

Part III.
ss. 23A-24.

Sub-sec. (2.)
omitted by No.
18, 1934, s. 10.*

Sub-section (3.)
omitted by
No. 28, 1925,
s. 6 (i).†

Successive
deductions.

Inserted by No.
18, 1934, s. 11.‡

Deductions in
case of
composite
incomes.

Inserted by No.
18, 1934, s. 11.‡

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23A. Where by this Act it is provided that any deduction shall be made successively from two or more classes of income, the deduction shall be set off against the income of the first of those classes, and, if it exceeds the income of that class, the excess shall be set off against the income of the second class, and so on until either the deduction or the income of the last of those classes is exhausted.^(a)

23B. Where the assessable income is derived from more than one of the following classes of income, that is to say, income from personal exertion, income from property other than dividends, and income from dividends, the following provisions shall apply to all deductions allowable under this Act except the statutory exemption :—

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

24.—(1.) The following amount (in this Act called “ the statutory exemption ”) shall be a deduction allowable under this Act to any person other than a company or an absentee :—

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

In this sub-section “ income ” means the residue after deducting from the assessable income all other deductions allowable under this Act.

(a) Under the corresponding provisions of the *Income Tax Assessment Act 1915-1916* the High Court held that a taxpayer having a share in three partnerships, the losses on two of which exceeded the whole of his income from personal exertion, was entitled to deduct the excess from his income from property. *McBrose v. Federal Commissioner of Taxation*, (1919) 26 C.L.R. 494 ; 25 A.L.J. 381.

* Section 17 (1.) of the *Income Tax Assessment Act 1934* provides that the amendments effected by section 10 of that Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-four and all subsequent years.

Sub-section (3.) of the same section provides that notwithstanding anything contained in section ten of that Act, the provisions of the Principal Act, which that section amends or repeals, shall, for all purposes in connexion with assessments for financial years prior to the financial year commencing on the first day of July, One thousand nine hundred and thirty-four, continue in force as if that Act had not been passed.

† By section twenty-four of the *Income Tax Assessment Act 1925*, paragraph (i) of section six of the Act shall be deemed to have commenced on the date of the commencement of the *Income Tax Assessment Act 1922*. See also section 16 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

‡ Section 17 (1.) of the *Income Tax Assessment Act 1934* provides that the amendments effected by section 11 of that Act shall apply to assessments for the financial year beginning on the first day of July, 1934 and all subsequent years.

§ Section 17 (1.) of the *Income Tax Assessment Act 1934* provides that the amendments effected by section 12 of that Act shall apply to assessments for the financial year beginning on the first day of July, 1934 and all subsequent years.

Sub-section (3.) of the same section provides that notwithstanding anything contained in section twelve of that Act, the provisions of the Principal Act, which that section amends or repeals, shall, for all purposes in connexion with assessments for financial years prior to the financial year commencing on the first day of July, One thousand nine hundred and thirty-four, continue in force as if that Act had not been passed. See also section 6 of the *Financial Relief Act 1932-1935* (*supra*, p. 1163).

Statutory
exemption.
Substituted by
No. 18, 1934,
s. 12.*

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ss. 24-25.

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

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

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

Deductions not
to be allowed
in certain
cases.

- (a) the cost incurred in the maintenance of any taxpayer, his family, or establishment other than as specified in section twenty-three of this Act;
- (b) domestic or private expenses;
- (c) any loss or expense which is recoverable under any contract of insurance or indemnity;
- (d) income carried to any reserve fund or capitalized in any way;
- (e) money not wholly and exclusively laid out or expended for the production of assessable income^(a);
- (ea) any periodical subscription by a person in respect of his membership of an association (whether corporate or unincorporate) unless—
 - (i) that subscription is expressly allowable as a deduction under any of the provisions of this Act;

Inserted by
No. 50, 1930,
s. 12 (a).^{*}

^(a) Held by the High Court that interest paid upon moneys borrowed for the purpose of contributing capital on the part of the taxpayer and his son to a newly formed company is not a deduction allowed by s. 23 (1.) (a). *Federal Commissioner of Taxation v. Munro*, (1926) 28 C.L.R. 153; 32 A.L.J. 339. Considering the retirement of the editor to be in the interests of a newspaper, a company entered into an agreement to pay the editor an allowance for a period of ten years in consideration of his retirement. Under the new editor the profits of the company increased. Held by the High Court (Rich, J.), that the allowance was money wholly and exclusively laid out or expended for the production of assessable income. *Margborough Newspaper Co. Ltd. v. Federal Commissioner of Taxation*, (1929) 43 C.L.R. 450; 3 A.L.J. 101; 35 A.L.R. 193. Where, however, a gratuity was paid to a manager retiring on the grounds of ill health, held by the High Court that the gratuity was not an outgoing incurred in gaining or producing assessable income. *Union Trustee Co. of Australia Ltd. v. Federal Commissioner of Taxation*, (1935) 53 C.L.R. 263; 41 A.L.J. 347. Held by the Supreme Court of South Australia that whether a gratuity to a manager is an outgoing incurred in gaining or producing income is a question of fact. *Simpson and Son Ltd. v. Deputy Commissioner of Taxation for South Australia*, 1925 S.A.S.R. 217. Whether money expended for the production of assessable income but which will also increase the income of future years is money "wholly and exclusively laid out or expended for the production of assessable income" see per the Supreme Court of South Australia in *Adelaide Electric Supply Company Ltd. v. Deputy Commissioner of Taxation for the State of South Australia*, 1930 S.A.S.R. 215 at p. 218. Held by the Full Court of the High Court (affirming the decision of Dixon, J.), that the annual subscription paid by a member to the Graziers' Association of New South Wales is money wholly and exclusively laid out, &c. *Federal Commissioner of Taxation v. Gordon*, (1930) 43 C.L.R. 456; 4 A.L.J. 30. Similarly held by the High Court (Gavan Duffy, C.J., Rich, Dixon and McTiernan, JJ.; Starke, and Evatt, JJ., dissenting) with respect to money expended by the proprietors of an evening newspaper by way of damages for defamatory matters published. *Herald and Weekly Times Ltd. v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 113; 1933 V.L.R. 112; 6 A.L.J. 314; 39 A.L.R. 46. W. sold land to his two sons, part of the consideration being that they should pay him, during his life, an annuity. Held by the High Court that the payments by the sons pursuant to the agreement were moneys expended in the production of assessable income. *Egerton-Warburton and others v. Deputy Federal Commissioner of Taxation* (1934) 51 C.L.R. 568; 40 A.L.R. 380. Where a broadcasting company, threatened with an action for infringement of copyright, negotiated a compromise, held by the Supreme Court of South Australia that the cost of negotiating the settlement was an expenditure in earning the assessable income. *Central Broadcasters Ltd. v. Deputy Commissioner of Taxation for South Australia*, 1934 S.A.S.R. 50. Cf. also footnote (b) (*supra*, p. 2489) and footnotes (a) and (b) (*infra*, p. 2514).

* Section 20 (5.) of the *Income Tax Assessment Act 1930* provides that the amendments effected by paragraphs (a) and (c) of section 12 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1930 and all subsequent years.

Part III., s. 25.

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

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

- (f) rent, or value of or cost of repairs to any premises or part of premises not occupied for the purpose of producing income;
- (g) any bad debts, except those specified in paragraph (r) of subsection (1.) of section twenty-three of this Act;
- (h) any loss not connected with or arising out of the production of assessable income, or any capital withdrawn from any business producing income, or any sum used or intended to be used as capital in any business, or any capital used in the improvement of premises occupied for the purpose of any business;
- (i) any wastage or depreciation of lease or in respect of any loss occasioned by the expiration of any lease:

Provided that where it is proved to the satisfaction of the Commissioner that any taxpayer (being the lessee under a lease, or the transferee or assignee of a lease) has paid any amount by way of royalty, bonus, fine, premium or foregift or consideration in the nature of a fine, premium or foregift for a lease, or a renewal of a lease, or by way of consideration for the assignment or transfer of a lease, of premises or machinery used by the taxpayer for the production of income, including, in either class of case, a sum which is attributable to the assignment or transfer of goodwill or of a licence, the taxpayer shall be entitled to a deduction from his assessable income of the sum obtained by dividing the amount so paid by the number of years of the unexpired period of the lease at the date the

Substituted by
No. 50, 1930,
s. 12 (b).

Amended by
No. 46, 1928,
s. 13 (d).

Amended by
No. 51, 1924,
s. 10; by
No. 32, 1927,
s. 13, and by
No. 46, 1928,
s. 13 (e), (f) and
(g),* and by
No. 50, 1930,
s. 12 (c).†
Previously
substituted by
No. 50, 1930,
s. 12 (c).†

* Section 22 (2.) of the *Income Tax Assessment Act 1928* provides that the amendments effected by paragraphs (f) and (g) of section 13 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1928, and all subsequent years.

† See footnote * on previous page.

amount was so paid or if, after the date of such payment, the lease was owned by the taxpayer during part only of the year in which the income was derived, that part of the sum so obtained which bears the same proportion to that sum as that part of the year bears to a year, but so that the aggregate of the deductions so allowed shall not exceed the sum so paid if paid after the thirtieth day of June, One thousand nine hundred and fourteen, or the part of the sum so paid which is proportionate to the unexpired period of the lease from the thirtieth day of June, One thousand nine hundred and fourteen if the sum were paid on or prior to that date^(a):

Provided further that where any taxpayer succeeds to any lease or share therein as a beneficiary upon the death of any person, or in the course of the administration of the estate of any person, who, in the opinion of the Commissioner, has paid for that lease any amount of the nature specified in the first proviso to this paragraph, the taxpayer shall be entitled to the same deduction or part thereof (proportionate to his share in the lease), as that person would have been entitled to under that proviso had he lived:

Inserted by No.
50, 1930, s. 12
(c).*

The provisos to this paragraph shall not apply—

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

Substituted by
No. 50, 1930,
s. 12 (c).*

(a) For a discussion on the meaning of the corresponding proviso in the *Income Tax Assessment Act 1922* see *Australian Mercantile Land and Finance Co. Ltd. v. Federal Commissioner of Taxation*, (1929) 42 C.L.R. 145; 2 A.L.J. 405; 35 A.L.R. 169, in which the High Court held, *inter alia* :—

- (i) That the surrender of a lease, expiring in 1918, to the Crown for the purpose of obtaining a fresh lease, under the Western Lands Acts of New South Wales, expiring in 1943, was not a fine, premium, or foregift, or consideration in the nature of a fine, premium, or foregift for a lease or a renewal of a lease, and that no portion of the sum paid for the old lease could therefore be claimed as a deduction in respect of the new lease;
- (ii) That the satisfaction of a definite pecuniary sum due to the assignee of the lease was a "payment of an amount"; and
- (iii) That an extension of the term of a lease (even under an option contained in the lease) was not within the provisions of that proviso.

Concerning the proviso as it read in the *Income Tax Assessment Act 1922-1925*, it was held by the High Court that a money sum must in some way be nominated or ascertained; an unascertained loss in value resulting from a detriment incurred as part of the consideration was not a "sum so paid". *Clarke v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 56; 6 A.L.J. 241; 39 A.L.R. 64. Held further that where, by reason of the former lessee's expectation of renewal, the taxpayer had had to pay £7,500 for the unexpired portion of a lease having but a few days to run, the whole sum was nevertheless paid to acquire the residue of that term and not in the nature of a fine, premium, or foregift. *Ibid.* See also *J. C. Williamson's Tivoli Vaudeville Pty. Ltd. v. Federal Commissioner of Taxation* (1929) 42, C.L.R. 452; 3 A.L.J. 276; 36 A.L.R. 14.

* See footnote * (*supra*, p. 2511).

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ss. 25-26.

Amended by
No. 50, 1930,
s. 12 (d).

Double
deductions.

Inserted by
No. 46, 1928,
s. 14.*

Substituted by
No. 50, 1930,
s. 19.

Deductions of
business losses.

Substituted by
No. 32, 1927,
s. 16.

Sub-section (1.)
substituted by
No. 50, 1930,
s. 14 (a).†

Amended by
No. 46, 1928,
s. 15 (b).

- (j) interest which might have been earned on any capital employed in the production of income, if lent out at interest; and
- (k) payments made by husband to wife or by wife to husband unless the Commissioner is satisfied that the payments have been made *bona fide* in the course of business and for services rendered and not in pursuance of an arrangement entered into for the purpose of relieving the husband or wife or both from any liability which would have occurred under this Act if the payments had not been made.^(a)

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

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

- (a) in carrying on a business in Australia;
- (b) if he is a resident, in carrying on a business the proceeds of which (if any) derived from sources outside Australia would not be wholly exempt from income tax under the provisions of sub-paragraph (i) of paragraph (g) of sub-section (1.) of section fourteen of this Act; or
- (c) upon the sale of any property the profits (if any) from the sale of which would have been assessable as income of that person,

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

(2.) In addition to any deduction which may be made under the last preceding sub-section in respect of any loss, a taxpayer shall be entitled to a deduction of any similar loss, or of part of any similar loss, incurred by him in any of the four years next preceding the year in which the income was derived, if, on account of the insufficiency of net assessable income in those years, no deduction of that loss, or (as the case may be) of that part of that loss, is allowable, under this section, in assessments for financial years preceding that for which the assessment is made.^(c)

(a) The corresponding paragraph of the *Income Tax Assessment Act 1915-1916* (s. 20 (k)) reads "payments made by husband to wife or by wife to husband". Held by the High Court that s. 18 (1.) of that Act (cf. s. 23 (1.) of this Act) did not permit a deduction of interest paid a husband to his wife on money borrowed from the wife and used in the husband's business. *Jeffrey v. Federal Commissioner of Taxation*, (1918) 24 C.L.R. 456.

(b) As to losses on betting transactions incurred by a person, whose usual occupation is that of grazier, see *Jones v. Commissioner of Taxation*, (1932) 6 A.L.J. 202 in which the High Court (Dixon, J.) held that the evidence did not show that the taxpayer was engaged in betting in the course of carrying on a business. See also footnote (a) (*supra*), p. 2510.

(c) Held by the High Court (Starke, J.) that a beneficiary of a trust estate, which discloses a loss, cannot deduct her share of that loss from other income. *Doherty v. Federal Commissioner of Taxation*, (1933) 48 C.L.R. 1; 7 A.L.J. 58.

* Section 22 (2.) of the *Income Tax Assessment Act 1928* provides that the amendments effected by s. 14 and para. (c) of s. 15 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1928 and all subsequent years.

† Section 26 (5.) of the *Income Tax Assessment Act 1930* provides that the amendments effected by paragraph (a) (in so far as they relate to losses made in carrying on a business) of section 14 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1930 and all subsequent years.

Provided that—

- (a) if a deduction is allowable in respect of two or more losses, the losses shall be taken into account in the order in which they were incurred; and
- (b) no deduction shall be allowed of any amount of loss which would have been allowable as a deduction in an assessment for any financial year preceding the financial year commencing on the first day of July One thousand nine hundred and twenty-seven if the provisions of this section had been in force for the purposes of assessments for all financial years subsequent to the financial year commencing on the first day of July One thousand nine hundred and twenty-two and had applied only to losses incurred and income derived on or after that date, or on or after the commencement of the accounting period substituted for the financial year commencing on that date under sub-section (3.) of section thirty-two of this Act, and no amount of loss, incurred prior to the first day of July One thousand nine hundred and twenty-six or prior to the commencement of any accounting period substituted under sub-section (3.) of section thirty-two of this Act for the financial year commencing on that date, shall be taken into account under sub-section (8.) of section thirteen of this Act in ascertaining the excess of allowable deductions for the year in which the loss was incurred, which would not have been allowable as a deduction in the assessment of income derived (prior to that date or that commencement) in any financial year or accounting period subsequent to the year or period in which the loss was incurred, if the provisions of this section had been so in force and had so applied.

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

- (a) if the person is not an absentee—the amount by which the total sum which would otherwise be deductible under this section exceeds the income which is not so liable, after deducting from that income, in any case in which there is a business loss which is attributable to sources outside Australia (not being a loss which is allowable as a deduction under this section) the amount of that loss; and
- (b) if the person is an absentee—the amount by which the loss exceeds the income derived from sources in Australia which is not so liable.

Inserted by No. 46, 1928, s. 15(c)* and substituted by No. 50, 1930, s. 14 (b).†

* See footnote * on previous page.

† Section 26 (5.) of the *Income Tax Assessment Act 1930* provides that the amendments effected by paragraphs (b) and (c) of section 14 of that Act (in so far as they relate to losses incurred in carrying on a business the proceeds of which, if any, derived from sources outside Australia would not be wholly exempt from income tax under the provisions of sub-paragraph (i) of paragraph (g) of sub-section (1) of section 14 of the Principal Act as amended by the 1930 Act), shall apply to assessments for the financial year beginning on the 1st July, 1930 and all subsequent years.

Part III,
ss. 26-27.

Amended by
No. 46, 1923,
s. 15.

Amended by
No. 46, 1923,
s. 15.

Substituted by
No. 46, 1923,
s. 15.

Inserted by
No. 46, 1923,
s. 15.

Substituted by
No. 50, 1930,
s. 14 (c).*

Oversea ships.
Sub-sec. (1.)
substituted by
No. 46, 1923,
s. 16.

(3.) If any loss, or a part of any loss, or the aggregate of any losses, in respect of which a deduction is allowable under this section, exceeds the net assessable income from which the deduction is to be made, the deduction shall be allowed to the extent of that income.

(4.) Any deduction under this section shall be made in the first instance from the net assessable income from personal exertion.

(5.) Where, in calculating the deduction under sub-section (1.) of this section for the purpose of ascertaining, in accordance with paragraph (a) of sub-section (1.) of section twenty-nine of this Act, the income of a partnership, any amount of loss made by the partnership in any year is not deducted by reason of the insufficiency of net assessable income, the share of each partner in that amount shall, for all purposes of this section, be deemed to be a loss made by him in that year.

(6.) For the purposes of this section, unless the contrary intention appears—

(a) "net assessable income" means the income by reference to which the deduction under section twenty-four of this Act would, but for the deduction allowable under this section, be calculated;

(b) "loss" means—

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

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

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

27.—(1.) Where a ship belongs to or is chartered by a person whose principal place of business is out of Australia and carries passengers, live stock, mails or goods shipped in Australia, the master of that ship or the agent or other representative in Australia of that person shall, when called upon by the Commissioner by notice published in the *Gazette* or by any other notice to him, make a return of the full

* See footnote † on previous page.

amount payable to the owner or charterer (whether such amount be payable in or beyond Australia) in respect of the carriage of the passengers, live stock, mails and goods.^(a)

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(2.) The master, agent or other representative shall be assessed thereon as agent for the owner or charterer and shall be liable to pay tax on five pounds per centum of the amount so payable^(a).

Substituted by
No. 46, 1928,
s. 16 and
amended by No.
17, 1933, s. 8.

(3.) Where no return is made under this section by the master of the ship or by the agent or other representative of the owner or charterer of the ship, the Commissioner may determine the amount payable to the owner or charterer in respect of the carriage of the passengers, live stock, mails and goods and may assess the tax payable on five pounds per centum of that amount and the master shall be assessed thereon as agent for the owner or charterer and shall be liable to pay the tax assessed.

Substituted by
No. 46, 1928,
s. 16, and
amended by
No. 17, 1933,
s. 8.

(4.) Where a return is made as required by this section and an assessment in respect of that return is made on the agent or other representative and the tax is not paid as required by or under this section the master of the ship shall be liable to pay the tax so assessed.

Substituted by
No. 46, 1928,
s. 16.

(4A.) Where any person is made liable to pay tax under this section the Commissioner shall give notice of assessment to that person, and that person shall forthwith pay the tax assessed.

Inserted by
No. 46, 1928,
s. 16.

(5.) Any Collector or officer of Customs for a State or Territory of the Commonwealth—

Amended by
No. 32, 1927,
s. 17.

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

(b) may detain the ship,

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

28.—(1.) When any business which is carried on in Australia is controlled principally by persons resident outside Australia, and it appears to the Commissioner that the business produces either no taxable income or less than the ordinary taxable income which might be expected to arise from that business, the person carrying on the business in Australia shall be assessable and chargeable with

Taxation of
Australian
business
controlled
abroad.

(a) Concerning the corresponding section (s. 22) of the *Income Tax Assessment Act 1915-1916* it was held by the High Court:—

- (i) That where the ship carried goods from Fremantle to Singapore (where they were transhipped and carried to London in another ship belonging to the same company) the company was liable to assessment only on the amount of freight from Fremantle to Singapore. *Ocean Steamship Co. Ltd. v. Federal Commissioner of Taxation*, (1918) 25 C.L.R. 412; 25 A.L.J.R. 56.
- (ii) That an oversea shipping company was not entitled to deduct from the amount so ascertained "so much of the assessable income as is available for distribution and is distributed to the members or shareholders" which s. 16 of that Act permitted to be deducted from the total assessable income of a company. *Union Steamship Co. of New Zealand Ltd. v. Federal Commissioner of Taxation*, (1924) 35 C.L.R. 209; 31 A.L.J.R. 337.

For the application of that section to war-time profits tax see *Union Steamship Co. of New Zealand Ltd. v. Federal Commissioner of Taxation*, (1920) 29 C.L.R. 84; 27 A.L.J.R. 21.

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income tax on such percentage of the total receipts (whether cash or credit) of the business, as the Commissioner in his judgment thinks proper.^(a)

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

Sub-section (3.)
omitted by
No. 28, 1925,
s. 7.*

* * * * *

Taxation of
film businesses
controlled
abroad.
Inserted by
No. 50, 1930,
s. 15.†

28A.—(1.) Notwithstanding anything contained in this Act, where any person residing outside Australia, or any foreign company, derives income under any contract or agreement with any person in relation to the carrying on in Australia by that person of a business of distributing, exhibiting or exploiting motion picture films or of leasing such films to other persons, or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connexion with such films, and, in the opinion of the Commissioner, that business—

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

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

(i) a foreign company; or

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

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

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

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

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

(a) Held by Isaacs, Higgins, Gavan Duffy, Rich and Starke, J.J., that this section is a valid exercise of the powers of the Parliament and is neither obnoxious to s. 55 of the Constitution nor extra territorial in its operation. *British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation* (1926) 38 C.L.R. 153; 32 A.L.R. 339. Per Isaacs, J., the words "taxable income" in this section have a meaning contrary to the definition in s. 4. *Ibid.* Held further by Isaacs, Gavan Duffy and Starke, J.J., this section is not a law imposing taxation; it creates a special measure of taxable income—the tax being imposed by the relevant Income Tax Act. *Ibid.*

* By section twenty-four of the *Income Tax Assessment Act 1925*, section seven of that Act shall be deemed to have commenced on the date of the commencement of the *Income Tax Assessment Act 1922*. See also section sixteen of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

† Section 26 (5.) of the *Income Tax Assessment Act 1930* provides that the amendments effected by section 15 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1930, and all subsequent years.

(3.) For the purposes of this section "foreign company" means a company incorporated outside Australia. Part III.,
ss. 28A-28H.

(4.) Any person carrying on business in Australia who has entered into, with any person residing outside Australia or with a foreign company, a contract or agreement of the nature specified in sub-section (1.) of this section, shall, for all purposes of this Act, be the agent for the person residing outside Australia or the foreign company and shall not make any payment of any income assessable under this section to or on account of that person or company and shall not transfer out of Australia any such income for the purpose of making any such payment unless and until arrangements have been made to the satisfaction of the Commissioner for the payment of any income tax which has been or may be assessed to be paid by that person or company.

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

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

28B.—(1.) Notwithstanding anything contained in this Act, where any person in Australia (referred to in this section as "the insured") enters into a contract of insurance or guarantee against loss, damage or risk of any kind whatever (not being a contract of life insurance)—

*Income
derived from
insurances.*

*Inserted by
No. 50, 1930,
s. 15.**

(a) with an absentee (referred to in this section as "the insurer") who is not carrying on in Australia an insurance business either in a principal office or by means of a branch; or

(b) with a person in Australia acting on behalf of the insurer,

any premium paid or payable under that contract shall be deemed to be assessable income derived from sources in Australia by the insurer.

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

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

* See footnote † on previous page.

Part III.,
ss. 28B-29.

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

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

Added by
No. 23, 1931,
s. 7.

(5.) Where an insurer specified in paragraph (a) of sub-section (1.) of this section satisfies the Commissioner that, on account of special circumstances, it is necessary that the rate of tax payable by him under this section should be ascertained at the time when premiums are paid to him, the Commissioner may direct that the tax payable under this section by the insurer in respect of premiums paid to him during any financial year shall be calculated at the rate which would have been payable if an assessment had been made in respect of those premiums at the date when they were paid.

Partners.
Amended by
No. 46, 1928,
s. 17.

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

- (a) his individual interest in the income of the partnership which, if the partnership were liable to pay tax, would have been the income of the partnership remaining after allowing all the deductions under this Act, except the deductions under section twenty-four and under sub-section (2.) of section twenty-six, together with
- (b) any other income derived by him separately,^(a) and
- (c) his individual interests in the income derived by any other partnership :

Provided that where in a partnership formed after the thirteenth day of September One thousand nine hundred and fifteen any partner is not a taxpayer and the Commissioner is not satisfied that that partner is in receipt and control of his share

(a) Concerning s. 25 of the *Income Tax Assessment Act 1922-1934* it was held by the High Court that interest received by a member of a partnership on money lent to that partnership was received by him as an individual. *Leonard v. Federal Commissioner of Taxation*, (1919) 26 C.L.R. 175 ; 1919 V.L.R. 367 ; 25 A.L.R. 176.

of the income, the partnership shall be assessed and liable, on behalf of that partner, for income tax on his individual interest in the income of the partnership under paragraph (a) of this section, at the rate which would be applicable to a taxable income equal to the income of the partnership remaining after allowing the deductions allowed under this Act.

Part III.,
ss. 29-30.

(2.) Where the Commissioner is of opinion that a partnership between husband and wife or between two or more husbands and any or all of their wives, or between relatives by blood, marriage or adoption, was formed or has been varied for the purpose of relieving any member thereof specified by the Commissioner from any liability to which he would have been subject under this Act if the partnership had not been formed, and that that purpose is effective in the year in which the income was derived or where there is a trust which is a partnership as defined in section four of this Act, the partnership shall be assessed as if it were a single person without regard to the interests therein of any of the partners or to any deductions to which any of them should be entitled under this Act, and shall—

Added by No.
32, 1927, s. 18,
and substituted
by No. 50, 1930,
s. 16.

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

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

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

Added by No. 50,
1930, s. 16.

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

Added by No.
50, 1930, s. 16.

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

Rebate in
respect of
business
income.
Amended by
No. 27, 1923,
s. 10.

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

Part III., s. 31.

Trustees.

Amended by
No. 46, 1928,
s. 13.*

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

Amended by
No. 50, 1930,
s. 17†

(a) his individual interest in the income of the trust estate, which if the trustee were liable to pay the tax in respect of the income of the trust estate,^(b) would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deduction under section twenty-four and, where the beneficiary has no beneficial interest in the corpus of the estate, except the deduction under section twenty-six in respect of any loss which is required to be met out of the corpus^(c); together with

(b) any other income derived by him separately; and

(c) his individual interests in the income derived from any other source.

(2.) A trustee shall be separately assessed and liable to pay tax in respect of that part of the income of the trust estate which if the trustee were liable to pay tax in respect of the income of the trust estate, would have been the income of the trust estate remaining after allowing all the deductions under this Act, except the deduction under section twenty-four, and^(a)

(a) which is proportionate to the interest in the trust estate of any beneficiary who is under a legal disability; or

(a) A trustee forwarded four-fifths of the income from the trust estate to the settlor in England to be applied for the maintenance, &c., of his children as the settlor should think fit. Held by the High Court (prior to the amending Act of 1930) that, assuming the settlor was liable to be assessed at all (as to which *quære*), he was not entitled to be assessed separately for the amounts expended upon each child and the amount (if any) remaining unexpended. Relationship between this section and between sections 4 and 89 considered. *Howey v. Federal Commissioner of Taxation*, (1930) 44 C.L.R. 289; 4 A.L.J. 307; 37 A.L.R. 7. Where a sum was paid by trustees to the taxpayer to be expended on the maintenance, education and support of her child, held by the High Court that the taxpayer was not liable to be assessed in respect of the amount so received and actually expended on the maintenance, education and support of the child. *Countess of Bective v. Federal Commissioner of Taxation*, (1932) 47 C.L.R. 417; 6 A.L.J. 110; 38 A.L.R. 362. Held by the High Court that where a trustee becomes liable to assessment for the first time, the Commissioner may not take into consideration the moneys passing to the beneficiary through his hands during previous years so as to apply the averaging provisions of s. 13. *Executor Trustee and Agency Co. of South Australia Ltd. v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 26; 6 A.L.J. 144; 39 A.L.R. 112. A trustee held moneys in trust to abide the result of certain legal proceedings and if, as a result of those proceedings, no money was payable (as proved to be the case), the money was to be paid to a company. Held by the High Court, concerning the section as it read prior to the amending Act of 1928, that the trustee was liable to taxation in respect of interest gained from the investment of the trust moneys prior to the determination of the legal proceedings, but at the rate at which the beneficiary would have been assessed. *Federal Commissioner of Taxation v. Higgins*, (1930) 44 C.L.R. 297; 4 A.L.J. 340. See also footnote (b) (*supra*, p. 2471). For the application of this section to War-time profits tax see *Kuhnel and Co. Ltd. v. Deputy Federal Commissioner of Taxation (S.A.)*, (1923) 33 C.L.R. 349; 30 A.L.R. 137; and *Deputy Federal Commissioner of Taxation (S.A.) v. Kuhnel and Co. Ltd.*, (1925) 37 C.L.R. 141; 32 A.L.R. 141.

(b) Per Rich and Dixon, JJ., the references to "income of the trust estate" indicate that the trustee must stand in some relation to the proprietary right in virtue of which the income arises, even though not a trustee in the proper sense. *Howey v. Federal Commissioner of Taxation*, (1930) 44 C.L.R. 289; 4 A.L.J. 307; 37 A.L.R. 7.

(c) See footnote (c) (*supra*, p. 2514).

* Section 22 (2.) of the *Income Tax Assessment Act 1928* provides that the amendments effected by section 18 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1928 and all subsequent years.

† Section 26 (5.) of the *Income Tax Assessment Act 1930* provides that the amendments effected by section 17 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1930 and all subsequent years.

Part III.,
ss. 31-31A.

(b) to which no other person is presently entitled and in actual receipt thereof and liable as a taxpayer in respect thereof.^(a)

(3.) A beneficiary who is under a legal disability, and who is a beneficiary in more than one trust estate, or derives income from any other source, shall be assessed in his individual capacity in respect of—

(a) his individual interest, upon which the trustee is liable to be assessed under sub-section (2.) of this section, in the income of each trust estate;

(b) any other income derived by him separately; and

(c) his individual interests in the income derived from any other source:

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

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

*Division 2.—Private Companies.**

31A.—(1.) In this Division, unless the contrary intention appears—

Definitions.

Inserted by No.
18, 1934, s. 13.*

“distributable income” means the amount obtained by deducting from the taxable income of a company all taxes, which, in the year of income, are paid under this or the previous Act, or paid in any country outside Australia, in respect of taxable income of the company under this or the previous Act;

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

^(a) Held by the High Court (Gavan Duffy, C.J., Starke and Evatt, J.J.; Rich, Dixon and McTiernan, J.J., dissenting) that the so-called trustees of the Wheat Pool of Western Australia (a Pool enabling its members to dispose of their wheat to the best advantage through a centralized selling organization) are not trustees within the meaning of this section and were not, therefore, liable to be taxed in respect of a portion of the proceeds of the sale of wheat paid into a reserve fund. *Deputy Federal Commissioner of Taxation v. Trustees of the Wheat Pool of Western Australia*, (1932) 48 C.L.R. 5; 6 A.L.J. 73; 39 A.L.R. 222. Where, pursuant to an order of a Court, trustees were permitted to accept a premium on a lease but directed to treat the premium as rent in advance, it was held by the High Court (Gavan Duffy, C.J., Rich, Starke, Dixon and McTiernan, J.J.; Evatt, J., dissenting) that the trustees were correctly assessed as to the moiety which would be distributed amongst life interests only if they survived the duration of the lease, but were not liable to assessment in respect of the other moiety to which remaindermen were entitled and who would otherwise themselves be liable. *Executor, Trustee and Agency Co. of South Australia Ltd. v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 26; 6 A.L.J. 144; 39 A.L.R. 113. See this case also on the point whether “and” should be construed as “or”.

* Division 2 of Part III. (comprising ss. 31A-31H) was inserted by section 13 of the *Income Tax Assessment Act 1934*. Section 17 (2.) of that Act reads—

“(2.) The amendments effected by section thirteen of this Act shall apply to income derived by a company during the year ending on the thirtieth day of June, One thousand nine hundred and thirty-four, or the accounting period adopted in lieu of that year, and all subsequent years or accounting periods.”

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

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

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

“undistributed amount” means—

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

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

(2.) For the purposes of this Division—

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

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

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

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

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

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

Part III.,
ss. 31A-31D.

(b) where it is not an investment company—

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

31B.—(1.) Where a private company has not before the expiration of nine months after the close of the year of income made a sufficient distribution of its income of the year, the Commissioner may assess the tax and additional tax which would have been payable by its shareholders if the company had on the last day of the year of income paid the undistributed amount as a dividend to the shareholders who would have been entitled to receive it, and the company shall be liable to pay the tax and additional tax so assessed.^(a)

Assessment of
additional tax.
Inserted by
No. 18, 1934,
s. 13.*

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

31C. Any dividend paid by a company on or before the thirty-first day of March, One thousand nine hundred and thirty-five out of the taxable income of the last preceding year of income shall be deemed to have been paid within nine months after the close of that year.

Dividends
paid before
31st March,
1935.
Inserted by
No. 18, 1934,
s. 13.*

31D.—(1.) Where in relation to any private company there is an undistributed amount, and any person (not being a company, trustee or partnership) would, otherwise than as a shareholder of the private company, have received a part of that amount if there had been successive distributions of the relative parts of that amount to and by each of any companies, trustees or partnerships interposed between the private company and that person, the Commissioner may, in addition to any tax assessed under section thirty-one B of this Act assess the tax and additional tax, if any, which would in that event have been payable by that person, and the private company shall be liable to pay the tax and additional tax so assessed.

Interposition of
companies,
trustees and
partnerships.
Inserted by
No. 18, 1934,
s. 13.*

(2.) If any company so interposed between the private company and that person is not incorporated in Australia, and the Commissioner is unable to ascertain the identity of that person, or the part of the

(a) For discussions by the High Court on s. 21 of the *Income Tax Assessment Act 1922-1932* (which was similar to but substantially differently worded from this section) see *Federal Commissioner of Taxation v. Australian Boot Factory Ltd.*, (1926) 38 C.L.R. 391; and *Neal's Motors Pty. Ltd. v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 233; 6 A.L.J. 320; 39 A.L.R. 101. Concerning that section it was held by the High Court that a *bona fide* agreement not to distribute income but to pay it to a creditor was not an agreement preventing the operation of this Act within the meaning of s. 93 (1). *G. E. Stuart Ltd. v. Federal Commissioner of Taxation*, (1927) 39 C.L.R. 327; 1 A.L.J. 60; 33 A.L.R. 378.

* See footnote * (*supra*, p. 2523).

Part III.,
ss. 31D-31G.

amount which he would have received, the Commissioner may assess the tax or additional tax, if any, which would have been payable if the company so interposed had only one shareholder, and the private company shall be liable to pay the tax or additional tax so assessed.

Excess
distribution of
previous years.

Inserted by
No. 18, 1934.
s. 13.*

31E.—(1.) Where the total amount of dividends paid by a private company out of its taxable income of the period of four years next preceding the year of income exceeds the aggregate of the smallest amounts that would have been a sufficient distribution in each of those years, the excess shall, for the purpose of calculating the undistributed amount, be deemed to be a dividend paid out of the taxable income of the year of income.

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

(a) any part of the company's taxable income of that period upon which it has paid or is liable to pay tax under this Division or under section twenty-one of the *Income Tax Assessment Act* 1922 as in force at any time at which, prior to the commencement of this section, the company so paid or so became liable to pay tax shall be deemed to be a dividend paid by the company during that period; and

(b) any dividend or part of a dividend paid out of that part of the company's taxable income shall be deemed not to be a dividend.

Rebates.

Inserted by
No. 18, 1934.
s. 13.*

31F. A shareholder of any company shall be entitled to a rebate of the amount by which his income tax is increased by the inclusion in his assessable income of—

(a) so much of the dividends paid to him by the company before the commencement of this section as is paid out of any amount or amounts in respect of which the company has paid or is liable to pay tax under this Division or under section twenty-one of the *Income Tax Assessment Act* 1922 as in force at any time at which, prior to the commencement of this section, the company so paid or so became liable to pay tax; and

(b) dividends paid to him by the company after the commencement of this section wholly and exclusively out of any such amount or amounts.

