to or for any free public library or any free public



museum or any public institution for the promotion of science and art (including working men's colleges and schools of mines) or any public university or any public hospital or public benevolent asylum or public dispensary or any woman's refuge or ladies' benevolent society or miners' benevolent fund or the fund known as the Lord Mayor's Fund for Metropolitan Hospitals and Charities or the fund known as the "National War Memorial of Victoria" established and maintained for providing money for the construction and maintenance of a public memorial relating to the war which commenced on the fourth day of August One thousand nine hundred and fourteen whether any such library or other institution is or is not in existence at the time of such gift: Provided that such public library or museum or other public institution is situate within Victoria.

*Income Tax Acts  
Amendment Act  
1927 s. 6.*

37. Every taxpayer carrying on any trade in Victoria as a principal and who employs therein any other person exclusively for the purposes of such trade and in addition to the wages or salary of such person paid in money supplies him with food, may deduct the sum actually expended by such taxpayer thereon from the income arising from such trade: Provided however that if such taxpayer is unable to state the sum actually expended as aforesaid such sum may be deducted as in the opinion of the Commissioner is just and reasonable.

*Deduction of  
cost of  
sustenance of  
employés.*

*Income Tax Act  
1915 s. 30.*

38. The Commissioner shall allow to be deducted from assessable income as a loss or outgoing such sum as he 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:

*Losses and  
outgoings by  
wear and  
tear and  
depreciation.*

*Income Tax  
Acts Amendment  
Act 1923 s. 11.  
Comp. Com.  
I.T.A. 1922[No.  
37 s. 23 (1) (c).*

Provided that where a deduction has been allowed pursuant to paragraph (a) of sub-section (2) of section twenty-three of this Act the Commissioner shall take into consideration the sum allowed pursuant to that section in determining the sum to be allowed under the foregoing provisions of this section:

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 section 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.<sup>(a)</sup>

(a) Under a former Act where a deduction from income tax was claimed the Commissioner was bound to allow as a deduction either the amount of income set apart by the taxpayer himself by way of a fund to cover depreciation of his machinery, &c., by reason of wear and tear during the year immediately preceding the year of taxation, or the amount which he himself fixed as fair and reasonable to represent such depreciation. This was so, notwithstanding the fact that the taxpayer may have been allowed a deduction in respect of the actual cost of repairs and renewals to the same machinery, &c. The fact that the taxpayer had not so set apart any income is not conclusive

evidence that there was no such depreciation.

*Held*, therefore, that an hydraulic company was entitled to a deduction for the diminution in value through wear and tear during the preceding year in respect of engines, pumps, accumulators, auxiliary engines, tanks, pipes, boilers, boiler settings, and water mains, though such engines, &c., were attached to or under the soil, and though a deduction had already been allowed for the actual cost of repairs and renewals thereof.—*In re the Income Tax Acts, Hydraulic Company's case*, 1905 V.L.R., 185. But the section is now altered; and see notes to section 42.

*Income Tax Act*  
1915 s. 52.

Interest on  
mortgage of land  
outside Victoria  
not subject to  
income tax.

39. (1) Interest received or receivable in Victoria pursuant to a covenant contained in any mortgage of any land which is situated outside Victoria shall be deemed and taken to be income not subject to income tax in Victoria.

(2) No costs charges interest commission exchange or other outgoing connected with or arising out of the earning or receiving in Victoria of such interest shall in estimating the balance of any income liable to tax be deducted from the gross amount of any taxpayer's income as losses and outgoings actually incurred in Victoria.

Taxable income  
of manufacturer  
where trade  
carried on in  
Victoria and  
elsewhere.

*Ib. s. 33.*

40. Where the head or principal office or principal place of business of a taxpayer (being a manufacturer) is in Victoria and the trade carried on by such taxpayer extends to any other State of the Commonwealth and income thence arising is subject to income tax in such other State the Commissioner may in the assessment of the income of such taxpayer chargeable with tax make such an allowance in respect of the income which is subject to tax in such other State as in his opinion is just and reasonable provided that no allowance made under this section shall exceed the proportion which the amount of the gross receipts of such trade in such other State during the year immediately preceding the year of assessment bears to the amount of the total gross receipts of such taxpayer from such trade in Victoria and elsewhere during the same period.

Beneficiaries in  
trust estates  
entitled to  
exemption on  
income from  
Government  
stock &c.

*Ib. s. 34.*

41. In the assessment of the income of any taxpayer being a beneficiary in a trust estate the income of which is derived wholly or partly from interest from any stock debentures or Treasury bonds of the Government of Victoria or from any stock debentures or bonds sold or issued under the Savings Banks Acts after the twenty-fourth day of September One thousand nine hundred and twelve or from dividends from any company there shall be deducted as exempt from income tax an amount which bears the same proportion to the total amount received or receivable by him as such beneficiary as the income received by the trustee from such sources bears to the total income of the estate.

The like deduction shall be made where the income or any portion thereof is subject to tax as undistributed income in the hands of a trustee in his representative capacity.

#### PART V.—SPECIAL PROVISIONS RELATING TO INCOME OF COMPANIES.

Taxation of  
company.

*Ib. s. 36.*

*Income Tax Act*  
*Amendment Act*  
1926 s. 2 (2).

42. So far as regards any company liable to pay tax the income thereof chargeable with tax shall (except as provided in paragraph (c) or paragraph (f) of section twenty-one or as hereinafter provided) be the profits<sup>(a)</sup> earned in or derived in or from Victoria by such company during the year immediately preceding the year of assessment.

(a) The use of the word "profits" in this section does not confine the payment of income tax to trading companies only.

*Quære*, whether the "profits" referred to in the section are those from which dividends might legally be declared.

The meaning of "profits" discussed.—*In re Income Tax Act (No. 1 of 1907)*, 1907 V.L.R., 185.

The taxpayer was an association registered under the *Companies Act* 1890, whose main object

was the promotion of the welfare of persons carrying on a specified business, which was achieved by the establishment of an ordinary club to which persons other than members of the association (called "club members") might belong, and also by the establishment of certain benefit funds, participation in which was confined to "association members" and their families. By the rules of the association, its "clear net profits" for each financial year were to be paid into the

43. Any company liable to tax which pays out of its profits a dividend on any shares which are preference shares may without further or other authority than this Act deduct from every such dividend an amount bearing the same proportion to the total tax paid by such

*Income Tax Act 1915 s. 36.*  
Tax payable by preferential shareholders of company.

benefit funds, and in addition a fixed part of the subscription of the "association members" was to be paid into one of such funds.

*Held*, that income tax was payable on the whole of the "profits" of the taxpayer, and that such profits included not only the profits on the club, but also the entrance fees and subscriptions of the "association members," and also all moneys received by the taxpayer by way of interest from the investment of the capital of its benefit funds.—*In re Income Tax Acts (No. 1 of 1907)*, 1907 V.L.R., 185.

On 15th October, 1903, M., by a contract made in Victoria, agreed to purchase an estate in New South Wales from one W. M. then proceeded to cut up and sell the estate in lots. The contracts of re-sale were, with one exception, made in New South Wales. Almost the whole of the estate was thus disposed of.

On 20th April, 1904, a company was incorporated in Victoria, having its registered office in Melbourne. By a deed dated 21st April, 1904, and executed in Victoria, M. assigned, and the company took over, all the rights and obligations of M. as purchaser from W., and by a deed dated 1st July, 1904, and executed in Victoria, M. assigned, and the company took over, all the rights and obligations of M. as vendor under the contracts of re-sale. In both deeds it was recited that M. had acted as trustee for the company then in the course of formation. The only general meeting of the company was held in Melbourne. The difference between the price paid for the estate and that obtained for it on re-sale gave a net profit of about £19,000.

*Held*, that this was profit earned by the company in Victoria, and that it was liable to pay income tax in respect thereof.

When a company is formed for a single venture, the preliminary expenses connected with its formation, including law costs, can, when assessing its income, be deducted from the profits of the venture.—*In re the Income Tax Acts, The Quat Quatta Company's case*, 1907 V.L.R., 54.

This has not the effect of rendering taxable as income profits of a company which would not be income in the ordinary sense of that term.

The fact of the reduction of the capital of a company pursuant to the Companies Act is not by itself decisive of the question of what are the profits of the company for the purposes of the Income Tax Acts.

*By Griffith, G.J., and O'Connor and Higgins, J.J.*—The articles of association of a company must be taken into consideration in ascertaining the profits of a company within the meaning of this section.

*By Isaacs, J.*—Internal regulations as to the disposal of income cannot be so taken into consideration.

The A. company was formed for the purpose of carrying on the business of banking, and also to take over, for a certain price paid in cash, shares and deposit receipts, and realize the assets of

another company consisting of debts owing to it and real estate held as security therefor. The amount of the price paid was the total amount of the debts so owing. The capital of the A. company was in 1905 reduced pursuant to the Companies Act 1896 by a sum representing the difference between the price paid for the assets and their estimated value in 1904. Subsequently to the reduction of the capital, certain of the assets were realized, some of them for sums less than the values placed on them in 1904, others for greater sums, but all for sums less than the amounts of the debts for which they were securities, with the result that in each of the years 1905, 1906, and 1907 the total amount obtained by realization was greater than the total valuation in 1904 of the properties realized. By certain of the original articles of association provision was made for keeping an account of the realization of these assets, for charging against the sum realized the price paid for the assets, and for placing to the credit of the reserve fund any sum realized beyond that price. On the reduction of capital these articles were replaced by an article providing that all surpluses over the paid-up capital so reduced which might arise on realization should be carried to the credit of the reserve fund. Another of the original articles provided that the reserve fund might be encroached upon for the purpose of equalizing dividends.

*Held*, that such surpluses of realization in 1905, 1906, and 1907 were not "profits" within the meaning of the corresponding section (9) of the Income Tax Act 1903, and were not chargeable with income tax.—*Webb v. The Australian Deposit and Mortgage Bank Limited*, 11 C.L.R., 223.

Three assets companies were formed in England in December, 1897, to carry out schemes of arrangement of the affairs of three Victorian banking companies then in course of liquidation in England and Victoria. In each case provisional agreements had been made with the sanction of the courts in England and Victoria. The basis of each scheme was that the whole of the assets of the banking company should be handed over to a company to be formed for the purpose of carrying it into effect. The creditors of the respective banks were to accept in full satisfaction of their claims, shares and debenture stock in the respective assets companies. The objects of each assets company was stated in its memorandum of association to be (*inter alia*) to carry out the provisional agreement; to acquire, take over, and carry on the undertaking, property, and assets of the banking company, and to issue the shares and debenture stock provided for in the agreement; and "to carry on the business of an assets company in all its branches, to nurse, use, employ, manage, develop, and liquidate for such time, and to realize at such time or times, and in such manner as may be deemed expedient, all property of every description including debts, claims, and demands which may at any time come into the hands of the company." The form

Income Tax Act 1915.

company as the total amount of such dividend bears to the total amount of profits liable to tax.

Calculation of tax on mining companies.

*Ib. s. 37.*

44. The taxable amount of the income of every company carrying on mining operations in Victoria shall be deemed to be the total amount of the dividends declared and debenture interest paid by such company during the year immediately preceding the year of assessment.

Life assurance companies.

*Ib. s. 38.*

45. (1) The taxable amount of the income of every company which carries on in Victoria the business of life assurance shall (with respect to life assurance business only) be a sum equal to Thirty pounds per centum of the premiums received by the company during the year immediately preceding the year of assessment in respect of insurances or assurances effected in Victoria<sup>(a)</sup> and such sum shall be chargeable with tax accordingly.

Industrial life assurance business.

(2) As to so much of the business of any company which carries on in Victoria the business of life assurance as consists of industrial life assurance, the taxable income of such company shall (notwithstanding anything in sub-section (1)) be estimated at fifteen per centum only of the premiums received for such business. The Commissioner shall determine whether any life assurance business is or is not industrial life assurance business for the purposes of this section.

Other insurance.

(3) So far as regards companies carrying on fire fidelity guarantee or marine assurance or insurance business the premiums derived from any such business shall not be included in the premiums received by any of such companies within the meaning of the first sub-section of this section.

adopted in the provisional agreements embodying the schemes was that the banking companies and their liquidators should respectively "sell and transfer" to the assets companies all the assets of the banking companies "in consideration whereof" the assets companies were to issue the debenture stock and shares. The values of the assets taken over by the respective assets companies were entered in their books according to valuations made by the liquidators of the banking companies respectively. The conditions of the issue of the debenture stock of each assets company authorized the redemption of it by purchase from the holders at a discount, or by distribution of money amongst the stock holders *pari passu*. No dividends were payable until all the stock had been redeemed. The three assets companies, which under the several schemes of arrangement were managed by the same body of persons, proceeded to realize their respective assets, and by the beginning of 1903 all the debenture stock had been redeemed out of the proceeds, and a large quantity of property still remained unsold. In 1903, the appellant company was formed in England with the objects, as stated in its memorandum of association, of carrying out three several draft agreements made respectively with the three assets companies. Each of those agreements provided that the assets company should "sell" and the appellant company should "purchase" the

undertaking of the assets company and all its assets in consideration (*inter alia*) of shares and debenture stock of the appellant company. The memorandum of association of the appellant company also included the following purposes:— "To nurse, use, employ, manage, develop, and liquidate for such time, and to realize at such time or times, and in such manner as may be deemed expedient, all property of every description, including debts, claims, and demands which may at any time come into the hands of the company"; "to carry on the business of an estates development and assets company in all its branches."

*Held*, by the Privy Council that the respondent was a trading company, and that any surplus ascertained and realized of the proceeds of the assets of the assets companies over the consideration paid by way of purchase money for them after making all just deductions, would be profits of the respondent under section 42, and taxable accordingly.—*Commissioner of Tax. v. Melbourne Trust Limited*, 18 C.L.R., 413.

(a) The consideration moneys received by a life assurance company for annuities on human life granted in Victoria are "premiums received . . . in respect of insurances or assurances effected in Victoria" within the meaning of this section.—*In re the Income Tax Acts (No. 2)*, 1913 V.L.R., 42.

## PART VI.—PUBLIC OFFICERS OF COMPANIES.—AGENTS AND TRUSTEES.

*Public Officers.*

46. Every company carrying on business in Victoria shall at all times be represented by a person residing in Victoria, who shall be duly appointed by the company or by some agent or attorney having power to appoint such person for the purposes of this Act; and the following provisions shall have effect:—

*Income Tax Act  
1915 c. 39.  
Companies to be  
represented by  
a public officer.*

- (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 company commences to carry on business in Victoria:
- (b) The office of public officer shall be kept constantly filled by making fresh appointments thereto as are necessary, and no appointment shall be deemed duly made until after notice thereof in writing specifying the name of the officer and an address for service has been given to the Commissioner:
- (c) Every company which fails or neglects to make an appointment to the office of a public officer pursuant to this Act or to keep the office constantly filled as aforesaid and every person who acts as agent or manager or representative of such company shall be liable to a penalty of not more than Fifty pounds a day for every day during which such failure or neglect continues:
- (d) Every public officer shall be answerable for the doing of all such acts matters or things as are required to be done by the company by virtue of this Act:
- (e) Everything done by any such public officer which he is required to do in his representative capacity shall be deemed to have been done by such company:
- (f) It shall not be necessary in any case to prove that any officer or person is or was the public officer of the company or acting in its business: and
- (g) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with any of the provisions of this Act; but every such company shall be liable to the provisions of this Act as if there was no requirement to appoint such officer.

*Agents and Trustees.*

47. For the purposes of this Act—

- (1) Any person in Victoria having the receipt management disposal or control of income on behalf of any taxpayer permanently or temporarily absent from Victoria or remitting or paying income to such taxpayer shall be deemed to be agent of such taxpayer; and
- (2) The Commissioner may declare any person to be agent of such taxpayer, and the person so declared an agent shall be agent for the purposes of this Act: Provided that nothing in this Act shall constitute or authorize the Commissioner to declare any banking company or

*Agents.  
Ib. s. 40.*

*Income Tax Act 1915.*

the public officer of such company to be the agent of any taxpayer permanently or temporarily absent from Victoria so far as regards moneys paid by any other company or person to the credit of such taxpayer with such banking company in the ordinary way of business unless such banking company or the public officer thereof is the holder of a power of attorney from such taxpayer or unless such moneys are specific sums so paid to such banking company and set out with the amounts thereof, the approximate dates of payment thereof, and the names of the companies or persons by whom the same were so paid in a notice in writing given by the Commissioner to such banking company; and

- (3) Where it appears that several persons are in receipt of income for or on behalf of any taxpayer so absent from Victoria the Commissioner in any case in which it appears to him to be necessary or expedient may consolidate all or any of the assessments thereof and declare any one of such persons to be the agent of such taxpayer in respect of such consolidated assessment and require him to pay the tax on the amount thereof.