Loans to
shareholders.

Inserted by
No. 18, 1934.
s. 13.*

31G.—(1.) If any amounts are advanced or any assets distributed by a private company to any of its shareholders by way of advances or loans, or any payment is made by the company on behalf of, or for the individual benefit of, any of its shareholders so much, if any, of those advances, loans or payment as, in the opinion of the Commissioner, represents distributions of income shall, for all purposes of this Act, be deemed to be dividends paid by the company to those shareholders.

* See footnote * (*supra*, p. 2523).

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

Part III., ss. 31g-31h.
Part IV., s. 32.

31H. So much of any sum paid or credited by a private company in any manner to any shareholder or to a director, or to a relative of a shareholder or a director, of the company, and being, or purporting to be, remuneration for services, as exceeds an amount which the Commissioner considers reasonable, shall not be an allowable deduction and the excess shall, for all purposes of this Act, be deemed to be dividends paid to the recipient and received by him as a shareholder of the company.

Payments to shareholders and directors.
Inserted by No. 18, 1934, s. 13.*

PART IV.—RETURNS AND ASSESSMENTS.

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

Persons to furnish returns.
Sub-section (1.) substituted by No. 60, 1930, s. 5.†

(a) in the case of a resident (not being a company) the total assessable income is not less than Two hundred and fifty pounds.

Substituted by No. 18, 1934, s. 14.‡

(b) in the case of a company or an absentee the total assessable income exceeds the sum of One pound.

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

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

(a) Concerning the *Income Tax Assessment Act 1915-1918* it was held by the Supreme Court of South Australia that an information which did not allege the publication of a notice in the *Gazette* did not disclose an offence for failure to lodge returns. (But N.B. that Act contained no provisions similar to ss. 80 and 81 of this Act.) *Fruzer v. Barclay*, 1920 S.A.L.R. 157.

(b) Held by the High Court that this sub-section did not extend to additional tax calculated or assessed, pursuant to s. 21 of the *Income Tax Assessment Act 1922-1924* (which section has since been repealed), on any further sums that could reasonably have been distributed by a company to its shareholders. *Federal Commissioner of Taxation v. Australian Boot Factory Ltd.*, (1926) 38 C.L.R. 391.

* See footnote * (*supra*, p. 2523).

† Section 8 of the *Income Tax Assessment Act (No. 2) 1930* provides that the amendments effected by section 5 of that Act shall apply to assessments for the financial year beginning on the 1st July, 1930 and all subsequent years.

‡ Section 17 (1.) of the *Income Tax Assessment Act 1934* provides that the amendments effected by section 14 of that Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-four and all subsequent years.

Sub-section (3.) of the same section provides that notwithstanding anything contained in section fourteen of that Act, the provisions of the Principal Act, which that section amends or repeals, shall, for all purposes in connexion with assessments for financial years prior to the financial year commencing on the first day of July, One thousand nine hundred and thirty-four, continue in force as if that Act had not been passed.

Part IV.,
ss. 32-36.

Amended by
No. 46, 1928,
s. 19 (d).

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

Added by
No. 46, 1928,
s. 19 (e).*

(4.) Where the Commissioner has under the last preceding subsection accepted from any person returns made up in respect of the accounting period any references in this Act to the year in which income is derived shall in relation to that person be deemed to be a reference to that period.

New or
further and
fuller returns.

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

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

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

Returns
deemed to be
duly made.

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

Assessments
to be made.

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

Assessment in
case of default
or
unsatisfactory
return.

Amended by
No. 32, 1927,
s. 19.

36. If—

- (a) any person makes default in furnishing any return; or
- (b) the Commissioner is not satisfied with the return made by any person; or
- (c) the Commissioner has reason to believe that any person (though he may not have furnished any return) is a taxpayer,

(a) Per Isaacs, J., this sub-section does not mean that by the making of a further assessment the previous assessment is abandoned. *R. v. Deputy Federal Commissioner of Taxation (S.A.)*; *ex parte Hooper*, (1926) 37 C.L.R. 368; 32 A.L.R. 101.

* Section 22 (1.) of the *Income Tax Assessment Act 1928* provides that the amendment effected by paragraph (e) of section 19 of that Act shall be deemed to have commenced upon the date of the commencement of the *Income Tax Assessment Act 1922*, but provides that the amendment shall not affect the rights of any person under a judgment obtained by him prior to the commencement of the *Income Tax Assessment Act 1928*.

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, income tax ought to be levied, and the person assessed shall be liable to income tax thereon, excepting so far as he establishes on objection that the assessment is excessive.^(a)

Part IV.,
ss. 36-37.

37.—(1.) The Commissioner may, subject to this section, cause to be made all such alterations in or additions to any assessment as he thinks necessary in order to insure its completeness and accuracy, notwithstanding that income tax may have been paid in respect of income included in the assessment:^(b)

Alteration of
assessment.
Sub-section (1.)
substituted by
No. 50, 1930,
s. 19.

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

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

Inserted by
No. 50, 1930,
s. 19.

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

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

Amended by
No. 18, 1934,
s. 15.

(ba) where an application for an alteration in his assessment is made by the taxpayer within three years from the date when the tax payable on the assessment was originally

Inserted by
No. 18, 1934,
s. 15.

(a) The provisions of this section as it read in the *Income Tax Assessment Act 1915-1916* (particularly in relation to the onus of establishing that the assessment is excessive) was considered by the High Court in *Stone v. Federal Commissioner of Taxation*, (1918) 25 C.L.R. 389.

(b) *Semble* per the Privy Council (concerning the sub-section for which the present sub-section was substituted by the amending Act of 1930) the power of alteration or addition remains even after a decision by the Board of Review. *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation*, [1931] A.C. 275; 44 C.L.R. 530; 4 A.L.J. 341; 37 A.L.R. 1. Held by the High Court (the decision turning principally on Regulation 45 (1.) of the Income Tax Regulations) that if the Commissioner, although pursuant to a decision of the Board of Review, amends an assessment he cannot also appeal to the Court from the decision of the Board. *Federal Commissioner of Taxation v. West Australian Trustee Executor and Agency Co. Ltd.*, (1929) 43 C.L.R. 20; 3 A.L.J. 205; 35 A.L.R. 301. Held by Rich, J., and affirmed by the Full Court of the High Court that the High Court would not compel the Commissioner to exercise a similar power given him by section 33 of the *Income Tax Assessment Act 1915-1918*. *Ex parte Carpalitia Tin Mining Co. Ltd.*, (1924) 35 C.L.R. 552; 31 A.L.R. 22. Where returns had been lodged and tax paid by a nominee which should have been lodged and paid by the principal it was held by the High Court that the Commissioner is not required to amend the nominee's assessment before he can amend the principal's assessment. *Richardson v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 192; 6 A.L.J. 152; 39 A.L.R. 257.

(c) Where an alteration imposed no fresh liability on the taxpayer it was held by the High Court (concerning an identical proviso to the sub-section as it read in 1924) that, notwithstanding that there had inadvertently been included in the notification of amendment an intimation that the taxpayer might object to the "assessment" within forty-two days, the amendment was not an "assessment" and the taxpayer had no right to object. *R. v. Deputy Federal Commissioner of Taxation (S.A.)*; *ex parte Hooper*, (1926) 37 C.L.R. 368; 32 A.L.R. 101.

(d) The corresponding provision in the *Income Tax Assessment Act 1922-1925* provided that no alteration or addition should be made "unless the Commissioner has reason to believe that there has been an avoidance of tax owing to fraud or attempted evasion". Held by the High Court (*Isaacs, J.*) that unless the ground on which the Commissioner's belief was based was found to be so irrational as not to be worthy of being called a reason by any honest man, his conclusion that it constituted a sufficient reason could not be overridden. *Moreau v. Federal Commissioner of Taxation*, (1926) 39 C.L.R. 65. See also footnote (a) (*supra*, p. 2466).

Part IV.,
ss. 37-39.

due and payable, and the taxpayer has supplied to the Commissioner, within that period, all information needed by the Commissioner for the purpose of deciding the application—at any time;^(a) and

(c) in any other case—within three years from the date when the tax payable on the assessment was originally due and payable:

Provided that where as the result of an alteration or addition to an assessment any fresh liability is, or has been, imposed on the taxpayer a further alteration or addition may be made within three years from the date upon which the tax became due and payable under the amended assessment, but only for the purpose of adjusting that liability by way of reduction.

Amended by
No. 76, 1932,
s. 8; by No. 40,
1933, s. 6* and
by No. 18, 1934,
s. 15.

Amended by
No. 76, 1932,
s. 8.

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

Added by
No. 28, 1925,
s. 8†; amended
by No. 32,
1927, s. 20,
and by No. 46,
1928, s. 20.

(3.) Notwithstanding anything contained in this section, where an assessment for any financial year includes the estimated amount of taxable income derived by the taxpayer, during the preceding financial year, from an operation or series of operations the profit or loss on which was not ascertainable at the end of that preceding year owing to the fact that the operation or series of operations was carried on during a period which extends over more than one, or parts of more than one, financial year, the Commissioner, upon ascertaining the total profit or loss actually derived or arising from the operation or series of operations, may, at any time, cause that assessment to be altered so as to ensure its completeness and accuracy on the basis of the profit or loss so ascertained.

Validity of
assessment.

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

Copies as
evidence.

Sub-section (1.)
substituted by
No. 40, 1933,
s. 7.

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

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

(a) The *Income Tax Assessment Act 1922-1928* (which did not contain this sub-section) contained a proviso to sub-section (2.) providing that a refund due in pursuance of that sub-section should not be made later than three years after the tax was originally due and payable. Held by the High Court that the limitation did not apply to a rebate pursuant to section 18. *R. v. Federal Commissioner of Taxation; ex parte King*, (1930) 43 C.L.R. 569; 4 A.L.J. 169; 36 A.L.R. 281.

(b) Held by the High Court (Isaacs, J.) that s. 38 and a similar sub-section for which sub-section (1.) of section 39 was substituted in 1933 referred to all assessments including additional tax assessed pursuant to s. 56 of this Act. *Commissioner of Taxation v. Public Requisites Ltd. (in liquidation)*, (1927) 33 A.L.R. 413.

(c) Per Lowe, J., of the Supreme Court of Victoria (concerning the similar provision for which this sub-section was substituted in 1933) it is the due making of the assessment that is conclusive not the validity of the assessment when duly made. *Kellow Falkiner Pty. Ltd. v. Commissioner of Taxation*, (1928) 34 A.L.R. 276; 49 A.L.J. 266.

* Section 9 (2.) of the *Income Tax Assessment Act 1933* reads—

"(2.) The amendment effected by section six of this Act shall be deemed to have commenced on the date of commencement of the *Income Tax Assessment Act 1932*."

† See section 16 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

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

Part IV.,
ss. 39-40 ;
Part V., s. 41.

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

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

Notice of
assessment.

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

PART V.—OBJECTIONS AND APPEALS.

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

Boards of
Review.
Amended by
No. 28, 1925,
s. 9.*

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

(3.) The persons who were, prior to the commencement of this section, appointed, in relation to income tax, to be members of a Board of Appeal, shall be deemed, as from the commencement of this Act, to have been appointed to be members of a Board of Review and shall continue to hold office as such members as if appointed under this Act.

Substituted by
No. 28, 1925,
s. 9.*

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

Provided that any appointment of a member of a Board of Review after the commencement of the *Income Tax Assessment Act 1927* may be for such term not exceeding seven years, as is specified by the Governor-General in the appointment.

Inserted by
No. 32, 1927
s. 21.

(5.) Notwithstanding anything contained in the Acts repealed by this Act or in this section, the persons mentioned in the first column of the table to this sub-section shall be deemed to have been appointed, on the dates respectively specified in the second column of that table, to the offices under this Act respectively specified in the third column of that table, and those persons shall be deemed to have continued in those offices until the commencement of this sub-section and shall thereafter, subject to sections forty-eight and forty-nine of this Act,

Inserted by
No. 32, 1927,
s. 21.

(a) See footnote (b) on previous page.

(b) Under the provisions of the sub-section for which the present sub-section was substituted by the amending Act of 1933, it was held by the Supreme Court of South Australia that the production of the notice was therefore *prima facie* evidence that property included in the notice was income and not accretion of capital. *Wright v. Deputy Commissioner of Taxes*, 1927 S.A.S.R. 212.

(c) See footnote (a) on following page.

* See ss. 16-21 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

Part V.,
ss. 41-44.

so continue until the dates respectively specified in the fourth column of that table.

| | | | |
|----------------------------|-----------------|---------------------------|------------------|
| Alfred Fletcher Twine | 26th May, 1922 | Chairman, Board of Review | 25th May, 1929. |
| Algernon Stratford Canning | 22nd June, 1922 | Member, Board of Review | 21st June, 1929. |
| Russell Martin Lightband | 25th June, 1922 | Member, Board of Review | 25th June, 1929. |

Officers of
Public Service
appointed to
Board.

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

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

Illness or
suspension
of Chairman
or member.

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

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

Powers of
Board.
Substituted by
No. 28, 1925,
s. 10.*

44.—(1.) A Board of Review shall have power to review such decisions of the Commissioner, Assistant Commissioner or Deputy Commissioner as are referred to it by the Commissioner under this Act and, for the purpose of reviewing such decisions, shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of the Board, and the decisions of the Board upon review, shall, for all purposes (except for the purposes of sub-section (4.) of section fifty and sub-section (6.) of section fifty-one of this Act) be deemed to be assessments, determinations or decisions of the Commissioner.^(a)

(2.) Notwithstanding anything contained in this Act, a determination made by the Board under section twenty-one of this Act shall not be invalidated by reason of the fact that it is not made within the time prescribed by that section.

(a) Held by the High Court (Isaacs, Higgins, Gavan Duffy Rich and Starke, JJ.; Knox, C.J., dissenting) that the powers conferred on the Board of Review by ss. 44, 50 and 51 of this Act are not part of the judicial powers of the Commonwealth and that the sections are not, therefore, invalid. *Federal Commissioner of Taxation v. Munro, British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation*, (1926) 38 C.L.R. 153; 32 A.L.R. 339. (Affirmed on appeal by the Privy Council *sub. nom. Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation*, [1931] A.C. 275; 44 C.L.R. 530; 4 A.L.J. 341; 37 A.L.R. 1 (cf. *British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation*, (1925) 35 C.L.R. 422; 31 A.L.R. 129, in which the High Court held that a Board of Appeal as constituted by the section for which this section was subsequently substituted purported to be a body exercising the judicial power of the Commonwealth and that, the Board of Appeal not being constituted in accordance with s. 71 of the Constitution, the powers which the legislature purported to confer on that Board were *ultra vires* the Parliament.) Held by the High Court (Rich, Dixon, Evatt and McTiernan, JJ., Starke, J., dissenting) that the Board of Review has power to review the entire process of assessing additional tax and for that purpose may exercise the Commissioner's function under the proviso to s. 67 (1.) of remitting the additional tax so imposed. *Jolly v. Federal Commissioner of Taxation*, (1935) 53 C.L.R. 206.

*See ss. 16-21 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

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

Part V.,
ss. 45-49.
Quorum and
voting.

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

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

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

Board may
not be sued.

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

Remuneration
of members.

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

Removal or
suspension of
member.

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

(3.) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant, and the office shall thereupon become and be vacant.

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

Vacation of
office of
member.

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

Part V.,
ss. 50-51.
Objections.

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

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

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

(4.) A taxpayer who is dissatisfied with the decision of the Commissioner, Assistant Commissioner or Deputy Commissioner may within thirty days after the service by post of notice of that decision—

(a) in writing, request the Commissioner to refer the decision to a Board of Review for review;^(c) or

(b) in writing, request the Commissioner to treat his objection as an appeal and to forward it either to the High Court or to the Supreme Court of a State.

(5.) The Commissioner may in any case in his discretion and upon reasonable cause being shown by the taxpayer, extend for a further period not exceeding thirty days **(a)** the period of forty-two days mentioned in sub-section (1.) of this section and **(b)** the period of thirty days mentioned in sub-section (4.) of this section.

Substituted by
No. 28, 1925,
s. 11.*

Sub-sec. (5)
omitted by No.
28, 1925, s. 11
and added by
No. 76, 1932,
s. 9.

Sub-sections
(6.)-(8.)
omitted by
No. 28, 1925,
s. 11.*

References
to Board.

Substituted by
No. 28, 1925,
s. 12.*

* * * * *

51.—(1.) Where a taxpayer has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the taxpayer's request is accompanied by a deposit of such amount as is prescribed for the particular class of case, refer the decision to the Board not later than thirty days after receipt of the request.

(2.) A taxpayer shall be limited on the review to the grounds stated in his objection.^(d)

(3.) If the assessment has been reduced by the Commissioner after considering the objection, the reduced assessment shall be the assessment to be dealt with by the Board under the next succeeding sub-section.

^(a) Section 37 (1.) of the *Income Tax Assessment Act 1915-1918* read "an appeal in writing . . . stating fully the reasons for the objection." Held by the High Court that a written communication, calculated to convey to the person to whom it was addressed that the taxpayer contends that the assessment was not according to law and stating the grounds of that contention, was an effective objection. *R. v. Deputy Commissioner of Taxation for W.A.; ex parte Copley*, (1924) 30 A.L.R. 86.

^(b) Concerning a similar provision (s. 28 (2.)) in the *War-time Profits Tax Assessment Act 1917-1918*, the High Court held that after allowing an objection the Commissioner cannot afterwards re-open the controversy. *Liverpool and London and Globe Insurance Co. Ltd. v. Federal Commissioner of Taxation*, (1927) 40 C.L.R. 108. It was later held by the Supreme Court of Victoria that the withdrawal of an assessment and its substitution by a new assessment did not constitute an allowance of the objection so as to import the decision of the High Court. *Kellow-Fulkiner Pty. Ltd. v. Commissioner of Taxation*, (1928) 34 A.L.R. 276; 49 A.L.J. 266.

^(c) See footnote (a) *supra*, p. 2532.

^(d) Held by the High Court (Starke, J.), that on appeal to the High Court the parties are not limited to the matters before the Board of Review but, unless leave to amend is obtained, are limited to the grounds stated in the notice of appeal. *Federal Commissioner of Taxation v. Lewis Berger and Sons (Aust.) Ltd.*, (1927) 39 C.L.R. 468; 34 A.L.R. 23.

* See ss. 16-21 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

(4.) The Board, on review, shall give a decision in writing and may either confirm the assessment or reduce, increase or vary the assessment.^(a)

Part V.,
ss. 51-51A.
Amended by
No. 40, 1933,
s. 8.

(4A.) Where, during the hearing of a review, the Commissioner or the taxpayer so requests, the Board shall, when giving its decisions on the review, state in writing its reasons, both of law and of fact, for the decision including the particular terms of the Act which have been considered by the Board in arriving at the decision.

Inserted by No.
40, 1933, s. 8.

(5.) The Board may, if it considers the reference to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount deposited in accordance with sub-section (1.) of this section.

(6.) The Commissioner or a taxpayer may appeal to the High Court from any decision of the Board under this section which, in the opinion of the High Court, involves a question of law^(b) and the Board shall, upon the request of the Commissioner or a taxpayer, refer to the High Court any question of law arising before the Board and the decision of the High Court thereon shall be final and conclusive.^(c)

Amended by
No. 32, 1927,
s. 22.

51A.—(1.) Where a taxpayer has, in accordance with section fifty of this Act, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or the Supreme Court of a State, the Commissioner shall forward it accordingly.^(d)

Appeals to
Court.
Inserted by
No. 28, 1925,
s. 12.*

(2.) The appeal shall be heard by a single Justice of the Court.

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

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

(a) See footnote (a) (*supra*, p. 2532).

(b) Held by the High Court (Starke, J.), that a question as to the portion of the profits that is derived from sources outside Australia is a question of fact. *Federal Commissioner of Taxation v. Lewis Berger and Sons (Aust.) Ltd.* (1927) 39 C.L.R. 468; 34 A.L.J. 23. On an objection to an assessment that portion of the income was derived from playing cards and betting on horses the High Court held that whether portion of the income was so derived is a question of fact, but whether, if so derived, it is taxable is a question of law. *Holt v. Federal Commissioner of Taxation*, (1929) 3 A.L.J. 68. M. formed two family companies, one controlling his manufacturing business and the other accepting a gift of property from M. and collecting the rents thereon. Upon the death of M. and another member of the second company, the first company paid the probate and estate duty due on shares held in the second company—thereby embarrassing its (the first company's) financial position. The second company, having power in its Memorandum of Association so to do, sold its property and deposited the proceeds with the first company. Held by the High Court that the question whether that sale was a business operation for profit making involved a question of law. *Ruhamah Property Co. Ltd. v. Federal Commissioner of Taxation*, (1928) 41 C.L.R. 148; 2 A.L.J. 173; 35 A.L.R. 50. Held by the High Court that where a decision of the Board involves a question of law the whole of that decision is open to review on appeal to the High Court. *Ibid.* Held by the High Court that a question whether a taxpayer has or has not paid calls upon shares when, after having new shares allotted to him, he authorizes moneys standing to his credit with the company to be utilized to pay a call of £1 per each new share, is a question of law. *Campbell v. Commissioner of Taxation*, (1927) 33 A.L.R. 450. Held by the High Court (Starke, J.) that although the question whether an expenditure of a life insurance company was incurred in producing premium income or in the general management of the company is a question of fact, if in reaching the conclusion of fact the Board acted upon some principle of law or acted without any evidence to support it then a question of law is involved in the decision of the Board. *Colonial Mutual Life Assurance Society Ltd. v. Federal Commissioner of Taxation*, (1933) 49 C.L.R. 171; 7 A.L.J. 172.

(c) As to the procedure where the Commissioner desires to appeal to the High Court but the taxpayer has died after the decision of the Board of Review has been given see *Commissioner of Taxation of the Commonwealth v. Dixon and others*, (1929) 2 A.L.J. 404.

(d) Per Isaacs, J., the appeal is to the Court in its original jurisdiction. *Federal Commissioner of Taxation v. Munro, British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation*, (1926) 38 C.L.R. 153; 32 A.L.R. 339. (Decision affirmed on appeal to the Privy Council *sub. nom. Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation*, [1931] A.C. 275; 44 C.L.R. 530; 4 A.L.J. 341; 37 A.L.R. 1.) See also footnote (c) (*supra*, p. 2506).

* See ss. 16-21 of the *Income Tax Assessment Act 1925*, (*infra*, p. 2556).

Part V.,
ss. 51A-52.

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

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

(7.) The costs of the appeal shall be in the discretion of the Court.

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

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

(10.) The Commissioner or a taxpayer may appeal to the High Court, in its appellate jurisdiction, from any order made under sub-section (5.) of this section.

Objections
and appeals
in certain cases.

Inserted by
No. 50, 1930,
s. 20, and
amended by
No. 18, 1934,
s. 16.*

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

Pending appeal
or reference
not to delay
payment
of tax.

Amended by
No. 23, 1925,
s. 13.†

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

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

(a) For a discussion of the question whether the High Court, having upheld an appeal of a taxpayer on the ground that he received the income as a representative of the beneficiaries, may order an assessment affecting those beneficiaries to be made, see *Federal Commissioner of Taxation v. Clarke*, (1927) 40 C.L.R. 246; 1 A.L.J. 287. Concerning the provisions of the *Income Tax Assessment Act 1915* it was held by the High Court that the fact that an assessment was for too small an amount was no reason for setting aside the assessment at the instance of the person assessed. *Cornell v. Deputy Federal Commissioner of Taxation (S.A.)*, (1920) 29 C.L.R. 39. Cf. also footnote (b) (*infra*), p. 2544.

(b) Section 14 (2.) (d) of the *Income Tax Assessment Act 1915-1921* contained a proviso that that paragraph should not apply to the lease of a mining property (other than coal-mining) where the Commissioner was satisfied that the lease had been sold, assigned, or transferred by a *bona fide* prospector. It was held by the High Court that where the Commissioner was not so satisfied no appeal from his decision lay to the Court. *Thomson v. Federal Commissioner of Taxation*, (1923) 33 C.L.R. 73.

* Section 17 (1.) of the *Income Tax Assessment Act 1934* provides that the amendments effected by section 16 of that Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-four and all subsequent years.

† See section twenty-three of the *Income Tax Assessment Act 1925* (*infra*, p. 2558).

53. * * * * *

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

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

(a) be notified in the *Gazette*;

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

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

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

Part V., s. 53;
Part VI., s. 54.

Rules of Court.
Sub-section (1.)
omitted and
sub-sec. (2.)
amended by No.
28, 1925, s. 14(a).

Amended by
No. 28, 1925,
s. 14(a).

PART VI.—COLLECTION AND RECOVERY OF TAX.

54.—(1.) Income tax shall be due and payable sixty days after the service by post of a notice of assessment.^(b)

Date of
payment of tax.

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

Amended by
No. 51, 1924,
s. 12.*

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

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

Substituted by
No. 50, 1930,
s. 21.

(a) income tax is not payable by that person; or

(b) all income tax which has been assessed to that person has been paid or that arrangements satisfactory to the Commissioner have been made for the payment of that tax and of any further income tax which may become due and payable by that person,

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

(a) Section 23 of the *Income Tax Assessment Act 1925* reads:—

"23. Any rules made by the Justices of the High Court under section fifty-three of the Principal Act as amended by this Act shall, so far as applicable, apply in relation to the hearing of appeals by the High Court under sections eighteen, nineteen and twenty-one of this Act in like manner as they apply to the hearing of appeals to the High Court under the Principal Act as amended by this Act".

(b) Held by the High Court that this sub-section did not extend to the additional tax provided by s. 21 (2.) of the *Income Tax Assessment Act 1922-1924* (cf. s. 31B (2.) of this Act). *Federal Commissioner of Taxation v. Australian Boot Factory Ltd.*, (1926) 38 C.L.R. 391.

(c) See footnote (c) (*supra*, p. 2529).

* Section 17 (3) of the *Income Tax Assessment Act 1924* reads:—

"The amendment effected by section twelve of this Act shall apply to all assessments made after the commencement of this Act."

Part VI.,
ss. 54-56.

Inserted by
No. 50, 1930,
s. 21.

(4A.) Every certificate issued under the last preceding sub-section shall be presented by or on behalf of the person to whom it is issued to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship by which the person intends to leave Australia at the port at which passage by the ship is to be booked, and unless and until such certificate is so presented an authority for that person to travel by that ship shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

Inserted by
No. 50, 1930,
s. 21.

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

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

Inserted by
No. 50, 1930,
s. 21.

(4C.) The owner, charterer, or the representative of the owner or charterer, of every ship which takes passengers on board at any port shall on the first working day after the advertised date of departure of the ship from the port in Australia at which the certificate mentioned in this section is required to be presented, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port is situated, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship) who sailed on the ship.

Inserted by
No. 50, 1930,
s. 21.

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

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

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

Time to pay—
extensions and
instalments.

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

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

Penal tax.
Amended by
No. 27, 1923,
s. 11.

56. If the income tax or additional income tax payable on an amended assessment is not paid before the expiration of the time specified in section fifty-four of this Act, or such further time as may be allowed by the Commissioner under section fifty-five of this Act,

Part VI.,
ss. 56-59.

additional tax shall be payable at the rate of ten per centum per annum upon the amount of tax unpaid, to be computed from the expiration of the time specified in section fifty-four of this Act, or, where further time has been allowed by the Commissioner under section fifty-five of this Act, from the expiration of that further time :^(a)

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

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

Recovery of
tax.

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

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

Substituted
service.

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

(b) cannot after reasonable inquiry be found,
service of any process in the proceedings may, without leave of the Court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

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

Liquidator to
give notice.
Amended by
No. 51, 1924,
s. 13.

(2.) A liquidator who fails to give notice to the Commissioner within the time specified in the last preceding sub-section or fails to provide for payment of the tax as required by this section shall be personally liable for any income tax that then is or thereafter becomes payable in respect of the company.

Amended by
No. 51, 1924,
s. 13.

* * * * *

(4.) Where more than one person are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of such persons :

Sub-section (3.)
added by
No. 32, 1927,
s. 23 : omitted
by No. 46, 1928,
s. 21.Added by
No. 32, 1927,
s. 23.

(a) See footnote (b) (*supra*, p. 2530).

(b) See footnote (a) on following page.

(c) Held by the Supreme Court of New South Wales (concerning an identical provision (s. 44 (2-3)) of the *Income Tax Assessment Act 1915-1920*) that a magistrate hearing an action for recovery of income tax is exercising federal jurisdiction and that no appeal lies to a Supreme Court of a State. *Ex parte Levy*, (1921) 39 W.N. (N.S.W.) 399.

Part VI.,
ss. 59-62.

Provided that where any one of such persons has paid the income tax due in respect of the company being wound-up the other person or persons shall be liable to pay that person each his equal share of the amount of the tax so paid.

Agent for
absentee
principal
winding up
business.

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

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

When tax not
paid during
lifetime.

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

Amended by
No. 76, 1932,
s. 10.

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

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

Substituted by
No. 76, 1932,
s. 10.

(c) the executors and administrators shall be subject to penalties by way of additional tax to the same extent as the taxpayer would be subject to such penalties if the taxpayer were still living:

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

Substituted by
No. 76, 1932,
s. 10.

(d) the amount of any tax or additional tax payable by the executors and administrators shall be a first charge on all the taxpayer's estate in their hands.

Provision for
payment of tax
by executors or
administrators.

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

(a) Held by the High Court (Knox, C.J., Higgins and Starke, J.J.; Isaacs and Rich, J.J., dissenting) that the liability or obligation to pay arises when the tax is imposed by the Income Tax Act of the particular year in question and that, therefore, tax due in respect of income derived prior to death is a "debt due by the deceased person" within the meaning of s. 88 of the *Administration Act 1903* (W.A.) notwithstanding that the assessment is not made until after death. *Commissioner of Stamps (W.A.) v. West Australian Trustee Executor and Agency Co. Ltd.* (1925) 36 C.L.R. 98. Similarly held by the Supreme Court of New South Wales with respect to deductions under s. 107 of the *Stamp Duties Act 1920* of that State. *Chesterman and others v. Commissioner of Stamp Duties*, (1922) 22 S.R. (N.S.W.) 648; 39 W.N. (N.S.W.) 227.

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

Part VI.,
s. 62.

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

(3A.) Where, in respect of the estate of any deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.

Inserted by
No. 32, 1927,
s. 24.

(3B.) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State in which the taxpayer resided.

Inserted by
No. 32, 1927,
s. 24.

(3C.) Any person claiming an interest in the estate of the taxpayer, may, within forty-two days of the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the taxpayer.

Inserted by
No. 32, 1927,
s. 24.

(3D.) Subject to any amendment of the assessment by the Commissioner, or by the Board of Review or by a Court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

Inserted by
No. 32, 1927,
s. 24.

(3E.) The Commissioner may issue an order in the form in the Second Schedule to this Act authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein to levy the amount of tax due by the deceased, with costs, by distress and sale of any property of the deceased.

Inserted by
No. 32, 1927,
s. 24.

(3F.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

Inserted by
No. 32, 1927,
s. 24.

(3G.) Notwithstanding anything contained in the last three preceding sub-sections, if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by, a person, that person may, within forty-two days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if that person were the taxpayer.

Inserted by
No. 32, 1927,
s. 24.

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

(a) the thirtieth day of June; or

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

Part VI.,
ss. 62-65.

immediately preceding his death to the date of his death, if his estate is liable to estate duty under the *Estate Duty Assessment Act 1914-1916*.^(a)

Recovery of
tax paid on
behalf of
another person.

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

Contributions
from joint
taxpayers.

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

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

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

Commissioner
may collect tax
from person
owing money
to taxpayers.

Amended by
No. 32, 1927,
s. 25.

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

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

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

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

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

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

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

Penalty : Fifty pounds.

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

(a) *Supra*, p. 2398.

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

Part VI.,
ss. 65-66.

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

(6.) In this section—

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

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

PART VII.—PENAL PROVISIONS.

66.—(1.) Any person who—

Offences.

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

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

(c) makes or delivers a return which is false in any particular^(a) or makes any false answer whether verbally or in writing, shall be guilty of an offence.

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

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

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

Amended by
No. 32, 1927,
s. 26.

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

(a) Held by the Supreme Court of New South Wales that the net amount of income is not a “particular”. Held further that a charge made under this section should specify wherein the return is false and the amount of the falsity. *Ex parte Wood; re Williams and another*, (1932) 32 S.R. (N.S.W.) 177; 49 W.N. (N.S.W.) 40.

Part VI.,
ss. 67-67A.

Additional tax
in certain cases.

Amended by
No. 27, 1923,
s. 12, by
No. 32, 1927,
s. 27, and by
No. 76, 1932,
s. 11.

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

(a) fails or neglects to duly furnish any return or information as and when required by this Act or the regulations or by the Commissioner; or

(b) fails to include any assessable income in any return; or

(c) includes in any return as a deduction an amount which is in excess of that actually expended or incurred by him,

shall, if a taxpayer to whom paragraph (a) of this sub-section applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax assessable to him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater, or, if a taxpayer to whom paragraph (b) or (c) of this sub-section applies, shall be liable to pay by way of additional tax the amount of One pound or double the amount of the difference between the tax properly payable and the amount of tax previously assessed to be paid by the taxpayer, or, if no amount of tax has previously been assessed, the amount of tax that would be payable by him if he were assessed for tax upon the basis of the return furnished by him, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty-six of this Act: ^{(a) (b)}

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

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

67A. If any person, in any declaration made under, or authorized or prescribed by, this Act or the regulations thereunder, knowingly and wilfully declares to any matter or thing which is false or untrue,

(a) Returns of income were made and tax paid by a nominee of the principal—the rate of tax thereby being lower than if paid by the principal. Held by the High Court that Starke, J., had rightly ordered that the tax paid by the nominee should be deducted from the tax payable by the principal after applying the provisions of this section and not, as the principal contended, deducted prior to the application of those provisions. *Richardson v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 192; 6 A.L.J. 152; 39 A.L.R. 257. Held by the High Court that the additional tax imposed by this section is cumulative upon the additional tax payable by reason of an amendment pursuant to s. 37. *Ibid.* Held by the High Court that it has jurisdiction, on appeal from a Board of Review, to consider the liability of the taxpayer to the additional tax. *Ibid.* See also *Penrose v. Federal Commissioner of Taxation*, (1931) 45 C.L.R. 263; 5 A.L.J. 174; in which Starke, J., held that the propriety of the imposition of the additional tax is within the jurisdiction of the Court on an appeal against an assessment. Concerning the corresponding sub-section (s. 59 (1)) of the *Income Tax Assessment Act 1915-1921* the High Court (Dixon, J., and affirmed on appeal by the Full Court) held that where a taxpayer had submitted amended returns some years after the making of the original assessment and the Commissioner had refused to remit any of the additional tax imposed by this section, that the taxpayer was a person who had failed to include assessable income in any return and that the Court could not review the exercise of the Commissioner's decision. *Jolly v. Federal Commissioner of Taxation*, (1934) 50 C.L.R. 131; 7 A.L.J. 427; 40 A.L.R. 86. As to whether the imposition of the additional tax contravenes s. 55 of the Constitution, see *Jolly v. Federal Commissioner of Taxation*, (1935) 53 C.L.R. 206, per Rich and Dixon, J.J., at p. 211.

(b) Held by the High Court (Rich, Dixon, Evatt and McTiernan, J.J.; Starke, J., dissenting) that the Board of Review has power to review the entire process of assessing additional tax and for that purpose may exercise the Commissioner's function under the proviso of remitting the additional tax imposed. *Jolly v. Federal Commissioner of Taxation*, (1935) 53 C.L.R. 206.

Amended by
No. 60, 1930,
s. 6.

False
declarations.
Inserted by
No. 50, 1930,
s. 22.

he shall be deemed to be guilty of wilful and corrupt perjury and shall upon conviction be liable to imprisonment for a period not exceeding four years.

Part VI.,
ss. 67A-74.

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

Under-
statement of
income.

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

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

Avoiding
taxation.

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

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

Time for
commencing
prosecutions.

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

Penalties not
to relieve from
tax.

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

Obstructing
officers.

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

PART VIII.—TAXATION PROSECUTIONS.

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

Taxation
prosecutions.

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

Proceedings,
how instituted.
Amended by
No 32, 1927,
s. 28.

(a) in the High Court of Australia; or

(b) in the Supreme Court of any State,

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

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

^(a) The Commissioner and a taxpayer who had evaded payment of tax compromised as to the amount of tax to be paid. In order to obtain a judgment for the purpose of enforcing the agreement prosecutions were instituted. Holding that the Legislature had conferred upon the Judiciary a discretion to impose a penalty within the limits of this section and had not conferred upon the Executive power to agree as to the amount of the penalties, the High Court (Starke, J.) held the agreement to be contrary to public policy and adjourned the proceedings *sine die*. *Attorney-General for the Commonwealth and another v. E. A. and L. Abrahams*, (1928) 1 A.L.J. 388.

Part VI.,
ss. 75-80.
Evidence of
authority to
institute
proceedings.