*Liabilities and powers of agents and trustees.*  
*Id. s. 41.*

**48.** (1) Every agent for any taxpayer permanently or temporarily out of Victoria and every trustee—

- (a) Shall be answerable for the doing of all such acts matters or things as are required to be done by virtue of this Act in order to insure the assessment of the income which belongs to the person or company whom or which such agent represents or which is the subject of the trust or such trustee, or which is received by such agent or trustee, and for paying the tax in respect thereof;
- (b) Is hereby authorized to recover from or deduct from any moneys belonging to any person or company in whose behalf such agent or trustee is compelled to pay any tax the amount so paid;
- (c) Is hereby authorized and required to retain from time to time in each year out of any money which comes to such agent or trustee as such agent or trustee so much as is sufficient to pay the tax in respect of any income subject to the tax; and is hereby indemnified for all payments which such agent or trustee makes in pursuance of this Act or by requirement of the Commissioner;
- (d) Is hereby made personally liable for the tax payable in respect of any income if while such tax remains unpaid—
- (1) Such agent or trustee alienates charges or disposes of such income; or
  - (2) Disposes of or parts with any fund or money which comes to him after the tax is payable from or out of which fund or money such tax could legally have been paid;

but shall not otherwise be personally liable for any tax: and

(2) Every such trustee may raise such moneys as may be necessary to pay any tax by mortgage with or without power of sale of any land or property held by him upon trust and may expend such moneys so raised or any trust in his possession or control in paying any tax. *Income Tax Act 1916.*

(3) Where a shareholder or member of a company is permanently or temporarily out of Victoria such company shall for the purposes of this Act be deemed and taken to be the agent for such shareholder or member, and shall so far as regards such shareholder or member have and exercise all the powers duties and responsibilities of an agent for a taxpayer permanently or temporarily out of Victoria.

(4) The Commissioner or any person empowered under this Act shall have such and the like remedies against all land or property of any kind vested in or under the control or management of any agent or trustee as he would have against the land or property of any person liable to pay tax and in as full and ample a manner.

49. (1) Every company society association and institution and every public or municipal trust body or corporation in Victoria which pays interest upon or in respect of any debentures or bonds shall for the purposes of this Act be deemed to be the agent of every holder of such debentures or bonds, and before paying or crediting such interest to or for any person shall, on behalf of the person entitled to receive such interest, pay to the Commissioner income tax calculated on the amount of such interest, and may deduct from such interest payable to such person the amount of income tax thereon. Provided however that if any such holder claims to be exempt from taxation in respect of such interest and makes application to the Commissioner in such form as may be prescribed the Commissioner may certify pursuant to this Act for a refund of the amount of tax which has been paid on such interest. *Debentures &c. of company. Ib. s. 42.*

(2) Nothing in this section shall authorize or require the payment of income tax in respect of interest accruing to any person not residing in Victoria from any stock debentures or bonds issued by any public or municipal trust body or corporation pursuant to any Act of the Parliament of Victoria.

50. If an owner of land is out of Victoria and has no known agent in Victoria any tenant of such land shall be deemed to be the agent of the owner. *Tenant when agent of owner. Ib. s. 43.*

PART VII.—ASSESSMENT OF INCOME.—TAXPAYERS' RETURNS.

51. (1) Returns shall be made annually by every taxpayer to the Commissioner as prescribed for the purpose of enabling assessments of income to be prepared.<sup>(a)</sup> *Annual returns. Ib. s. 44.*

(2) The annual period for which assessments shall be made for the purpose of charging levying collecting and paying the duties of income tax shall unless the contrary is provided commence as on the first day of July in each year. *Periods for which assessments to be made. Income Tax (Amendment and Rates) Act 1919 s. 3.*

(3) Returns of income shall be based upon the amount of income which was earned derived or received by the taxpayer during the year ending on the thirtieth day of the month of June immediately *Annual returns of income. Income Tax Act 1915 (No. 2) s. 4.*

(a) The persons required to furnish returns are fixed by this section and by section 56 empowering the Commissioner to require any person to send in a return.—*House v. Petersen*, 25 V.L.R., 240.

*Income Tax Act*  
1916.

preceding the commencement of the year of assessment.<sup>(a)</sup> Where the income of a taxpayer cannot be conveniently returned as of the date hereinbefore provided, it shall be optional for the Commissioner to accept returns made up to the date of the annual balance of accounts of such taxpayer; and the Commissioner may if he accepts the date of such annual balance for the purpose of the return to be made by such taxpayer accept an estimated return of income for assessment, such assessment to be adjusted by the Commissioner upon such annual balance being completed.

(4) Returns of income derived from personal exertion and of income the produce of property shall be calculated separately.

Further  
provisions  
as to returns  
required for  
assessments.

(5) Subject to this Act returns may be required from any taxpayer at any time and in any manner required by or under any notice given by the Commissioner for that purpose although the period or year for which assessments are required to be made has not commenced or has expired; and all the provisions of this Act shall extend and apply to such returns and the taxpayer liable to make the same; and assessments may be made upon or in respect of such returns as if the same had been required to be made or made within the year or period for which assessments are required to be made; and all proceedings may be had and taken and all acts and things done for the purpose of giving effect to this Act accordingly; but nothing herein shall prevent the Commissioner from requiring from any taxpayer any further or fuller returns at any time or as at any date in such manner as may be prescribed, or from making any assessment upon any such return in such manner as may be necessary to give effect to this Act.

Income tax  
of Commis-  
sioner.

(6) If the Commissioner or any deputy commissioner is liable to tax then the same shall be assessed by such person and in such manner as the Governor in Council by notification published in the *Government Gazette* appoints in that behalf, and such person shall have the like powers in respect thereof as are by this Act conferred on the Commissioner in respect of any income, and every commissioner or deputy commissioner shall have the like right of objection to assessment as any other taxpayer.

(7) Nothing contained in this section shall be deemed to interfere with or control any special powers of assessment conferred by this Act.

Preparation of  
assessments  
and entering  
same in  
registers &c.  
*Ib. s. 45.*

52. (1) The Commissioner shall cause assessments to be prepared at such time or times and in such manner as shall be prescribed for the purpose of ascertaining the amount upon which income tax shall be levied under this Act and such assessments shall be entered in assessment-registers in accordance with regulations.

(a) See *In re the Income Tax Act*, 26 V.L.R., 297; and *In re the Income Tax Acts* (No. 2), 27 V.L.R., 39, cited in note to section 4.

Interest upon two deposit receipts for moneys lodged with a bank became payable on 31st December, 1893, and 20th January, 1894, respectively. The 31st December, 1893, and 1st and 2nd January, 1894, were bank holidays. The interest was paid on 3rd January, 1894, and 20th January, 1894.

*Held*, that the whole of the interest was rightly included in the assessment for the year 1894.—*In the matter of the Income Tax Acts*, 23 V.L.R., 312.

Income tax is payable for the year when the return is made, not for the last preceding year, although in making the assessment reference may be made to the income of the next preceding year.—*In the matter of the Income Tax Acts* (No. 3), 23 V.L.R., 429.

Sub-sections (1) and (3) show that the income which the Legislature intended to tax is not the amounts actually received by a taxpayer during any particular year, but only such amounts as might reasonably be expected to recur from year to year.—*In re the Income Tax Acts*, 26 V.L.R., 297.



(2) Every agent (whether a person or company) for any person permanently or temporarily out of Victoria and every trustee shall be assessed separately in respect of any income for which such agent or trustee is agent or trustee, and shall be chargeable with the tax payable in respect thereof in the same manner as if such income were the income of such agent or trustee; and shall be assessed in respect thereof as such agent or trustee, and each such assessment shall be kept separate and distinct from such agent or trustee's individual assessment.

*Income Tax Act 1915, Agents and trustees.*

53. (1) Persons carrying on any trade in partnership shall be liable to make a joint return as such partners in respect of the trade which they carry on or are engaged in with such particulars as may from time to time be prescribed, but they shall be liable to tax only in their separate individual capacities.

*Joint return by partners. Ib. s. 46. Income Tax Act Amendment Act 1927 s. 4.*

(2) Notwithstanding anything in this section when a married woman and her husband carry on a trade in partnership and the Commissioner is of opinion that the partnership was entered into for the purpose of relieving the husband or wife from any liability which would have occurred under this Act if the partnership had not been formed—

*Special provisions where husband and wife carry on trade in partnership. Comp. Com. Income Tax Act 1915 s. 26.*

(a) the partners shall be jointly assessed and liable to tax in respect of the income of the partnership as if the income had been the income of a single person and without regard to the respective interests therein of the partners or to any deductions to which either of them individually may be entitled under this Act; and

(b) each partner shall in addition be separately assessed and liable in respect of any other income earned or derived by him or her separately; and the amount of tax payable by each partner on the separate income shall be the difference between the tax payable on the income of the partnership and the tax which would be payable on an income of the amount obtained by adding the income of the partnership to the separate income of the particular partner.

54. (1) Where a taxpayer dies on or after the first day of July in any year and before furnishing a return of his income of the preceding year, his executors or administrators shall furnish a return of the income earned derived or received by such deceased taxpayer during the said preceding year and shall be assessable in respect thereof and shall be chargeable with and pay tax thereon.

*Returns by executors. Income Tax Act 1915 s. 47. Income Tax Act Amendment Act 1923 s. 12.*

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

55. (1) The Commissioner may from time to time in respect of any assessment-register—

*Power to Commissioner to amend and alter assessment-registers.*

(a) Place thereon the name of any taxpayer of whose liability to taxation he is satisfied, and remove therefrom the name of any person not so liable:

*Income Tax Act 1915 s. 46.*

*Income Tax Act 1916.*

- (b) Add to any register the amount of any income omitted either wholly or partly to be assessed or returned at the time and in the manner required by law :
- (c) Place thereon the amount of any income received or receivable by any taxpayer which he is satisfied is liable to be assessed for taxation, and remove therefrom the amount of any income which he is satisfied ought not to be assessed for taxation :
- (d) Make any alteration or amendment necessary in consequence of any alteration or amendment by him pursuant to this Act of any assessment.

(2) The Commissioner shall not (unless with the consent of the taxpayer affected) add any name to or place the amount of any income upon any assessment-register under the power conferred upon him until the expiration of one month after he has given notice thereof to the taxpayer affected thereby ; and every such taxpayer shall have the same right to object and to have his objection heard and determined in like manner as is hereinafter provided with regard to objections to assessments.

Receivers of incomes exempt from taxation liable to make returns.  
*Ib. s. 49.*

56. Every person or company who receives whether on his or its own behalf or not any income which is or may be exempt from taxation shall when required by the Commissioner make and furnish a return of income in respect of any annual period and except as to liability to taxation in respect of such income every such person or company shall be liable to all the provisions of this Act relating to the returns of income required to be made or furnished thereunder.<sup>(a)</sup>

Taxpayers may be required to make new or further and fuller returns.  
*Ib. s. 50.*

57. Every taxpayer shall be liable from time to time and at any time when required by the Commissioner to make a new or further and fuller return of income either in respect of the whole or any part of the income received by such taxpayer whether in his or its own behalf or as an agent or trustee and although a return has been previously made by such taxpayer for the same annual period ; and all the provisions of this Act shall extend and apply to any such new or further and fuller return, and assessments may be made upon or in respect thereof by the Commissioner in accordance with this Act in such manner as may be necessary to give effect thereto.

Power to require information and for production of deeds books accounts &c.  
*Ib. s. 51.*

58. (1) For the purpose of obtaining full information in respect of any income of any taxpayer or of any part thereof respectively the Commissioner may from time to time and at any time by fourteen days' notice in writing require any person whomsoever or the public officer of any company to furnish information in writing signed by such person or public officer or by verbal communication and whether general or particular which may be in his knowledge possession or power relating to any such income or any part thereof respectively ; or if the Commissioner thinks fit he may require any such person or the public officer of any such company or any person in whose custody or control the same may be to produce for examination by the Commissioner or by any person appointed by him for that purpose at such time and place as may be appointed by the Commissioner in that

(a) See note to section 51.—*House v. Petersen*, 25 V.L.R., 240.

behalf any deeds instruments books accounts trade-lists stock-sheets *Income Tax Act 1915.*  
or documents or writings that may be deemed necessary for any of the purposes of this Act.

(2) The Commissioner may by fourteen days' notice in writing require any person or company entitled to or in receipt of any income whether on his own or its behalf or as an agent or trustee of any person or company or the public officer of any company being such owner or holder or so entitled or in receipt as aforesaid or any person whomsoever that the Commissioner deems able to furnish information to attend at a time and place to be named by the Commissioner for the purpose of being examined by him respecting the income of any such person or company or any transactions or matters affecting the same or any of them or any part thereof. Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by such person in such attendance. *Power to orally examine certain persons.*

(3) Every person who without reasonable excuse fails or neglects to comply with any requirement of the Commissioner under this or the last preceding section or who without reasonable excuse fails or neglects to attend and give evidence or information as provided by this section, shall be guilty of an offence and shall for every such offence be liable to a penalty of not less than Two nor more than One hundred pounds. *Penalty on failure to comply with the provisions of this or last preceding section.*

59. If any person or company carrying on any trade when requested by the Commissioner or any assessor or officer appointed under this Act to disclose the name and residence of the person entitled to receive or participate in the income derived from such trade refuses or wilfully omits to disclose such name or residence or wilfully misstates the same or neglects or refuses to give any information in his possession requested (whether for the purposes of assessment or not) by the Commissioner or such assessor or officer such person or company shall for every such offence be liable to a penalty of not more than Fifty pounds. *Person carrying on trade refusing to give information liable to a penalty. *Ib. s. 52.**

60. The Commissioner or any person authorized by him in writing may at any time enter upon any land or premises for the purpose of inspecting all or any part of any property producing income, and the Commissioner or such person shall have the right for the purpose aforesaid to enter upon such land or premises at any reasonable hour during the day-time. *Commissioner's right to enter and inspect. *Ib. s. 53.**

61. In every case in which any taxpayer makes default in furnishing any return or if the Commissioner is not satisfied with the return furnished by any taxpayer, the Commissioner may make an assessment in such sum as in the Commissioner's judgment ought to be charged by virtue of this Act, and thereupon shall give notice thereof to the taxpayer to be charged, and such taxpayer shall pay the tax upon the same. Such assessment shall be subject to objection, and the taxpayer if he has made default as aforesaid shall not be entitled to any costs on such objection. *Parties making default to be assessed by Commissioner. *Ib. s. 54.**

62. (1) If at any time it appears to the Commissioner that any taxpayer who ought to have been charged with tax has not been charged therewith the Commissioner may make an assessment as to the income of such taxpayer in respect to which such omission has *Double tax payable where tax evaded. *Ib. s. 55.**

*Income Tax Act 1915.*

occurred, and the taxpayer shall be chargeable with a double rate of tax thereon if such omission has been occasioned by the taxpayer.

(2) If the Commissioner is satisfied that the taxpayer was not guilty of any wilful default neglect or omission and had not done any act with intent to defraud the revenue he may remit the whole or any part of such double duty over and above the amount computed on the ordinary rate.

**PART VIII.—NOTICE OF ASSESSMENTS AND OBJECTIONS TO ASSESSMENTS.**

*Notice of every assessment to be sent to taxpayers affected.*  
*Id. s. 56.*

**63.** (1) Upon entering any assessment in any assessment-register the Commissioner shall cause to be given to each taxpayer whose income has been assessed a notice of the making of the assessment. Such notice shall be in such form and contain such particulars as may be prescribed and shall be posted to such person in a closed letter or envelope.

*Omission of notice not to invalidate assessment.*

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

*How objections to be made to assessment.*

(3) Objections to any assessment under this Act may be made by any taxpayer feeling aggrieved by reason of any assessment in which he personally as principal or as agent or trustee is interested or by the Commissioner in such manner and on such terms and conditions as shall be prescribed.

*Commissioner to give notice of date for receiving objections.*

(4) The Commissioner shall in such form as he thinks fit and either in the notice of the making of the assessment or publicly or otherwise give notice that objections to the assessments made are to be sent in to him on or previous to a day to be appointed in the notice, and no objection other than one made by the Commissioner shall be entertained which is not lodged with him on or before the last day appointed for lodging objections.

*Objections to be made in writing.*

(5) Every objection shall be in writing and every objection (other than one by the Commissioner) shall be delivered or posted to the Commissioner in sufficient time to reach him on or before the last day appointed for receiving objections.

*Objection by Commissioner.*

(6) Where the Commissioner makes any objection to an assessment he shall give notice thereof to the taxpayer interested, who shall within such time and in such manner as may be prescribed give notice to the Commissioner of assent to or dissent from such objection. If default is made in notifying the Commissioner as aforesaid such taxpayer shall be deemed to assent to the Commissioner's objection. In case of dissent the Commissioner shall transmit such objection and notice of dissent to a judge of county courts in order that the objection may be heard and determined.

*What constitutes assessment-register.*

(7) Where no objections are made to any assessment or where objections have been allowed or withdrawn the assessment-register signed by the Commissioner shall be the assessment-register in respect of the income therein mentioned.

*Right to recover taxa not suspended by objections or appeal.*

(8) The right of the Commissioner to recover any tax shall not be suspended by any objection or appeal thereupon, but if the objector (not being the Commissioner) succeeds on such objection or appeal thereupon the amount (if any) of tax received by the Commissioner in excess of the amount determined upon by the final determination as to such objection or appeal thereupon shall be repaid to the taxpayer

making such objection ; and the Commissioner shall give the objector a refund certificate to that effect.

*Income Tax Act 1915.*

**64.** (1) The Commissioner shall consider the objections made by any taxpayer assessed and may make such inquiries thereon or relating thereto as he thinks fit.