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

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

Defendant to
have right of
trial in High
or State Court.

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

Prosecution in
accordance with
Practice Rules.

77. Every taxation prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

State Court
practice.

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

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

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

No objection
for irregularity.

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

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

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

Part VI.,
ss. 81-85.
Conviction not
to be quashed.

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

Protection
to witnesses.

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

Averment of
prosecutor
sufficient.
Substituted by
No. 50, 1930,
s. 23.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

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

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

Minimum
penalties.

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

Treatment of
convicted
offenders.

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

Amended by
No. 50, 1930,
s. 24.

^(a) Held by the Supreme Court of New South Wales that an averment that has neither been read to the accused nor tendered in evidence is not evidence of the matter averred. *Ex parte Wood & Re Williams and another*, (1932) 32 S.R. (N.S.W.) 177; 49 W.N. (N.S.W.) 40.

Part VI.,
ss. 86-88.
Release of
offenders.

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

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

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

Parties may
recover costs.

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

PART IX.—MISCELLANEOUS.

Public officer
of company.

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

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

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

- (d) service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient ;

Part VI.,
ss. 88-88A.

- (e) the public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the regulations by a taxpayer, and in case of default shall be liable to the same penalties;
- (f) everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not exclude the company from the necessity of complying with any of the provisions of this Act or the regulations, or from the penalties of the section on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer :
- (g) in any proceedings under this Act taken against the public officer of the company the proceedings shall be deemed to have been taken against the company, and the company shall be liable for any penalty imposed upon the public officer ;
- (h) notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

Added by
No. 50, 1930,
s. 25.

88A. Where a company has paid or is liable to pay, in addition to income tax payable at the rates fixed for companies, further income tax of a specified percentage of its taxable income which is derived—

Deduction of
tax from
dividends
payable to
preference
shareholders.Inserted by
No. 23, 1931,
s. 9.

- (a) from property ;
- (b) by way of interest, dividends, rents or royalties, whether derived from personal exertion or from property ; and
- (c) in the course of carrying on a business, where the income is of such a class that, if derived otherwise than in the course of carrying on a business, it would be income from property,

the company may, notwithstanding anything contained in the memorandum or articles of association of the company, or in any other document or agreement, deduct from any dividends payable to the preference shareholders of the company an amount equivalent

Part VI.,
ss. 88A-89.

Agents and
trustees.

to the amount of that further income tax which has been paid or is payable by the company upon taxable income which has been distributed to its preference shareholders.

89. With respect to every agent and with respect also to every trustee, the following provisions shall apply :—^(a)

- (a) he shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the income derived by him in his representative capacity or derived by the principal by virtue of his agency and the payment of income tax thereon;
- (b) he shall in respect of such income make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) where as agent or trustee he pays income tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;
- (e) he is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the income tax which is or will become due in respect of the income;
- (f) he is hereby made personally liable for the income tax payable in respect of the income if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which income tax could legally be paid, but he shall not be otherwise personally liable for the tax:

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

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

^(a) As to the relationship of this section to section 31 see *Howey v. Federal Commissioner of Taxation*, (1930) 44 C.L.R. 289; 4 A.L.J. 307; 37 A.L.R. 7. Held by the High Court (Gavan Duffy, C.J., Starke and Evatt, J.J.; Rich, Dixon and McTiernan, J.J., dissenting) that the so-called trustees of the Wheat Pool of Western Australia (a pool enabling its members to dispose of their wheat to the best advantage through a centralized selling organization) are not trustees within the meaning of this section and were not, therefore, liable to be taxed in respect of a portion of the proceeds of the sale of wheat paid into a reserve fund and were not liable to be taxed as agents because although the proceeds of the wheat is income derived by the trustees as mandataries or agents that income cannot be taken as net profit or assessable income of the growers for no account is taken of the cost of producing the wheat. *Deputy Federal Commissioner of Taxation v. Trustees of the Wheat Pool of Western Australia*, (1932) 48 C.L.R. 5; 6 A.L.J. 73; 39 A.L.R. 222.

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

Part VI.,
ss. 90-93.

Person in
receipt or
control of
money for
absentee.

- (a) he shall when required by the Commissioner pay the income tax due and payable by the person on whose behalf he has the control receipt or disposal of money;
- (b) where he pays income tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person;
- (c) he is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the income tax which is or will become due by that person;
- (d) he is hereby made personally liable for the income tax payable by him on behalf of the person resident out of Australia if after the Commissioner has required him to pay the tax he disposes of or parts with any fund or money then in his possession or which comes to him from or out of which the income tax could legally be paid, but he shall not be otherwise personally liable for the tax :

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

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

* * * * *

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

Section 91
repealed by
No. 51, 1924,
s. 14.*

Payment of
absentee's tax
by banker.

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

Contracts to
evade tax void.

- (a) altering the incidence of any income tax ; or
- (b) relieving any person from liability to pay any income tax or make any return ; or

* Section 17 (2.) of the *Income Tax Assessment Act 1924* provides that the amendments effected by section 14 of that Act shall not commence until a date to be fixed by Proclamation. The amendments were proclaimed to commence on 15th November, 1934. See *Gazette*, 1934, p. 1778.

Part VI.,
ss. 93-94.

(c) defeating, evading, or avoiding any duty or liability imposed on any person by this Act; or

(d) preventing the operation of this Act in any respect;

be absolutely void, but without prejudice to its validity in any other respect or for any other purpose.^(a)

Assessment of
income tax on
payment for
transfer &c., of
income-
producing asset.

Inserted by
No. 51, 1924,
s. 15.

93A. Where under any contract agreement or arrangement made or entered into in writing or verbally, either before or after the commencement of this Act, a person assigns, conveys, transfers or disposes of an income-producing asset on terms and conditions which include the payment for the assignment, conveyance, transfer or disposal of the asset by periodical payments which, in the opinion of the Commissioner, are really in the nature of income of the person assigning, conveying, transferring or disposing of the asset, that person shall be assessed to pay income tax upon those periodical payments.^(b)

Covenant by
mortgagor
to pay tax.

Amended by
No. 60, 1930,
s. 7.

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

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

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

(a) The absolute owner of shares in a company made a declaration of trust in favour of such religious and charitable organizations as he should think fit during his life; at his death the shares were to revert to his estate. Held by the High Court that the settlement was not within the meaning of this section and that, notwithstanding the power of selection, the taxpayer had divested himself of the whole of the income from the shares which did not, therefore, form part of his taxable income. *Tunley v. Federal Commissioner of Taxation*, (1927) 39 C.L.R. 528; 1 A.L.J. 126. Where a taxpayer, in order to avoid the application of s. 16 (d) of the *Income Tax Assessment Act 1922-1925* (which provided that a premium demanded and given in connexion with leaseholds should be included in assessable income) interposed a company in which he was the sole beneficial shareholder, subsequently obtaining the money when the company went into voluntary liquidation, the High Court treated the premium demanded as being portion of the taxpayer's assessable income, holding that the interposition of the company was contrary to the provisions of paragraph (c) of this section. *Clarke v. Federal Commissioner of Taxation*, (1932) 48 C.L.R. 56; 6 A.L.J. 211; 39 A.L.R. 64. Section 21 of the *Income Tax Assessment Act 1922-1933* (cf. s. 31B of this Act) provided for the calculation of tax on the income of a company which the Commissioner considered could reasonably have been distributed amongst its members. Held by the High Court that a *bona fide* agreement not to distribute income but to pay it to a creditor was not an agreement preventing the operation of this Act within the meaning of paragraph (d) of this section. *G. E. Stuart Ltd. v. Federal Commissioner of Taxation*, (1927) 39 C.L.R. 327; 1 A.L.J. 60; 33 A.L.R. 378. Held by Knox, C.J. (and affirmed on appeal by the Full Court of the High Court) that the provisions of an identical section in the *Income Tax Assessment Act 1915-1916* extended to contracts, &c., which would, if valid, enable a taxpayer to evade the payment of tax in respect of what is really his own income but did not render void a declaration of trust whereby the beneficial interest in the income was *bona fide* transferred to other persons—notwithstanding that, in the opinion of the Court, the trustee was to some extent influenced by a desire to lessen the burden of taxation. *Deputy Federal Commissioner of Taxation v. Purcell*, (1921) 29 C.L.R. 464; 27 A.L.R. 364. Held further by Knox, C.J. (the point not being considered on appeal) that the onus was on the Commissioner to show that a transaction was within the terms of that section. *Ibid.*

(b) For £70,000 a company disposed of an agency which was its sole activity and was consequently wound up. Held by the High Court that the amount was of a capital nature and not taxable and that this section had no application. *Californian Oil Products Ltd. (in liquidation) v. Federal Commissioner of Taxation*, (1934) 52 C.L.R. 28; 40 A.L.R. 339; 8 A.L.J. 195.

(c) Per Isaacs, J. (concerning the corresponding section (s. 54) of the *Income Tax Assessment Act 1915*), the governing words of the section are to be read in their legal as distinct from their popular sense. *Brett v. Barr-Smith*, (1919) 26 C.L.R. 87; 1919 V.L.R. 170; 25 A.L.R. 75.

(2.) A covenant or stipulation in a mortgage, whether entered into before or after the commencement of this sub-section, which has or purports to have the purpose or effect of including in or adding to the interest payable, in any specified circumstances, by the mortgagor, any amount in respect of income tax payable by the mortgagee upon the interest to be paid under the mortgage, shall be void to the extent only to which it has or purports to have that purpose or effect.

Part VI.,
ss. 94-95.
Inserted by
No. 60, 1930,
s. 7.

(3.) Where, in any mortgage, provision is made for the reduction of the rate or amount of interest in the event of prompt payment of the interest or in any other circumstances, and for the rate or amount of such reduction to be diminished by or in proportion to any amount of income tax payable by the mortgagee, the portion of the provision which provides for that diminution shall be void, and the reduction of the rate or amount of interest shall take effect as if the portion of the provision which provides for that diminution had not been inserted.

Added by
No. 23, 1931,
s. 10.

(4.) Any provision in a mortgage by or under which it is provided that any income tax payable by the mortgagee, or any portion thereof, shall or may be taken into account for the purpose of fixing, measuring, or calculating the rate of interest payable under the mortgage or any reduction or alteration of that rate shall, to the extent to which it provides for income tax to be so taken into account (but not otherwise), be void, whether the provision be in the form of a covenant or agreement to pay interest, or a proviso or a stipulation for an alternative, substituted, or reduced rate of interest in lieu of a higher rate payable by the mortgagor pursuant to any such covenant or agreement, or otherwise.

Added by
No. 76, 1932,
s. 12.

95.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time—

Release of
taxpayers
in cases of
hardship.
Amended by
No. 32, 1927,
s. 29.

(a) that a taxpayer liable to pay income tax has become bankrupt or insolvent; or

(b) that a taxpayer has suffered such a loss or is in such circumstances, or, owing to the death of a person, who, if he had lived, would have paid tax, the dependants of that person are in such circumstances, that the exaction of the full amount of tax will entail serious hardship,

the Board may release the taxpayer or the executor or administrator of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries and alterations in the assessment as are necessary for that purpose.

(2.) The Commissioner shall be Chairman of the Board and the decision of the majority shall prevail.

(3.) In every case in which the amount of tax from which the taxpayer applies to be released is not less than Five hundred pounds, the Board shall, and in any case in which the amount of tax from

Added by No.
51, 1924, s. 16,*
and amended by
No. 28, 1925,
s. 15†.

* Sub-section (2.) of section sixteen of the *Income Tax Assessment Act 1924* is as follows—
“(2.) This section shall commence upon the date upon which this Act receives the Royal Assent.”
† See ss. 17-21 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

Part VI.,
ss. 95-97.

which the taxpayer applies to be released is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review constituted under this Act and shall notify the taxpayer in writing of its having done so.

Added by No.
51, 1924, s. 16,*
and amended by
No. 28, 1925,
s. 15.†

(4.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

Added by No.
51, 1924, s. 16,*
and amended by
No. 28, 1925,
s. 15.†

(5.) The taxpayer may appear before the member of the Board of Review or the member of the Board of Review may require the taxpayer to appear before him, either in person or by a representative, and the member of the Board of Review may examine the taxpayer or his representative upon oath concerning any statements which the taxpayer has, or desires to have, placed before the Board constituted by this section.

Added by No.
51, 1924, s. 16,*
and amended by
No. 28, 1925,
s. 15.†

(6.) The member of the Board of Review shall be assisted in his examination of the taxpayer by an officer of the Department of Taxation who is a qualified accountant.

Added by No.
51, 1924, s. 16,*
and amended by
No. 28, 1925,
s. 15.†

(7.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

Added by No.
51, 1924, s. 16,*
and amended by
No. 28, 1925,
s. 15.†

(8.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

Added by No.
51, 1924, s. 16.*

(9.) The member of the Board shall submit a report to the Board constituted by this section upon the facts disclosed by his examination and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the taxpayer's application for release from tax. The report shall be accompanied by the record mentioned in sub-section (8.) of this section.

Access to
books, &c.

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

Department to
obtain
information
and evidence.

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

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

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

* Sub-section (2.) of section sixteen of the *Income Tax Assessment Act 1924* is as follows:—
“(2.) This section shall commence upon the date upon which this Act receives the Royal Assent.”
† See ss. 17-21 of the *Income Tax Assessment Act 1925* (*infra*, p. 2556).

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

Part VI,
ss. 97-100.

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

Naval service.

99. Statutory Rules 1922, No. 150, shall have effect, and shall be deemed to have had effect, in relation to assessments for the financial year commencing on the first day of July One thousand nine hundred and twenty-one, as if they had been made on the first day of July One thousand nine hundred and twenty-one.

Validation of
Statutory Rules
1922, No. 150.

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

Regulations.

THE FIRST SCHEDULE.

Amended by
No. 32, 1927,
s. 30.

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

THE SECOND SCHEDULE.

Added by
No. 32, 1927,
s. 31.

Commonwealth of Australia.
Income Tax Assessment Act 1922-1927.

Order.

To _____ at _____
WHEREAS at the time of the death of _____
of _____ deceased, income tax has not been assessed
and paid on the whole of the income derived by the said _____ up to
the date of his death :

AND WHEREAS probate has not been granted or letters of administration have
not been taken out in respect of the estate of the said _____ deceased

AND WHEREAS the amount of income tax remaining due by the said _____
at the time of his death has been assessed by
me as _____

THESE ARE THEREFORE to require and authorize you forthwith to levy the said
sum of _____ together with the costs of these presents
by distress and sale of any property of the estate of the said _____
found by you and that you certify to me on the _____ day of _____
what you shall do by virtue of this warrant.

Dated this _____ day of _____ One thousand
nine hundred and _____

Commissioner of Taxation.

INCOME TAX ASSESSMENT ACT 1925.

No. 28 of 1925.

An Act to amend the *Income Tax Assessment Act 1922-1924*.

[Assented to 26th September, 1925.]

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

Short title
and citation.

1.—(1.) This Act may be cited as the *Income Tax Assessment Act 1925*.

(2.) The *Income Tax Assessment Act 1922-1924** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act 1922-1925*.

* * * * *

Validation of
past
assessments.

16. Every assessment, determination or decision of the Commissioner, Assistant Commissioner or Deputy Commissioner made under the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act shall be as valid and effectual as if made under the Principal Act, as amended by this Act, and, for the purposes of any such assessment, determination or decision, the amendments contained in sections three, and five to fourteen inclusive, of this Act shall be deemed to have been in force at the time the assessment, determination or decision was made or given.

Assessments
under *Income
Tax Assessment
Act 1915-1921*.

17. Every assessment of the Commissioner, Assistant Commissioner or Deputy Commissioner, made under any Act repealed by the Principal Act, shall be as valid and effectual as if any Board of Appeal under the Act so repealed had been a Board of Review constituted in the same manner, and having the same powers and functions, as a Board of Review under the Principal Act as amended by this Act.

Prior decisions.

18. Where the Commissioner, purporting to act under the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act, has referred to a Board of Appeal any assessment, determination or decision of the Commissioner, or where any objection against an assessment of the Commissioner has been treated as an appeal and forwarded to a Board of Appeal, the decision of a

(a) Sections 2 to 15 (inclusive) amend ss. 2, 17, 20, 21, 23, 28, 37, 41, 44, 50, 51, 52, 53 and 95 respectively of the *Income Tax Assessment Act 1922-1924* and the amendments so made have been incorporated in the print of the *Income Tax Assessment Act 1922-1934* (*supra*, p. 2465).

* Now the *Income Tax Assessment Act 1922-1934* (*supra*, p. 2465).

body of persons, purporting to act as a Board of Appeal, upon any such reference or objection shall be deemed to be, and at all times to have been, a decision upon review and as valid and effectual as if it had been given by a Board of Review in pursuance of the provisions of the Principal Act, as amended by this Act, and in any case in which the Commissioner or the taxpayer has instituted, or purported to institute, an appeal to the High Court from the decision of that body of persons, the Commissioner or the taxpayer may appeal to the High Court from that decision (as if it were a decision of a Board of Review) if, in the opinion of the High Court, the decision involves a question of law.^(a)

19.—(1.) Where, under any Act repealed by the Principal Act, any objection against an assessment of the Commissioner has been treated as an appeal and forwarded to a Board of Appeal, the decision of a body of persons, purporting to act as a Board of Appeal, upon any such objection, shall be deemed to be, and at all times to have been, a decision of a Board of Review upon review, and as valid and effectual as if the Board of Appeal under the Act so repealed had been a Board of Review constituted in the same manner, and having the same powers and functions, as a Board of Review under the Principal Act as amended by this Act.^(a)

Objections
under *Income
Tax Assessment
Act 1915-1921.*

(2.) In any case in which the Commissioner or a taxpayer has instituted, or purported to institute, an appeal to the High Court from the decision of a body of persons purporting to act as such Board of Appeal, the Commissioner or the taxpayer may appeal to the High Court from that decision (as if it were a decision of a Board of Review) if in the opinion of the High Court, the decision involves a question of law.^(a)

20. Any action taken prior to the commencement of this section by a member of a Board of Appeal in accordance with section ninety-five of the Principal Act in connexion with any application referred to him under that section shall be deemed to have been taken by a member of a Board of Review in accordance with that section as amended by this Act.

Validation of
action of Board
of Appeal in
cases of
hardship.

21.—(1.) Where a taxpayer, purporting to act under and in accordance with the *Income Tax Assessment Act 1922*, the *Income Tax Assessment Act 1922-1923* or the Principal Act, and the Regulations under any of those Acts, has requested the Commissioner—

Pending cases.

(a) to treat his objection against his assessment as an appeal to a Board of Appeal; or

(b) to refer any determination or decision of the Commissioner to a Board of Appeal,

^(a) Held by Isaacs, Higgins, Gavan Duffy, Rich and Starke, JJ., to be a valid exercise of the powers of the Parliament. *Federal Commissioner of Taxation v. Munro, British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation*, (1926) 38 C.L.R. 153; 32 A.L.R. 339. The decision in this case was affirmed on appeal by the Privy Council, sub. nom. *Shell Co. of Australia Ltd. v. Federal Commissioner of Taxation*, [1931] A.C. 275; 44 C.L.R. 530; 4 A.L.J. 341; 37 A.L.R. 1.

or where a taxpayer, purporting to act under and in accordance with any Act repealed by the Principal Act and the Regulations under the Act so repealed, has requested the Commissioner to treat his objection against his assessment as an appeal to a Board of Appeal, and no order in respect of the appeal or reference has been made by any body of persons purporting to act as a Board of Appeal, the Commissioner may, upon the request in writing of the taxpayer made within thirty days after the commencement of this Act, refer the objection, determination or decision to a Board of Review for review.

(2.) Where a person, purporting to act under and in accordance with the *Income Tax Assessment Act* 1922, the *Income Tax Assessment Act* 1922-1923 or the Principal Act and the Regulations under any of those Acts or under and in accordance with any Act repealed by the Principal Act and the Regulations under the Act so repealed, has requested the Commissioner to treat his objection against his assessment as an appeal to the High Court or the Supreme Court of a State and the hearing of the appeal has not commenced, that person may within ninety days after the commencement of this section, by notice in writing, request the Commissioner to refer his assessment to a Board of Review for review in respect of the matters stated in the objection and the Commissioner shall refer the assessment accordingly.

(3.) Where a reference has been made under the last preceding sub-section, the High Court or the Supreme Court, as the case may be, shall not have jurisdiction to proceed with the hearing of the appeal.

(4.) The Commissioner or a taxpayer may appeal to the High Court from any decision of the Board of Review under this section which, in the opinion of the High Court, involves a question of law.

Validation of
determinations
under section
21 of
Principal Act.

22. Where the Commissioner, purporting to act under section twenty-one of the *Income Tax Assessment Act* 1922, or of the *Income Tax Assessment Act* 1922-1923, or of the Principal Act, has, within the time prescribed for making a determination under that section, indicated (whether expressly or impliedly) in writing to a company that he is of opinion that it could reasonably have distributed a sum or further sum to its members or shareholders, that indication shall be deemed to be, and at all times to have been, a determination within the meaning of that section.

Rules of
High Court.

23. Any rules made by the Justices of the High Court under section fifty-three of the Principal Act as amended by this Act shall, so far as applicable, apply in relation to the hearing of appeals by the High Court under sections eighteen, nineteen and twenty-one of this Act in like manner as they apply to the hearing of appeals to the High Court under the Principal Act as amended by this Act.

Commencement.

24. Sections three and five, paragraph (i) of section six and section seven of this Act shall be deemed to have commenced upon the date of the commencement of the *Income Tax Assessment Act* 1922.

INCOME TAX ASSESSMENT ACT (No. 2) 1934.

No. 51 of 1934.

An Act to amend section nine of the *Income Tax Assessment Act 1933*.

[Assented to 14th December, 1934.]

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

1. This Act may be cited as the *Income Tax Assessment Act* Short title.
(No. 2) 1934.

2.—(1.) Section nine of the *Income Tax Assessment Act 1933* is amended by adding at the end of sub-section (1.) the following proviso:— Application of Act.

“Provided that the amendment effected by section five of this Act shall apply only in respect of calculations of the further tax mentioned in that section.”^(a)

(2.) This section shall be deemed to have commenced on the date of commencement of the *Income Tax Assessment Act 1933*.

INCOME TAX ASSESSMENT (BONUS SHARES) ACT 1926.

No. 12 of 1926.

An Act to validate certain Refunds of Income Tax and for other purposes.

[Assented to 26th March, 1926.]

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

1. This Act may be cited as the *Income Tax Assessment (Bonus Shares) Act 1926*. Short title.

2. In this Act, unless the contrary intention appears—

“Income Tax Assessment Act” means the *Income Tax Assessment Act 1915* and includes that Act as subsequently amended by any Act or Acts passed prior to the year One thousand nine hundred and twenty-two: Definitions.

^(a) The amendment referred to was to section 24 of the *Income Tax Assessment Act 1922-1932*. Between the passing of the *Income Tax Assessment Act 1933* and this Act, however, section 24 of the Principal Act was repealed and a new section substituted by the *Income Tax Assessment Act 1934*.

“ shares distributed out of taxed profits ” means shares distributed by a company to its members or shareholders prior to the first day of July One thousand nine hundred and twenty-one out of the profits of the company upon which it has paid income tax, as upon undistributed income, under the Income Tax Assessment Act.

Validation of
refunds.

3. Where the paid-up value of any shares distributed out of taxed profits has been included in any assessment under the Income Tax Assessment Act, as being income within the meaning of paragraph (b) of section fourteen of that Act, and income tax has been paid on that value, any refund of the income tax so paid made by the Commissioner prior to the commencement of this Act shall be deemed to be, and at all times to have been, as lawfully made as if that value had been exempt from income tax under that Act.

Validation of
omissions from
assessments.

4. Where the paid-up value of any shares distributed out of taxed profits has been omitted from any assessment, under the Income Tax Assessment Act, in which that value is assessable as income within the meaning of paragraph (b) of section fourteen of that Act, that value shall be deemed to be, and at all times to have been, as lawfully omitted as if it had been exempt from income tax under that Act.

Cases where
judgment
given

5. Where the paid-up value of any shares distributed out of taxed profits has been included in any assessment under the Income Tax Assessment Act, and the High Court has, prior to the thirty-first day of August One thousand nine hundred and twenty-four, decided that the value of shares, including the shares so distributed has been lawfully included in that assessment, the Commissioner may, nevertheless, accept, as payment of the income tax under that assessment, the amount which would be payable under that assessment if the paid-up value of the shares so distributed were omitted therefrom.

INCOME TAX ASSESSMENT (LIVE STOCK) ACT 1924.

No. 33 of 1924.

An Act relating to the Valuation of Live Stock for the purposes of Assessments of Income Tax.

[Assented to 8th October, 1924.]

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

Short title.

1. This Act may be cited as the *Income Tax Assessment (Live Stock) Act 1924*.

2. For the purposes of assessments under the *Income Tax Assessment Act 1915*, or under that Act as subsequently amended, live stock owned by any person at the beginning and end of any of the years upon the income of which the assessments were made, may, subject to this Act, be taken into account at the value thereof.

Value of live stock for the purposes of assessment.

3.—(1.) Where the value of live stock has been taken into account in any assessment made under the *Income Tax Assessment Act 1915*, or under that Act as subsequently amended, the person whose income was assessed may elect, within four months of the commencement of this Act, to have the assessments made under that Act, or under that Act as subsequently amended, altered in accordance with the provisions of the last preceding section and the Commissioner may thereupon make such alterations in the assessments as are necessary for that purpose.

Acceptance of assessment already made.

(2.) Where any person entitled to elect under the last preceding sub-section fails so to elect within the period specified in that sub-section, he shall be deemed to have accepted the existing assessments which shall thereupon be deemed to be correct, valid and effectual.

(3.) An election shall not be deemed to have been made under sub-section (1.) of this section unless notice in writing thereof is given or posted to the Commissioner of Taxation within the period specified in that sub-section.

4. This Act shall not apply to any assessment in respect of which the person to whose income the assessment relates has, before the thirtieth day of June One thousand nine hundred and twenty-four, obtained a judgment of the High Court in his favour in respect of the value of live stock included in that assessment.

Exemption of cases where judgment of High Court obtained.

INCOME TAX COLLECTION ACT 1923-1934.^(a)

An Act relating to the collection of Income Tax and for other purposes.

[Assented to 1st September, 1923.]^(b)

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

1. This Act may be cited as the *Income Tax Collection Act 1923-1934*.^(a)

Short title.
Short title amended.
No. 32, 1918,
s. 2.
Commencement.

2. This Act shall be deemed to have commenced on the thirtieth day of June One thousand nine hundred and twenty-three.

(a) The *Income Tax Collection Act 1923-1934* comprises the *Income Tax Collection Act 1923* (No. 28 of 1923) as amended by the *Income Tax Collection Act 1924* (No. 36 of 1924) and by the *Statute Law Revision Act 1934* (No. 45 of 1934). See Acts No. 36, 1924, s. 1. and No. 45, 1934, s. 1 and 1st Schedule.

(b) This is the date of assent to the *Income Tax Collection Act 1923*. The *Income Tax Collection Act 1924* was assented to on 8th October, 1924, and the *Statute Law Revision Act 1934* on 6th August, 1934.

Definitions.

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

“Arrangement” means an arrangement made in pursuance of section four of this Act;

“Pay” means pay at the rate received by the officer immediately prior to his retirement, and includes basic wage allowance, cost of living allowance, higher duties allowance, child endowment, and special allowances under Arbitration Court Awards, and such other allowances as are prescribed;

“Service” means service under, or employment by, the Commonwealth, and includes any service which is, for the purposes of the *Commonwealth Public Service Act 1922*,^(a) reckoned as service in the Commonwealth Service, or which would have been reckoned as service in the Commonwealth Service if that Act had been in force at the time of appointment of the officer to the Commonwealth Service, and any temporary service with which the permanent service of the officer is continuous.

“the Public Service Board” means the Board of Commissioners constituted under the *Commonwealth Public Service Act 1922*;^(a)

“the Taxation Branch” means the Taxation Branch of the Department of the Treasury.

(2.) In any case where the appointment of an officer who is a returned soldier within the meaning of the Commonwealth Public Service Act has been made retrospective the period of service of the officer shall be deemed to include the period to which his appointment was made retrospective.

Arrangement
with State for
collection of
Commonwealth
Income Tax.

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

(2.) The Agreement relating to any such arrangement may make provision for any other matters necessary or convenient to be provided for carrying out the arrangement, 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.^(b)

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

5. If, in consequence of the economy rendered possible by any arrangement made in pursuance of this Act, the services of any officer are no longer required either before or after his transfer to the Service of the State, he may be retired from the Service of the State, or the Service of the Commonwealth, as the case may be:

(a) *Supra*, p. 1964.

(b) See s. 21 of the *Financial Emergency Act 1931-1935* (*supra*, p. 1157).

Reduction of
staff through
economy
effected by
arrangement.

Provided that if the Public Service Board is of opinion that any such officer is more deserving than any officer employed in any other Department or Branch of the Commonwealth Service, that other officer may be retired from the Commonwealth Service, and the first-mentioned officer may be appointed in his stead.

6.—(1.) There shall be payable to any officer who is retired in pursuance of the last preceding section compensation in the proportion of One month's pay for each year of service or portion of a year of service :

Compensation
to officers who
are retired.

Provided that the amount payable to any officer shall not be less than the equivalent of six months' pay, and shall not exceed the pay of the officer for the unexpired period of his service.

(2.) In this section " the pay of the officer for the unexpired period of his service " means the total of the pay which, in the opinion of the Public Service Board, the officer would probably have received had he continued to occupy, until he attained the age of sixty-five years, the office occupied by him at the time of his retirement.

7.—(1.) Compensation in accordance with the last preceding section shall also be payable to any officer who, with the written consent of the Treasurer, retires voluntarily from the Commonwealth Service within twelve months after the date upon which an arrangement with the State in which he is employed comes into operation, and

Compensation
to officers
retiring
voluntarily.

- (a) whose office the Public Service Board certifies has been, or will be, filled by an officer of the Taxation Branch ; or
- (b) whose office, or any vacancy consequential upon the filling of whose office, has been, or will be, filled by an officer of the Taxation Branch who, in the opinion of the Treasurer is of substantially similar status to the officer who has retired.

(2.) The provisions of this Act shall apply in relation to any such officer who retires in pursuance of this section in like manner as they apply in relation to officers who are retired in pursuance of section five of this Act.

8.—(1.) Compensation payable in pursuance of this Act shall be in addition to—

Compensation
to be in
addition to
pay in lieu of
furlough, &c.

- (a) any pay in lieu of furlough payable to the officer under the provisions of section seventy-three of the *Commonwealth Public Service Act 1922* ;^(a)
- (b) any sum payable to the officer under the provisions of section seventy-four of the *Commonwealth Public Service Act 1922*,^(a) or which would have been so payable if the officer had attained the age of sixty years ; and

(a) *Supra*, p. 1964.

- (c) Where the officer is, immediately prior to his retirement, eligible for recreation leave for any period, the sum equivalent to the amount of salary which would be payable to him for that period if the leave were granted to him.

(2.) In determining the amount payable to an officer under the provisions of paragraph (a) or (b) of the last preceding sub-section, no deduction shall be made on account of any recreation leave already granted to the officer in respect of the year in which he retires or is retired.

Compensation where person entitled to pension, &c.

9.—(1.) If it appears that any officer who is retired or retires in pursuance of this Act is entitled to any pension, retiring allowance, gratuity, or compensation under any other law (not including the *Australian Soldiers' Repatriation Act 1920-1922*^(a)), compensation under this Act shall only be allowed upon the officer undertaking not to claim pension, retiring allowance, gratuity, or compensation under that other law.

(2.) Any officer who has given the undertaking referred to in the last preceding sub-section shall, for the purposes of section forty of the *Superannuation Act 1922*,^(b) be deemed to be an officer who has resigned from the service.

(3.) There shall be deducted from the compensation payable to any officer under this Act the amount of any compensation or special grant already paid to him in respect of any portion of the service in respect of which compensation is payable under this Act.

Compensation not liable to income tax.

10. Compensation paid under this Act shall not be liable to income tax under any law of the Commonwealth or a State.

Provision in case of re-appointment of retired officers.

11. A person to whom compensation has been paid in pursuance of this Act shall not be appointed to any position under the Commonwealth until he has, if so required by the authority making the appointment, paid or agreed to pay into the Treasury an amount equal to the compensation so paid to him, or such proportionate amount as that authority determines.

Application of Act to temporary employees who have passed examination. Substituted by No. 36, 1924, s. 2.

12.—(1.) The provisions of this Act in relation to the payment of compensation to officers shall, in the same manner as they apply to officers, apply to—

- (a) temporary employees who are returned soldiers, as defined in the *Commonwealth Public Service Act 1922*,^(c) and who have passed the examination prescribed under that Act, but whose appointments to the Commonwealth Service have not been made or confirmed; and

(a) *Supra*, p. 2157.

(b) *Supra*, p. 2019.

(c) *Supra*, p. 1964.

(b) temporary employees who—

- (i) are returned soldiers as defined in that Act;
- (ii) were in the employ of the Taxation Branch on the first day of July One thousand nine hundred and twenty-three and have been or are retired after that date; and
- (iii) are certified by the Board of Commissioners appointed under that Act to have passed a special examination which the Board shall hold for the sole purpose of conferring eligibility for compensation under this Act.

(2.) For the purpose of ascertaining the amount of compensation payable—

- (a) to a temporary employee to whom paragraph (a) of the last preceding sub-section applies—his period of service shall be deemed to have commenced on a date certified by the Board of Commissioners as that upon which his service would have commenced if his appointment had been made and confirmed prior to the commencement of this Act; and
- (b) to a temporary employee to whom paragraph (b) of the last preceding sub-section applies—his period of service shall be deemed to have commenced on the date of the commencement of his temporary employment in the Taxation Branch, followed by continuous employment in that Branch up to the date of his retirement in accordance with this Act.

* * * * *

13. This Act shall not apply to any officer whose retirement has been in the nature of a penalty, or on account of unsatisfactory service or inefficiency or medical unfitness.

14. Compensation payable under this Act shall not be claimable or recoverable by any person as a matter of right, but shall be deemed to be a free gift by the Commonwealth.

15. Where any person entitled to payment of compensation under this Act dies before payment is made, the amount of the compensation so payable shall not form part of the estate of the deceased, and shall not be claimable by the executor or administrator of the estate, but may be paid to the dependants of the deceased in such proportions and under such conditions as the Minister approves.

16.—(1.) For the purposes of this Act there shall be established in the books of the Treasury a Trust Account which shall be known as the Taxation and Other Officers' Compensation Account, and that account shall be a Trust Account for the purposes of section sixty-two A of the *Audit Act* 1901-1920.^(a)

S. 12A inserted by No. 36, 1924, s. 2 and repealed by No. 45, 1934, s. 2 and 4th Schedule.

Non-application of Act.

Compensation not payable as a right.

Provision for payment where officer dies before payment.

Establishment of Trust Account and payment of compensation.

(a) *Supra*, p. 195.

(2.) There shall be payable out of the Consolidated Revenue Fund, which is hereby appropriated accordingly, such amount as is necessary to pay compensation in accordance with this Act, and the amount so payable shall be placed to the credit of the Taxation and Other Officers' Trust Account.

(3.) Any compensation payable under this Act shall be paid out of moneys for the time being standing to the credit of the Taxation and Other Officers' Trust Account.

Regulations.

17. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

LAND TAX ACT 1910-1927.^(a)

An Act to impose a Progressive Land Tax upon Unimproved Values.^(b)

[Assented to 16th November, 1910.]^(c)

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

Short title.

1. This Act may be cited as the *Land Tax Act 1910-1927*.^(a)

Short title amended; No. 32, 1918, s. 2.

Incorporation.

2. The *Land Tax Assessment Act 1910* shall be incorporated and read as one with this Act.^(d)

Imposition of land tax.

3. Land tax is imposed at the rates declared in this Act.^(e)

Rate of land tax.

4.—(1.) The rate of the land tax, when the owner is not an absentee, shall be as set out in the First Schedule to this Act.^(e)

(2.) The rate of the tax, when the owner is an absentee, shall be as set out in the Second Schedule to this Act.^(e)

(a) The *Land Tax Act 1910-1927* comprises the *Land Tax Act 1910* (No. 21 of 1910) as amended by the *Land Tax Act 1914* (No. 28 of 1914); and by the *Land Tax Act 1927* (No. 29 of 1927). See Acts No. 28, 1914, s. 1; No. 30, 1918, s. 1; No. 17, 1922, s. 1; and No. 29, 1927, s. 1. The *Land Tax Act 1910* was also amended by the *Land Tax Act 1918* (No. 30 of 1918); the *Land Tax Act 1919* (No. 10 of 1919); and by the *Land Tax Act 1920* (No. 45 of 1920), but these three Acts were all repealed by the *Land Tax Act 1922* (No. 17 of 1922).