Commissioner may consider objections.  
*Id. s. 57.*

(2) If the Commissioner considers that any objection should be allowed either wholly or in part he may alter or amend the assessment accordingly, and his decision shall in all cases be final and conclusive in respect of all matters relating to such assessment except as to the amount thereof.

And allow alter or amend assessment.

(3) If the parties assessed are dissatisfied with the Commissioner's decision as to such amount then such objection shall so far only as the amount of assessment is concerned be transmitted by the Commissioner to be heard and determined by a judge of county courts as hereinafter provided.<sup>(a)</sup>

County court to deal with objection disallowed.

(4) The Commissioner shall on or before any day appointed for the review of assessments deliver or transmit all objections not allowed assented to or withdrawn to a judge of county courts in order that the objections may be heard and determined.

Commissioner to transmit objections to judge of county courts.

**65.** The duties and powers imposed upon judges of county courts and the mode terms and conditions on which the same shall be exercised and performed shall be prescribed by regulation and in addition thereto—

Powers and duties of judges of county courts in hearing objections.

(a) Each judge of county courts shall hear and determine all objections transmitted to such judge as hereinbefore provided and may alter the assessment-registers accordingly:

*Id. s. 58.*  
Duties of judge of county courts.

(b) Every judge of county courts shall have full power of hearing and determining the objections as to the amount of the assessments so transmitted to him and shall make such order as to costs as he shall deem just :

Objections to assessments.

(c) Unless a case is stated as hereinafter provided the decision of each judge on all objections coming before him and on all other matters coming within his cognisance shall be final and conclusive. The decision of the judge shall be recorded on the assessment-register, and such register shall be signed by the judge and proof of such signature shall be conclusive evidence in all courts of the regularity and legality of the decision :

Decision conclusive unless appealed against.

(d) The judge shall initial all amendments alterations and insertions (if any) made by him in each assessment-register, and shall sign the assessment-register and deliver or transmit it to the Commissioner :

Duties of judge.

(e) The Commissioner or Deputy Commissioner may appear before the judge personally or by his barrister and solicitor or agent and the assessor or other officer may appear in person in support of the assessment, and any person objecting to such assessment may appear in person or by his barrister and solicitor or by any person

Who may appear before judge.

(a) An appeal from the decision of the Commissioner of Taxes on any objection lodged by a taxpayer is given by the Act, whether such de-

cision involves questions of principle or law, and is not limited to matters of mere amount.—*The Commissioner of Taxes v. Everitt*, 21 V.L.R., 481.

*Income Tax Act 1915.*

*Assessment-register.*

*Hearing of objections in county court. Ib. s. 59.*

*Special case may be stated.*

*Cost of hearing.*

*Procedure under special case. Ib. s. 60.*

in his exclusive employment duly authorized by writing in that behalf :

(f) When an assessment-register is signed by the judge or corrected and signed by the judge it shall be the assessment-register for all assessments entered therein.

66. (1) Unless otherwise requested by the taxpayer the county court with closed doors and with the public and press excluded shall hear evidence touching the question in dispute.

(2) The county court may make such order<sup>(a)</sup> touching the matter in dispute as the court deems just, and shall cause any alteration necessitated by the decision to be immediately made in the assessment-register or certified copy as aforesaid, and every such alteration shall be attested by the signature of the judge of such court.

(3) The court upon the hearing may on the application of either party state a special case<sup>(b)</sup> on either the whole matter or on any question arising thereon for the opinion of the Supreme Court ; and the county court shall when such special case is remitted back to such court make an order in respect of the matters referred to the Supreme Court in conformity with the opinion and determination of the said Supreme Court or of any single judge thereof sitting as the Supreme Court.

(4) The county court shall make such order as to costs of the proceedings relating to any such matter remitted to it as such court deems just.

67. In reference to special cases stated for the opinion of the Supreme Court<sup>(c)</sup> and the hearing thereof the following provisions shall have effect :—

(1) If the taxpayer applies for the case to be stated he shall before he is entitled to have the case stated pay to the county court a fee of Twenty shillings for and in respect of the case.

(2) The Supreme Court shall hear and determine the question or questions at law arising on a case transmitted under this Act and may thereupon reverse affirm or amend the assessment or determination in respect of which the case has been stated or remit the matter to the county court with the opinion of the Supreme Court thereon or may make such other order in relation to the matter and as to costs as to the court seems fit, and all such orders shall be final and conclusive except as to matters remitted to the county court.

(a) A person against whom an action in the county court has been instituted by the Commissioner of Taxes to recover income tax alleged to be due may show in that court that he is a person who was not at any time liable to be taxed.—*Webb v. England*, 23 V.L.R., 260.

(b) On a special case stated under this subsection the Commissioner of Taxes has the right to begin.—*In re the Income Tax*, 1919 V.L.R., 515.

(c) The Income Tax Acts create a tribunal for determining the amount of the tax (if any) which each subject is liable to pay to the Crown, and

provide for appeals and cases stated.

Any person dissatisfied with the amount at which he is assessed under the Acts as liable to pay must explicitly follow the procedure provided by the Acts for determining the extent of his liability to tax, and must pay the amount at which his assessment is by this means finally fixed. He cannot directly apply to the Supreme Court to obtain a determination of the amount of his liability ; nor can he pay the amount at which he is assessed and then apply to the Supreme Court to recover it back.—*Kelly v. The King*, 27 V.L.R., 522.

- (3) The Supreme Court shall have power to cause the case to be sent back for amendment and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended. *Income Tax Act 1915.*
- (4) The authority and jurisdiction hereby vested in the Supreme Court shall (subject to any rules of the court) be exercised by a single judge thereof sitting as the Supreme Court in court or chambers with the public and the press excluded.<sup>(a)</sup>

## PART IX.—LIABILITY TO PAYMENT OF TAX.

68. (1) Subject to the provisions of this Act, tax shall be payable— Persons by whom tax payable. *Id.* s. 61.

- (a) in respect of the income of a company by the public officer thereof;
- (b) in respect of the income of any taxpayer permanently or temporarily absent from Victoria by the attorney or agent of such taxpayer;
- (c) in respect of the income of any person under legal disability by his trustee;
- (d) in respect of income earned derived or received by any trustee where there is no other person presently entitled to such income who is in actual receipt thereof and liable as a taxpayer in respect thereof, by such trustee;<sup>(b)</sup> and
- (e) in respect of every other income and in all other cases by the person to whom the income arises or accrues or who is legally or equitably entitled to the receipt thereof.

(2) Where a person is entitled to receive or receives income from any agent or trustee nothing in this section shall be taken to relieve such person from any tax due or payable in respect of such income unless such agent or trustee has paid the tax in respect thereof.

69. (1) Where any person chargeable with tax is under any legal disability or where any person so chargeable dies, in every such case the trustee of such person upon default of payment of such tax out of the trust estate if such estate is sufficient to enable him so to do shall Remedy in case of persons under disability. *Id.* s. 62.

(a) The legal points involved in decisions under the Income Tax Act may be published. But no names should be published or information given that would disclose the taxpayer's private business.—*In the matter of the Income Tax Acts*, 25 V.L.R., 554.

(b) This sub-section only applies where there is income belonging to some one who is liable as a taxpayer, but who is not presently entitled to receive such income.—*In the matter of the Income Tax Acts (No. 3)*, 25 V.L.R., 554.

Income of a trust estate is assessable to tax under this sub-section, although the will directs that it shall be accumulated and treated as part of the corpus, and there is, therefore, no person presently entitled beneficially to it, and the trustee is liable to pay such tax.

So held, *per Holroyd and a Beckett, JJ.*, on the ground that in such a case the trustee who receives the income is the "taxpayer."

*Per Hood, J.*—On the ground that there is in fact some one behind the trustee beneficially entitled to the income, although not presently ascertainable.—*Re Income Tax Act*, 10 A.L.R., 28; 25 A.L.T., 133.

A trustee, in the case contemplated by this sub-section, namely, where he has "earned derived or received income," and "there is no other person presently entitled to such income who is in actual receipt thereof and liable as a taxpayer in respect thereof," is liable to pay income tax in respect of the total income so earned, derived, or received by him on behalf of the beneficiaries as a class, and not in respect of separate shares of such income to which such beneficiaries may ultimately be possibly entitled; and such trustee may, as afterwards appears just, apportion the tax among such beneficiaries.—*In re the Income Tax Acts (No. 3 of 1907)*, 1907 V.L.R., 358.

*Income Tax Act 1915.*

be and is hereby made liable to and charged with the payments which the said person under disability ought to have made or the person so dying was chargeable with.

(2) If such trustee neglects or refuses to pay as aforesaid it shall be lawful to proceed against him in like manner as against any other person making default of payment of the said tax.

(3) All trustees making payment as aforesaid shall be allowed every sum paid for such persons in their accounts and shall be allowed to deduct all such payments out of the assets of the person so dying.

*Commissioner to determine doubtful cases. Id. s. 63.*

70. Whenever as to any particular income more than one person or company appears or claims to be liable or qualified to pay tax, or a question arises as to the person or company liable to pay tax thereon, or a question arises in any case whatever as to whether a person or company is liable to pay or chargeable with tax and whether on his or its own behalf or as trustee attorney or agent of any other person or company, the Commissioner may finally and conclusively decide the matter in question. Pending any such decision all the persons and companies appearing to be liable to pay tax in respect of any particular income shall be jointly and severally responsible and liable for the proper discharge of the duties imposed by this Act on taxpayers as to income tax.

#### PART X.—ENFORCEMENT OF TAXATION.

*Date of payment of tax. Income Tax Act Amendment Act 1923 s. 13. Income Tax Act 1924 s. 4.*

*Id. s. 4.*

71. (1) (a) Income tax shall be due and payable on a date stated in the notice of assessment to be the due date which date shall not be less than fourteen days after the service of such notice.

(b) 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 fourteen days after the service of the notice of amended assessment upon the taxpayer.

(c) When the Commissioner has reason to believe that the taxpayer may leave Victoria 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.

(d) If any tax remains unpaid at the due date Ten pounds per centum per annum from the due date to the date of payment on the amount of the tax unpaid or any part unpaid of such tax shall be added thereto :

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.

(e) The Commissioner may in such cases as he thinks fit—

(i.) extend the time for payment as he considers the circumstances warrant ; or

(ii.) permit the payment of tax to be made by instalments within such time as he considers the circumstances warrant.



(2) Such tax, whatever may be the amount thereof, shall be recoverable in any county court or court of petty sessions by the Commissioner on behalf of the Crown by action or proceeding in his own name. Income Tax Act 1915 s. 64. Tax to be recovered by Commissioner.

(3) With respect to actions and proceedings in a county court for the recovery of any amount due in respect of tax, such action shall for all purposes be deemed within the meaning of the *County Court Act 1928* to be an action brought to recover a debt or liquidated demand only, and the provisions of such Act and the rules thereunder applicable to such a debt or demand shall apply accordingly. Procedure in county court.

(4) With respect to proceedings in a court of petty sessions for the recovery of the tax the following provisions shall have effect:— Procedure in petty sessions.

(a) When a summons for the recovery of tax is issued and served then unless at least six clear days before the day appointed for hearing, a statement in writing, verified on oath, by or on behalf of the defendant showing a defence on the merits, shall be delivered to the clerk of the court in which the summons is returnable, such court shall make an order for the amount claimed without allowing any defence, and without the necessity of the Commissioner or any one on his behalf appearing in court or proving the liability of the defendant and the non-payment of the tax:

(b) In all such cases the summons shall be served upon the defendant at least fourteen days before the day appointed for hearing:

(c) It shall be sufficient in any such proceeding if the particulars of demand state the amount sought to be recovered, the date on which the same was payable, with such further and other particulars as the Commissioner thinks necessary to fully inform the defendant of the nature of the demand: and

(d) An order made when either party does not appear may be set aside upon such terms as to costs or otherwise as the court of petty sessions in which application is made to set aside the same thinks fit, and in such case such court may hear and determine the proceedings in respect of which such order was made.

(5) In sub-sections (2) (3) and (4) of this section "tax" includes any additional tax or other amount payable as an addition to tax under any section of this Act.

72. For the purpose of enforcing the assessment of income in certain cases the Commissioner shall have the following powers:— Powers to the Commissioner to enforce assessments in certain cases.

(a) Where any person dies who was possessed of or entitled to an income in his life-time which was not returned or assessed under this Act or any corresponding previous enactment, the Commissioner shall have and may exercise the like remedies in respect of or against the executors or administrators of such deceased person as he would have had against him in his lifetime; Income. Ib. s. 65.

*Income Tax Act 1916.*

Against personal representatives.

No lapse of time to be a bar to proceedings.

Statute of limitations not to bar remedy. Act not to limit operation of Crown Remedies Act.

*Ib. s. 66.* Provision for relief.

*Ib. s. 67.* In cases of insolvency.

Where exaction of tax would entail hardship.

False declaration punishable as perjury. *Ib. s. 68.*

Penalty for making false returns or evading tax. *Ib. s. 69.*

and such executors or administrators are required to make such returns as the Commissioner requires unless he is satisfied it is not in their power to do so :<sup>(a)</sup>

- (b) The tax to be recoverable against the legal personal representatives of any such person or his estate in any such case shall be assessed and levied for the whole or part (as the case may be) of the period or periods during which such income has not been so assessed or returned for assessment, and shall be assessed and levied at the rate of tax payable in respect of the year or years for which tax ought to have been paid ; and the amount payable and to be recovered shall be double the amount of the tax so assessed and levied :
- (c) No time or period which has elapsed shall be deemed to prevent the operation of this section, but the Commissioner may take any such proceeding or exercise or enforce any power authority or remedy for the purpose of giving effect to this Act, and recover the tax due or that ought to have been paid in any of the cases aforesaid as he has or can or may exercise in any other case.

73. No statute of limitations now or hereafter in force shall bar or affect any action proceeding or remedy for recovery of tax under this Act, and nothing in this Act contained shall limit or prevent the enforcement of any claim for tax under this Act by His Majesty in the manner provided by the *Crown Remedies and Liability Act 1928.*

74. In any case where it is shown to the satisfaction of the Commissioner—

- (a) That any taxpayer liable to the payment of tax has become bankrupt or insolvent within the meaning of any law for the time being in force relating to bankruptcy or insolvency ; or
- (b) That any taxpayer liable to tax has suffered loss so that the exaction of the full amount of tax in any case would entail hardship of such a nature as to render it just and equitable that relief from such tax should be given,
- then and in any of such cases the Commissioner may release any such taxpayer wholly or in part from liability to tax and may make such entries or alterations in any assessment register in force as are necessary for that purpose.

#### PART XI.—OFFENCES.—LEGAL PROCEEDINGS.—EVIDENCE ETC.

75. Every person who in any declaration made under or authorized or prescribed by this Act knowingly and wilfully declares to any matter or thing which is false or untrue shall be liable to the penalties of perjury.

76. (1) Every person, whether or not liable to taxation under this Act who—

- (a) Being within or having an agent within Victoria fails or neglects to furnish on or before the prescribed day any

(a) This sub-section relates only to cases in which the deceased was in default, and a person who dies before the last day for sending in a return

is not in any default for not having sent in a return. —*In the matter of the Income Tax Acts (No. 3), 28 V.L.R., 338.*

return required by or under this Act, or within a time specified by the Commissioner any further or fuller return required by the Commissioner, unless such person proves that such failure or neglect was not wilful,<sup>(a)</sup> or

- (b) Knowingly and wilfully makes or delivers any false return, or makes any false answer, whether oral or in writing, in relation to his land mortgages leases or income or any matter or thing affecting his liability to or exemption from tax; or
- (c) By any falsehood wilful neglect fraud art or contrivance whatsoever used or practised, or by or under any instrument made signed executed taken or received, evades or avoids or attempts to evade or avoid assessment of any land mortgage lease or income whether liable to taxation or not, or the payment of any tax under this Act,

shall be liable to a penalty of not less than Two nor more than One hundred pounds, and if such return affects any person as a taxpayer shall also by the court imposing such penalty be assessed and charged double the amount of the tax of which such person has attempted to evade or avoid the payment in addition to any tax for which such person would have been otherwise liable.

(2) Every person aiding or assisting in any manner whatsoever to commit any offence within the meaning of this section shall upon conviction be liable to a penalty of not less than Two nor more than Fifty pounds.

(3) The word "person" in this section includes the public officer of a company and the attorney agent or trustee of any person or company.

(4) Whenever upon any information against a principal offender under this section the court before whom the same is heard holds the matter of the information to be proved there shall be two convictions: the first in the usual form adjudging the defendant to pay the penalty imposed and such costs as shall be allowed, and the second adjudging the defendant to pay double the amount of the tax of which he has sought to evade or avoid the payment.<sup>(b)</sup>

(5) Such first conviction shall be forthwith enforceable in the manner directed by the *Justices Act 1928*; but such second conviction shall not be formally drawn up until the amount of the tax of which the defendant has attempted to evade or avoid payment has been ascertained by the Commissioner, who shall as soon as practicable proceed to ascertain and fix the same.

(6) The Commissioner shall give notice to the defendant of the amount so ascertained, and if the defendant within fourteen days from the giving of such notice gives the Commissioner notice in writing of objection to such amount he shall be entitled to have such objection heard and determined by a police magistrate.

(a) An information under this sub-section is good although it does not allege an attempt to avoid or evade payment of the tax.—*House v. Cox*, 5 A.L.R., 26; 20 A.L.T., 186.