(b) Held by the High Court that this Act does not deal with any other subject of taxation than land, and does not in that respect infringe section 55 of the Constitution. Held, further, that this Act, read with the *Land Tax Assessment Act 1910*, which is incorporated with it, does not contain any provisions which, if they are invalid as being beyond the power of the Parliament, are not severable from the rest of the Act under the rule already laid down by the High Court; and that the Act as a whole is valid. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(c) This is the date of assent to the *Land Tax Act 1910*. The *Land Tax Act 1914* was assented to on 21st December, 1914, and the *Land Tax Act 1927* on 22nd December, 1927.

(d) Held by the High Court that the incorporation into this Act of the *Land Tax Assessment Act 1910*, which was not assented to until the following day, is effectual, and this Act with that incorporation is in substance and in form an Act imposing taxation, and not an Act to prevent the holding of large quantities of land by single persons. *Osborne v. Commonwealth* (*supra*).

(e) See footnote (b) (*infra*, p. 2576).

4A. Notwithstanding anything contained in this Act the land tax payable under the preceding provisions of this Act shall be the amount of land tax as imposed by this Act reduced by ten per centum thereof.

Reduction of
Land Tax.
Inserted by
No. 29, 1927,
s. 2.*

5. Land tax shall be levied in and for the financial year beginning on the first day of July, One thousand nine hundred and ten and each financial year thereafter.

Levy of land
tax.

SCHEDULES.

FIRST SCHEDULE.

RATE OF TAX WHEN AN OWNER IS NOT AN ABSENTEE.^(a)

Substituted by
No. 28, 1914,
s. 2.†

For so much of the taxable value as does not exceed £75,000, the rate of tax per pound sterling shall be One penny and one eighteen thousand seven hundred and fiftieth of one penny where the taxable value is One pound sterling, and shall increase uniformly with each increase of One pound sterling of the taxable value by One eighteen thousand seven hundred and fiftieth of one penny.

For every pound sterling of taxable value in excess of £75,000 the rate of tax shall be Ninepence.

The rate of tax for so much of the taxable value as does not exceed £75,000 may be calculated from the following formula:—

$$\begin{aligned} R &= \text{rate of tax in pence per pound sterling} \\ V &= \text{taxable value in pounds sterling} \\ R &= \left\{ 1 + \frac{V}{18,750} \right\} \text{pence.} \end{aligned}$$

SECOND SCHEDULE.

RATE OF TAX WHEN OWNER IS AN ABSENTEE.^(a)

Substituted by
No. 28, 1914,
s. 3.†

For so much of the taxable value as does not exceed £5,000, the rate of tax per pound sterling shall be One penny. For so much of the taxable value as exceeds £5,000, but does not exceed £80,000, the rate of tax per pound sterling shall be Twopence and one eighteen thousand seven hundred and fiftieth of one penny where the excess is One pound sterling, and shall increase uniformly with each increase of One pound sterling in the taxable value by One eighteen thousand seven hundred and fiftieth of one penny.

For every pound sterling of taxable value in excess of £80,000 the rate of tax shall be Tenpence.

The rate of tax for so much of the taxable value as exceeds £5,000, and does not exceed £80,000, may be calculated by the following formula:—

$$\begin{aligned} R &= \text{rate of tax in pence per pound sterling.} \\ E &= \text{excess of taxable value over £5,000 in pounds sterling.} \end{aligned}$$

$$R = \left\{ 2 + \frac{E}{18,750} \right\} \text{pence.}$$

(a) See footnote (b) (*infra*, p. 2576).

* Section 3 of the *Land Tax Act 1927* reads—

“3. The amendment of the Principal Act made by this Act shall apply to assessments made for the financial year beginning on the first day of July One thousand nine hundred and twenty-seven and each financial year thereafter.”

† Section 4 of the *Land Tax Act 1914* reads—

“4. The amendments of the Principal Act made by this Act shall apply to land tax levied in and for the financial year beginning on the first day of July, One thousand nine hundred and fourteen and all subsequent years.

LAND TAX ASSESSMENT ACT 1910-1934.^(a)An Act relating to the Imposition, Assessment, and Collection of a Land Tax upon Unimproved Values.^(b)[Assented to 17th November, 1910.]^(c)

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

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Land Tax Assessment Act 1910-1934*.^(a)

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

PART I.—Introductory.

PART II.—Administration.

PART III.—The Land Tax.

PART IV.—Returns, Assessments, and Liability.

PART V.—Objections and Appeals.

PART VI.—Acquisition of Land.

PART VII.—Collection and Recovery of Tax.

PART VIII.—Miscellaneous.

(a) The *Land Tax Assessment Act 1910-1934* comprises the *Land Tax Assessment Act 1910* (No. 22 of 1910), as amended by the *Land Tax Assessment Act 1911* (No. 12 of 1911); the *Land Tax Assessment Act 1912* (No. 37 of 1912); the *Land Tax Assessment Act 1914* (No. 29 of 1914); the *Land Tax Assessment Act 1916* (No. 33 of 1916); the *Land Tax Assessment Act 1923* (No. 20 of 1923), the *Land Tax Assessment Act 1924* (No. 32 of 1924); the *Land Tax Assessment Act 1926* (No. 50 of 1926); the *Land Tax Assessment Act 1927* (No. 30 of 1927); the *Land Tax Assessment Act 1928* (No. 34 of 1928); the *Land Tax Assessment Act 1930* (No. 1 of 1930); the *Land Tax Assessment Act* (No. 2) 1930 (No. 8 of 1930); the *Financial Relief Act 1932* (No. 64 of 1932); and by the *Land Tax Assessment Act 1934* (No. 14 of 1934). See Acts No. 12, 1911, s. 1; No. 37, 1912, s. 1; No. 29, 1914, s. 1; No. 33, 1916, s. 1; No. 20, 1923, s. 1; No. 32, 1924, s. 1; No. 50, 1926, s. 1; No. 30, 1927, s. 1; No. 34, 1928, s. 1; No. 8, 1930, s. 1; and No. 14, 1934, s. 1.

(b) Held (per Griffith, C.J., Barton and O'Connor, J.J.), that this Act is not an Act imposing taxation within the meaning of section 55 of the Constitution. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(c) This is the date of assent to the *Land Tax Assessment Act 1910*. The *Land Tax Assessment Act 1911* was assented to on 18th December, 1911, (section 13 provides that the amendments made by this Act shall apply to all assessments for financial years beginning on 1st July, 1911 and all subsequent years); the *Land Tax Assessment Act 1912* on 24th December, 1912 (section 12 provides that the amendments made by this Act (excepting the amendment made to section 27 (3.) of the Principal Act) shall apply to all assessments for the financial year beginning on 1st July, 1912, and all subsequent years); the *Land Tax Assessment Act 1914* on 21st December, 1914; the *Land Tax Assessment Act 1916* on 30th September, 1916; the *Land Tax Assessment Act 1923* on 1st September, 1923 (deemed to have commenced on 1st July, 1923, and to apply to assessments made for financial years beginning on that date and to all subsequent years); the *Land Tax Assessment Act 1924* on 3rd October, 1924 (deemed to have commenced on 2nd October, 1924); the *Land Tax Assessment Act 1926* on 23rd August, 1926; the *Land Tax Assessment Act 1927* on 22nd December, 1927; the *Land Tax Assessment Act 1928* on 22nd September, 1928; the *Land Tax Assessment Act 1930* on 22nd March, 1930; the *Land Tax Assessment Act* (No. 2) 1930 on 14th April, 1930; the *Financial Relief Act 1932* on 5th December, 1932; and the *Land Tax Assessment Act 1934* on 30th July, 1934.

3. In this Act, unless the contrary intention appears—

"Absentee" means a person who does not reside in Australia or in a Territory under the authority of the Commonwealth; and includes a person who—

(a) is absent from Australia and such Territories at the time when the ownership of his land for the purposes of this Act is determined; or

(b) has been absent from Australia and such Territories during more than half of the period of twelve months immediately preceding that date,

unless he satisfies the Commissioner that he resides in Australia or a Territory under the authority of the Commonwealth; but does not include a public officer of the Commonwealth or of a State who is absent in the performance of his duty.

"Agent" includes every person who in Australia, for or on behalf of any person out of Australia (in this section called "the principal") has the control or disposal of any land belonging to the principal, or the control, receipt, or disposal of any rents, issues, or proceeds derived from any such land.

"Assistant Commissioner" means the Assistant Commissioner of Land Tax.

Definitions.

Cf. N.S.W.
59 Vic. No. 15,
s. 68 (h).
N.Z. 1908,
No. 95, s. 2.
S.A. 1884,
No. 323.
W.A. 1907,
No. 15, s. 2.

Inserted by No.
33, 1916, s. 2.

"Owner",^(a) in relation to land, includes every person who jointly or severally, whether at law or in equity—

(a) is entitled to the land for any estate of freehold in possession; or

(a) Held by the High Court (Griffith, C.J., and Isaacs, J., Rich, J., dissenting) that where under a will trustees held real and personal estate upon trust to accumulate a specified sum to be paid at the end of a certain period to certain persons, and to divide the residuary estate among certain other persons, those other persons were not, while the trust for accumulation was still in operation, entitled to an estate of freehold in possession, and consequently were not owners or joint owners within this section. *Glenn v. Federal Commissioner of Land Tax*, (1915) 20 C.L.R. 490; 21 A.L.R. 465. Held by the High Court (Griffith, C.J. and Isaacs, J.) that it is an essential element of an estate of freehold in possession, as that term is used in this section, that the person entitled to the land for that estate has a present right of beneficial enjoyment of the land, whether accompanied by actual physical possession or not. *Glenn v. Federal Commissioner of Land Tax (supra)*. Held by the High Court that the definition of owner in this section should be read as if after the word "includes" the words "besides absolute owners" were inserted, and so read the definition is exhaustive. *Union Trustee Co. of Australia Ltd. v. Federal Commissioner of Land Tax*, (1915) 20 C.L.R. 526; 21 A.L.R. 481. A testator who died before 1st July, 1910, by his will, after making certain bequests, gave the residue of his estates to trustees. He gave to his widow an annuity which he declared should be a yearly rent-charge charged upon and issuing out of her lands. Held by the High Court that the testator's widow was not liable to tax in respect of the lands on which the rent-charge was charged. By Griffith, C.J., Barton, Gavan-Duffy, and Rich, J.J., on the grounds that she was not at law or in equity "entitled to receive or in receipt of, or if the land were let to a tenant . . . entitled to receive the rents and profits" of those lands, and therefore was not an "owner" within this section; and that, even if she were an "owner" of those lands, she held the rent-charges by way of security for money, and was therefore exempted under section 32. By Isaacs, J., on the ground that, although by virtue of the rent-charge she was an owner of those lands within section 3, she held the rent-charge by way of security for money, and so was exempted under section 32. *Cochrane v. Federal Commissioner of Land Tax*, (1916) 21 C.L.R. 422; 22 A.L.R. 163. Held by the High Court where a testator who died before 1st July, 1910, devised certain land and premises to trustees upon trust to carry on a business and out of the net profits of the business and the rents of the properties to pay certain annuities to certain persons for their lives, and subject to such annuities to pay the net profits annually to his nephew that the nephew was the "owner". *Adams v. Federal Commissioner of Land Tax*, (1919) 26 C.L.R. 341. See also footnote (b) (*infra*, p. 2593).

(b) is entitled to receive, or in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise ;

and includes every person who by virtue of this Act is deemed to be the owner.

"Owned" has a meaning corresponding with that of owner.

Amended by
No. 12, 1911,
s. 2.

"Joint owners"^(a) means persons who own land jointly or in common, whether as partners or otherwise, and includes persons who have a life or greater interest in shares of the income from the land.

"Land tax" means the land tax imposed as such by any Act, as assessed under this Act.

"Taxpayer" means any person chargeable with land tax.

Inserted by
No. 8, 1930,
s. 2.*

"Improvements" in relation to land means improvements thereon or appertaining thereto whether visible or invisible

(a) Held by the High Court to include persons who are beneficiaries of land vested in trustees for realization with powers of postponement and realization. *Baird v. Federal Commissioner of Land Tax*, (1915) 19 C.L.R. 490; 21 A.L.R. 55. Under a will of real and personal property trustees held the estate upon trust, subject to certain annuities, to accumulate the income during the life of the testator's widow, and after her death to appropriate the estate, including the accumulations, to his children in certain shares as tenants in common, and to pay the income of the shares to the children respectively for life, and after their respective deaths upon trust as to their respective shares for their children who attained the age of 21 years or married under that age. One of the testator's children died, leaving a daughter surviving. Held by the High Court that the testator's surviving children and his grand-daughter were not during the life of his widow entitled to the land comprised in the estate for an estate of freehold in possession, and therefore were not joint owners of the land within the Act. *Union Trustee Company of Australia Ltd. v. Federal Commissioner of Land Tax*, (1915) 20 C.L.R. 526; 21 A.L.R. 481. Held by the High Court that for the purposes of assessment of land tax, the personal right created by a contract of partnership in a grazing business allowing the stock of the farm to be agisted on lands owned severally by members of the partnership does not constitute the partners joint owners of the land within the Act. *Mant v. Deputy Federal Commissioner of Land Tax for Queensland* (1915) 20 C.L.R. 564; 21 A.L.R. 483. Held by the High Court that "joint owners" includes partners, each being the registered proprietor of a separate parcel of land, where the indenture of partnership provided that the "assets and capital" should consist of the several parcels of land and that on the expiration or determination of the partnership the real estate should remain the property of each individual in whose name it was shown to be in the certificates of title. *Seymour Bros. v. Deputy Federal Commissioner of Land Tax for South Australia*, (1918) 25 C.L.R. 303; 25 A.L.R. 29. Held by the High Court that where a testator devised certain land and premises to trustees upon trust to carry on a business and out of the net profits of the business and the rents of the properties to pay certain annuities to certain persons for their lives and subject to such annuities to pay the net profits to his nephew, the annuitants were not "joint owners" with the nephew. *Adams v. Federal Commissioner of Land Tax*, (1919) 26 C.L.R. 341. See also footnote (b) (*infra*, p. 2593).

* Section three of the *Land Tax Assessment Act* (No. 2) 1930 is as follows :—

"3.—(1) The amendments of the Principal Act made by this Act shall be deemed to have commenced on the date of the commencement of the *Land Tax Assessment Act* 1910, and shall, subject to sub-section (2.) of this section, apply to all assessments for the financial year beginning on the first day of July One thousand nine hundred and ten and all subsequent years.

(2) The amendments of the Principal Act effected by this Act shall not apply so as to affect any judgment of the High Court or of the Supreme Court of a State obtained, prior to the commencement of this Act, by any person in his favour in respect of an assessment under the Principal Act."

and made or acquired by the owner or his predecessor in title, and includes all such destruction of suckers and seedlings as is incidental to the destruction of timber or mallee, and also includes the destruction of other vegetable growths and of animal pests on the land to the extent to which such destruction retains its utility, but does not include the destruction by any person of any such growths or pests which are allowed to establish themselves on the land during his ownership, except to the extent (if at all) to which it restores wholly or partly so much of the utility of a previous improvement in the nature of the destruction of such growths or pests as is, by the subsequent provisions of this definition, deemed to have been lost, and any improvement consisting of the destruction of such growths or pests, by whomsoever the same may be effected, shall be deemed to have lost its utility to the extent to which, after it has been made, other growths or pests, as the case may be, are allowed to establish themselves on the land.^(a)

"Improved value",^(b) in relation to land, means the capital sum which the fee-simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require.^(c)

(a) Under the *Regulation of Sugar Cane Prices Act 1915 to 1922* (Qld.), sugar-lands may be assigned to a particular mill which is bound to accept all cane grown thereon at a price to be determined by a Board. Held by the High Court that such an assignment is not an improvement. *Drysdale Bros. and Co. v. Federal Commissioner of Land Tax*, (1931) 46 C.L.R. 308; 5 A.L.J. 213. Prior to the insertion of this definition by the amending Act of 1930 it was held by the High Court (Knox, C.J., and Dixon, J., Isaacs, J., dissenting) that the eradication, destruction and removal of prickly pear plants which would otherwise spread and deprive the land of its utility and value are "improvements on" the land within the meaning of the *Land Tax Assessment Act 1910-1926*. *McGeoch v. Federal Commissioner of Land Tax*, (1929) 43 C.L.R. 277; 3 A.L.J. 230; 36 A.L.R. 82.

See also *Jovett v. Federal Commissioner of Taxation*, (1926) 38 C.L.R. 325; 32 A.L.R. 430, in which the High Court (Rich, J.) held the prevention of prickly pear (not merely its removal) to be an improvement.

(b) The ordinary principle of ascertaining the value of land on a given date, stated by Isaacs, J., in *Spencer v. The Commonwealth*, 5 C.L.R. 418, at p. 441, applies to the ascertainment of the value of land for the purposes of this Act. *Commissioner of Land Tax v. Nathan*, (1913) 16 C.L.R. 654; 19 A.L.R. 274. Held by the High Court that in ascertaining the improved value of pastoral land, the value of land which, situated as the land in question is, would carry one sheep to the acre, may properly be taken as the standard value. *McDonald v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 231; 22 A.L.R. 35. Held by the High Court, in a case relating to the value of a pastoral property, that the proper method of ascertaining the improved value of the property was to base the value on its carrying capacity. *Kibble v. Deputy Federal Commissioner of Land Tax*, (1920) 27 C.L.R. 416. Held by the High Court that in ascertaining the value of land the price paid for the particular land, or for similar land on a concluded contract, is admissible as evidence of the value, but the price offered for the particular land or the price which the owner has offered to accept, not followed by a concluded contract, is not so admissible. *McDonald v. Deputy Federal Commissioner of Land Tax for New South Wales* (*supra*). Under the *Regulation of Sugar Cane Prices Act 1915 to 1922* (Qld.), sugar-lands may be assigned to a particular mill which is bound to accept all cane grown thereon at a price determined by a Board. Held by the High Court that the enhancement in value of the lands assigned should be considered in ascertaining the improved value. *Drysdale Bros. and Co. v. Federal Commissioner of Land Tax*, (1931) 46 C.L.R. 308; 5 A.L.J. 213.

(c) See footnote (b) on next page.

Substituted by
No. 8, 1930,
s. 2.*

"Unimproved value,"^(a) in relation to unimproved land, means the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.^(b)

Substituted by
No. 8, 1930,
s. 2.*

"Unimproved value,"^(a) in relation to improved land, means the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require,^(b) assuming that, at the time as at which the value is required to be ascertained for the purposes of this Act, the improvements did not exist:

(a) Land was licensed as a race-course under the *Gaming and Betting Act* 1912-1927 (N.S.W.). Per Rich and Dixon, JJ., the fact of the licence was not to be taken into account as enhancing the value of the land when ascertaining its unimproved value. *Stephen v. Federal Commissioner of Land Tax* (1930) 45 C.L.R. 122; 4 A.L.J. 307; 37 A.L.R. 73.

Held by the High Court (Isaacs, C.J., and Starke, J., Rich and Dixon, JJ., dissenting) that, where land was granted by the Crown to trustees and the trustees were empowered to lease the land for a period not exceeding twenty-one years for (*inter alia*) the purposes of being used as a public race-course, the fee simple to be valued was the estate subject to the conditions and restrictions in the grant. *Stephen v. Federal Commissioner of Land Tax*, *Ibid.*

Concerning the definition of "unimproved value" as it read prior to the amending Act of 1930 (which repealed that definition and inserted this and the next following definition in its stead) the following decisions have been given by the High Court:—

To arrive at the unimproved value of land for the purposes of the Act the improvements existing at the time of the valuation upon the land itself as legally incident to its enjoyment are to be assumed as not made, but the existence of part improvements, and the effect which they or their use have had in bringing the land up to its then value, are not to be ignored. *The Commissioner of Land Tax v. Nathan*, (1913) 16 C.L.R. 654; 19 A.L.R. 274.

Where land was improved for certain purposes, which did not turn out to be successful, and was then used as a race-course, for which it was peculiarly adapted, and which greatly increased the value of the land, it was held that in ascertaining the taxable value the land must be valued as a registered race-course, and, in the circumstances, with the likelihood of registration not being refused in the future, and to ascertain the unimproved value it was necessary only to deduct the value of the improvements, which were to be valued as set out in section 3 of the Act. *Commissioner of Land Tax v. Nathan* (*supra*).

The word "improvements" in the definition of the term "unimproved value" includes such operations of man upon the land since it has ceased to be Crown land, the benefit of which continues at the date of valuation, and operations of nature which are only effectual by reason of what man has done as have contributed to bring about the present enhancement of the value of the land. *Morrison v. Federal Commissioner of Land Tax*, (1914) 17 C.L.R. 498; 20 A.L.R. 113.

In estimating the unimproved value of land, the probability of the land bringing a higher price if subdivided before sale than if sold in one block is an element to be taken into consideration but is no more. *Federal Commissioner of Land Tax v. Duncan*, (1915) 19 C.L.R. 551; 21 A.L.R. 107.

The unimproved value of land may be ascertained by comparison with the prices obtained for similar land in the neighbourhood in a state of nature. *Campbell v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 49; 21 A.L.R. 175.

The improvements contemplated by the Act are such as are in the strict legal sense appurtenant to the property and incident to its ownership and the existence of a water bore which has been constructed by a public trust on land adjoining a pastoral property, and from which part of the property may be watered, is not an improvement appertaining to the property the value of which may be deducted from the improved value in order to arrive at the unimproved value. *McDonald v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 231; 22 A.L.R. 35.

Held by Isaacs and Gavan Duffy, JJ. (Powers, J., dissenting), that in ascertaining the unimproved value of a pastoral property which has been improved and worked for some years, the only practical method in the majority of instances is to begin by finding the fair carrying capacity of the land, taking into consideration all existing improvements. *Fisher v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 242; 22 A.L.R. 29.

As to method of ascertaining the unimproved value of a pastoral property, see *Kiddle v. Deputy Federal Commissioner of Land Tax*, (1920) 27 C.L.R. 316. *Keogh v. Deputy Federal Commissioner of Land Tax* (N.S.W.), (1915) 20 C.L.R. 258; 22 A.L.R. 39; and *Scott McLeod v. Commissioner for Land Tax*, (1929) 35 A.L.R. 195.

As to method of ascertaining the unimproved value of Crown leases, see *Jonett v. Federal Commissioner of Taxation*, (1926) 38 C.L.R. 325; 32 A.L.R. 430.

Held by Knox, C.J., and Dixon, J., (Isaacs, J., dissenting) that the unimproved value of land should be ascertained by considering what the land would have sold for at the relevant date if improvements including that which consisted in keeping the land free from prickly pear had not been made. *McGeoch v. Federal Commissioner of Land Tax*, (1929) 43 C.L.R. 277; 3 A.L.J. 230; 36 A.L.R. 82. See also footnote (a) (*infra*, p. 2580).

Note, many of the cases in this footnote are collected and discussed by Murray, C.J. of the Supreme Court of South Australia in *Kymill v. Deputy Federal Commissioner of Land Tax*, 1919 S.A.L.R. 1.

(b) *Semble* per the Supreme Court of Victoria (MacFarlan, J.) that the words "on such reasonable terms and conditions as a *bona fide* seller would require" do not refer to sale by sub-division or as a whole but to the conditions of sale in the ordinary sense of the word. *Payne v. Federal Commissioner of Land Tax*, 1924 V.L.R. 231; 45 A.L.T. 148. In that case the evidence accepted by the Court disclosed that if the land were sub-divided and sold it would realize £22,000 without improvements but if sold as a whole to a purchaser buying with a view to sub-division it would realize only £18,000. The Court held the unimproved value to be £18,000.

* See footnote * (*supra*, p. 2570).

Provided that the unimproved value shall in no case be less than the sum that would be obtained by deducting the value of improvements from the improved value^(a) at the time as at which the value is required to be ascertained for the purposes of this Act.

"Value of improvements," in relation to land, means the added value which the improvements give to the land at the time as at which the value is required to be ascertained for the purposes of this Act irrespective of the cost of the improvements, including in such added value the value of any hotel licence or other similar interest^(b) the value of which has been included in the improved value :^{(a)(c)}

Substituted by
No. 8, 1930,
s. 2.*

Provided that the added value shall in no case exceed the amount that should reasonably be involved in effecting, at the time as at which the value is required to be ascertained for the purposes of this Act, improvements of a nature and efficiency equivalent to the existing improvements.

"Trustee", in addition to every person appointed or constituted trustee by act of parties by order or declaration of a Court or by operation of law, includes—

- (a) an executor or administrator, guardian, committee, receiver, or liquidator, and
- (b) every person having or taking upon himself the administration or control of land affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession control or management of the land of a person under any legal or other disability.

(a) Held by the High Court that to obtain the improved value of land based on the probable annual return the value of stock and plant must be eliminated. *Russell v. Federal Commissioner of Taxation* (1934) 50 C.L.R. 182; 7 A.L.J. 461; 40 A.L.R. 118.

(b) Land was licensed as a race-course under s. 51 (1) of the *Gaming and Betting Act 1912-1927* (N.S.W.); per Rich and Dixon, J.J., the licence amounted to or created in the land a "similar interest" within the meaning of the words as used in this definition. *Stephen v. Federal Commissioner of Land Tax*, (1930) 45 C.L.R. 122; 4 A.L.J. 307; 37 A.L.R. 73.

(c) Under the *Regulation of Sugar Cane Prices Acts 1915 to 1922* of Queensland, sugar-lands may be assigned to a particular mill which is bound to accept all cane grown thereon at a price determined by a Board. Held by the High Court (Gavan Duffy, C.J., Starke, Dixon, Evatt and McTiernan, J.J.) that—

(1) the assignment is not an improvement;
(2) the enhancement in value of the lands assigned should be considered in ascertaining the improved value; and

(3) (Dixon and McTiernan, J.J., dissenting) that the value of the assignment is not included in the definition of "value of improvements".

Drysdale Bros. and Co. v. Federal Commissioner of Land Tax, (1931) 46 C.L.R. 308; 5 A.L.J. 213.

See also *Australian Estates and Mortgage Co. Ltd. v. Commissioner of Land Tax*, (1931) 5 A.L.J. 36. Concerning the definition as it read prior to the amending Act of 1930 the following decisions have been given by the High Court:—

That the term "value of improvements" means the added value which the existing improvements give to the land at the date of valuation irrespective of costs—not the value which they gave from their creation up to that date, nor the value which past improvements have given. *Commissioner of Land Tax v. Nathan*, (1913) 16 C.L.R. 654; 19 A.L.R. 274.

That the term "value of improvements" includes the present enhancement of the value of the land attributable to the operations of man upon the land effected since the land ceased to be Crown land, the benefit of which continues at the date of valuation, and also includes the present enhancement of value attributable to those operations of nature which are only effectual by reason of what man has done. *Morrison v. Federal Commissioner of Land Tax* (1914) 17 C.L.R. 498; 20 A.L.R. 113.

That the value of the improvements may be ascertained by ascertaining the improved value and deducting the unimproved value of land in the neighbourhood in a state of nature as shown by sales from the unimproved value. *Campbell v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 49; 21 A.L.R. 175.

That the added value which the proof by means of a bore of the presence of water below the surface of the land gives to that land is not an improvement on or appertaining to the land, and, therefore, the value of the improvement attributable to a water bore on the land is what at the date of the assessment it would cost in time and money to sink the bore. *McDonald v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 231; 22 A.L.R. 35; see also footnote (a) (*supra*, p. 2571).

See also *Rymill v. Deputy Federal Commissioner of Land Tax*, 1919 S.A.L.R. 1.

* See footnote * (*supra*, p. 2570).

"Person" includes a company.

"Company" includes all bodies or associations corporate or unincorporate.

"Mortgage" includes any charge whatever upon land, or interest therein, howsoever created, for the securing of money.

"Mortgagee" includes every person entitled at law or in equity to a mortgage or any part thereof.

"The Commissioner" means the Commissioner of Land Tax.

PART II.—ADMINISTRATION.

Commissioner
and Assistant
Commissioner

Added by
No. 33, 1916,
s. 3.

Second
Commissioner
of Land Tax.

Inserted by
No. 30, 1927,
s. 3.

4.—(1.) There shall be a Commissioner of Land Tax, who shall, subject to the control of the Minister, have the general administration of this Act.

(2.) There may be an Assistant Commissioner of Land Tax.

4A.—(1.) There may be a Second Commissioner of Land Tax.

(2.) The person for the time being holding the office of Assistant Commissioner of Land Tax shall be the Second Commissioner of Land Tax; and any reference in this Act to the Assistant Commissioner shall be deemed to include a reference to the Second Commissioner of Land Tax.

Tenure and
salary of
Commissioner
and Assistant
Commissioner.

Sub-sec. (2)
substituted by
No. 33, 1916,
s. 4; Sub-sec. (3)
substituted by
No. 30, 1927,
s. 4.

5.—(1.) The Commissioner shall be appointed for a term of seven years, and shall be eligible for re-appointment.

(2.) The Assistant Commissioner may be appointed for a term of seven years, and shall be eligible for re-appointment.

(3.) The Commissioner and the Assistant Commissioner shall not be subject to the *Commonwealth Public Service Act* 1902-1916^(a) or any Act amending or in substitution for that Act; but any officer of the Commonwealth appointed, before or after the commencement of this section, as Commissioner or Assistant Commissioner shall—

(a) retain all his existing and accruing rights; and

(b) have all rights arising from service under that Act or any Act amending or in substitution for that Act,

as if his service as Commissioner or Assistant Commissioner were, for the purpose of any of those Acts, service in the Public Service of the Commonwealth; and if any officer in the Public Service of a State is appointed Commissioner or Assistant Commissioner his service as Commissioner or Assistant Commissioner shall, for the purpose of determining his existing and accruing rights be counted as public service in the Commonwealth as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

(4.) In case of the illness, absence, suspension, removal, or death of the Commissioner or the Assistant Commissioner or in case of a vacancy in the office of the Commissioner or the Assistant Commissioner, the Governor-General may appoint a person to be Acting Commissioner or Acting Assistant Commissioner, as the case may be, during the illness, absence, or suspension, or until the appointment

Substituted by
No. 33, 1916,
s. 4, and
amended by
No. 32, 1924,
s. 3.

(a) Now the *Commonwealth Public Service Act* 1922-1934 (*supra* p. 1964).

of a successor and no longer; and the Acting Commissioner or the Acting Assistant Commissioner shall have all the powers and perform all the duties of the Commissioner or the Assistant Commissioner, as the case may be.

(5.) There shall be payable to the Commissioner a salary at the rate of Two thousand pounds a year, and to the Assistant Commissioner a salary at the rate of One thousand five hundred pounds a year, out of the Consolidated Revenue Fund, which is hereby appropriated for that purpose accordingly.

Added by
No. 33, 1916,
s. 4, and
amended by
No. 58, 1926,
s. 2.*

6.—(1.) The Commissioner or the Assistant Commissioner may be suspended from his office by the Governor-General, but shall not be removed from office except as in this section provided.

Suspension or
removal of
Commissioner
or Assistant
Commissioner.

(2.) The Minister shall cause to be laid before both Houses of the Parliament a full statement of the grounds of suspension within seven days of the suspension, if the Parliament is then sitting, but, if not, then within seven days of the next meeting of the Parliament.

Amended by No.
33, 1916, s. 5.

(3.) The Commissioner or the Assistant Commissioner, as the case may be, shall be restored to office by the Governor-General unless each House of the Parliament, within forty-two days after the day when the statement is laid before it, declares by resolution that the Commissioner or the Assistant Commissioner, as the case may be, ought to be removed from office; and if each House within that time so declares, the Commissioner or the Assistant Commissioner, as the case may be, shall be removed from office by the Governor-General accordingly.

Amended by
No. 33, 1916,
s. 5.

6A.—(1.) Subject to this section the Assistant Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act.

Powers of
Assistant
Commissioner.

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

Substituted by
No. 30, 1927,
s. 5.†

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

* Section 2 (2.) of the *Lands Tax Assessment Act 1926* provides that the amendment effected by this section shall be deemed to have commenced on the first day of July One thousand nine hundred and twenty-five, and shall apply to the persons holding the office of Commissioner and Assistant Commissioner, respectively, at the date of the commencement of this section, as well as to persons appointed to those offices after the date of commencement of this section.

† Section 30 of the *Land Tax Assessment Act 1927* is as follows:—"Section five of this Act shall be deemed to have commenced on the first day of July One thousand nine hundred and twenty-four."

Deputy
Commissioners.

7. There may be such Deputy Commissioners of Taxes as are required, who shall, subject to the control of the Commissioner, have such powers and functions as are prescribed or as the Commissioner directs.

Delegations
by the
Commissioner.

Amended by
No. 33, 1916,
s. 7, and by
No. 30, 1927,
s. 6.

8.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Commissioner.

Added by
No. 30, 1927,
s. 6.

(3.) Any delegation under this section may be made subject to review and alteration by the Commissioner, within the time specified in the instrument of delegation, of any act done by the delegate in pursuance of the delegation.

Report by
Commissioner.

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

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

PART III.—THE LAND TAX.

10.—(1.) Subject to the provisions of this Act, land tax shall be levied and paid upon the unimproved value of all lands within the Commonwealth which are owned by taxpayers, and which are not exempt from taxation under this Act.^(a)

(2.) The land tax^(b) shall be at such rates as are declared by the Parliament.

11.—(1.) Land tax shall be payable by the owner of land upon the taxable value of all the land owned by him, and not exempt from taxation under this Act.^(a)

(2.) The taxable value of all the land owned by a person is—

(a) in the case of an absentee—the total sum of the unimproved value of each parcel of the land.

(b) in the case of an owner not being an absentee—the balance of the total sum of the unimproved value of each parcel of the land, after deducting the sum of Five thousand pounds.^(c)

(a) As to whether an agreement made before Federation, by a Colony which has become a State exempting the other party to the agreement from certain rates or taxes which might be imposed, has the effect of exempting that party from taxation imposed by the Parliament of the Commonwealth, see *Eastern Extension, Australasia and China Telegraph Co. Ltd. v. Federal Commissioner of Taxation*, (1933) 33 C.L.R. 426; 30 A.L.J.R. 144. See also footnote (a) (*infra*, p. 2587).

(b) Section 4 of the *Financial Relief Act 1932-1935* (*supra*, p. 1163) provides as follows:—
"4. Notwithstanding anything contained in the *Land Tax Act 1910-1927* or in the *Land Tax Assessment Act 1910-1930*, the amount of tax for which any taxpayer would, but for this section, be liable, in pursuance of those Acts, in respect of any assessment for the financial year beginning on the first day of July, One thousand nine hundred and thirty-two, shall be reduced by one third."

(c) Held by the High Court that under this paragraph a taxpayer who owns several parcels of land is not entitled to a deduction of £5,000 from the value of each parcel, but to one deduction of £5,000 from the sum of the value of the several parcels. *Bailey v. Federal Commissioner of Land Tax*, (1911) 13 C.L.R. 302.

Land tax on
unimproved
value.

Cf. N.S.W., 50,
Vic. No. 15
s. 10.

W.A. 1907,
No. 15, s. 9.

Taxable value.

(3.) For the purposes of assessments of land tax for the financial year ending on the thirtieth day of June One thousand nine hundred and twenty-eight and all succeeding years—

Substituted by
No. 30, 1927,
s. 7.

(a) land which is separately let or leased by the owner to another person; and

(b) subject to the last preceding paragraph, all lands owned by one person and contiguous to each other or separated only by fences, roads, public reserves or watercourses, and used by the owner or another person for the purpose of any one business or treated by the owner as one area,

shall be deemed to be a separate parcel.

12. Land tax shall be charged on land as owned at midnight on the thirtieth day of June immediately preceding the financial year for which the tax is levied :^(a)

Date of
ownership for
purposes of tax.
Cf. N.Z., 1908
No. 95, s. 12 (1).

Provided that an owner of the land who, before the thirtieth day of September, One thousand nine hundred and ten, has sold or agreed to sell or conveyed part of the land or has sold or agreed to sell or conveyed all the land to different persons, shall, if the Commissioner is satisfied that the sale agreement or conveyance was *bonâ fide* and not for the purpose of evading the payment of land tax, be separately assessed for the year ending on the thirtieth day of June, One thousand nine hundred and eleven, in respect of the land so sold or agreed to be sold or conveyed to any one person, and be charged with land tax in respect of that land as if it were the only land owned by him.

Amended by
No. 30, 1927,
s. 8.

13. The following lands shall be exempt from taxation under this Act, namely :—

Land exempted
from tax.
Cf. Ib. s. 14.

(a) all land owned by a State, or by a municipal, local, or other public authority of a State ;^(b)

(b) all land owned by a Savings Bank regulated by any State Act ;

(c) all land owned by any society registered under a State Act relating to friendly societies or trade-unions ;

(d) all land owned by any building society registered as a building society under any Act or State Act, not being land of which the society has become owner by foreclosure of a mortgage ;

(e) all land owned by or in trust for a charitable or educational institution, if the institution, however formed or constituted, is carried on solely for charitable or educational purposes and not for pecuniary profit ;

(a) Held by the Supreme Court of New South Wales (Harvey, J.) that the tax is imposed on the person who owned land at the beginning of the financial year and, there being no provisions for apportionment and the Court having no jurisdiction to order apportionment under either its equitable jurisdiction or the *Apportionment Act* 1905 of New South Wales, the estate of a life tenant, dying during the year, is liable for taxation for the whole financial year. *Rabett v. Forrest*, (1918) 18 S.R. (N.S.W.) 131 ; 35 W.N. (N.S.W.) 48.

(b) Held by the High Court that, where land was granted by the Crown to trustees with a power to lease for the purpose of (*inter alia*) a public race-course and a State Act empowered the trustees to lease the land for the same purposes, the land was not owned by a State or public authority of a State. *Stephen v. Federal Commissioner of Land Tax*, (1930) 45 C.L.R. 122 ; 4 A.L.J. 307 ; 37 A.L.R. 73.

(f) all land owned by or in trust for a religious society, the proceeds whereof are devoted solely to the support of the aged or infirm clergy or ministers of the society or their wives or widows or children, or to religious charitable or educational purposes ;

(g) all land owned by or in trust for any person or society and used or occupied by that person or society solely as a site for—

- (1) a place of worship for a religious society, or a place of residence for any clergy or ministers or order of a religious society ;
- (2) a charitable or educational institution not carried on for pecuniary profit ;
- (3) a building owned and occupied by a society, club or association, not carried on for pecuniary profit ;^(a)
- (4) a public library, institute, or museum ;

Sub-para. (5) omitted by No. 34, 1928, s. 2.

* * * * *

- (6) a public cemetery or public burial ground ;
- (7) a public garden, public recreation ground,^(a) or public reserve ;
- (8) a public road ; or
- (9) a fire brigade station ;

Added by No. 30, 1927, s. 9 ; and amended by No. 1, 1930, s. 2.*

(h) all land owned by, or in trust for, any club or body of persons, and used primarily and principally for the purposes of athletic sports or exercises (other than horse racing or golf) and not used for the pecuniary profit of the members of that club or body ;^(b)

Added by No. 34, 1928, s. 2.

(i) all land used and occupied for the purpose of holding agricultural shows or shows of the like character, and owned by, or held in trust for, a society which is established for the purpose of holding such shows and is not carried on for the pecuniary profit of its members and applies its revenues substantially towards the promotion or holding of such shows.

(a) Held that a race-course is not land used or occupied solely as a site for a public building or public recreation ground. *Stephen v. Federal Commissioner of Land Tax*, (1930) 45 C.L.R. 122 ; 4 A.L.J. 307 ; 37 A.L.R. 73.

(b) Held by the Supreme Court of Victoria (MacFarlan, J.) that the sport of fox-hunting is an athletic sport or exercise within the meaning of this section but that where land was used primarily and principally for the purpose of maintaining a pack of hounds for use in fox-hunting the land was not used primarily and principally for the purpose of fox-hunting. *Melbourne Hunt Club v. Federal Commissioner of Land Tax*, 1930 V.L.R. 365 ; 36 A.L.R. 277.

* Sub-sections (1.) and (3.) of section four of the *Land Tax Assessment Act 1930* are as follows :—

" 4.—(1.) The amendment of the Principal Act made by section two of this Act shall apply to all assessments for the financial year beginning on the first day of July One thousand nine hundred and thirty, and all subsequent years.

(3.) Notwithstanding anything contained in this section, the amendments effected by this Act shall not apply so as to affect any judgment of the High Court or of the Supreme Court of a State obtained, prior to the commencement of this Act, by any person in his favour in respect of an assessment under the Principal Act."

14. With respect to land which, under the last preceding section, is exempt from land tax—

- (a) the exemption shall be limited to the owner specified in that section, and shall not extend to any other person who is the owner of any estate or interest in the land; and
- (b) in the case of land owned by or vested in the Crown on any express or implied trust, the person entitled in equity to the rents and profits of the land shall, for the purposes of this Act, and to the extent to which he is so entitled, be deemed to be the owner of the land and be liable to land tax in respect thereof.

Limitation of exemption.

Cf. N.Z., 1908, No. 95, s. 15.

PART IV.—RETURNS, ASSESSMENTS, AND LIABILITY.

Returns.

15.—(1.) For the purposes of the assessment and levy of land tax, every taxpayer shall in each financial year, in the prescribed manner, and within the prescribed time, furnish returns setting forth a full and complete statement of all land owned by him at midnight on the thirtieth day of June then last past, and of the improved value and unimproved value of every parcel thereof, with such other particulars as are prescribed.^(a)

Taxpayer to furnish returns.
Cf. N.Z., 1908, No. 95, ss. 13, 16.

Amended by
No. 30, 1927,
s. 10.

Provided that, except as otherwise required by the Commissioner or prescribed, a taxpayer who in any financial year has furnished the full returns above mentioned may in each of the two succeeding years furnish, in lieu of such full returns as above mentioned, supplementary returns setting out a full and complete statement of all land of which he has become or ceased to be the owner since the thirtieth day of June preceding the date of the last full return, and of the improved and unimproved value of every parcel thereof, with such other particulars as are prescribed.

(2.) The Commissioner may at any time require any person to furnish a return or a further and fuller return setting forth a full and complete statement of all or any land owned by him, or in respect of which he is agent or trustee, at midnight on the thirtieth day of June in any year, and of the improved value and unimproved value of every or any parcel thereof, with such other particulars as the Commissioner requires, and whether or not any return has previously been made by that person in respect of land owned by him, or in respect of which he is agent or trustee, on that date.

Substituted by
No. 30, 1927,
s. 10.

(3.) All the provisions of this Act shall extend and apply to any return made or required in accordance with the last preceding subsection, and the Commissioner may cause assessments to be made upon or in respect of that return in such manner as is necessary.

Added by
No. 30, 1927,
s. 10.

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

Returns deemed to be duly made.
Cf. 1b, s. 16 (f).

(a) Held by the High Court that the Official Receiver in Bankruptcy is bound to furnish the returns required by this section. *Lloyd v. Federal Commissioner of Land Tax; in re Browne; ex parte Lloyd*, (1933) 40 C.L.R. 160; 6 A.B.C. 212; 39 A.L.R. 425; 7 A.L.J. 200.

Assessments.

Valuations of
land.

Cf. N.Z., 1908,
No. 95, s. 17.

Assessments to
be made.

Cf. ib., s. 18.

17.—(1.) The Commissioner may, if, as, and when he thinks fit, make or cause to be made valuations of any land.

(2.) The Commissioner may obtain and use as valuations, or for the purpose of preparing valuations, any valuations made by or for any State or any authority constituted under a State.^(a)

18. From the returns and valuations so made, if any, and from any other information in his possession, or from any one or more of those sources, and whether any return has been furnished or not, the Commissioner shall cause assessments to be made for the purpose of ascertaining the amount upon which land tax shall be levied.

Assessment in
case of default
or
unsatisfactory
return.

Cf. N.Z., 1908,
No. 95, s. 19.

Amended by
No. 30, 1927,
s. 11.

19. If—

(a) any taxpayer or person makes default in furnishing any return; or

(b) the Commissioner is not satisfied with the return made by any taxpayer or person; or

(c) the Commissioner has reason to believe that any person (though he may have furnished no return) is a taxpayer,

the Commissioner may make an assessment of the amount on which, in his judgment, land tax ought to be levied, and the taxpayer or person shall be liable to land tax thereon, excepting so far as he establishes, on review by a Valuation Board or on appeal to a Court as provided by this Act, that the assessment is excessive.

Triennial
assessments and
alterations of
assessments.

Substituted by
No. 30, 1927,
s. 12.

20.—(1.) Assessments of land tax shall be made in respect of triennial periods.

(2.) The first triennial period shall commence with the financial year beginning on the first day of July One thousand nine hundred and twenty-seven.

(3.) The value at which any area of land or any interest in an area of land has been included in the assessment of any year of a triennial period shall, subject to the provisions of this Act, not be increased in respect of any subsequent year of that triennial period.

(4.) Whenever there has been a change of ownership of the whole or part of an area of land or of an interest in an area of land, the Commissioner may, for the purpose of the assessments of the remaining years comprising the triennial period during which the change of ownership took place, cause the value of the area or interest or of the respective parts into which it has been divided to be altered.

^(a) As to the utilization of valuations made by local authorities, see *Nathan v. Commissioner of Land Tax*, 1912 St.R.Qd. 191, but N.B. the actual decision in this case was reversed on appeal by the High Court, *Commissioner of Land Tax v. Nathan*, (1913) 16 C.L.R. 654; 19 A.L.R. 274.

Held by the High Court that although the Commissioner is entitled to have regard to the valuation of land for the purpose of State land tax, on an appeal from an assessment that valuation is not evidence of the value of the land. *Federal Commissioner of Land Tax v. Duncan*, (1915) 19 C.L.P. 551; 21 A.L.R. 107. In *Deputy Federal Commissioner of Taxation v. Gold Estates of Australia* (1903) Ltd., ((1934) 51 C.L.R. 509; 40 A.L.R. 368) the High Court reversed a decision of the Supreme Court of Western Australia, holding to be unsound the method of valuation adopted by that Court, viz., accepting the assessment for the previous year and deducting therefrom a general percentage reduction by which expert witnesses considered land values had fallen.

21.—(1.) Where any land or interest in land has not been included in the assessment of the owner, the Commissioner may cause the assessment to be altered so as to include that land or interest as from the date when the assessment was made.^(a)

Alteration of
assessments.
Substituted by
No. 30, 1927,
s. 12.

(2.) If the Commissioner is of the opinion in any case that there has been an avoidance of tax by attempted evasion, he may at any time cause to be made such alterations in or additions to any assessment affected by the attempted evasion as he considers necessary to ensure its completeness and accuracy.^(a)

(3.) The Commissioner may, within three years after the tax on an assessment was originally due and payable, upon his own motion or upon an application received from a taxpayer, reduce the assessment as he thinks necessary in order to ensure its completeness and accuracy.^(a)

(4.) Where the alteration in, or addition to, an assessment has the effect of imposing any fresh liability, or increasing any existing liability—

(a) the taxpayer shall be liable to pay the difference between any land tax which he has paid and the land tax which he ought to have paid if the assessment had been originally made as altered or added to; and

(b) the alteration or addition shall, unless it has been made with the consent of the taxpayer, be subject to objection.

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

(6.) For the purposes of this section the Commissioner may, *inter alia*—

(a) place on or remove from an assessment the name of any person, or the particulars or valuation of any land; or

(b) increase or reduce the assessed value of any land.

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

Validity of
assessment.
Cf. N.Z., 1908,
No. 95, s. 20 (4).

23.—(1.) The production of any assessment or of any document under the hand of the Commissioner, Assistant Commissioner or a Deputy Commissioner purporting to be a copy of an assessment shall—

Evidence.
Cf. ib., s. 20
(5) (6).

Amended by
No. 30, 1927,
s. 13.

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

(a) Held by the High Court that ss. 59 and 60 of this Act did not restrict the power of altering assessments which was, prior to the amending Act of 1927, conferred on the Commissioner by s. 20. *Trustees Executors, &c., Co. v. Commissioner of Land Tax*, (1915) 20 C.L.R. 21; 1915 V.L.R. 245; 21 A.L.R. 185. See this case also as to the power to amend more than once. Where, as a result of the Commissioner's having submitted to the taxpayer's contention, the taxpayer discontinued an appeal to the Court, it was held by the High Court that the Commissioner was precluded from subsequently amending an assessment so as to give effect to his former contention. *Cox v. Deputy Federal Commissioner of Land Tax, Tasmania*, (1914) 17 C.L.R. 450; 20 A.L.R. 166.

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

Amended by
No. 30, 1927,
s. 13.

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

Notice of
assessment.
Cf. N.Z., 1908,
No. 93, ib. s. 21.

24.—(1.) As soon as conveniently may be after a taxpayer's assessment is made, the Commissioner shall cause notice in writing of the assessment to be given to him.

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

Liability.^(b)

Owner of
freehold.
Cf. ib. s. 55.
Amended by
No. 37, 1912,
s. 3.

25.—(1.) The^(c) owner of any freehold estate less than the fee-simple (other than an estate of freehold arising by virtue of a lease for life under a lease or an agreement for a lease) shall be deemed to be the owner of the fee-simple, to the exclusion of any person entitled in reversion or remainder^(d):

Amended by
No. 12, 1911,
s. 3.

Provided that, for the purpose of the assessment of a legal tenant^(e) for life of land, without power to sell, under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, the unimproved value of the land shall be calculated upon the basis of the rent which he obtains for the land, or which, if he let the land, he ought reasonably to be able to obtain; so that the unimproved

(a) For a discussion by the High Court as to the onus of proof that shares are not held by a taxpayer in trust for another, see *Stewart Dawson and Co. (Victoria) Pty. Ltd. v. Federal Commissioner of Taxation*, (1933) 48 C.L.R. 683; 6 A.L.J. 427; 39 A.L.R. 253.

(b) Section 3 (2) of the *Land Tax Assessment Act 1911* is as follows:—"Assessments for the financial year beginning on the first day of July, One thousand nine hundred and ten, made in accordance with paragraph (a) of Regulation 51 of Statutory Rules No. 8 of 1911, shall be deemed to have been made in accordance with the Principal Act."

(c) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(d) Held by the High Court (before the amendments made to this section by the *Land Tax Assessment Act 1911*) that this section applies to both a legal and an equitable tenant for life, and that under this section the tenant for life is the only owner of the land for the purposes of taxation, and that owners of estates in remainder are not liable to taxation. *Sendall v. Federal Commissioner of Land Tax*, (1911) 12 C.L.R. 653; 17 A.L.R. 407. See also *Isles v. Federal Commissioner of Land Tax*, (1912) 14 C.L.R. 372; 18 A.L.R. 392.

(e) Held by the High Court (Griffith, C.J., Barton and Gavan Duffy, J.J.; Isaacs, J., dissenting) after the amendments made to this proviso by the *Land Tax Assessment Act 1911* that this section applies to legal tenants for life only. *Hedderwick v. Federal Commissioner of Land Tax*, (1913) 16 C.L.R. 27; 19 A.L.R. 112.

Held by the High Court that, where under a will trustees are empowered to carry on business on land until expiration of 21 years from testator's death, dividing net annual income among children living at each annual distribution, and at expiry of period dividing land among children then living and issue of deceased children, the children were not tenants for life within this proviso. *Trustees, Executors, &c., Company v. Commissioner of Land Tax*, (1915) 20 C.L.R. 21; 1915 V.L.R. 245; 21 A.L.R. 185.

Per Griffith, C.J., and Barton, J., where a widow is entitled to the rents and profit of land until the eldest surviving son attains the age of 21 years, when son to receive the land, the widow has an estate for years in the land and is not a tenant for life within this section. *Cox v. Deputy Federal Commissioner of Land Tax, Tasmania*, (1914) 17 C.L.R. 450; 20 A.L.R. 166.

Held by the High Court that, where land under the *Real Property Act 1900* of New South Wales is devised to a person for life and the beneficiary has not been registered as tenant for life of the land, he is a legal tenant for life within this section. *Holt v. Deputy Federal Commissioner of Land Tax, New South Wales*, (1914) 17 C.L.R. 720; 20 A.L.R. 322.

value of the land shall be taken to be equal to the unimproved value of land owned in fee simple which would produce the same rent; and for the purpose of this section rent, in the case of improved land, means so much of the whole rent as bears to the whole rent the proportion which the unimproved value of the land bears to the improved value.

(2.) In this section "tenant for life" includes—

cf. 45-6 Vic,
c. 38, s. 58.

(a) a tenant for the life of another;

(b) a tenant for his own or any other life whose estate is liable to cease in any event during that life.

* * * * *

Para. (c)
omitted; No. 12,
1911, s. 3.
Conditional
purchases.

26. The^(a) holder of land under a purchase or a right of purchase from the Crown upon conditions, under the laws of a State relating to the alienation or disposition of Crown lands, shall be deemed to be the owner of the land if all the conditions other than the payment of purchase money have been fulfilled, but not otherwise.

27.—(1.) The^(b) owner of a leasehold estate in land, under a lease made or agreed to be made after the commencement of this Act, not being a lease made in pursuance of an agreement made before the commencement of this Act, shall be deemed (though not to the exclusion of the liability of any other person) to be the owner of land of an unimproved value equal to the unimproved value of his estate:^(c)

Lessees of land
after
commencement
of Act.
Substituted by
No. 37, 1912,
s. 4.

Provided that where the owner of a leasehold estate has, within five years previously, been the owner of a freehold estate in the land he shall be assessed and liable to land tax as if he were the owner of the fee simple.

(2.) He shall be entitled to deduct from the tax payable by him in respect of the unimproved value of his estate an amount equal to the sum of—

(a) the amount which bears the same proportion to the tax payable in respect of the land by the owner of any freehold estate as the unimproved value of the leasehold estate bears to the unimproved value of the land, and

(b) the amount which bears the same proportion to the tax payable in respect of the unimproved value of any precedent leasehold estate as the unimproved value of the leasehold estate bears to the unimproved value of the precedent leasehold estate.

(a) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242; but the dicta in that case at pages 341, 347 and 369 to the effect that the words "a lease with a right of purchase" in s. 29 refers to "the holder of land under . . . a right of purchase from the Crown" in this section, has since been dissented from by the High Court. *Fisher v. Deputy Federal Commissioner of Land Tax* (N.S.W.), (1915) 20 C.L.R. 242; 22 A.L.R. 29.

(b) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(c) Held by the High Court, (Knox, C.J., Gavan Duffy, Rich and Starke, JJ.; Isaacs, J., dissenting) that, where the rent reserved by a lease and the duration of the term were uncertain the prescribed method of assessing the unimproved value of the leasehold estate of the appellants in the lease could not be applied and consequently the provisions of sections 27, 28 and 29 of the *Land Tax Assessment Act 1910-1927* were not applicable to the lease. *Clark Tait and Company and another v. Federal Commissioner of Land Tax*, (1929) 43 C.L.R. 1; 3 A.L.J. 237; 26 A.L.R. 1. This case was discussed in *Stephen v. Federal Commissioner of Land Tax*, (1930) 45 C.L.R. 122; 4 A.L.J. 307; 37 A.L.R. 73.

Amended by
No. 29, 1914,
s. 2.

(3.) Notwithstanding^(a) anything in this section, where the owner of the fee simple is exempt under sections thirteen or forty-one of this Act from taxation in respect of the land, or the lease is a lease from the Crown, a lessee of the land shall be assessed^(c) and liable for land tax as if the lease were made before the commencement of this Act and not otherwise.

(4.) For the purposes of this section—

(a) the unimproved value^(b) of a leasehold estate means the present value of the annual value of the land calculated for the unexpired period of the lease^(c) at four and a half per centum, according to calculations based on the prescribed tables for the calculation of values;

(b) the annual value of land means four and a half per centum of the unimproved value of the land;

Provided that the Commissioner may from time to time, if he thinks fit, alter the rate per centum upon which the calculations in this section are based; and

(c) the owner of a leasehold estate includes the lessee of land for life under a lease or agreement for a lease.

Lessors and
lessees of land
leased before the
commencement
of this Act.

28.—(1.) The^(d) owner of a freehold estate in land who or whose predecessor in title has before the commencement of this Act entered into an agreement to make or granted a lease of the land shall, for the purpose of his assessment under this Act, be entitled, during the currency of the lease, to have the unimproved value (if any) of the lease deducted from the unimproved value of the land.

(2.) The owner of a leasehold estate in land,^(e) under a lease made or agreed to be made before the commencement of this Act, shall be deemed to be, in respect of the land, the owner of land of an unimproved value equal to the unimproved value (if any) of his estate; but if he has, before the commencement of this Act, entered into an agreement to make or granted a lease of the land, he shall be entitled, during the currency of that lease, to have the unimproved value (if any) of that lease deducted from the unimproved value of his estate:

Provided that where the owner of the leasehold estate has, within three years before the commencement of this Act, been the owner of a freehold estate in the land, he shall be assessed and liable

(a) This sub-section applies to all assessments made under the Act. See Act No. 37, 1912, s. 12 (1).

(b) See footnote (b) on following page.

(c) As an example of a lease with an unexpired period for the purpose of the calculations mentioned in sub-sections (3.) and (4.) of this section, see *Stephen v. Federal Commissioner of Land Tax*, (1930) 45 C.L.R. 122; 4 A.L.J. 307; 37 A.L.R. 73.

(d) Validity of section discussed by High Court. *Oshorne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242. See also footnote (c) on previous page.

(e) For a discussion as to the meaning of this section prior to the amendments made to s. 29 by the amending Act of 1923 see *Fisher v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 242; 22 A.L.R. 29, in which the High Court held that—

(1) A lessee under the laws of a State of Crown lands with a right of purchase under a lease granted before the commencement of the Act is liable to taxation in respect of the land under section 28 (2.) of the Act; and

(2) The holder of a conditional lease granted before the commencement of the Act under the law of New South Wales, being a Crown lessee with a right of purchase, is taxable in respect thereof under section 28 (2.) of the Act.

Held by the High Court that the lessee has a taxable interest in the land, notwithstanding a provision in the lease empowering the Crown to cancel the lease after giving short notice of its intention and without becoming liable to pay any compensation to the lessee. *The Coal Cliff Collieries Ltd. v. Federal Commissioner of Land Tax*, (1917) 24 C.L.R. 197; 24 A.L.R. 86.

to land tax as if his leasehold estate had been under a lease made after the commencement of this Act.

(3.) For^(a) the purposes of this section—

(a) the unimproved value of a lease or leasehold estate in land means the value of the amount (if any) by which four and a half per centum of the unimproved value of land exceeds the annual rent reserved by the lease,^(b) calculated for the unexpired period of the lease at four and a half per centum, according to the calculations based on the prescribed tables for the calculation of values :

Substituted by
No. 37, 1912,
s. 5.

Provided that the Commissioner may from time to time, if he thinks fit, alter the rate per centum upon which the calculations in this section are based ;

(aa) annual rent^(c) reserved by the lease means the rent which, as on the thirtieth day of June immediately preceding the financial year for which tax is levied, is payable for the period which includes that thirtieth day of June if that rent is the rent payable for the period of one year, or if that rent is not the rent payable for the period of one year, the sum which bears the same proportion to the rent payable as the period of a year bears to the period for which that rent is payable :

Inserted by
No. 1, 1930,
s. 3.*

Provided that, if as on that thirtieth day of June—

(a) no rent is payable ; or

(b) a rent, which is subject to a liability to reappraisal, is payable,

for the period which includes that thirtieth day of June, and a rent or a reappraised rent subsequently becomes payable for that period, the rent which so becomes payable shall be deemed to be the rent payable as on that thirtieth day of June :

Provided further that where, by any State Act, provision has, prior to the commencement of this proviso, been

Added by
No 14, 1934,
s. 2.†

(a) Method of ascertaining the unexpired value of the estate of a lessee of land leased before commencement of Act and of which sub-leases were granted by the lessee before that date discussed by High Court. *Hendon v. Deputy Federal Commissioner of Land Tax, New South Wales*, (1914) 17 C.L.R. 727 ; 20 A.L.R. 324. As to the method of ascertaining "the unimproved value of land" where the land is held under Crown leases, see *Jowett v. Federal Commissioner of Taxation*, (1926) 38 C.L.R. 325 ; 32 A.L.R. 430.

(b) Held by the High Court that, where a lessee covenanted to pay an annual rent, to pay rates and taxes, to erect certain buildings, and keep them in repair, the lessee was not entitled to have the amount expended for rates and taxes or for repairs added to the reserved rent. *Apperly v. Federal Commissioner of Land Tax*, (1914) 17 C.L.R. 535 ; 20 A.L.R. 209. Held by the High Court that, where appellant leased a coal mine for a term of years at a rental of £500 provided lessors might without payment of royalty work the mine and remove coal up to £500 in value in any one year, but lessees should pay a royalty in respect of all coal above that quantity obtained by them from the mine during that year, the amount of royalty so paid in any one year, as well as the rent of £500, was included in the term "rent, reserved by the lease". *Black v. Federal Commissioner of Land Tax*, (1920) 27 C.L.R. 483.

(c) See footnote (c) *supra*, p. 2583.

* Sub-sections (2.) and (3.) of section four of the *Land Tax Assessment Act 1930* are as follows :—

"4.—(2.) The amendment of the Principal Act made by section three of this Act shall be deemed to have commenced on the date of the commencement of the *Land Tax Assessment Act 1914*, and shall apply to all assessments for the financial year beginning on the first day of July One thousand nine hundred and fourteen, and all subsequent years.

(3.) Notwithstanding anything contained in this section, the amendments effected by this Act shall not apply so as to affect any judgment of the High Court or of the Supreme Court of a State obtained, prior to the commencement of this Act, by any person in his favour in respect of an assessment under the Principal Act."

† Section 3 of the *Land Tax Assessment Act 1934* is as follows :—

"3. The amendment effected by section two of this Act shall apply to assessments for the financial year beginning on the first day of July, One thousand nine hundred and thirty-three and all subsequent years."

made for a percentage reduction in annual rents reserved in leases of Crown lands, the annual rents reserved in those leases shall be deemed to be the annual rents payable prior to the percentage reduction ;

- (b) rent, in the case of a lease of improved land, means so much of the whole rent as bears to the whole rent the proportion which the unimproved value of the land at the date of the lease bore to the improved value :

Provided that, where onerous conditions^(a) for constructing buildings, works, or other improvements upon the land, or expending money thereon, are imposed upon the lessee, or where any fine, premium, or fore-gift, or consideration in the nature of fine, premium, or fore-gift, is payable by the lessee, the Commissioner may assess the amount (if any) which ought, for the purposes of this section, to be added to the value of the rent in respect thereof, and the value of the rent shall be deemed to be increased by that amount accordingly ;

- (c) the owner of a leasehold estate includes the lessee of land for life under a lease or an agreement for a lease.

(4.) This section^(b) shall apply to any lease which is a lease from the Crown and which is subject to liability to resumption of the whole or of any part or proportion of the land comprised in the lease, whether that part or proportion be defined or not, and for the purpose of the application of the provisions of paragraph (a) of the last preceding sub-section—

- (a) where the resumption, if effected, would be without right of compensation or without right of compensation except for improvements or certain improvements—

(i) the lease, in respect of the whole or a part or a proportion of the whole, as the case may be, so subject to resumption, shall be deemed to be a lease for a period ending on the earliest date on which such resumption may be made, and, in respect of the part or proportion (if any) of the whole not so subject to resumption, shall be deemed to be a lease for a period ending on the date upon which the lease expires ;

(ii) a rent shall be deemed to be payable in respect of the part or proportion which is subject to liability to resumption of an amount which bears the

(a) Held by the High Court that where a lessee covenanted to pay an annual rent, to pay rates and taxes, to erect buildings and keep them in repair, he was not entitled to have either the amount expended for rates and taxes or for repairs added to the reserved rent or allowed as a deduction. *Apperly v. Federal Commissioner of Land Tax*, (1914) 17 C.L.R. 535 ; 20 A.L.R. 209.

Meaning of "onerous conditions" discussed. *Apperly v. Federal Commissioner of Land Tax* (*supra*).

Held by the High Court that a covenant in a lease of Crown land for mining purposes requiring the lessees during the term of the lease to employ in the construction of works or in mining operations on or under the land a number of able and competent workmen and miners, was an onerous condition for expending money upon the land. *The Coal Cliff Collieries Ltd. v. Federal Commissioner of Land Tax*, (1917) 24 C.L.R. 197 ; 24 A.L.R. 86.

(b) See footnote (b) on previous page.

* See footnote * on previous page.

Amended by
No. 12, 1911,
s. 5.

Added by
No. 37, 1912,
s. 5.

Added by
No. 1, 1930,
s. 3.*

same proportion to the annual rent as the part or proportion of the area which is so subject bears to the total area, and the amount of the residue of the annual rent shall be deemed to be the rent payable in respect of the part or proportion not so subject; and

(iii) the unimproved value of the part or proportion subject to liability to resumption and the unimproved value of the part or proportion not so subject shall be respectively deemed to be such sums as bear to the unimproved value of all the land leased the same proportions as such respective parts or proportions respectively bear to the total area of the land leased; and

(b) where the lease is one to which paragraph (a) of this sub-section does not apply, the lease shall be deemed to be a lease for the full period of the lease as if no resumption of the lease or part of the lease were liable to be made:

Provided that leased land shall not be deemed to be subject to resumption without compensation, or without compensation except for improvements or certain improvements, nor shall any lease be deemed to have no period or no unexpired period, by reason of the fact that any land may be liable to be resumed or withdrawn from the lease for mining purposes or for public roads or for any other public purpose, without compensation or without compensation except for improvements or certain improvements.

29. Notwithstanding^(a) anything in the last two preceding sections, the owner of a leasehold estate under the laws of a State or part of the Commonwealth relating to the alienation or occupation of Crown lands or relating to mining (not being a perpetual lease without

Crown lessees.

Amended by
No. 29, 1914,
s. 3, and by
No. 29, 1923,
s. 2.

(a) Held by the High Court that the *Land Tax Assessment Act 1910-1914* in so far as it purports to impose land tax upon leasehold estates in Crown lands is not invalid—

- (1) Under the *Colonial Laws Validity Act 1865*, as being repugnant to the Imperial Acts which confer upon the legislatures of the several States powers of legislation with respect to waste lands of the Crown in those States respectively;
- (2) Under section 114 of the Constitution, as imposing a tax upon State property;
- (3) As being not a law imposing taxation, but a law as to the control and management of Crown lands in the several States; or
- (4) As infringing the rule laid down in *D'Emden v. Pedder* (Note: this decision was given prior to the decision in the *Engineers' Case* ((1922) 28 C.L.R. 129) which overruled the converse application of the rule in *D'Emden v. Pedder*).

Attorney-General for Queensland v. Attorney-General for the Commonwealth, (1915) 20 C.L.R. 148; 21 A.L.R. 221; special leave to appeal refused by the Privy Council, (1916) 22 C.L.R. 322; 23 A.L.R. 85.

For a discussion as to the meaning and effect of this section as it read prior to the amending Act of 1923 see *Fisher v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 20 C.L.R. 242; 22 A.L.R. 29, in which the High Court held that—

- (1) A lessee under the laws of a State or Crown land with a right of purchase under a lease granted before the commencement of the Act is liable to taxation in respect of such land under section 28 (2) of the Act; and
- (2) A holder of a conditional lease granted before the commencement of the Act under the law of New South Wales, being a Crown lessee with a right of purchase, is taxable in respect thereof under section 28 (2) of the Act.

Held by the High Court that a racing club which was the lessee of land granted by the Crown to trustees who were empowered to lease the land for the purpose of a public race-course was not the owner of a leasehold estate in the land under the laws of New South Wales relating to the alienation or occupation of Crown lands within the meaning of this section. *Stephen v. Federal Commissioner of Land Tax*, (1930) 45 C.L.R. 122; 4 A.L.J. 307; 37 A.L.R. 73.

See also footnotes (c) (*supra*, p. 2583) and (b) (*supra*, p. 2585).

revaluation, or a lease with right of purchase)^(a) shall not be liable to assessment or taxation in respect of the estate :

Provided that in the assessment of the unimproved value of a lease the value of any metals or minerals or other rights reserved to the Crown shall be excluded.

Covenant by
lessee to pay
land tax.

30. A covenant or stipulation in a lease or agreement for a lease of land, which has or purports to have the purpose or effect of imposing on the lessee the obligation of paying taxes on the land^{(b)(d)}—

(a) if the lease or agreement was made before the commencement of this Act—shall not be valid to impose on the lessee the obligation of paying land tax to any greater amount than the amount (if any) which would have been payable by the lessee if he had been the owner^(c) of the land included in the lease and of no other land ; and

(b) if the lease or agreement was made after the commencement of this Act—shall be absolutely void.

Mortgages.
Cf. N.Z., 1908,
No. 95, s. 66.

31. No deduction from the unimproved value of any land shall be allowed in respect of any mortgage to which the land is subject, or in respect of any unpaid purchase money ; and a mortgagor shall be assessed and liable for land tax as if he were the owner of an unencumbered estate.

Mortgages.
Cf. ib. s. 67.

32. A^(d) mortgagee, or other person owning any estate or interest in land by way of security for money, shall not be liable to land tax in respect of that mortgage, estate, or interest :

Provided that a mortgagee in possession of land, or any other person in possession of land by way of security for money, shall so long as such possession continues (though not to the exclusion of any other person) be deemed to be the owner of the land ; and the mortgagor shall be deemed to be the primary taxpayer, and the mortgagee in possession to be the secondary taxpayer ; and there shall be deducted from the tax payable by the latter in respect of the land such amount (if any) as is necessary to prevent double taxation :

(a) See footnote (c) (*supra*, p. 2588).

(b) By a lease made in 1895 the lessees covenanted to pay all taxes &c. "except the land tax". Held by the Privy Council that the exception referred to the State land tax and did not operate to exempt the lessee from payment of Federal Land Tax and that the lessee was therefore liable under the lease to the extent contemplated by paragraph (a). *South Australian Brewing Company, Ltd. v. Hill*, [1919] A.C. 519.

But in a later case a contrary decision was given by the Supreme Court of South Australia on a lease made in 1899 and containing the words "excepting land tax" the Court distinguishing the case from the Privy Council decision by virtue of the fact that (a) in 1899 the establishment of the Commonwealth was in sight, and (b) the words "excepting land tax" were different from the words "except the land tax." *South Australian Brewing Co., Ltd. v. Executor Trustee and Agency Co., Ltd.*, 1923 S.A.S.R. 325.

Held by the Supreme Court of Victoria (McArthur J.) that the words "save and except any landlord's property tax" in a lease executed in 1905 included Federal land tax. In *re Walker's and Kelly's Lease*, 1924 V.L.R. 85 ; 45 A.L.J. 98 ; 30 A.L.R. 49.

(c) Held by the Supreme Court of New South Wales that "owner" as used in this section means "owner in fee simple." *Turner v. Wilson*, (1914) 14 S.R. (N.S.W.) 448.

(d) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321 ; 17 A.L.R. 242.

Held by the High Court that the holder who holds the charge as security for money of a rent-charge, even if the owner of the land, is exempted from taxation under this section. *Cochrane v. Federal Commissioner of Land Tax*, (1916) 21 C.L.R. 422 ; 22 A.L.R. 163.

Provided further that the last preceding proviso shall not apply—

(a) to any mortgagee or person in possession whose possession began before the first day of July One thousand nine hundred and ten; nor

(b) to any mortgagee or person in possession until a period of three years after he has entered into possession;

but any such mortgagee or person in possession shall, if the mortgagor makes default in the payment of land tax in respect of the land, be responsible for the payment of the tax due by the mortgagor, which payment shall be deemed to be made by him on behalf of the mortgagor.

33.—(1.) Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he were beneficially entitled to the land: (a)

Trustees.

Cf. N.Z., 1908,
No. 95, s. 65

Provided that where he is the owner of different lands in severalty, in trust for different beneficial owners who are not for any reason liable to be jointly assessed, the tax so payable by him shall be separately assessed in respect of each of those lands:

Provided also that when a trustee is also the beneficial owner of other land, he shall be separately assessed for that land, and for the land of which he is a trustee, unless for any reason he is liable to be jointly assessed independently of this section.

* * * * *

(2.) A trustee shall in no case be deemed to be an absentee; but any of the beneficiaries who are absentees shall be separately assessed and liable as absentees.

Proviso omitted:
No. 12, 1911,
s. 6

Absentees.

34. Where under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, land is charged with an annuity^(b)—

Land charged
with annuity
under settlement
or will before 1st
July, 1910.

(a) the value of the annuity shall be calculated according to the prescribed tables for the calculation of values; and

(b) there shall be deducted from the unimproved value of the land a sum which bears the same proportion to the value of the annuity as the unimproved value of the land bears to its improved value:

Provided that, where a deduction is allowed in respect of the share of an annuitant as one of the beneficial owners of the land, the deduction under this section in respect of the annuity shall be the amount by which the value of the annuity applicable to the unimproved value of the land calculated as provided in this section exceeds the deduction allowed in respect of the annuitant's share in the land.

Proviso added
by No. 37, 1912,
s. 6.

(a) As to the extent of the liability of a trustee under this section, see *Sendall v. Federal Commissioner of Land Tax*, (1911) 12 C.L.R. 653; 17 A.L.R. 407.

Held by the High Court to apply to the Official Receiver in Bankruptcy for the period after sequestration. *Lloyd v. Federal Commissioner of Land Tax*; *in re Broome*; *ex parte Lloyd*, (1933) 49 C.L.R. 160; 6 A.B.C. 212; 39 A.L.R. 425; 7 A.L.J. 200.

(b) Held by the High Court (Barton and Isaacs, J.J., Griffith, C.J., dissenting) that the word "annuity" in this section is used in its technical sense as meaning a sum certain payable periodically, and that therefore a "fair and reasonable allowance for the maintenance, education and support of children, not exceeding in the whole the annual sum of £200" is not an annuity within the meaning of the section. *Deputy Federal Commissioner of Land Tax, Sydney v. Hindmarsh*, (1912) 14 C.L.R. 334. A testator by his will devised his real estate to trustees "upon trust out of the clear annual income derived from" certain lands hereditaments and premises to pay certain annuities. Held by the High Court that the annuities were made a charge on the land. *Queensland Trustees Ltd. v. Deputy Federal Commissioner of Land Tax, Brisbane*, (1919) 26 C.L.R. 485. See also footnote (a) (*supra*, p. 2569).