Where the magistrates find only that the defendant did fail or neglect to make the return, but not that he sought to evade or avoid payment of

the tax, they have no jurisdiction to order a second conviction under sub-section (4).

*Dictum of a'Beckett, J.*, in *House v. Cox* (5 A.L.R., 26), approved.—*House v. Thomson*, 26 V.L.R., 660.

(b) See note to sub-section (1) (a), *supra*.

*Income Tax Act 1915.*

(7) At any time after such amount has been ascertained by the Commissioner or, upon objection, by such police magistrate, the second conviction may be formally drawn up adjudging the defendant to pay double the amount so ascertained or determined, and shall be forthwith enforceable in the manner in which convictions are enforceable under the *Justices Act 1928*.

(8) Section seventy-two of the *Justices Act 1928* shall not apply to any charge or proceeding for an offence against this Act.

Evidence of failure to furnish returns.

(9) On the hearing of a complaint for any offence against this section if it is proved to the satisfaction of the court that any return has not been received by the Commissioner such proof shall until the contrary be shown be *prima facie* evidence that such return was not furnished to the Commissioner.

Additional tax in certain cases. *Income Tax Acts Amendment Act 1928 s. 14.* Comp. Com. *I.T.A. 1922 No. 37 s. 67.*

**77.** (1) Notwithstanding anything in the last preceding section every 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) wilfully fails to include any assessable income in any return; or
- (c) wilfully 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 of 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 seventy-one 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 such action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

Penalty for obstructing officers or not complying with Act. *Income Tax Act 1915 s. 70.*

**78.** Every person who obstructs or attempts to obstruct any officer acting in the discharge of his duty under this Act or who refuses or neglects to answer questions put by any such officer relating to any income belonging to such person, or as to any deductions claimed or allowed in respect of such income or any part thereof, or who gives any false or evasive answer, or who in any manner whatsoever fails to comply with any of the provisions of this Act for which no penalty is expressly provided, shall in any of such cases be guilty of an offence, and be liable to a penalty of not more than Fifty pounds.

**79.** If any company makes default in complying with any provision of this Act such company or the public officer thereof shall where no other penalty is provided by this Act incur a penalty of not more than Five pounds for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

*Income Tax Act 1915 s. 71.*  
Penalty on company making default in complying with this Act.

**80.** (1) All penalties imposed under this Act shall be recoverable<sup>(a)</sup> in a summary way before a court of petty sessions upon the information of a person or persons appointed by the Commissioner either generally or for the purpose of any particular case and when recovered shall be paid into the consolidated revenue.

*Procedure to recover penalties.*  
*Ib. s. 72.*

(2) The Governor in Council may at his discretion mitigate or stay or compound proceedings for any penalty and may reward any person who informs of any offence against this Act or assists in the recovery of any penalty.

*Power to remit or compound for penalties.*

**81.** Notwithstanding anything in the *Justices Act 1928* or any other Act any information or complaint to be heard in a summary way for any offence committed or penalty incurred under this Act may be laid at any time within three years next after the date of the offence committed or the penalty incurred.

*Offences under this Act may be prosecuted within three years.*  
*Ib. s. 73.*

**82.** Except as in this Act expressly provided no decision or determination of the Commissioner or any county court or police magistrate shall be considered or reviewed by any court whatsoever or be removed or removable by *certiorari* or otherwise into the Supreme Court for any want or alleged want of jurisdiction or for any error or alleged error of form or substance or on any ground whatsoever.

*No certiorari.*  
*Ib. s. 74.*

**83.** The Commissioner shall not for the purposes of demanding or recovering tax or for any other of the purposes of this Act be concluded or estopped by any entry appearing in any register book notice or record made kept or given by him under any of the provisions of this Act.

*Commissioner not concluded entries in registers &c.*  
*Ib. s. 75.*

**84.** The onus of proof that any income is exempt from or not liable to payment of tax or is subject or entitled to any deduction shall be on the person claiming the benefit of such exemption non-liability or deduction.

*Onus of proof of exemption &c.*  
*Ib. s. 76.*

**85.** (1) The production of the *Government Gazette* containing any regulations purporting to be regulations under this Act or any notice purporting to be published by the Commissioner in pursuance of this Act or any notice of the appointment of any officer or person under this Act shall be conclusive evidence of such regulation notice publication or appointment.<sup>(b)</sup>

*Evidence.*  
*Ib. s. 77.*

(a) This section does not require any proceedings for the "imposition" of penalties "under" the Act as a condition precedent to proceedings for the "recovery" of penalties by a person authorized by the Commissioner.—*House v. Coz*, 5 A.L.R., 26; 20 A.L.T., 186.

(b) While an income is being assessed, the as-

essment-register is made by this sub-section only *prima facie* evidence; when, however, the register has been finally dealt with sub-section (2) makes it (apart from the cases expressly excepted) conclusive evidence.—*Kelly v. The King*, 27 V.L.R., 522.

*Income Tax Act 1915.*

(2) The production of any assessment-register or book or of any document under the hand of the Commissioner purporting to be a copy of or extract from any such register or book shall be conclusive evidence of the making of the assessment, and except in the case of proceedings before a judge of county courts by way of objection to the assessment (when the same shall be *prima facie* evidence) or in any appeal therefrom or subsequent proceedings on such appeal shall be conclusive evidence that the amount and all particulars of such assessment appearing in such register book or document are absolutely correct.

Registers to be evidence.

(3) Assessment-registers and all entries made therein or a copy of or extract from any such register certified by the Commissioner or Deputy Commissioner, upon payment of the prescribed fee, to be a true copy or extract or any return of any kind made by any person by the production thereof alone and without any further evidence shall be received as *prima facie* evidence of the facts therein mentioned.

Returns made by persons or companies to be deemed duly made.

(4) Any return made or purporting to be made or signed by or on behalf of any person or by the public officer of any company for the purposes of this Act shall for all purposes be taken and deemed to be duly signed by the person or by the public officer of the company affected (as the case may be) unless such person or public officer proves that such return was not made or signed as aforesaid.

(5) The validity of any procedure under this Act or of any assessment or any register or book or any document purporting to be made under this Act or to be signed by any person who is or has been Commissioner or Deputy Commissioner shall not be prejudiced or affected by reason of any irregularity or informality therein or of the fact that any of the provisions of this Act have not been complied with.

Commissioner or officers may appear in proceedings.  
*Ib. s. 78.*

**86.** In any action or in any proceeding whatsoever had or taken by or against the Commissioner or a Deputy Commissioner or before any county court or court of petty sessions the Commissioner or Deputy Commissioner may appear either personally or by a barrister and solicitor or by some officer in the public service, and the appearance of any such officer and his statement that he so appears by authority of the Commissioner or Deputy Commissioner shall be sufficient evidence of such authority for all purposes.

Limitation of action against officers &c.  
*Ib. s. 79.*

**87.** (1) No action for anything done or omitted to be done by the Commissioner or any officer or person appointed under this Act in the execution of his duty shall be brought unless the same is commenced within six months after the act complained of has been committed; and no such action shall be commenced until one month's previous notice thereof and of the cause thereof has been delivered to the defendant by the party intending to commence such action.

"Not guilty by statute."

(2) In all actions brought against the Commissioner or any officer or person for anything done or omitted to be done in pursuance of this Act or in the execution of the powers or authorities thereof the defendant in such action may plead the defence of "not guilty by statute" and give this Act and the special matter in evidence at any trial to be had thereupon.

PART XII.—GENERAL PROVISIONS AND REGULATIONS.

88. The Registrar-General the Registrar of Titles the Master-in-Equity and every public officer shall at the prescribed time and in the prescribed form furnish the Commissioner with such information in their respective offices as may be prescribed and for the like purpose every municipality and the officers thereof shall permit any assessor or prescribed officer without payment to make and take for the information of the Commissioner a copy of or extract from any rate-books or municipal lists or rolls of any such municipality.

*Income Tax Act 1915 s. 80. Registrar-General Registrar of Titles &c. to furnish information and clerks of municipalities to allow copies of books &c. to be made.*

89. (1) Every municipal council and every corporation board commission company or body and every person whosoever if required by the Commissioner shall in such manner and form and at such times as may be prescribed or as the Commissioner may require furnish to the Commissioner returns of all or any particular class of persons employed by them and the earnings salary wages allowance pension or stipend paid or allowed to each such person.

*Corporations companies &c. to furnish returns (if required) of persons employed and salaries &c. paid. It. s. 81.*

(2) Every company which carries on business in Victoria if required by the Commissioner by a notice or public notice shall in such manner and form and at such times as may be prescribed or as the Commissioner may require furnish to the Commissioner returns showing all payments made to any person in respect of any share or interest in such company and also of all moneys received from any person on deposit for any fixed time or period with or without interest and in such returns shall furnish all such information with regard to such payments deposits and persons as may be prescribed or as may be required by the Commissioner.