Equitable
owners.

Cf. N.Z., 1908,
No. 95, s. 64.

35. Subject^(a) to this Act, the owner of any equitable estate or interest in any land shall be assessed and liable in respect of land tax as if he were the legal owner of the estate or interest; and the owner of the legal estate shall be deemed to be the primary taxpayer, and the owner of the equitable estate is to be the secondary taxpayer; and there shall be deducted from the tax payable by the latter in respect of the land such amount (if any) as is necessary to prevent double taxation:

Proviso added
by No. 37, 1912,
s. 7.

Provided^(b) that an equitable tenant for life of land under a settlement made before the first day of July One thousand nine hundred and ten or under the will of a testator who died before that day shall not be entitled to be assessed as if he were the legal tenant for life of the land, without power to sell.

Married woman.
Cf. N.S.W., 59
Vic. No. 15, s.
26; N.Z., 1908,
No. 95, s. 114.

36.—(1.) Land^(c) owned by a married woman for her sole and separate use shall be liable to assessment and taxation as if she were unmarried.

(2.) Where^(d)—

- (a) a husband has directly or indirectly transferred land to or in trust for his wife, or
- (b) a wife has directly or indirectly transferred land to or in trust for her husband.

(they not being judicially separated), the husband and wife shall, unless the Commissioner is satisfied that the transfer was not for the purpose of evading land tax, be deemed to be joint owners of all the land owned by either of them:

Provided that this sub-section shall not apply to settlements made before the thirtieth day of September, One thousand nine hundred and ten.

Buyer and
seller.

Cf. N.Z., 1908,
No. 95, ss. 61,
62.

37.—(1.) Where, before or after the commencement of this Act, an agreement has been made for the sale of land, whether the agreement has been completed by conveyance or not—

- (a) the buyer shall be deemed to be the owner of the land (though not to the exclusion of the liability of any other person) so soon as he has obtained possession of the land;^(e) and
- (b) the seller shall be deemed to remain the owner of the land (though not to the exclusion of the liability of any other person) until possession of the land has been delivered to

(a) Held by the High Court (Griffith, C.J., Barton, and Gavan Duffy, J.J.; Isaacs, J., dissenting) that notwithstanding the provisions of this section an equitable tenant for life is not entitled to the benefit of the proviso to section 25. *Hedderwick v. Federal Commissioner of Land Tax*, (1913) 16 C.L.R. 27; 19 A.L.R. 112.

(b) This proviso is merely declaratory of the law as it was before the proviso was inserted. *Hedderwick v. Federal Commissioner of Land Tax*, *supra*.

(c) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(d) Sub-section held invalid by High Court. *Waterhouse v. Deputy Federal Commissioner of Land Tax, South Australia*, (1914) 17 C.L.R. 665; 20 A.L.R. 155.

(e) As to the position where—

(1) The buyer purchases land for the purpose of sub-division and sale without actually taking physical possession of the land; and

(2) Where the actual occupier was the tenant of the vendor and continues as the tenant of the purchaser.

see *Highlands Ltd. v. Deputy Federal Commissioner of Taxes (S.A.)*, (1931) 47 C.L.R. 191; 5 A.L.J. 282; 38 A.L.R. 186.

the purchaser and at least fifteen per centum of the purchase money has been paid ; ^(a)

Provided that the Commissioner may exempt the seller from the provisions of this section, if he is satisfied that the agreement for sale has been made in good faith, and not for the purpose of evading the payment of land tax, and that the agreement is still in force ; as to all which matters the decision of the Commissioner shall be final and conclusive.

(2.) In estimating the amount of purchase money which has been paid, all money—

(a) owing by the purchaser to the seller, and secured by any mortgage or charge on the land ; or

(b) lent to the purchaser by the seller ; or

(c) owing by the purchaser to any other person, and directly or indirectly guaranteed by the seller,

shall be deemed to be unpaid purchase money.

(3.) When by virtue of this section the buyer and seller of any land are both liable for land tax in respect thereof, the buyer shall be deemed to be the primary taxpayer, and the seller to be the secondary taxpayer ; and there shall be deducted from the tax payable by the seller in respect of the land such amount (if any) as is necessary to prevent double taxation.

38.—(1.) Joint owners of land shall be assessed and liable for land tax in accordance with the provisions of this section.

(2.) Joint owners (except those of them whose interests are exempt from taxation under section thirteen or section forty-one of this Act) shall be jointly assessed and liable in respect of the land (exclusive of the interest of any joint owner so exempt) as if it were owned by a single person, ^(b) without regard to their respective interests therein or to any deductions to which any of them may be entitled under this Act, and without taking into account any land owned by any one of them in severalty or as joint owner with any other person.

(3.) Each joint owner of land shall in addition be separately assessed and liable in respect of—

(a) his individual interest in the land (as if he were the owner of a part of the land in proportion to his interest), together with

(b) any other land owned by him in severalty, ^(c) and

(c) his individual interests in any other land.

(4.) The joint owners in respect of their joint assessment shall be deemed to be the primary taxpayer, and each joint owner in respect of his separate assessment to be a secondary taxpayer ; and from the

Joint owners.
Cf. N.Z., 1908,
No. 95, ss. 54
(3), 59.

Sub-sec. (2)
substituted by
No. 37, 1912,
s. 8.

(a) See footnote (e) on previous page.

(b) See *Isles v. Federal Commissioner of Land Tax*, (1912) 14 C.L.R. 372 ; 18 A.L.R. 392 ; and *Seymour Bros. v. Deputy Federal Commissioner of Land Tax for South Australia*, (1918) 25 C.L.R. 303 ; 25 A.L.R. 29.

(c) Held by the High Court that where a joint owner of land is also an owner in severalty of other land and is separately assessed under this sub-section in respect of the whole of his interests, the land held by him in severalty is to be assessed according to the ordinary rules for assessing land so held and that, therefore, where the land held in severalty is subject to a lease granted before the commencement of this Act, the taxpayer is entitled to have the unimproved value of the lease deducted from the unimproved value of the land so held for the purpose of apportioning the amount of assessment between that land and the joint estate. *Flemmich v. Federal Commissioner of Land Tax*, (1916) 21 C.L.R. 167.

tax payable, in respect of his interest in the land,^(a) by each joint owner under the last preceding sub-section, there shall be deducted such amount (if any) as is necessary to prevent double taxation.

(5.) Joint owners shall in no case be deemed in respect of their joint assessment to be absentees; but any of them who is an absentee shall be separately assessed and liable, under this section, as an absentee.

(6.) This section shall not apply in the case of joint owners who have made partition of their interests since the thirtieth day of June, One thousand nine hundred and ten, and before the thirtieth day of September, One thousand nine hundred and ten.

(7.) Where,^(b) under a settlement^(c) made before the first day of July, One thousand nine hundred and ten, or under the will^(d) of a testator

Added by No.
12, 1911, s. 7.

(a) Held by the High Court that the amount of the tax payable in respect of a joint owner's interest in the land, within the meaning of this section, is the whole amount payable by him as a secondary taxpayer in respect of that land, and not a part of that amount proportional to the value of his joint interest as compared with the value of the land owned by him in severalty. *Bailey v. Federal Commissioner of Land Tax*, (1911) 13 C.L.R. 302. (But see now section 43A of this Act, which was added by the amending Act of 1911.) See also footnote (c) on previous page.

(b) Sub-sections (7) and (8) of this section were added by the *Land Tax Assessment Act 1911*, which also repealed the following proviso, which stood as the third proviso to section 33 (1) —

"Provided further that, in the case of land vested in a trustee, under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, upon trust to stand possessed thereof for the benefit of a number of persons who are relatives of the settlor or testator, then, for the purpose of ascertaining the taxable value of the land owned by him as such trustee, there may be deducted from the unimproved value of the land, instead of the sum of Five thousand pounds as provided by paragraph (b) of sub-section (2) of section eleven of this Act, the aggregate of the following sums, namely:—

"In respect of each share into which the land is in the first instance distributed under the settlement or will amongst such beneficiaries, the sum of Five thousand pounds, or the unimproved value of the share, whichever is the less."

Under this proviso the following decisions have been given by the High Court:—Where by a will of a testator who died before 1st July, 1910, land was given to trustees upon trust to sell and distribute the proceeds among certain relatives of the testator, it was held that the trustees "stood possessed of the land for the benefit of a number of persons who were relatives of the testator" within the meaning of this proviso. *Archer v. Federal Commissioner of Land Tax*, (1912) 13 C.L.R. 557; 18 A.L.R. 145. Where by a will of a testator real estate was left to trustees upon trust to pay the income thereof to the wife of the testator during the minority of his children, and upon trusts for their benefit (subject to certain other trusts) thereafter, and all the children had attained their majority at the time of the assessment, it was held that the trustees were entitled to the statutory deduction in respect of each of the children's shares. *Reading v. Federal Commissioner of Land Tax*, (1912) 14 C.L.R. 217; 18 A.L.R. 566. The words "in respect of each share into which the land is in the first instance distributed under the . . . will amongst such beneficiaries" were held to relate to beneficiaries who at the time the question arose derived their title to their shares directly from the instrument and independently of any intermediate person. Certain shares held to be shares into which the land was in the first instance distributed under the will among the class of beneficiaries referred to in the proviso. *Archer v. Federal Commissioner of Land Tax* (supra). The words "is in the first instance distributed" were held to extend to contingent interests. *Neill v. Federal Commissioner of Land Tax*, (1912) 14 C.L.R. 207; 18 A.L.R. 240. A testator who died before 1st July, 1910, devised all his real and personal property including certain land to trustees upon trust after payment of certain annuities for such of the children of his daughter as being born in his lifetime should attain the age of 25 years, or, if a female, marry, or being born after his death, attained the age of 21 years or, being a female, married. The daughter married subsequently to the testator's death, and, at the time when the land was assessed in the hands of the trustees, had four children, the eldest of whom was 9 years of age. It was held that the trustees were entitled to claim the statutory deduction in respect of each of the four children. *Neill v. Federal Commissioner of Land Tax* (supra). It was held that a joint owner, who holds as a trustee, is entitled to the benefit of this proviso. *Isles v. Federal Commissioner of Land Tax*, (1912) 14 C.L.R. 372; 18 A.L.R. 392. It was held that beneficiaries in a trust estate who also own other land are entitled to the benefit of this proviso. *Baird v. Federal Commissioner of Land Tax*, (1915) 19 C.L.R. 490; 21 A.L.R. 55.

(c) Held by the High Court that settlement does not include intestacy. *Hart v. Federal Commissioner of Land Tax*, (1913) 15 C.L.R. 545; 19 A.L.R. 98.

(d) Held by the High Court that, where under a will land was devised to trustees on trust for such sons as should attain the age of 25 years, with power for the trustees to apportion the land in such manner as they thought fit, and on the sons attaining that age, the trustees at the sons' request conveyed the land to them as tenants in common, the beneficial interest in the land was no longer shared by the sons under the will. *Thomson v. Deputy Federal Commissioner of Land Tax, Tasmania*, (1915) 19 C.L.R. 351; 21 A.L.R. 257.

A testator, who died before 1st July, 1910, by his will devised his land to trustees upon trust for the benefit of his eight children, all of whom survived him as tenants in common. One of his daughters died after that date, having by her will given all her property to her husband. Held by the High Court that the beneficial interest in the land, although still shared among a number of persons all of whom were relatives of the testator by blood, marriage or adoption, was no longer so shared under the testator's will within the meaning of this sub-section. *Wilson v. Federal Commissioner of Land Tax*, (1916) 21 C.L.R. 225; 22 A.L.R. 79.

who died before that day, the beneficial interest in any land^(a) or in the income therefrom is for the time being shared among a number of persons, all of whom are relatives of the settlor or testator by blood, marriage, or adoption, in such a way that they are taxable as joint owners under this Act,^(b) then, for the purpose of their joint assessment as such joint owners, there may be deducted from the unimproved value of the land, instead of the sum of Five thousand pounds as provided by paragraph (b) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely:—

In respect of each of the joint owners who hold an original share in the land under the settlement or will—

(a) the sum of Five thousand pounds, or

(b) the sum which bears the same proportion to the unimproved value of the land, after deducting the value of any annuity under section thirty-four of this Act, as the share bears to the whole,

whichever is the less:

Amended by
No. 37, 1912,
s. 8.

(a) Held by the High Court (Isaacs, Gavan Duffy and Rich, JJ.; Griffith, C.J. and Barton, J. dissenting) that land in this sub-section means a parcel of land and does not include an interest in land and that where trustees, under the will of A, held an undivided moiety in trust for A's children, and other trustees held the other moiety under the will of B in trust for B's children (who were not related to A's children) so that the two sets of trustees were joint tenants within the meaning of the Act, they were not entitled to the benefit of this sub-section. Meaning of the whole section fully discussed. *Clifford and others v. Deputy Federal Commissioner of Land Tax for New South Wales*, (1915) 19 C.L.R. 593; 21 A.L.R. 165.

(b) Held by the High Court that all the joint owners at the time of assessment must be relatives by blood, marriage or adoption of the original settlor or testator and that trustees are not, therefore, entitled to the provisions of this sub-section where under the will of a deceased beneficiary an interest in her share has passed to a stranger. *Parker v. Deputy Federal Commissioner of Land Tax, Tasmania*, (1914) 17 C.L.R. 438; 20 A.L.R. 117. Under a will of real and personal property trustees held the estate upon trust, subject to certain annuities, to accumulate the income during the life of the testator's widow and after her death to appropriate the estate, including the accumulations, to his children in certain shares as tenants in common, and to pay the income of the shares to the children respectively for life, and after their respective deaths upon trust as to their respective shares for their children who attained the age of 21 years or married under that age. One of the testator's children died leaving a daughter surviving. Held by the High Court that the testator's surviving children and his grand-daughter were not during the life of his widow entitled to the land comprised in the estate for an estate of freehold in possession, and therefore were not joint owners of the land within the meaning of the Act. *Union Trustee Company of Australia Limited v. Federal Commissioner of Land Tax*, (1915) 20 C.L.R. 526; 21 A.L.R. 481. Held by the High Court that beneficiaries, not being either entitled to the land for an estate of freehold in possession or entitled to receive or in receipt of the rents and profits thereof, were neither "owners" nor "joint owners" of the land and were not therefore "taxable as joint owners". *Terry v. Federal Commissioner of Taxation*, (1920) 27 C.L.R. 429; 1920 V.L.R. 257. By his will a testator devised land to trustees upon trust to manage and work it for 21 years and thereafter to stand possessed of the income upon trust for such of his seven children as should then be living; provision was made for grand-children to be substituted for their parent in the event of the parent's not surviving. One of the seven children died leaving two children. Held by the High Court (Isaacs, J., dissenting) that, where each of the surviving children of testator was at the date of assessment entitled to a first life or greater interest in land, each of them, assuming them to be joint owners, was accordingly a joint owner who held an original share in the land and entitled to a deduction of £5,000 but no deduction in respect of grandchildren of testator allowed. *Hoysted and others v. Federal Commissioner of Taxation*, (1926) 27 C.L.R. 400; 1926 V.L.R. 230. The matter was again before the High Court the following year in respect of a subsequent year of taxation and the High Court, holding that, as the question whether the beneficiaries were joint owners was not put in issue on appeal to the High Court from the assessment, the Commissioner was, on an appeal from an assessment for the subsequent year, not estopped from contending that the beneficiaries were not joint owners of the land, held that the six surviving children were not "joint owners" within the definition in s. 3 and that, therefore, the trustees were not entitled to more than one deduction of £5,000. *Hoysted v. Federal Commissioner of Taxation* (1921) 29 C.L.R. 537; 1922 V.L.R. 237; 23 A.L.R. 77. On appeal to the Privy Council, this decision of the High Court was reversed, on the grounds that the Commissioner was estopped by the previous judgment. *Hoysted v. Commissioner of Taxation*, [1926] A.C. 155; 37 C.L.R. 290; 32 A.L.R. 33. Where one child on a specific date had a vested right to an aliquot share of income, the amount being determined by the aggregate number of beneficiaries in existence on 1st January of each year, but the right of the remaining children, who were infants, to a share in the income of each year was dependent upon their surviving until the commencement of the following year, it was held by the High Court that the infants were not owners and could not therefore be joint owners. *Rose v. Deputy Federal Commissioner of Land Tax (N.S.W.)*, (1920) 28 C.L.R. 347. The income from an estate was paid by a trustee to four children of the testator and to two grandchildren who took their deceased father's share, but as regards the share enjoyed by the grandchildren, the trustee had a discretionary power to pay only such portion as he should think fit for the education, maintenance, &c., of the grandchildren and to accumulate the balance. Held by the High Court that neither the four surviving children and two grandchildren nor the four surviving children were joint tenants and that the trustee was therefore entitled to only one deduction of £5,000. *National Trustees, Executors and Agency Co. of Australasia Ltd. v. Federal Commissioner of Taxation*, (1923) 33 C.L.R. 491.

Proviso added by
No. 37, 1912, s. 8.

Provided that, where the same persons have a beneficial interest in land^(a) or in the income therefrom under more than one settlement or will or under a settlement and will, they shall be jointly assessed in respect of the whole of their interests under the settlements or wills or settlement and will, and there may be deducted in the joint assessment from the unimproved value of the land comprised in the joint assessment, instead of the sum of Five thousand pounds as provided by paragraph (b) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely:—

In respect of each of the joint owners who holds an original share in the land being jointly assessed—

(a) the total sum of Five thousand pounds, or

(b) the sum which bears the same proportion to the unimproved value of the land after deducting the value of any annuity under section thirty-four of this Act as the share bears to the whole,

whichever is the less.

Added by No.
12, 1911, s. 7.
Amended by No.
37, 1912, s. 8.

(8.) In this section, "original share in the land"^(b) means the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest^(c) thereunder in the land or the income therefrom, or to the first such interest in remainder after a life interest of the settlor or after a life interest of the wife or husband of the settlor or testator.

Deductions
under original
and subsidiary
settlements
and wills.

Inserted by
No. 37, 1912,
s. 9.

38A.—(1.)^(d) Where, under a settlement made before the first day of July One thousand nine hundred and ten, or under the will of a testator who died before that day (in this section referred to as the "original settlement or will") together with a settlement made before that day by a beneficiary under the original settlement or will of his share thereunder or a will of a beneficiary under the original settlement or will who died before that day, the beneficial interest in any land or in the income therefrom is for the time being shared among a number of persons, who are relatives by blood, marriage, or adoption of the original settlor or testator in such a way that they are taxable as joint owners under this Act, then, for the purpose of their joint

(a) Held by the High Court (Griffith, C.J., Barton, Gavan Duffy and Rich, J.J.; Isaacs, J., dissenting), that the term "beneficial interest in land" in the proviso to section 38 (7) refers to the beneficial interest mentioned in the earlier part of the sub-section, and means the whole beneficial interest in the land assessed; that the proviso does not apply to a case in which each of the settlements or wills relied upon comprises only an undivided interest in land; and that the only effect of the proviso is that, when the same group of persons takes different parcels of land under more than one will or settlement, then, whether the settlors or testators are a single person or not, the privilege conferred by sub-section (7.) must be claimed once for all, in respect of the aggregate value of all the land. *Emmerton v. Federal Commissioner of Land Tax*, (1916) 22 C.L.R. 40; 22 A.L.R. 335.

(b) Held by the High Court that where land is devised to the testator's daughter for life, and upon her decease in trust for her children, the children are not holders of original shares. *Levis v. Federal Commissioner of Land Tax*, (1914) 17 C.L.R. 566; 20 A.L.R. 279.

(c) Held by the High Court that a contingent interest is an "interest"; an interest in the proceeds of the sale of land devised in trust for sale and payment of the proceeds to beneficiaries is an interest in the land, and such an interest contingent upon surviving a certain period is an interest greater than a life interest. *Per Isaacs, J.*—Although a contingent interest is an "interest" in land, it is not, within the meaning of section 38 (8), a "first life or greater interest" in the land or in the income therefrom. *Hoysted and others v. Federal Commissioner of Taxation*, (1920) 27 C.L.R. 400; 1920 V.L.R. 230.

(d) Held by the High Court that the next of kin taking under the intestacy of a person who died before 1st July, 1910, cannot claim the benefit of this section. *Hart v. Federal Commissioner of Land Tax*, (1913) 15 C.L.R. 545; 19 A.L.R. 98. As to the relationship of this section to s. 37 see *Wilson v. Federal Commissioner of Land Tax*, (1916) 21 C.L.R. 225; 22 A.L.R. 79.

assessment as such joint owners, there may be deducted from the unimproved value of the land, instead of the sum of Five thousand pounds as provided by paragraph (b) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely :—

In respect of each of the joint owners who holds an original share^(a) in the land under the original settlement or will—

- (a) the sum of Five thousand pounds, or
- (b) the sum which bears the same proportion to the unimproved value of the land, after deducting the value of any annuity under section thirty-four of this Act, as the share bears to the whole,

whichever is the less.

(2.) In this section, "original share in the land" means the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest thereunder in the land or the income therefrom, or to the first such interest in remainder after a life interest of the settlor or after a life interest of the wife or husband of the settlor or testator.

39.—(1.) All^(b) land owned by a company shall be deemed (though not to the exclusion of the liability of the company or of any other persons) to be owned by the shareholders of the company as joint owners, in the proportions of their interests in the paid-up capital of the company.

Land owned by companies.
Cf. N.Z. 1908,
No. 95, s. 57.

(2.) The provisions of section thirty-eight of this Act shall apply accordingly (but so that the assessment and liability of the company shall be in lieu of the joint assessment and liability under sub-section (2.) of that section), and the shareholders shall be separately assessed and liable, and entitled to deductions, in accordance with that section:

Provided that—

- (a) notwithstanding anything contained in this Act, any person whose individual interest in the unimproved value of land owned by any one company of which he is a shareholder did not amount to more than One hundred pounds shall not be separately assessed and liable, and entitled to deductions, in respect of that interest; and
- (b) any person whose individual interests not including an interest to which paragraph (a) of this proviso applies, did not amount, in the aggregate, to Five hundred pounds shall not be separately assessed and liable, and entitled to deductions, in respect of those interests.

Proviso added by
No. 30, 1927,
s. 14.

(a) Held by the High Court that where an original share is held for the benefit of several persons each of whom is a relative by blood, marriage, or adoption of the original testator, the deduction may be made as if the shares were held by one person only. *Archer v. Deputy Federal Commissioner of Land Tax, Tasmania*, (1914) 17 C.L.R. 444; 20 A.L.R. 119.

(b) Section held valid by High Court. *Morgan v. Deputy Federal Commissioner of Land Tax*, (1912) 15 C.L.R. 661; 19 A.L.R. 120.

Attorney-General for Queensland v. Attorney-General for Commonwealth, (1915) 20 C.L.R. 148; 21 A.L.R. 221.

Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(3.) The term "shareholder," in this and the next following section includes all persons on whose behalf a share in the company is held by a trustee or by any other person.

*Cf. N.Z., 1908,
No. 95, s. 54 (4).*

(4.) A company shall in no case be deemed to be an absentee; but any of the shareholders who are absentees shall be separately assessed and liable as absentees.

*Added by No.
37, 1912, s. 10.*

(5.) A company shall be deemed to be the agent in the Commonwealth for the purposes of this Act for an absentee shareholder in respect of his interest in the company.

*Companies
having
substantially
the same
shareholders.*

Cf. ib. s. 58.

*Amended by
No. 30, 1927,
s. 15.*

40.—(1.) Any^(a) two or more companies which consist substantially of the same shareholders shall be deemed to be a single company, and shall be jointly assessed and liable accordingly, with such rights of contribution or indemnity between themselves as is just.

(2.) Two companies shall be deemed to consist substantially of the same shareholders if shares representing not less than three-fourths of the paid-up capital of each of them are held by or on behalf of shareholders of the other. Shares in one company held by or on behalf of another company shall for this purpose be deemed to be held by shareholders of the last-mentioned company.

*Mutual Life
Assurance
Societies.*

*Amended by
No. 12, 1911,
s. 2.*

41.—(1.) Land^(b) owned by a Mutual Life Assurance Society (not being land of which the society is mortgagee in possession, or which the society has acquired under or by virtue of a mortgage) shall not be liable as against the society or its policy-holders, to assessment or taxation under this Act.

(2.) For the purposes of this section, a Mutual Life Assurance Society means any assurance society all the profits of which are divided among the policy-holders. In the case of a society which has shareholders who are entitled to receive a share of the profits of the society, a proportion of such land owned by the society, corresponding to the proportion of the total assurances of the society which is represented by its Australian policies, shall not be liable as against the society or its policy-holders to assessment or taxation under this Act.

*Sub-sec. (3)
omitted; No.
12, 1911, s. 2.*

*No disposition
to be effective
while possession
retained.*

Cf. ib. s. 63.

* * * * *

42. Notwithstanding any conveyance, transfer, declaration of trust, settlement, or other disposition of land, whether made before or after the commencement of the Act, the person making the same shall, so

(a) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321. Company A held shares representing 50.2 per cent. of the paid-up capital of Company B and shareholders of Company A held shares representing a further 29.5 per cent. of the paid-up capital of Company B. Shareholders of Company B held shares representing only 33 per cent. of the paid-up capital of Company A. Held by the High Court (prior to the insertion of the words "shares representing" in sub-section (2.) by the amending Act of 1927) that Company A was not liable to be jointly assessed with Company B. *Burns, Philp & Co. Ltd. v. Commissioner of Land Tax*, (1929) 43 C.L.R. 58; 3 A.L.J. 318; 36 A.L.R. 212. See also *Stewart Dawson and Co. (Victoria) Pty. Ltd. v. Federal Commissioner of Taxation*, (1933) 48 C.L.R. 633; 6 A.L.J. 427; 39 A.L.R. 253; as to shares held in trust. In that case, however, it was decided by the High Court (Dixon, J.) that, on the evidence, the shares in question were held beneficially and not in trust for D, who was a shareholder in three other companies. Question of onus of proof that the shares were not held in trust discussed.

(b) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242. (Note.—This section has since been amended by the *Land Tax Assessment Act* 1911.)

long as he remains or is in possession or in receipt of the rents and profits of the land, whether on his own account or on account of any other person, be deemed (though not to the exclusion of any other person) to be the owner of the land.

42A. Where land is occupied, controlled, or used by a person who is not the owner and there is no lease or agreement for a lease for a definite term^(a) in respect of the occupancy, control, or user of the land, the person occupying, controlling, or using the land shall be deemed to be the lessee for life of the land and shall be assessable as provided in section twenty-seven of this Act:

Occupation,
control or use
of land.

Inserted by
No. 37, 1912,
s. 11.

Provided that the Commissioner may exempt the person occupying, controlling, or using the land from the provisions of this section, if he is satisfied that the arrangement is of a temporary nature, as to which matter the decision of the Commissioner shall be final and conclusive.

43. Where under this Act—

(a) any person is deemed to be the secondary taxpayer in respect of any land or interest; and

(b) it is provided that there shall be deducted from the tax payable by the secondary taxpayer, in respect of the land or interest, such amount (if any) as is necessary to prevent double taxation,

Deductions to
prevent double
taxation.

See ss. 32, 35,
37, 38.

Amended by
No. 12, 1911,
s. 9.

the amount of the deduction (if any) shall be the lesser of the following amounts:—

(a) the amount of tax payable in respect of the land or interest by the secondary taxpayer;^(b) or

(b) the aggregate of the amounts of tax (if any) payable in respect of the land or interest by the primary taxpayer and by any precedent secondary taxpayer:

* * * * *

Proviso omitted
by No. 12, 1911,
s. 9.

Amended by
No. 12, 1911,
s. 9.

Provided that the secondary taxpayer shall be assessed and liable in respect of the land or interest, notwithstanding that the primary taxpayer is exempt from taxation in respect of the land or interest, or that there is no primary taxpayer in respect of the land or interest.

43A. Where^(c) in this Act reference is made to the tax payable by a person in respect of any land or interest, the reference is to so much of the whole tax payable by him as bears to the whole tax payable by him the proportion which the unimproved value of the land or interest referred to bears to the unimproved value of all the land owned by him.

Meaning of tax
payable in
respect of
certain land.

Inserted by
No. 12, 1911,
s. 10.

(a) Held by the High Court that a lease from year to year is a lease for a definite term within the meaning of this section and that the lessee of such a lease is not to be deemed the life tenant of the land leased. *Weatherly v. Federal Commissioner of Land Tax*, (1915) 20 C.L.R. 282; 21 A.L.R. 367.

(b) See footnote (c) (*supra*, p. 2591).

(c) A contract for the sale of land (the price being payable by instalments) provided that "The purchasers shall whenever required in each year pay to the vendor a sum equivalent to the land tax (both Federal and State) charged to and payable by the vendor in respect of the lands hereby sold or on such part thereof as the vendor shall for the time being remain liable to be taxed in respect of." Held by the Supreme Court of Victoria (Madden, C.J.) (as regards Federal land tax) that the sum payable by the purchasers was such proportion of the whole amount of the tax paid by the vendor in respect of his whole assessed estate as the unimproved value of the land comprised in the contract bore to the unimproved value of the whole assessed estate of the vendor and that, so construed, this section did not prevent the parties from so stipulating. *In re Clarke and Learmonth's Contract*, 1916 V.L.R. 151; 37 A.L.J. 178; 22 A.L.R. 43.

PART V.—OBJECTIONS AND APPEALS.

Heading
substituted by
No. 30, 1927,
s. 16.

Valuation
Boards.

Substituted by
No. 30, 1927,
s. 17.

44.—(1.) For the purposes of this Part there shall be such Valuations Boards as the Governor-General determines.

(2.) There shall be three members of each Board, consisting of a Chairman and two other members, who shall be appointed by the Governor-General.

(3.) The members of a Board shall hold office for such period, not exceeding seven years, as the Governor-General determines, but shall be eligible for re-appointment.

Officers of
Public Service
appointed to
Board.

Inserted by
No. 30, 1927,
s. 17.

44A.—(1.) If any officer of the Public Service of the Commonwealth or any person who is employed by the Commonwealth and whose service in such employment is, for the purpose of determining his existing and accruing rights, counted as service in the Public Service of the Commonwealth, is appointed a member of the Board, his service as member shall, for the purpose of determining his existing and accruing rights, be counted as public service in the Commonwealth.

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

Illness or
suspension
of Chairman
or member.

Inserted by
No. 30, 1927,
s. 17.

44B. In case of the illness, suspension or absence of the Chairman or any other member of a Board the Governor-General may appoint another person to act as Chairman or member, as the case may be, during the illness, suspension or absence and that person shall, while so acting, have all the powers and perform all the duties of the Chairman or member.

Quorum
and voting.

Inserted by
No. 30, 1927,
s. 17.

44C.—(1.) For the conduct of the business of a Board any two members shall form a quorum.

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

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

(4.) Where, at any meeting of a Board at which one of the members is not present, the members present are divided in opinion upon any question, the determination of that question shall be postponed until a meeting at which all the members are present.

Board may
not be sued.

Inserted by
No. 30, 1927,
s. 17.

44D. No action or suit shall be brought or maintained against any person who is or has been a member of a Board for any act or omission in connexion with his duties.

Remuneration
of members.

Inserted by
No. 30, 1927,
s. 17.

44E. The Chairman and each of the other members of a Board shall receive such salary or fees and such travelling allowance as the Governor-General determines and the Consolidated Revenue Fund is, to the necessary extent, hereby appropriated accordingly.

44F.—(1.) The Governor-General may remove the Chairman of a Board from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

Removal or suspension of Chairman.
Inserted by No. 30, 1927, s. 17.

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

(3.) Where the Chairman has been suspended under this section, a statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the Chairman to office, the Chairman shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the Chairman to be vacant, and the office shall thereupon become and be vacant.

44G. A Chairman or a member of a Board shall be deemed to have vacated his office if—

Chairman not to engage in other duties.
Inserted by No. 30, 1927, s. 17.

- (a) he engages, during his term of office, without the consent of the Governor-General, in any paid employment outside the duties of his office ;
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit ; or
- (c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months.

44H. A member of a Board, other than the Chairman, may be removed from office by the Governor-General for misbehaviour or incapacity.

Removal of member.
Inserted by No. 30, 1927, s. 17.

44J. A Valuation Board shall, subject to this Act, have power in any case in which the decision of the Commissioner on an objection against an assessment has been referred to it under this Act, to review the value assigned to land in that assessment, and any decision made by the Board upon such review shall, for all purposes (except those specified in sub-section (4.) of section forty-four K and sub-section (7.) of section forty-four L of this Act), be deemed to be a decision of the Commissioner.

Powers of Board.
Inserted by No. 30, 1927, s. 17.*

* Section 29 of the *Land Tax Assessment Act 1927* is as follows :—“ 29.—(1.) Where, prior to the commencement of this section, a taxpayer, acting under and in accordance with the *Land Tax Assessment Act 1910-1914*, or that Act as subsequently amended, or with the Regulations under that Act or under that Act as subsequently amended, has appealed to a Court against any assessment or has required his objections to any assessment to be treated as an appeal to a Court, and the value assigned to land in that assessment is disputed in any ground of that appeal or in any such objection, and the hearing of the appeal has not commenced, that person (if his appeal has not been withdrawn) may, within sixty days after the commencement of this section, or within such further time as the Commissioner allows, by notice in writing, request the Commissioner to refer the case to a Valuation Board for review of the value so disputed, and the Commissioner shall refer the case accordingly.

(2.) Where a request has been made under the last preceding sub-section, the Court, subject to the next succeeding sub-section, shall not have jurisdiction to proceed with the hearing of the appeal.

(3.) The provisions of sections forty-four J, forty-four L and forty-four M of the Principal Act, as amended by this Act, shall apply to the case as if the reference were a reference of a decision on an objection.”

Objections.
Inserted by
No. 30, 1927,
s. 17.

44K.—(1.) A taxpayer who is dissatisfied with the assessment made by the Commissioner under this Act may, within thirty days after service by post of the notice of assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies.

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

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

(4.) A taxpayer who is dissatisfied with the decision of the Commissioner may within thirty days after the service by post of notice of that decision—

(a) in writing, request the Commissioner to refer the decision to a Valuation Board for review of the value assigned to land in his assessment; or

(b) in writing, request the Commissioner to treat his objection as an appeal and to forward it to the High Court, or, where the land dealt with in the assessment is situated wholly within one State, to the High Court or the Supreme Court of that State.

References
to Board.
Inserted by
No. 30, 1927,
s. 17.

44L.—(1.) Where a taxpayer has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Valuation Board, the Commissioner shall, if the taxpayer's request is accompanied by a deposit of such amount as is prescribed for the particular class of case, refer the decision to the Board not later than thirty days after receipt of the request.

(2.) A taxpayer shall be limited on the review to the grounds which he has stated in his objection as being those upon which he objects to the value assigned to his land.

(3.) If the value assigned to land in the assessment has been reduced by the Commissioner after considering the objection, the reduced value shall be the value dealt with by the Board under the next succeeding sub-section.

(4.) Subject to the next succeeding sub-section, the Board, on review, shall give a decision and may either confirm the value assigned to the land in the assessment or reduce or increase that value.

Amended by
No. 34, 1928,
s. 3.

Inserted by No.
34, 1928, s. 3.

(4A.) In default of the appearance of the taxpayer before the Board for the purpose of the review, the Board shall confirm the value assigned to the land in the assessment:

Provided that upon good cause shown, the Board may, within the prescribed time, re-open the matter and review the value assigned to the land in the assessment.

Amended by
No. 34, 1928,
s. 3.

(5.) The Board may, if it considers the reference to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount deposited in accordance with sub-section (1.) of this section and shall,

in any case in which the value assigned to land in the assessment is confirmed under the last preceding sub-section and the matter is not re-opened, order the forfeiture of the amount so deposited.

(6.) The taxpayer may, within thirty days after the date of the Board's decision, request the Commissioner, in writing, to treat his objection, so far as it relates to grounds not dealt with by the Board, as an appeal and forward it to the High Court or, where the land dealt with in the assessment is situated wholly within one State, to the High Court or the Supreme Court of that State.

(7.) The Commissioner or a taxpayer may, within thirty days after the date of the Board's decision, appeal to the High Court from any decision of the Board under this section which, in the opinion of the High Court, involves a question of law, and the Board shall refer to the High Court any question of law arising before the Board and the decision of the High Court thereon shall be final and conclusive.

(8.) Where the Board has reduced or increased the value assigned to land in an assessment and no appeal has been made against the value so reduced or increased, the Commissioner shall forthwith amend the assessment accordingly, and, as the case may be, the Commissioner shall refund to the taxpayer any tax overpaid by him, or the taxpayer shall become liable to pay the tax due by him in consequence of any increase in the value assigned to his land.

44M.—(1.) Where a taxpayer has, in accordance with sub-section (4.) of section forty-four K or sub-section (6.) of section forty-four L of this Act, requested the Commissioner to treat his objection as an appeal and to forward it to the High Court or the Supreme Court of a State, the Commissioner shall, within thirty days after the receipt by him of the request, forward it accordingly.

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

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

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

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

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

(7.) The costs of the appeal shall be in the discretion of the Court.

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

Appeals to
Court.
Inserted by
No. 30, 1927,
s. 17.*

* See footnote * (*supra*, p. 2599).

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

(10.) The Commissioner or a taxpayer may appeal to the High Court, in its appellate jurisdiction, from any order made under subsection (5.) of this section.

Pending appeal or reference not to affect assessment.

Cf. N.Y., 1908, No. 95, s. 32.

Amended by No. 30, 1927 s. 18.

45.—(1.) The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the assessment the subject of that appeal or reference; and land tax may be levied and recovered on the assessment as if no appeal or reference were pending.

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

Section 46 repealed by No. 30, 1927, s. 19.

Rules of Court. Amended by No. 30, 1927, s. 20.

* * * * *

47.—(1.) The Justices of the High Court, or a majority of them, may make Rules of Court for regulating the practice and procedure in relation to appeals against assessments and decisions of Valuation Boards.

(2.) All such rules shall—

(a) be notified in the *Gazette*;

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

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

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

PART VI.—ACQUISITION OF LAND.

Power of Commonwealth to acquire land unless valuation increased.

Cf. *ibid.* s. 33.

48. For^(a) the protection of the revenue against the undervaluation of land, if the Commissioner is of opinion that the owner of any land has, in a return furnished under this Act, understated the unimproved value of the land, to the extent of twenty-five per centum or more, the following provisions shall apply:—

(a) The Commissioner may apply to the High Court for a declaration that the Commonwealth is entitled to acquire the land under this Act.

^(a) Validity of section discussed by High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

- (b) The application shall be heard by a Justice of the High Court, whose decision shall be final and without appeal; and the owner of the land shall be entitled to be heard.
- (c) If the Justice—
 - (i) is satisfied that the owner has understated the unimproved value of the land to the extent of twenty-five per centum or more; and
 - (ii) is not satisfied that the undervaluation was not made with a view to evading taxation,
 he shall make the declaration applied for.
- (d) Thereupon the Governor-General may acquire the land on behalf of the Commonwealth; and for that purpose may, within a reasonable time, by proclamation, declare that the land is vested in the Commonwealth, but subject to all leases, mortgages, and other charges affecting the land.
- (e) The effect of the proclamation shall be to vest the land in the Commonwealth for the same estate or interest therein as the owner was entitled to at the date of the publication of the proclamation in the *Gazette*, but subject to all leases mortgages and other charges then affecting the land, and to entitle the owner to compensation therefor upon the basis of the improved value obtained by adding the fair value of improvements to the unimproved value stated in the return, together with the amount of ten per centum upon that improved value, by way of an allowance for compulsory dispossession.
- (f) The provisions of the *Lands Acquisition Act 1906*^(a) shall, so far as applicable, but subject to this Act, apply in relation to the land so acquired as if it had been acquired under that Act.
- (g) The Minister shall forthwith notify a Minister of the Crown for the State in which the land is situate that the land has been so acquired; and if within three months after the notification the Government of the State requires the Commonwealth to convey the land to the State, in consideration of the payment by the State to the Commonwealth of the sum payable by the Commonwealth to the owner, together with the costs of conveyance and any expenses incurred by the Commonwealth in regard to the land acquired, the land shall be conveyed to the State accordingly.
- (h) If the Government of the State does not so require the Commonwealth to convey the land to the State, the Governor-General may authorize the use of the land for any public purpose of the Commonwealth for which it is required; or, if it is not required for any public purpose, may authorize the disposal of it as he thinks fit.

(a) *Supra*, p. 1434.

PART VII.—COLLECTION AND RECOVERY OF TAX.

Date of
payment of tax.
Substituted by
No. 30, 1927,
s. 21.

49.—(1.) Land tax for each year shall be due and payable thirty days after the service by post of the notice of assessment.

(2.) Where an assessment is altered or added to in accordance with this Act and a liability to pay additional land tax is thereby imposed upon the taxpayer, the additional land tax shall be due and payable thirty days after the service by post upon the taxpayer of the notice of the alteration or addition to the assessment.

(3.) Whenever land tax has been paid, whether upon an original assessment or upon an alteration or addition thereto, and an objection or appeal against the assessment, alteration or addition has been lodged by the taxpayer within the prescribed time, the amount of tax in dispute shall be refunded to the taxpayer at the expiration of six months from the date of payment if the matter has not then been finally determined, and shall not be repayable (whether under any alteration of the assessment or otherwise) until the matter has been finally determined :

Proviso
substituted by
No. 34, 1928,
s. 4.

Provided that in any case in which the determination of an objection or the hearing of an appeal has been delayed or postponed—

(a) upon the application of the taxpayer ; or

(b) owing to the failure of the taxpayer to supply information required by the Commissioner within such period, not being less than fourteen days from the date of the Commissioner's written request therefor, as the Commissioner states in his request,

the said period of six months shall be extended by the addition of the period of the postponement made upon the application of the taxpayer or, as the case requires, the period commencing at the expiration of the period fixed under paragraph (b) of this proviso and ending upon the date when the required information is lodged at the office of the Commissioner.

Added by
No. 34, 1928,
s. 4.

(4.) Where, in the opinion of the Court, there is unreasonable delay on the part of the appellant in setting an appeal down for hearing, the Court may, upon application by the respondent, dismiss the appeal for want of prosecution.

Extensions and
payment by
instalments.

Inserted by
No. 30, 1927,
s. 22.

49A. The Commissioner may, in such cases as he thinks fit—

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

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

Penal tax.

Substituted by
No. 30, 1927,
s. 23.

50. If any land tax is not paid before the expiration of thirty days after it has become due, or such further time as is allowed by the Commissioner under section forty-nine A of this Act, additional tax shall be payable at the rate of ten per centum per annum upon the amount of the tax unpaid :

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the whole or any part of the additional tax imposed under this section.

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

Recovery of tax.
N.S.W.
59 Vic., No. 15,
ss. 42, 51;
N.Z., 1908,
No. 95, s. 93.

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

52. If, in any proceedings against a taxpayer for the recovery of land tax, the defendant—

Substituted
service.

N.Z. 1b. s. 95.

Amended by
No. 30, 1927,
s. 24.

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

(b) cannot after reasonable inquiry be found,

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

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

Provision when
tax not paid
during lifetime.
Cf. N.Z., 1908,
No. 95, s. 98.

(a) The Commissioner shall have the same powers and remedies against the executors and administrators of the taxpayer in respect of the estate of the taxpayer as he would have had against the taxpayer in his lifetime.

(b) The executors and administrators shall make such returns as the Commissioner requires for the purpose of a full assessment.

(c) The assessment shall be at the rates payable in respect of the years for which the tax ought to have been paid, and the amount payable shall (where the taxpayer's default was intentional) be treble the amount of the difference between the tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the taxpayer's estate in the hands of the executors and administrators.

(d) No lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section and recovering the treble tax as in the case of ordinary assessments and taxation.

Statutes of
Limitations.

Cf. N.Z., 1909,
No. 95, s. 100.

Remedy against
other persons
where taxpayer
makes default.
Cf., ib. s. 102.

54. No statute of limitations at any time in force shall bar or affect any action or remedy for recovery of land tax.

55. Where a taxpayer makes a default in the payment of land tax, then without in any way releasing him from his liability the following provisions shall apply as long as the default continues:—

(a) If the tax is payable in respect of land subject to any lease or occupied by any person, then the lessee or occupier shall be responsible for the payment of the tax and it may be recovered from him as if he were the defaulting taxpayer.

(b) All payments made under this section by a lessee or occupier shall be deemed to be made on behalf of the defaulting taxpayer:

Provided that the responsibility of the lessee or occupier under this section shall only be to the extent of any rent or payments due by him to the taxpayer at the time of demand made or action brought by the Commissioner, or from time to time accruing due thereafter.

Tax to be a first
charge on land.
N.S.W., 59 Vic
No. 15, s. 54;
N.Z., 1908, No.
95, s. 99.

56.—(1.) Land^(a) tax shall until payment be a first charge upon the land taxed in priority over all other encumbrances whatever, and notwithstanding any disposition of the land it shall continue to be liable in the hands of any purchaser or holder for the payment of the tax so long as it remains unpaid:

Provided that no such charge shall be of effect as against a *bona fide* purchaser for value who at the time of purchase made due inquiry but had no notice of the liability:

Provided further that a purchaser shall be deemed to have made due inquiry who has made inquiry of the Commissioner as prescribed.

Cf. 1006, No. 13,
s. (1)
N.Z., ib. s. 99
(2).

(2.) Where the Commissioner thinks it advisable to register the charge, he may lodge with the Registrar-General or Registrar of Titles or other proper officer of the State or part of the Commonwealth in which the land is situated a certificate under his hand describing the land charged, and stating that there are arrears of land tax payable in respect thereof; and the Registrar or other proper officer shall register it in the register and as nearly as may be in the manner in which dealings with land are registered, and shall deal with and give effect to the certificate as if it were an instrument of charge or encumbrance duly executed under the laws in force in that State or part of the Commonwealth.

Added by
No. 30, 1927,
s. 25.

(3.) The Registrar General or Registrar of Titles or other proper officer of the State or part of the Commonwealth in which the land is situated shall not remove the charge from the register until he has received a certificate from the Commissioner, Assistant Commissioner or a Deputy Commissioner certifying that the arrears of land tax and all costs incurred in the registration and removal of the charge have been paid.

(a) Validity of section discussed by the High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

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

Recovery of tax paid on behalf of another person.

N.Z. 1908, No. 95, s. 112.

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

Contribution from taxpayers jointly liable.

N.S.W., 59 Vic. No. 12, s. 1 (2); N.Z., ib. s. 113.

(a) A person who has paid the tax in respect of any land may recover by way of contribution from any other owner thereof a sum which bears the same proportion to the tax as the value of the estate of such other person bears to the whole value of the land.

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

59. If^{(a) (b)} within three years after any land tax has been paid it is discovered that too little in amount has been paid, the taxpayer liable for the tax shall forthwith pay the deficiency:

Payment of deficiency.
Cf. N.Z., 1908, No. 95, s. 115.

Provided that nothing in this section shall operate to limit or affect the liability of the taxpayer or any other person under section fifty-three of this Act.

60. If^(b) within three years after any land tax has been paid, it is discovered that too much in amount has been paid, whether by reason of duplicate taxation or otherwise, the Commissioner upon being satisfied thereof shall order the excess to be returned to the taxpayer entitled thereto.

Refund of excess.
Cf. ib. s. 116.

PART VIII.—MISCELLANEOUS.

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

Public officer of company.
N.S.W., 59 Vic. No. 15, s. 43; N.Z., ib. s. 8.

(a) The person so appointed shall for the purposes of this Act be called the public officer of the Company.

(a) Held by the High Court that where an assessment is appealed against and the Commissioner submits to the contention of the taxpayer and the appeal is withdrawn, the Commissioner is precluded from subsequently making an amended assessment re-asserting his former claim. *Cox v. Deputy Federal Commissioner of Land Tax, Tasmania*, (1914) 17 C.L.R. 450; 20 A.L.R. 166.

(b) Held by the High Court that this section did not restrict the power of altering assessments which, prior to the amending Act of 1927, s. 20 (see now s. 21) conferred on the Commissioner. *Trustees, Executors, &c., Company v. Commissioner of Land Tax*, (1915) 20 C.L.R. 21; 1915 V.L.R. 245; 21 A.L.R. 185.

- (b) The Company shall keep the office of public officer constantly filled, and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner.
- (c) If the Company fails or neglects to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.
Penalty : Fifty pounds for every day during which the failure or neglect continues.
- (d) Service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the Regulations, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (e) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the Regulations by a taxpayer, and in case of default shall be liable to the same penalties.
- (f) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not exonerate the company from the necessity of complying with any of the provisions of this Act or the Regulations, or from the penalties consequent on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.

62. With respect to every agent, and with respect also to every trustee, the following provisions shall apply :—

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of the land held by him in his representative capacity and the payment of land tax thereon.
- (b) He shall in respect of such land make the returns and be assessed thereon, but in his representative capacity only, and each return and assessment shall except as otherwise provided by this Act be separate and distinct from any other.
- (c) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person if living would have been liable to make.
- (d) Where as agent or trustee he pays land tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person.

- (e) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the land tax which is or will become due in respect of the land.
- (f) He is hereby made personally liable for the land tax payable in respect of the land if while the tax remains unpaid he alienates charges or disposes of any real or personal property which is held by him in his representative capacity, but he shall not be otherwise personally liable for the tax.^(a)
- (g) If he is a trustee he may raise whatever moneys are necessary in order to pay the land tax by mortgage or charge with or without power of sale of any real or personal property held by him as such trustee, and may apply the money so raised or any other moneys in his possession as such trustee in paying the tax.
- (h) He is hereby indemnified for all payments which he makes in pursuance of this Act or by requirements of the Commissioner.
- (i) For the purpose of insuring the payment of land tax the Commissioner shall have the same remedies, against all land or other property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the land or other property of any other taxpayer in respect of land tax, and in as full and ample a manner.

63. Every contract agreement or arrangement made or entered into, in writing or verbally, whether before or after the commencement of this Act, shall (except as provided by section thirty of this Act) so far as it has or purports to have the purpose or effect of in any way, directly or indirectly,^(b)

Contracts to evade tax void.
N.S.W., 59 Vic.,
No. 15, s. 63;
N.Z., 1908, No.
59, s. 103.

(a) altering the incidence of any land tax; or

(b) relieving any person from liability to pay any land tax^(b) or make any return; or

(a) Held by the High Court to apply to the Official Receiver in Bankruptcy. *Lloyd v. Federal Commissioner of Land Tax*; *in re Browne*; *ex parte Lloyd*, (1933) 49 C.L.R. 130; 5 A.B.C. 212; 39 A.L.R. 425; 7 A.L.J. 200.

(b) Validity of section discussed by the High Court. *Oshorne v. Commonwealth*, (1911) 12 C.L.R. 321. Section held by the Supreme Court of Victoria to be valid. *Patterson v. Farrell*, 1912 V.L.R. 17; 33 A.L.T. 149; 17 A.L.R. 502. In a contract of sale of certain land, in respect of which the vendor was liable to pay land tax under this Act, a condition was inserted providing that "the purchaser shall be liable for all rates, taxes, and insurance premiums falling due from and after the date of possession, but all annual outgoings and insurance premiums in respect of the property sold shall be apportioned between the vendor and purchaser up to such date." It was held by the High Court (reversing the decision of the Supreme Court of Victoria in *Patterson v. Farrell, supra*) that the federal land tax was an "annual outgoing" within the meaning of this condition; that the agreement that the land tax for the year during which the purchaser went into possession should be apportioned was not affected by this section; and that therefore the vendor was entitled to recover from the purchaser a sum which would represent a portion of the federal land tax payable in respect of land whose unimproved value was equivalent to that of the land sold, proportionate to the period of the year during which the purchaser had been in possession. It was held, further, that the purchaser was not liable to pay at the higher rate at which the vendor was liable to pay because of his owning other land. *Patterson v. Farrell*, (1912) 14 C.L.R. 348; 1913 V.L.R. 69; 18 A.L.R. 237. Prior to executing a lease but after entering into a preliminary agreement for a lease at a weekly rental of 90l per week, the tenant to pay all taxes including land tax, the lessor became aware of this section. The lease as executed showed the weekly rental as 100l, the lessor promising to repay an amount equal to the difference between this increase and the amount of Federal and State land tax paid. Held by the Supreme Court of Victoria (Irvine, C.J.) there was no contract agreement or arrangement altering the incidence of land tax within the meaning of this section. *In re Luicks Ltd. (In liquidation)*, 1928 V.L.R. 180; 49 A.L.T. 229; 34 A.L.R. 155.

(c) defeating evading or avoiding any duty or liability imposed on any person by this Act; or

(d) preventing the operation of this Act in any respect,

be absolutely void, but without prejudice to its validity in any other respect or for any other purpose.

Access to lands,
buildings, &c.
Cf. N.Z. 1908,
No. 95, s. 104
(c).

64. The Commissioner, or any officer authorized by him on that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents, and other papers, and to all registers of deeds or documents of title, for the purpose of valuing or inspecting any land, or of ascertaining the ownership of any land, and for any of those purposes may make extracts from or copies of any such books documents or papers.

Power to
obtain
evidence.
Substituted by
No. 30, 1927,
s. 26.

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

(a) to furnish the Commissioner with such information concerning any land or assessment as he requires; or

(b) to attend and give evidence before the Commissioner or before any officer authorized by him in that behalf concerning any land or assessment, and to produce all books, documents or other papers whatever in his custody or under his control relating thereto.

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

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

Release of
taxpayers in
case of hardship.
Cf. ib. s. 117.
Sub-sec. (1)
substituted by
No. 30, 1927,
s. 27, and
amended by
No. 64, 1932,
s. 5.

66.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs, or of such substitutes for any or all of them as the Minister from time to time appoints—

(a) that a taxpayer liable to pay land tax has become bankrupt or insolvent, or has suffered such a loss that the exaction of the full amount of tax would entail serious hardship;

(b) that, by reason of drought or adverse seasons or other adverse conditions, the returns from any land owned by the taxpayer upon which he carries on agricultural or pastoral pursuits have been seriously impaired;^(a) or

(c) that, owing to low prices in respect of primary products the income derived from the land the subject of land tax has been so reduced that the taxpayer is unable to pay the whole of the tax out of his income derived in the financial year for which the land tax is assessed, and that

(a) Held by the High Court (Starke, J.) and affirmed by the Full Court (Knox, C.J. and Isaacs, J., Rich, J., dissenting) that on an application based on the provisions of this paragraph the Board is not precluded from considering the general financial position of the taxpayer. *Ex parte Fulkner*, (1929) 35 A.L.R. 303; 3 A.L.J. 244.

the financial position of the taxpayer is such that the exaction of the full amount of land tax would entail serious hardship,

the Board may release such taxpayer wholly or in part from his liability for land tax or for land tax in respect of any particular land the returns from which have been so impaired, and the Commissioner shall make such alterations in the amount of tax payable and shall make such refund of tax already paid as is necessary to give effect to the decision of the Board.

(2.) The Commissioner, or, where a substitute for the Commissioner has been appointed under sub-section (1.) of this section, that substitute, shall be the Chairman of the Board, and the decision of the majority shall prevail.

Amended by
No. 30, 1927,
s. 27.

(3.) The Minister shall cause to be laid before both Houses of Parliament as soon as may be after the close of the financial year a full statement of all cases in which, and the grounds on which, liability has been so released.

(4.) In every case in which the amount of tax from which the taxpayer applies to be released is not less than Five hundred pounds, the Board shall, and, in any case in which the amount of tax from which the taxpayer applies to be released is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review constituted under the *Income Tax Assessment Act 1922-1925.*^(a)

Added by
No. 30, 1927,
s. 27.

(5.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

Added by
No. 30, 1927,
s. 27.

(6.) The member of the Board of Review may require the taxpayer to appear before him, either in person or by a representative, and may examine the taxpayer upon oath concerning any statements which the taxpayer has, or may desire to have, placed before the Board constituted by this section.^(b)

Added by
No. 30, 1927,
s. 27.

(7.) The member of the Board of Review shall, if he so requires, be assisted in his examination of the taxpayer by an officer of the Department of Taxation who is a qualified accountant.

Added by
No. 30, 1927,
s. 27.

(8.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as that member considers the circumstances justify.

Added by
No. 30, 1927,
s. 27.

(9.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

Added by
No. 30, 1927,
s. 27.

(a) *Supra*, p. 2465.

(b) Held by the High Court that where the taxpayer has been given an opportunity of being heard by the member the Board is not bound also to give the taxpayer that opportunity. *Ex parte Falkiner*, (1929) 35 A.L.R. 303; 3 A.L.J. 244.

Added by
No. 30, 1927,
s. 27.

(10.) The member of the Board shall submit a report to the Board constituted by this section upon the facts disclosed by his examination and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the taxpayer's application for release from tax. The report shall be accompanied by the record mentioned in the last preceding sub-section.

Obstructing
officers,
N.S.W., 59 Vic.,
No. 15, s. 61 ;
N.Z., 1908, No.
95, s. 108 (a).

67. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the Regulations shall be guilty of an offence.

Penalty : Fifty pounds.

Offences.
Substituted by
No. 30, 1927,
s. 28.

68.—(1.) Any person who—

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations, or to comply with any requirement of the Commissioner, Assistant Commissioner or a Deputy Commissioner made in pursuance of this Act or the Regulations ;
- (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner, Assistant Commissioner or a Deputy Commissioner or any officer duly authorized by him, or to answer truly and fully any questions put to him, or to produce any book or papers required of him by the Commissioner, Assistant Commissioner or a Deputy Commissioner or any such officer ; or
- (c) makes or delivers a return or gives any information which is false in any particular or makes any false answer whether verbal or in writing, in relation to any matter arising under this Act,

shall be guilty of an offence.

Penalty : One hundred pounds.

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

(3.) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements of this Act, or of the Regulations, or of the Commissioner, Assistant Commissioner, a Deputy Commissioner or other authorized officer, in respect of which he was convicted, shall be guilty of an offence.

Penalty : Five hundred pounds and treble the amount of any tax payment whereof he has evaded or attempted to evade ; or forfeiture of the land in respect of which the offence was committed, or any part thereof.

(4.) It shall be a defence to a prosecution for an offence against paragraph (c) of sub-section (1.) of this section if the defendant proves that the false return, information or answer was made or given in good faith.

68A.—(1.) Notwithstanding anything contained in the last preceding section, any person who—

Failure to
furnish returns.
Inserted by
No. 30, 1927,
s. 28.

(a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations or by the Commissioner, Assistant Commissioner or a Deputy Commissioner; or

(b) fails to include in any return any land owned by him,

shall, if a taxpayer to whom paragraph (a) of this sub-section applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax assessable to him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater, or, if a taxpayer to whom paragraph (b) of this sub-section applies, shall be liable to pay by way of additional tax the amount of One pound or double the amount of the difference between the tax properly payable and the tax which would be payable if the assessment were based upon the return lodged, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section fifty of this Act:

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

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

69.—(1.) Any^(a) person who, with intent to defraud, in any return understates the unimproved value of any land, shall be guilty of an indictable offence.

Under-
valuation of
land.

Penalty: Five hundred pounds and an amount equal to treble the amount of the tax which would have been evaded if the value stated in the return had been accepted as the unimproved value of the land; or forfeiture of the land undervalued or any part thereof.

(a) Validity of section discussed by the High Court. *Osborne v. Commonwealth*, (1911) 12 C.L.R. 321; 17 A.L.R. 242.

(2.) Where the value stated in the return is less, by twenty-five per centum or more, than the value as found by the jury, the value shall be presumed, in the absence of evidence to the contrary, to have been understated with intent to defraud.

Evading
taxation.
N.S.W., 50 Vic.,
No. 15, s. 60 ;
N.Z., 1908,
No. 95, s. 103.

70. Any^(a) person who, by any wilful act default or neglect, or by any fraud art or contrivance whatever, evades or attempts to evade assessment or taxation, shall be guilty of an indictable offence.

Penalty : Five hundred pounds and treble the amount of the tax payment whereof he has evaded or attempted to evade ; or forfeiture of the land in respect of which the offence was committed, or any part thereof.

Forfeiture of
land for
fraudulent
evasion, &c.

71.—(1.) Where,^(a) on the conviction of any person under either of the last two preceding sections, the penalty of forfeiture of any of his land has been imposed, the Governor-General may, by proclamation, declare that the estate or interest of that person in the land is forfeited to the Commonwealth.

(2.) The proclamation shall have the same effect as a proclamation under section forty-eight of this Act, and paragraphs (c) to (h), inclusive, of that section shall apply, except that—

(a) the taxpayer shall not be entitled to any compensation ;
and

(b) paragraph (g) of that section shall be read with the substitution of the improved value of the land, as assessed by the Commissioner, for the sum payable by the Commonwealth to the owner.

Penalties not to
relieve from tax.

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

Aiding or
abetting
offences.

73. Whoever aids, abets, counsels, or procures, or by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence under this Act, shall be deemed to have committed that offence, and shall be punishable accordingly.

Regulations.*

74. The Governor-General may make Regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

(a) Validity of section discussed by the High Court. *Osborne v. Commonwealth*. (1911) 12 C.L.R. 321 ; 17 A.L.R. 242.

* Section four of the *Land Tax Assessment Act* (No. 2) 1930 is as follows :—

"4. Statutory Rules 1930 No. 33 shall be deemed to have commenced on the date of the commencement of the amendments effected by section three of the *Land Tax Assessment Act* 1930."

SALES TAX ACT (No. 1) 1930-1931.^(a)

An Act to impose a Tax upon the Sale Value of Goods manufactured in Australia, and sold by the Manufacturer or treated by him as stock for sale by retail or applied to his own use.

Title amended by No. 63, 1930, s. 3.

[Assented to 18th August, 1930.]^(b)

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

1. This Act may be cited as the *Sales Tax Act (No. 1) 1930-1931*.^(c)
2. The *Sales Tax Assessment Act (No. 1) 1930-1931*^(c) shall be incorporated and read as one with this Act.
3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods manufactured in Australia by a taxpayer, which, before the eleventh day of July, One thousand nine hundred and thirty-one, are sold by him or treated by him as stock for sale by retail or applied to his own use, and at the rate of six^(d) per centum upon the sale value of goods manufactured in Australia by a taxpayer, which, on or after that date, are sold by him or treated by him as stock for sale by retail or applied to his own use.

Short title.
Short title amended.
No. 32, 1918, s. 2.
Incorporation.
Amended by No. 26, 1931, s. 3.

Imposition of tax.
Amended by No. 63, 1930, s. 4 and by No. 26, 1931, s. 4.

(a) The *Sales Tax Act (No. 1) 1930-1931* comprises the *Sales Tax Act (No. 1) 1930* (No. 26 of 1930) as amended by the *Sales Tax Act (No. 1A) 1930* (No. 63 of 1930), and by the *Sales Tax Act (No. 1) 1931* (No. 26 of 1931). See Acts No. 63, 1930, s. 1 and No. 26, 1931, s. 1.

(b) This is the date of assent to the *Sales Tax Act (No. 1) 1930*. The *Sales Tax Act (No. 1A) 1930* was assented to on 16th December, 1930 (deemed to have commenced on the date of the commencement of the *Sales Tax Act (No. 1) 1930*); and the *Sales Tax Act (No. 1) 1931* on 10th August, 1931, (deemed to have commenced on 11th July, 1931).

(c) *Infra*, following page.

(d) By section 19 of the *Financial Relief Act 1933*, the tax imposed at the rate of six per centum by this Act has been reduced to five per centum.

SALES TAX ASSESSMENT ACT (No. 1) 1930-1935.^(a)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods manufactured in Australia and sold by the Manufacturer, or applied to his own use, and for other purposes.

[Assented to 18th August, 1930.]^(b)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act* (No. 1) 1930-1935.^(a)

2. This Act is divided into Parts, as follows:—

- Part I.—Preliminary.
- Part II.—Administration.
- Part III.—Registration and Certificates.
- Part IV.—Liability to Taxation.
- Part V.—Returns.
- Part VI.—Collection and Recovery of Tax.
- Part VII.—Objections and Appeals.
- Part VIII.—Penal Provisions.
- Part IX.—Taxation Prosecutions.
- Part X.—Miscellaneous.

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

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

“Board of Review” means a Board of Review constituted under the *Income Tax Assessment Act* 1922-1929;^(c)

(a) The *Sales Tax Assessment Act* (No. 1) 1930-1935 comprises the *Sales Tax Assessment Act* (No. 1) 1930 (No. 25 of 1930) as amended by the *Sales Tax Assessment Act* (No. 1A) 1930 (No. 62 of 1930); the *Sales Tax Assessment Act* (No. 1) 1931 (No. 25 of 1931); the *Sales Tax Assessment Act* (No. 1) 1932 (No. 39 of 1932); the *Financial Relief Act* 1932 (No. 61 of 1932); the *Financial Relief Act* 1933 (No. 17 of 1933); the *Sales Tax Assessment Act* (No. 1) 1933 (No. 47 of 1933); the *Financial Relief Act* 1934 (No. 16 of 1934); the *Sales Tax Assessment Act* (No. 1) 1934 (No. 29 of 1934); the *Sales Tax Assessment Act* (No. 1) 1935 (No. 8 of 1935); the *Sales Tax (Financial Relief) Act* 1935 (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act* 1935 (No. 61 of 1935). See Acts No. 62, 1930, s. 1; No. 25, 1931, s. 1; No. 39, 1932, s. 1; No. 47, 1933, s. 1; No. 29, 1934, s. 1; and No. 61, 1935, s. 1 (4).

(b) This is the date of assent to the *Sales Tax Assessment Act* (No. 1) 1930. The *Sales Tax Assessment Act* (No. 1A) 1930 was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act* (No. 1) 1930); the *Sales Tax Assessment Act* (No. 1) 1931 on 10th August, 1931; the *Sales Tax Assessment Act* (No. 1) 1932 on 5th October, 1932; the *Financial Relief Act* 1932 on 5th December, 1932; the *Financial Relief Act* 1933 on 26th October, 1933 (excepting section 18 which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts commenced on the date of assent); the *Sales Tax Assessment Act* (No. 1) 1933 on 12th December, 1933; the *Financial Relief Act* 1934 on 1st August, 1934; the *Sales Tax Assessment Act* 1934 on 4th August, 1934; the *Sales Tax Assessment Act* (No. 1) 1935 on 10th April, 1935; the *Sales Tax (Financial Relief) Act* 1935 on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act* 1935 on 7th December, 1935.

(c) *Supra*, p. 2465.

Short title.
Short title
amended.
No. 32, 1918,
s. 2.
Parts.

Definitions.

"Certificate" means a certificate of registration under this Act ;

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

"Goods" includes commodities, but does not include goods which have, either through a process of retailing or otherwise, gone into use or consumption in Australia ;

Amended by
No. 8, 1935,
s. 2.

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

"Manufacture" includes production, and also the combination of parts or ingredients whereby an article or substance is formed which is commercially distinct from those parts or ingredients, except such combination as, in the opinion of the Commissioner, is customary or reasonably practicable for users or consumers of those articles or substances to undertake, and also includes any treatment applied to foodstuffs as a process in the preparation of the foodstuffs for human consumption ;^(a)

Substituted by
No. 39, 1932,
s. 2; amended
by No. 29,
1934, s. 2.*

"Manufactured" has a meaning corresponding to that of "Manufacture" ;

Substituted by
No. 39, 1932,
s. 2.

"Manufacturer" means a person who engages, whether exclusively or not, in the manufacture of goods, and includes a printer, publisher, lithographer or engraver, and a person (not being an employee) who makes up goods, whether or not the materials out of which the goods are made are owned by him, but, where one person makes goods for another, wholly or in part out of materials supplied by that other, and the goods are not required for the private, domestic or other personal use of that other, the person supplying the materials shall be deemed to be the manufacturer, and the person so making the goods shall not be deemed to be the manufacturer ;^(a)

Amended by
No. 62, 1930,
s. 3 and by
No. 39, 1932,
s. 2.

"Person" includes a company ;

* Sub-section (2.) of section 2 of the *Sales Tax Assessment Act* (No. 1) 1934 is as follows :—

"(2.) The amendment effected by paragraph (a) of sub-section (1.) of this section shall have effect and be deemed to have had effect at all times as if the words thereby inserted in the definition of "Manufacture" in sub-section (1.) of section three of the Principal Act had, at the date of the commencement of the *Sales Tax Assessment Act* (No. 1) 1930 been included at the end of the definition of "Manufacture" in sub-section (1.) of section three of that Act and had, at the date of the commencement of the *Sales Tax Assessment Act* (No. 1) 1932 been included at the end of the definition of "Manufacture" in section two of that Act."

(a) Held by the High Court, prior to the amendments effected by the amending Act of 1932 that persons engaged in reporting Court proceedings and conferences and selling the transcript to their clients or, with permission to other persons, are not manufacturers. *Adams v. Rau*, (1931) 46 C.L.R. 572 ; 5 A.L.J. 279. 38 A.L.R. 87. Per Evatt J., a medical practitioner taking X-rays and furnishing copies of the skiagraph to the patient is not a producer of goods ; nor is the artist who makes an etching for a client and provides him with a dozen copies a manufacturer of commodities. *Ibid.*

Held by the High Court, prior to the amendments effected by the amending Act of 1932, that a person who imports the parts of a motor cycle (disassembled prior to exportation) excepting the tyres and tubes, reassembles those parts and fits tyres and tubes thereon, is not a manufacturer. *Irvine v. Munro and Sons Ltd.*, (1931) 46 C.L.R. 279 ; 5 A.L.J. 286.

Held by the High Court that by preparing and cooking fish and "chips" a defendant had neither produced nor manufactured goods. *Federal Commissioner of Taxation v. Rochester* (1934) 50 C.L.R. 225.

Held by the Supreme Court of New South Wales that a retail florist who in the course of business made up and sold wreaths was a manufacturer. *In re Searls Ltd.* (1932) 33 S.R. (N.S.W.) 7 ; 49 W.N. (N.S.W.) 195.

Held by the High Court (Rich, Starke, Dixon and McTiernan, J.J. ; Evatt, J., dissenting) that photographs, whether tinted or untinted, taken of and supplied to clients are manufactured goods. *Federal Commissioner of Taxation v. Riley*, (1935) 53 C.L.R. 69 ; 41 A.L.R. 339. Where the business of the taxpayer is to develop photographic films exposed by amateur photographers and make prints thereof, held by the High Court (Rich, Starke, Dixon and McTiernan, J.J. ; Evatt, J., dissenting) that the prints are manufactured goods. *Federal Commissioner of Taxation v. Butcher*, (1935) 53 C.L.R. 82 ; 41 A.L.R. 339.

“Registered person” means a manufacturer or wholesale merchant who is registered under this Act;

Inserted by
No. 39, 1932
s. 2.

“Sale of goods by wholesale” includes—

- (i) a sale of goods to a person who buys the goods for the purpose of resale or for supply to some other person in the circumstances specified in sub-section (4.) of this section;
- (ii) a sale of goods at a discount which is of the kind allowed by the vendor to persons engaged in trade or business; and
- (iii) a sale of goods to a manufacturer (whether or not he is required to be registered in accordance with the provisions of this Act) to be used in wrought into or attached to goods to be manufactured by him;

Added by
No. 47, 1933,
s. 2.

but, notwithstanding anything contained in the foregoing provisions of this definition, does not include—

- (a) the sale by a retailer to his employees of goods at a discount from the retail selling price;
- (b) the sale of goods, by a retailer, whether or not at a discount from the retail selling price, for the accommodation of the purchaser owing to temporary shortage of stock of the purchaser such goods being of a kind usually manufactured by the purchaser or usually purchased by him from a manufacturer or wholesale merchant for sale;
- (c) the sale of goods by a retailer on cash orders issued by firms or persons carrying on the business of issuing cash orders authorizing or requesting goods to be supplied to the holders of such cash orders;
- (d) the sale whether for cash or on credit, and whether at a discount from the retail selling price or not, of goods of a kind used in the construction and repair of and wrought into or attached to so as to form part of buildings, unless such goods are sold to a person (not being a person who buys goods for supply to some other person in the circumstances specified in sub-section (4.) of this section) who buys the goods for the purpose of resale;
- (e) the sale by a retailer, whether for cash or on credit, and whether at a discount from the retail selling price or not, of goods of a kind used in the manufacture of and wrought into or attached to clothes for human wear, if the sale is made to a person whose principal business is the making up of articles of human wear to the orders of individual customers; and
- (f) the supply of goods by a person to some other person in the circumstances specified in sub-section (4.) of this section,

and any sale or supply of goods as specified in paragraph (a) (b) (c) (d) (e) or (f) of this definition shall be deemed to be a sale of goods by retail.

For the purposes of this definition "retailer" means a person whose sales of goods (not including sales to which paragraphs (a) (b) (c) and (e) of this definition apply) are made principally by retail and "sale of goods by a retailer" means a sale of goods from stock in a retail store or a retail section of a store.

"Taxpayer" means a person chargeable with sales tax under this Act;

"the Commissioner" means the Commissioner of Taxation;

"the Second Commissioner" means the Second Commissioner of Taxation;

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

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

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

"Unregistered person" means a person who is not registered under this Act;

"Wholesale Merchant" means a person who engages, whether exclusively or not, in the sale of goods by wholesale, and includes a trustee, as defined by this section, in whom the ownership of the business of any such person or of any manufacturer becomes vested, or who becomes entitled to the possession, management or control of that business or of the goods of that business, and who sells those goods, whether in the course of carrying on or in the course of winding-up or realizing that business.