*Companies to furnish returns (if required).*

(3) Any person if required by the Commissioner shall in such manner and form and at such time as may be required by the Commissioner furnish to the Commissioner a return containing to the best of his belief the proper names of every person resident in his dwelling-house.

*Return of residents in dwelling-house.*

(4) Every person or company who acts as an attorney or agent for any other person or company shall in such manner and form and at such times as may be prescribed or as may be required by the Commissioner furnish to the Commissioner returns containing to the best of his belief full particulars of all moneys collected or received by him for or on behalf of or paid to any such person or company whether resident or carrying on business in Victoria or elsewhere.

*Returns by attorneys or agents.*

(5) Every such return shall be verified by any prescribed form of declaration or in such other manner as shall be prescribed or as may be specially required by the Commissioner.

90. (1) Every contract covenant agreement or undertaking made or entered into whether by deed, or in writing, or orally either before or after the commencement of this Act between or by any person or persons or companies whatsoever which but for the provisions of this section would altogether or partially relieve any person or company from the burden or incidence of the tax or from liability to pay any tax

*Contracts to shift the burden or incidence of tax to be void. It. s. 82.*

*Income Tax Act 1915.*

shall so far as such contract covenant agreement or undertaking relates to or covers the tax be wholly and absolutely null and void.<sup>(a)</sup>

(2) Every person or company who is a party to any such contract covenant agreement or undertaking made after the commencement of this Act shall be guilty of an offence and shall be liable to a penalty of not more than One hundred pounds.

*Provision if too little tax has been paid.*

*Ib. s. 83.*

91. If after any tax has been paid under this Act it is discovered that too little in amount has been paid the person liable for the tax shall forthwith pay the necessary additional amount, and the amount so payable shall be recoverable in like manner as any tax under this Act is recoverable. But no taxpayer shall as an agent or trustee be liable under this section to pay any amount in excess of the assets in his control or possession belonging to the estate for which he is agent or trustee and for which such additional amount is payable.

*Provision for refund if too much tax has been paid.*

*Ib. s. 84.*

92. (1) If after any tax has been paid under this Act it is discovered that too much in amount has been paid, the Commissioner upon an application being made to him for a refund of such overpayment and upon being satisfied that too much in amount has been paid shall issue to the taxpayer entitled to receive the same a certificate stating that the amount overpaid is to be refunded to such taxpayer.

*Limit of time for application for refund.*

*Income Tax Act Amendment Act 1923 s. 15.*

(2) No application for a refund of an overpayment shall be entertained by the Commissioner unless made within three years after such overpayment was made; or if there has been an objection then within three months after the date of the decision on such objection.<sup>(b)</sup>

*Certificate for refund.*

(3) Every certificate for a refund of moneys paid as tax moneys pursuant to any provision of this Act shall state the person to whom such refund is to be made and the amount of every such refund certificate shall be paid by the Treasurer out of the consolidated revenue.

*Stating case for opinion of Supreme Court.*

*Income Tax Act 1915 s. 35.*

93. Whenever any question arises with regard to any matter under this Act or to any question of law therein arising the Commissioner may if he thinks fit state a case for the opinion of the Supreme Court, and thereupon it shall be lawful for the said court to give its judgment thereon and to make such order as to costs as to the court seems fit.

*Judges and police magistrate not disqualified by reason of liability to be assessed for tax.*

*Ib. s. 86.*

94. No judge of the Supreme Court or of county courts and no police magistrate or justice shall solely on account of his liability to be assessed under this Act or of his liability to tax under any Act be deemed to be interested in or be debarred from dealing with any matter upon which he may be called upon to adjudicate or determine under this Act.

(a) Where a mortgage provides for the payment of interest at 6 per cent. a covenant in such mortgage by the mortgagee that if interest is paid within ten days of the date fixed for payment he will accept interest at such a rate as would, after deduction of income tax and certain other taxes, leave a clear remainder of 5 per cent., is not void within the meaning of this section.

Where a mortgagee has covenanted to accept interest at a rate of 5 per cent., the mortgagor paying in addition thereto the amount (if any)

of the income tax chargeable against the mortgagee the latter, for the purpose of assessing the amount of such tax, can only assess the amount at the rate which would be payable in respect of the particular mortgage, and not the amount of the tax chargeable on other mortgages held by him, which might tend to make the whole of the income tax chargeable against him payable at the higher rate fixed by the Act.—*Elder v. Dennis*, 22 V.L.R., 125.

(b) See note to section 67.—*Kelly v. The King*.



**95.** (1) If any act matter or thing prescribed by or under this Act to be made or done at or within a fixed time cannot be or is not so made or done, the Governor in Council may by order from time to time appoint a further or other time for making or doing the same, whether the time or any such further or other time within which the same ought to have been done has or has not elapsed or expired.

*Income Tax Act 1916 s. 87. Governor in Council may extend time for doing acts.*

(2) Any act matter or thing made or done within the time or further or other time appointed by such Order in Council shall be as valid as if it had been made or done within the time prescribed by or under this Act.

**96.** (1) The Governor in Council may make regulations, not inconsistent with this Act, for the following purposes or any of them (that is to say) :—

*Regulations for administration of Act to be made by Governor in Council. Ib. s. 88.*

- (a) Prescribing the duties of all officers and persons appointed or employed under this Act or engaged in its administration, and if necessary the districts or places within or at which they are to act; and the forms of books assessment-registers notices certificates and instruments mentioned in this Act or necessary to give effect thereto:
- (b) Prescribing the forms of returns to be furnished to the Commissioner and the contents thereof, and by whom the same shall be made, and the time and mode of making and furnishing the same :<sup>(a)</sup>
- (c) Providing, where there is no provision in this Act, or no sufficient provision in respect of any matter or thing necessary to give effect to this Act, in what manner and form the want of provision or insufficient provision shall be supplied :
- (d) Providing that, for avoiding duplicate taxation in any case in respect of the same year or period, the Commissioner may make such allowance or refund as he shall deem just, and in such manner as shall be prescribed :
- (e) Prescribing the manner and form of obtaining adjusting and settling returns from by or with any agent in Victoria of a company or person outside Victoria selling or disposing of any property in Victoria and prescribing such particulars and such proof as may be thought fit, and for the purpose of making completing and enforcing assessments of income paid to any company or person outside Victoria :
- (f) Providing for the assessment of the income of persons temporarily resident in Victoria for a period exceeding six months in any year, and for the payment of tax thereon :

(a) This section does not empower the Governor in Council to make regulations prescribing that persons other than those mentioned in sections 51 and 54 must send in returns.

Where the Act provides that certain classes of

persons are liable to make returns—*e.g.*, partners and trustees—the Governor in Council may by regulation determine which of such persons so liable shall furnish the return.—*House v. Petersen*, 25 V.L.R., 240.

*Income Tax Act 1915.*

(g) Providing for any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act, or that may be desirable or necessary to carry out the objects and purposes hereof, or which it is by this Act declared may be provided for by regulations: and

(h) Imposing a penalty of not more than Fifty pounds for any breach of any regulation.

Regulations to be gazetted and have force of law.

(2) All such regulations shall be published in the *Government Gazette*, and when so published shall be of the same effect as if they were contained in this Act, and shall be judicially noticed, and shall be laid before each House of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within ten days after the next meeting of Parliament.

Section 2.

### SCHEDULE.

Number of Act.	Title of Act.	Extent of Repeal.
2576	<i>Income Tax Act 1914</i>	The whole.
2668	<i>Income Tax Act 1915</i>	So much as is not already repealed.
2799	<i>Income Tax Act 1915 (No. 2)</i>	The whole.
3035	<i>Income Tax (Amendment and Rates) Act 1919</i>	The whole.
3090	<i>Income Tax Act 1920</i>	The whole.
3153	<i>Income Tax Act 1921</i>	The whole.
3215	<i>Income Tax Act 1922</i>	The whole.
3313	<i>Income Tax Act 1923</i>	The whole.
3319	<i>Income Tax Acts Amendment Act 1923</i>	The whole.
3390	<i>Income Tax Act 1924</i>	The whole.
3436	<i>Income Tax Act 1925</i>	The whole.
3472	<i>Income Tax Act 1926</i>	The whole.
3473	<i>Income Tax Acts Amendment Act 1926</i>	The whole.
3533	<i>Income Tax Act 1927</i>	The whole.
3547	<i>Income Tax Acts Amendment Act 1927</i>	The whole.
3591	<i>Income Tax Act 1928</i>	The whole.

### INDETERMINATE SENTENCES.

[See *Crimes Act 1928*; *Gaols Act 1928*.]