Substituted by
No. 39, 1932,
s. 2.

(2.) For the purpose of this Act, a person shall be deemed to have quoted his certificate where, in any transaction, act or operation in relation to goods the sale value of which is subject to tax, he represents in the prescribed manner that he is the holder of a certificate issued under this Act.

(3.) Any reference in this Act to the amount for which goods are sold shall, where the goods are sold subject to the payment of a royalty, be deemed to include such amount as, in the opinion of the Commissioner, is the value of the royalty.

(4.) For the purposes of this Act, a person shall be deemed to have sold goods if, in the performance of any contract under which he has received, or is entitled to receive, valuable consideration, he

Added by
No. 39, 1932,
s. 2.

supplies goods the property in which (whether as goods or in some other form) passes, under the terms of the contract, to some other person.

Added by
No. 29, 1934,
s. 2.*

(5.) Where a sale and purchase, for one inclusive price, is made of goods upon the sale value of which sales tax is payable, together with goods upon the sale value of which sales tax is not payable, the amount for which the goods upon the sale value of which sales tax is payable are sold and purchased, shall be deemed to be the amount which, in the opinion of the Commissioner, would have been the sale price of those goods if sold separately.

Added by
No. 29, 1934,
s. 2.*

(6.) For the purposes of the last preceding sub-section "goods upon the sale value of which sales tax is not payable" shall include any property upon which such tax is not payable.

PART II.—ADMINISTRATION.

Commissioner.

4. The Commissioner of Taxation shall have the general administration of this Act.

Powers of
Second
Commissioner.

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

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

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

Deputy
Commissioners.

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

Delegation
by the
Commissioner.

7.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions

* Sub-section (3.) of section 2 of the *Sales Tax Assessment Act (No. 1) 1934* is as follows:—

"(3.) The amendment effected by paragraph (b) of sub-section (1.) of this section shall have effect and be deemed to have had effect at all times as if the sub-sections thereby inserted in section three of the *Principal Act* had, at the date of the commencement of the *Sales Tax Assessment Act (No. 1) 1930*, been included in section three of that Act:

Provided that the amendment shall not have effect in respect of any sale and purchase, prior to the twenty-sixth day of October, One thousand nine hundred and thirty-three, for one inclusive price, of goods being plant, machinery or equipment which has been used as such by the vendor in the ordinary course of his business, together with any other property."

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

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

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

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

References to
Commissioner.

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

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

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

Report by the
Commissioner.

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

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

Officers to
observe secrecy.

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

Penalty : Two hundred and fifty pounds.

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

Penalty : Two hundred and fifty pounds.

(4.) Notwithstanding anything contained in this section, the Commissioner, the Second Commissioner or a Deputy Commissioner may communicate any matter, which comes to his knowledge in the performance of his official duties, to a Board of Review appointed under this Act or to the Commissioner of Income Tax for any State, or the officer or authority administering any Act of a State relating to Stamp Duties or Succession Duties (who is authorized by law to afford similar information to the Commissioner, the Second Commissioner or a Deputy Commissioner) or to the Comptroller-General of Customs :

Provided that, where any matter is communicated to a Board of Review in pursuance of this section and that matter consists of returns, or information derived from returns, of a taxpayer other than the taxpayer whose assessment is under review in the review in the course of which the communication is made, the members of the Board shall be subject to the same obligation as is imposed by sub-section (3.) of this section upon a person who has been an officer under this Act.

(5.) An officer shall not be required to produce in any Court any return, assessment or notice of assessment, or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act.

PART III.—REGISTRATION AND CERTIFICATES.

11.—(1.) Every person who is, at the commencement of this Act, a manufacturer or wholesale merchant shall, within twenty-eight days after that commencement, become registered as prescribed.

(2.) Every person who becomes a manufacturer or wholesale merchant after the commencement of this Act shall, within twenty-eight days after he becomes a manufacturer or wholesale merchant, become registered as prescribed.

(3.) Upon registration a certificate of registration shall be issued to such manufacturer or wholesale merchant and shall, subject to this Act, remain in force until—

(a) the death or bankruptcy of the registered person ;

or

(b) the cancellation of the certificate in accordance with the provisions of this Act.

(4.) Notwithstanding any statement contained in any certificate in force at the date of the commencement of this sub-section in regard to the period for which the certificate shall remain in force, every certificate in force at that date shall, subject to section sixteen of this Act, remain in force until the death or bankruptcy of the registered person to whom it was issued.

Issue of
certificates.

Amended by
No. 25, 1931,
s. 2, and by No.
61, 1935, s. 2.*

Amended by
No. 25, 1931,
s. 2, and by No.
61, 1935, s. 2.*

Amended by
No. 25, 1931,
s. 2.

Substituted by
No. 25, 1931,
s. 2.

* Sub-section (2.) of section 2 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"(2.) Nothing in this section shall affect the liability of any person under any security given under the Principal Act and in force immediately prior to the commencement of this Act in so far as that liability directly or indirectly relates to tax payable in respect of transactions, acts or operations entered into, done or carried out prior to the commencement of this Act, but otherwise no liability shall attach to any person under any such security."

* * * * *

(4B.) Any manufacturer or wholesale merchant who was, prior to the thirtieth day of June, One thousand nine hundred and thirty-one, the holder of a certificate of registration, and who failed to apply for a fresh certificate as required by sub-section (4.) of section eleven of the *Sales Tax Assessment Acts (No. 1) 1930*, shall be deemed to have continued to be a registered person after that date, and the certificate held by him prior to that date shall be deemed to have remained in force up to the date of commencement of this sub-section, and, subject to section sixteen of this Act, shall be deemed to be in force after the commencement of this sub-section until the death or bankruptcy of the manufacturer or wholesale merchant.

(5.) Certificates shall be issued by the Commissioner or by a person thereto authorized in writing by the Commissioner.

(6.) Certificates under this Part shall be subject to the following conditions:—

(a) That the person to whom the certificate is issued will—

- (i) keep proper books or accounts for the purposes of this Act;
- (ii) render true statements of all sales made by him as and when required by the Commissioner; and
- (iii) duly pay all tax required by or under this Act to be paid by him; and

(b) Such other conditions as are prescribed.

(7.) In respect only of the period commencing on the first day of August One thousand nine hundred and thirty and ending on the expiration of twenty-eight days after the commencement of this Act the following provisions shall apply:—

- (a) Any person required by this Act to be registered shall be deemed to be a registered person until in fact so registered;
- (b) Every person so deemed to be a registered person shall, upon every purchase of goods by him for the purpose of sale, or for use in the manufacture of goods for sale, certify in writing to the vendor that the goods are purchased for that purpose;
- (c) Where in respect of any sale of goods the purchaser so certifies, he shall be deemed, for the purposes of this Act, to have quoted his certificate in respect of the purchase of those goods, and where he does not so certify he shall be deemed not to have quoted his licence.

(8.) The last preceding sub-section shall not operate so that sales tax will be payable upon the sale value of goods sold on or after the first day of August One thousand nine hundred and thirty, but prior to the commencement of this Act, in any case in which the Commissioner is satisfied that sales tax is payable or has been paid under any Act upon the sale value of those goods in respect of a prior sale thereof.

Sub-section 4A inserted by No. 25, 1931, s. 2, and omitted by No. 61, 1935, s. 2.*

Inserted by No. 39, 1932, s. 3, and amended by No. 61, 1935, s. 2.*

* See footnote * on previous page.

Inserted by
No. 61, 1935,
s. 2.*

(8A.) In any case where, in the opinion of the Commissioner, it is necessary for the protection of the revenue to do so, he may, in writing, require any registered person to give security for compliance by that person with the conditions of any certificate issued to him under this Act, and that person shall, within twenty-eight days after the date of the requirement, give security to the satisfaction of the Commissioner, in such amount, not exceeding One thousand pounds, as the Commissioner considers reasonable, for compliance with the conditions of the certificate.

Inserted by
No. 61, 1935,
s. 2.*

(8B.) Every security given under the last preceding sub-section shall remain in force until—

- (a) fresh security satisfactory to the Commissioner is furnished in lieu thereof by the registered person ;
- (b) the expiration of the prescribed period after the Commissioner has received from any party to the security, other than the taxpayer, a request, in writing, to be discharged from his obligations under the security ; or
- (c) the Commissioner, by notice in writing, relieves the parties to the security from their obligations under the security :

Provided that nothing in this sub-section shall relieve any party to a security from his obligations under the security in respect of any period prior to the date of the termination of the security.

Added by
No. 25, 1931,
s. 2.

(9.) The manner in which security shall be given for the purposes of this section, and the forms to be used in connexion therewith, shall be as prescribed, and a form of security may be prescribed which shall suffice for all the purposes of a bond or guarantee, and which, without sealing, shall bind its subscribers as if sealed, and, unless otherwise provided therein, jointly and severally, and for the full amount.

Added by
No. 99, 1932,
s. 2.

(9A.) Where a taxpayer has given a security in pursuance of this section, the assent of the Commissioner to a Deed of Arrangement made by, for or in respect of the affairs of the taxpayer under Part XII. of the *Bankruptcy Act* 1924–1932,^(a) shall not release any party to that security, other than the taxpayer, from any of his obligations under the security.

Added by
No. 25, 1931,
s. 2.

(10.) Securities given for the purposes of this Act shall not be subject to stamp duty under the law of any State.

Added by
No. 25, 1931,
s. 2. and
amended by
No. 61, 1935,
s. 2.*

(11.) Upon the receipt by the Commissioner from any party to a security, other than the taxpayer, of a request to be discharged from his obligations under the security, or upon the termination of any security, or if, at any time, the Commissioner is not satisfied that the security given by any registered person is sufficient, the Commissioner may, by notice in writing, require the registered person who has given the security to furnish fresh security or additional security within such time as is specified in the notice, and the registered person shall give security accordingly.

(a) *Supra*, p. 337.

* See footnote * (*supra*, p. 2622).

(12.) The provisions of this section relating to securities shall not apply to any person other than a person who is engaged in—

Added by
No. 25, 1931,
s. 2.

- (a) the manufacture or sale of goods upon the sale value of which sales tax is payable by him under this Act; or
- (b) other transactions, acts or operations in connexion with which sales tax is payable by him.

12.—(1.) A registered person shall quote his certificate in such manner and under such circumstances as are prescribed.

Quotation of
certificates.

(2.) A registered person shall not quote his certificate except as prescribed.

Penalty : One hundred pounds.

13. Any person carrying on business as a manufacturer or as a wholesale merchant who fails within the time specified in section eleven of this Act to become registered under this Part or fails within the time so specified to apply for a fresh certificate, or, in either case, to give security to the satisfaction of the Commissioner if so required by him, shall be guilty of a separate offence for each day during which he fails to become so registered or so to apply for a fresh certificate or so, in either case, to give such security.

Failure to
register or
give security.
Amended by
No. 61, 1935,
s. 3.

Penalty : One hundred pounds, for each separate offence.

14. Any manufacturer or wholesale merchant to whom a certificate has been issued under this Part who contravenes or fails to observe any condition of the certificate shall be guilty of an offence.

Non-observance
of conditions.

Penalty : One hundred pounds.

15. Any person who, in relation to any transaction, act or operation in respect of goods the sale value of which is subject to tax under this Act, falsely represents that he is a registered person or falsely quotes a certificate, shall be guilty of an offence.

Wrongful
quotation of
certificate.

Penalty : One hundred pounds.

16. Any manufacturer or wholesale merchant to whom a certificate has been issued under this Part who, during the currency of the certificate, ceases to carry on the business to which the certificate relates shall forthwith notify the Commissioner in writing of his having so ceased to carry on business and shall forward his certificate to the Commissioner who, upon being satisfied that the conditions of the certificate have been observed, shall cause it to be cancelled.

Registered
person ceasing
to carry on
business.

PART IV.—LIABILITY TO TAXATION.

17. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 1) 1930*^(a) shall be levied and paid upon the sale value of goods manufactured^(b) in Australia, either before or after the commencement of this Act, by

Sales tax.
Amended by
No. 62, 1930,
s. 4.

(a) *Supra*, p. 2615. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 1) 1930-1931* is reduced to the rate of five per centum.

(b) As to the meaning of manufactured see footnote (a) (*supra*, p. 2671).

a taxpayer and on or after the first day of August One thousand nine hundred and thirty sold by him or treated by him as stock for sale by retail or applied to his own use.^{(a)(b)}

Goods deemed to be sold.

Inserted by No. 29, 1934, s. 3.

17A. Where goods are manufactured for a person wholly or in part out of materials supplied by him, the manufacturer of the goods, whether he makes up those goods himself or procures their making-up by another person, shall, for the purposes of this Act, be deemed to have sold the goods to the first-mentioned person, at the time of their delivery to him, for the amount charged to him by the manufacturer in respect of those goods.

Sale value of goods.

Amended by No. 29, 1932, s. 4.*

18.—(1.) For the purposes of this Act, the sale value of goods not being goods to which the next succeeding sub-section applies which are sold by the manufacturer to an unregistered person or to a registered person who has not quoted his certificate in respect of that sale shall be^(b)—

(a) where the goods are sold by wholesale—the amount for which those goods are sold; and

(b) where the goods are sold by retail—

(i) if the goods are of a class which the manufacturer himself sells by wholesale—the amount for which the goods would be sold by the manufacturer if sold by wholesale; and

(ii) in any other case—the amount for which those goods would have been purchased by the taxpayer from another manufacturer if that other manufacturer had manufactured those goods in the ordinary course of his business for sale to the taxpayer:

Proviso omitted by No. 29, 1934 s. 4 (a).

Amended by No. 29, 1932, s. 4.*

(2.) For the purposes of this Act the sale value of goods treated by the manufacturer of the goods as stock for sale by retail shall be^(b)—

(a) where the goods are of a class which the manufacturer himself sells by wholesale—the amount for which the goods would be sold by the manufacturer if sold by wholesale; and

(a) A company carrying on the business of retail florist, liable to registration as a manufacturer by reason of making up and selling wreaths, &c., went into voluntary liquidation. During the course of liquidation the liquidator sold the office furniture. Held by the Supreme Court of New South Wales that the two requisites of liability to taxation are that the goods should be manufactured in Australia by someone and that, on or after the 1st August, 1930, they should be sold by a person who is a manufacturer or wholesale merchant, and these requisites being present the liquidator was liable to pay sales tax in respect of the sale of the furniture. *In re Scaris*, (1932) 33 S.R. (N.S.W.) 7; 49 W.N. (N.S.W.) 195. (But note the subsequent amendments to the definition of "Goods").
(b) Held by the High Court that where a manufacturer had, prior to 1st August, 1930, treated goods as stock for sale by retail, and after that date sold them to an unregistered person or a registered person who had not quoted his certificate, the sales fell within the provisions of s. 18 (1). *Federal Commissioner of Taxation v. Beard, Watson and Co. Ltd.*, (1931) 45 C.L.R. 272; 5 A.L.J. 173; 37 A.L.R. 278.

* Section 9 of the *Sales Tax Assessment Act* (No. 1) 1933 is as follows:—

"9. Notwithstanding anything contained in section four of the *Sales Tax Assessment Act* (No. 1) 1932, the provisions of section eighteen of the *Sales Tax Assessment Act* (No. 1) 1930-1931, as in force immediately prior to the commencement of the *Sales Tax Assessment Act* (No. 1) 1932, shall continue, and be deemed to have at all times continued, in force for all purposes in connexion with liability to sales tax in respect of transactions acts and operations prior to such commencement."

- (b) where the goods are of a class which the manufacturer himself does not sell by wholesale—the amount for which the goods would have been purchased by the taxpayer from another manufacturer if that other manufacturer had manufactured those goods in the ordinary course of his business for sale to the taxpayer.

Provided that in any case where the Commissioner is satisfied, with respect to all the goods used in, wrought into or attached to any goods (being goods to which this sub-section applies) manufactured by the taxpayer, that sales tax has been paid in respect of the goods so used, wrought into or attached, the sale value of the manufactured goods shall be the amount of the wages actually paid in respect of the manufacture of the manufactured goods increased by twenty per centum of that amount.

Added by
No. 47, 1933,
s. 3 ;
amended by
No. 29, 1934,
s. 4 (b)*.

(3.) For the purposes of this Act, the sale value of goods manufactured by any person and applied to his own use shall be—

Amended by
No. 39, 1932,
s. 4.†

- (a) where the goods are of a class which the manufacturer himself sells by wholesale—the amount for which the goods would be sold by the manufacturer if sold by wholesale ; and
(b) where the goods are of a class which the manufacturer himself does not sell by wholesale—the amount for which the goods would have been purchased by the taxpayer from another manufacturer if that other manufacturer had manufactured those goods in the ordinary course of his business for sale to the taxpayer.

Provided that in any case where the Commissioner is satisfied with respect to all the goods used in, wrought into or attached to any goods (being goods to which this sub-section applies) manufactured by the taxpayer, that sales tax has been paid in respect of the goods so used, wrought into or attached, the sale value of the manufactured goods shall, unless the manufacturer sells similar goods by wholesale or is a person who sells goods principally by wholesale, be the amount of the wages actually paid in respect of the manufacture of the manufactured goods increased by twenty per centum of that amount.

Added by
No. 47, 1933,
s. 3 ;
amended by
No. 29, 1934,
s. 4 (c).*

(3A.) Where, in the case of goods to which paragraph (b) of sub-section (1.) or to which sub-section (2.) or (3.) of this section applies (not being goods to which the proviso to sub-section (2.) or (3.) of this section applies), the amount set forth as the sale value of the goods in any return furnished under this Act is less than the amount for which, in the opinion of the Commissioner, the goods would have been sold or purchased, as the case may be, in the circumstances specified in that paragraph or sub-section, the Commissioner may alter the amount set forth in the return to the amount for which, in

Inserted by No.
39, 1932, s. 4,
and amended by
No. 47, 1933,
s. 3.

* Sub-section (2.) of section 4 of the *Sales Tax Assessment Act (No. 1) 1934* is as follows :—

“(2.) The amendments effected by paragraphs (b) and (c) of sub-section (1.) of this section shall have effect and be deemed to have had effect at all times as if the provisos to sub-sections (2.) and (3.) of section eighteen of the Principal Act had, at the date of commencement of the *Sales Tax Assessment Act (No. 1) 1933*, been in force as respectively amended by those paragraphs.”

† See footnote * on previous page.

his opinion, the goods would have been so sold or purchased, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

(4.) Notwithstanding anything contained in sub-section (1.) of this section, where, in respect of any sale to which that sub-section applies—

- (a) the vendor and the purchaser are companies the shareholding interests of which are, in the opinion of the Commissioner, directly or indirectly in substantially the same hands ;
- (b) the vendor or the purchaser is a company in which, in the opinion of the Commissioner, the purchaser or the vendor, as the case may be, directly or indirectly controls the voting power of the company ;
- (c) the circumstances are such that, in the opinion of the Commissioner, the vendor or the purchaser is directly or indirectly in substantial control of the business operations of the other ; or
- (d) the goods sold were manufactured, wholly or in part, from materials sold to the manufacturer by the purchaser,

and it appears to the Commissioner that the amount for which those goods were sold is less than their fair market value in the ordinary course of trade, the sale value shall be altered by the Commissioner to the value which, in his opinion, would be the fair market value of the goods if sold by that person in the ordinary course of trade, and the altered value shall be the sale value of those goods for the purposes of this Act.

(5.) For the purposes of this section, the sale value of goods shall not be taken to include any amount payable in respect of sales tax, but, when the goods are sold in bond, the sale value shall be taken to include the amount of any duty of Excise to which the goods would be subject if entered for home consumption at the time at which they are sold.

(5A.) Notwithstanding anything contained in this section, in the case of any prescribed goods manufactured to the order of individual customers, the sale value shall be an amount ascertained in such manner as is prescribed, but not exceeding the amount for which the goods are sold.

(6.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

19. Sales tax shall be paid by the manufacturer of goods the sale value of which is specified in the last preceding section.

* By section thirteen of the *Sales Tax Assessment Act* (No. 1) 1931, this section is deemed to have commenced on 11th July, 1931.

Inserted by
No. 29, 1934,
s. 4 (e).

Substituted by
No. 25, 1931,
s. 2.

Inserted by
No. 25, 1931,
s. 2.

Liability for
tax.

20. Notwithstanding anything contained in section nineteen of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

Exemptions.
Substituted by
No. 61, 1935,
s. 4.*

PART V.—RETURNS.

21.—(1.) Every manufacturer who, during any month—

- (a) makes any of the sales specified in section eighteen of this Act; or
- (b) treats any goods as stock for sale by him by retail; or
- (c) applies to his own use any goods specified in sub-section (3.) of section eighteen of this Act,

Returns, &c.
Amended by
No. 47, 1933,
s. 5.

shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales, or, as the case may be, of those goods, in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

22. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

Further
returns.

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

- (a) to furnish him with such information as he requires; or
- (b) to attend and give evidence before him or before any officer authorized by him in that behalf,

Department to
obtain
information
and
evidence.

for the purpose of inquiring into or ascertaining his or any other person's liability under any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

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

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

* Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

(a) *Infra*, p. 2698.

PART VI.—COLLECTION AND RECOVERY OF TAX.

Time of
payment of
tax.

Amended by
No. 25, 1931,
s. 5.

24.—(1.) Every person liable to pay tax upon the sale value of any goods, sold or treated by him during any month as specified in sub-section (1.) or (2.) of section eighteen of this Act, shall, within twenty-one days after the close of that month, pay sales tax upon the sale value of the goods

(2.) Every person liable to pay tax upon the sale value of any goods as ascertained under sub-section (3.) of section eighteen of this Act shall, on or before the date specified in the notice served on him by post by the Commissioner stating the amount of his liability under that sub-section, pay sales tax upon the sale value of those goods.

Further tax.

25.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

(a) assess the sale value upon which tax should be or should have been paid ; and

(b) calculate the tax or further tax which is payable.

(2.) Where, under sub-section (4.) of section eighteen of this Act, the sale value of any goods has been altered, the Commissioner shall calculate the further tax (if any) payable in consequence of that alteration.

Inserted by
No. 47, 1933,
s. 6.

(2A.) Where—

(a) any person makes default in furnishing any return ; or

(b) the Commissioner is not satisfied with the return made by any person ; or

(c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and that person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(3.) As soon as conveniently may be after an assessment is made or a sale value is altered, the Commissioner shall cause notice in writing of the assessment or alteration and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(4.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(5.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

Refunds of tax.
Sub-section (1.)
substituted by
No. 47, 1933
s. 7 (a).

26.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

(2.) Where a registered person has sold goods upon the sale value of which he has paid tax, and has subsequently written off as a bad debt the whole or any part of the amount for which the goods were sold, the Commissioner may—

Amended by
No. 25, 1931,
s. 6.

- (a) on proof to his satisfaction that the whole amount is a bad debt—refund to the registered person the amount of tax paid on the sale value of the goods;
- (b) on proof to his satisfaction that a part of the amount is a bad debt—refund to the registered person so much of the tax as bears to the total amount of tax the same proportion as the amount so proved to be a bad debt bears to the total amount for which the goods were sold:

Provided that if any amount in respect of which tax has been so refunded is at any time wholly or partly recovered by the taxpayer, he shall, within twenty-one days after the close of the month in which the amount is so recovered, repay to the Commissioner so much of the tax refunded as bears to the total amount of that tax the proportion which the amount so recovered bears to the amount in respect of which tax was so refunded.

Substituted by
No. 47, 1933,
s. 7. (b).

* * * * *

Sub-sec. (3.)
omitted by
No. 8, 1935,
s. 4.

(4.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State, and the Commissioner is satisfied—

Added by
No. 39, 1932,
s. 6.

- (a) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act* 1935,^(a) and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,
- (b) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,
- (c) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and
- (d) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government Authority,

Amended by
No. 61, 1935,
s. 13.

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

(a) *Infra*, p. 2698.

Added by
No. 39, 1932,
s. 6.*

(5.) Where the Commissioner is satisfied that goods, which have been manufactured by a baker or pastrycook, and to which the sale value prescribed by sub-section (2.) of section eighteen of this Act applies, have been donated to any public organization or committee established for the purpose of assisting unemployed persons in necessitous circumstances, or to any charitable institution, the taxpayer shall be entitled to a rebate of tax on the sale value of those goods.

Added by
No. 47, 1933,
s. 7 (c).

(6.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of transactions acts or operations which took place before the date of assent to the law making the alteration.

Taxpayer
leaving
Australia.

27.—(1.) When the Commissioner has reason to believe that a taxpayer may leave Australia before the tax or further tax becomes due and payable by him the tax or further tax shall be due and payable on such date as the Commissioner fixes and notifies to the taxpayer.

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

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

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

(3.) Every certificate issued under the last preceding sub-section shall be presented by or on behalf of the person to whom it is issued to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship by which the person intends to leave Australia at the port at which passage by the ship is to be booked, and unless and until such certificate is so presented an authority for that person to travel by that ship shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

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

* By section nine of the *Sales Tax Assessment Act* (No. 1) 1932, sub-section (5.) of section twenty-six of the *Principal Act* which is inserted by section six of the amending Act is deemed to have commenced on 1st August, 1932.

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

(5.) The owner, charterer, or the representative of the owner or charterer, of every ship which takes passengers on board at any port shall, on the first working day after the advertised date of departure of the ship from the port in Australia at which the certificate mentioned in this section is required to be presented, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port is situated, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship) who sailed on the ship.

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

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

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

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

Time to pay—
extensions and
instalments.

29. If the tax or further tax is not paid before the expiration of the time specified in section twenty-four or twenty-five of this Act, or such further time as may be allowed by the Commissioner under section twenty-eight of this Act, additional tax shall be payable at the rate of ten per centum per annum upon the amount of tax unpaid, to be computed from the expiration of the time specified in section twenty-four or twenty-five of this Act, or, where further time has been allowed by the Commissioner under section twenty-eight of this Act, from the expiration of that further time :

Penal tax.

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

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

Recovery of
tax.

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

Substituted
service.

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

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

(b) cannot after reasonable inquiry be found,

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

Liquidator to
give notice.

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

(2.) A liquidator who fails to give notice to the Commissioner within the time specified in the last preceding sub-section or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that then is or thereafter becomes payable in respect of the company.

(3.) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of such persons:

Provided that where any one of such persons has paid the tax due in respect of the company being wound-up the other person or persons shall be liable to pay that person each his equal share of the amount of the tax so paid.

Inserted by
No. 29, 1934,
s. 5.*

(4.) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any tax payable in respect of the company.

Agent for
absentee
principal
winding-up
business.

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

* Sub-section (2.) of section 5 of the *Sales Tax Assessment Act (No. 1) 1934* is as follows:—
“(2.) This section shall be deemed to have commenced on the first day of September, One thousand nine hundred and thirty-three.”

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

34. In any case where, whether intentionally or not, a taxpayer escapes full taxation in his lifetime by reason of not having duly made full, complete and accurate returns—

When tax not paid during lifetime.

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

35.—(1.) Where, at the time of a taxpayer's death, he had not paid the whole of the tax payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the executors and administrators as he would have had against that person, if that person were alive.

Provision for payment of tax by executors or administrators.

(2.) The executors or administrators shall furnish such of the returns mentioned in Part V. of this Act as have not been made by the deceased person.

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

(4.) Where, in respect of the estate of any deceased taxpayer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.

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

(6.) Any person claiming an interest in the estate of the taxpayer, may, within forty-two days after the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the taxpayer.

(7.) Subject to any amendment of the assessment by the Commissioner, or by the Board of Review or by a Court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(8.) The Commissioner may issue an order in the form in the Second Schedule to this Act authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein to levy the amount of tax due by the deceased, with costs, by distress and sale of any property of the deceased.

(9.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

(10.) Notwithstanding anything contained in the last three preceding sub-sections, if at any time probate of the will of the deceased is granted to, or letters of administration of the estate are taken out by, a person, that person may, within forty-two days after the date on which probate was granted or letters of administration were taken out, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if that person were the taxpayer.

Recovery of
tax paid on
behalf of
another person.

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

Contributions
from joint
taxpayers.

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

- (a) a person who has paid the tax in respect of the sale value of any goods may recover by way of contribution from any other person jointly liable to that tax a sum which bears the same proportion to the tax as the interest which that other person had in those goods bears to the total interests therein of the persons jointly liable to tax ;

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

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

Commissioner
may collect tax
from person
owing money
to taxpayer.

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

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

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

Penalty: Fifty pounds.

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

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

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

(6.) In this section—

“Tax” means sales tax and includes additional tax chargeable under this Act, and any judgment debt and costs in respect of tax;

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

Evidence.

39.—(1.) The production of any document or a copy of a document under the hand of the Commissioner, Second Commissioner or a Deputy Commissioner purporting to be a notice or a copy of a notice specifying any liability of a taxpayer under this Act shall be conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner, Second Commissioner, or a Deputy Commissioner for the purpose of ascertaining the liability so specified and (except in proceedings on appeal when it shall be *prima facie* evidence only) shall be conclusive evidence of the correctness of any calculations upon which that liability is ascertained.

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

PART VII.—OBJECTIONS AND APPEALS.

POWERS OF
BOARD.

40. A Board of Review shall have power to review such decisions of the Commissioner, Second Commissioner or Deputy Commissioner as are referred to it by the Commissioner under this Act and, for the purpose of reviewing such decisions, shall have all the powers and functions of the Commissioner in making assessments, determinations and decisions under this Act, and such assessments, determinations and decisions of the Board, and the decisions of the Board upon review, shall for all purposes (except for the purposes of sub-section (4.) of section forty-one and sub-section (6.) of section forty-two of this Act) be deemed to be assessments, determinations or decisions of the Commissioner.^(a)

Objections.

41.—(1.) A taxpayer who considers that any amount upon which he is required to pay sales tax in respect of any goods is not the sale value of those goods as declared by this Act or who is dissatisfied with any assessment or decision made by the Commissioner under this Act by which the sale value of any goods is ascertained may, within forty-two days after the first day upon which he is required by or under this Act to pay sales tax upon that amount or value, post to or lodge with the Commissioner an objection in writing against that amount or value stating fully and in detail the grounds on which he relies.

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

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

(a) Held by the Supreme Court of Queensland, exercising Bankruptcy jurisdiction, that although the Court of Bankruptcy has jurisdiction to entertain an application by a trustee for directions as to sales tax concerning the estate of a bankrupt, the Court should not deal with such matters and that proceedings should be taken to obtain the decision of the Board of Review. *Re Wiltshire*, 1934 Q.W.N. 43; 7 A.B.C. 223.

(4.) A taxpayer who is dissatisfied with the decision of the Commissioner, Second Commissioner or Deputy Commissioner may within thirty days after the service by post of notice of that decision request the Commissioner in writing to refer the decision to a Board of Review for review.

42.—(1.) Where a taxpayer has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the taxpayer's request is accompanied by a deposit of such amount as is prescribed for the particular class of case, refer the decision to the Board not later than thirty days after receipt of the request.

References to
Board of
Review.

(2.) A taxpayer shall be limited on the review to the grounds stated in his objection.

(3.) If the amount or sale value has been reduced by the Commissioner after considering the objection, the reduced amount or value shall be that to be dealt with by the Board under the next succeeding sub-section.

(4.) The Board, on review, shall give a decision and may either confirm the amount or sale value or reduce, increase or vary the amount or value.

(5.) The Board may, if it considers the reference to be frivolous or unreasonable, order the forfeiture of the whole or part of the amount deposited in accordance with sub-section (1.) of this section.

(6.) The Commissioner or a taxpayer may appeal to the High Court from any decision of the Board under this section which, in the opinion of the High Court, involves a question of law and the Board shall, upon the request of the Commissioner or a taxpayer, refer to the High Court any question of law arising before the Board and the decision of the High Court thereon shall be final and conclusive.

43.—(1.) The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the amount or sale value the subject of that appeal or reference; and sales tax may be levied and recovered on the assessment as if no appeal or reference were pending.

Pending appeal
not to delay
payment
of tax.

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

44. Where, as a result of the consideration of any objection, reference to a Board of Review, or decision by the High Court under this Part, the sale value of any goods is increased or reduced, sales tax shall be payable in accordance with this Act upon the sale value as so increased or reduced.

Adjustment of
tax consequent
upon objections.

PART VIII.—PENAL PROVISIONS.

Offences.

45.—(1.) Any person who—

- (a) fails or neglects duly to furnish any return or information or to comply with any requirement of the Commissioner as and when required by this Act or the Regulations thereunder, or by the Commissioner ; or
- (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer ; or
- (c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing ; or
- (d) contravenes any provision of this Act for the contravention of which no penalty is expressly provided,

shall be guilty of an offence.

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

Sub-section (2.)
omitted by
No. 29, 1934,
s. 6, and
inserted by No.
8, 1935, s. 5.

(2.) In any prosecution, for an offence against paragraph (c) of sub-section (1.) of this section, of any person who has not previously been convicted of an offence against this Act or against the *Sales Tax Procedure Act* 1934,^(a) it shall be a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally ; and
- (b) that the false particulars were given or (as the case may be) the false statement was made through ignorance or inadvertence.

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

Sub-section (4.)
omitted by
No. 29, 1934,
s. 6.

Additional tax
in certain cases.

* * * * *

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

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations thereunder or by the Commissioner ; or
- (b) fails to include any particulars of goods the sale value of which is subject to tax under this Act in any return, or includes those particulars in a column of the return provided for particulars of goods in respect of which sales tax is not payable,

Amended by
No. 39, 1932,
s. 7.

(a) *Infra*, p. 2718.

shall, if a taxpayer to whom paragraph (a) of this sub-section applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax assessable to him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater, or, if a taxpayer to whom paragraph (b) of this sub-section applies, shall be liable to pay by way of additional tax the amount of One pound or double the amount of the difference between the tax properly payable and the tax payable upon the basis of the return lodged, whichever is the greater :

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

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

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

False
declarations.

48. Any person who, with intention to defraud, in any return understates the amount of the sale value of any goods shall be guilty of an offence.

Under-
statement of
sale value of
any goods.

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

Amended by
No. 8, 1935,
s. 6.

49. Any person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid tax chargeable under this Act, shall be guilty of an offence.

Avoiding
taxation.

Penalty : Not less than Fifty pounds and the amount of sales tax avoided or attempted to be avoided, nor more than Five hundred pounds and treble the amount of sales tax avoided or attempted to be avoided.

Amended by
No. 8, 1935,
s. 7.

50.—(1.) A prosecution in respect of any offence against either of the last two preceding sections may be commenced at any time within three years after the commission of the offence.

Time for
commencing
prosecutions.

(2.) A prosecution in respect of any offence against section twelve, section fifteen or paragraph (a) or (c) of sub-section (1.) of section forty-five of this Act may be commenced at any time.

Added by
No. 29, 1934,
s. 7.

Penalties not
to relieve from
tax.

51. Payment of penalties under this Act shall not relieve any person from liability to any tax for which he would otherwise be liable.

Obstructing
officers.

52. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the Regulations thereunder shall be guilty of an offence.

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

PART IX.—TAXATION PROSECUTIONS.

Taxation
prosecutions.

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

How instituted.

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

(a) in the High Court of Australia ; or

(b) in the Supreme Court of any State,

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

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

Evidence of
authority to
institute
proceeding.

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

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

Defendant to
have right of
trial in High
or State Court.

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

Prosecution in
accordance with
Practice Rules.

57. Every taxation prosecution in the High Court of Australia or the Supreme Court of any State may be commenced prosecuted and proceeded with in accordance with any rules of practice established by the Court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

^(a) In *Adams v. Cleve*, ((1935) 53 C.L.R. 185 ; 41 A.L.R. 168) the High Court overruled an objection that authority to prosecute in the name of the Commissioner did not authorize the abandoning of the excess necessary to bring the action in a court of summary jurisdiction.

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

State Court practice.

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

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

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

No objection for informality.

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

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

Conviction not to be quashed.

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

Protection to witnesses.

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

Averment of prosecutor sufficient.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(a) S.101 of the *Justices Act 1902* (N.S.W.) confines appeals to questions of law. In *Irving v. Munro and Sons Ltd.*, (1931) 46 C.L.R. 279; 5 A.L.J. 286 the High Court permitted an appeal from a decision of a magistrate that a person was not a manufacturer. Held by the High Court that this section does not prevent an appeal from a court of summary jurisdiction exercising Federal jurisdiction to the High Court pursuant to s. 39 (2) (b) of the *Judiciary Act 1903-1934*. *Adams v. Cleere*, (1935) 53 C.L.R. 185; 41 A.L.R. 168.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

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

Minimum penalties.

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

Treatment of convicted offenders.

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

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

Release of offenders.

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

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

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

Parties may recover costs.

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

PART X.—MISCELLANEOUS.

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

Public officer
of company.

- (a) Such person shall be called the public officer of the company for the purposes of this Act and shall, if not already appointed, be appointed within three months after the commencement of this paragraph or after the company commences to carry on business in Australia.
- (b) The company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner.
- (c) If the company fails or neglects to duly appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.

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

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

Amended by
No. 25, 1931,
s. 7.

- (h) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the Regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company.

Agents and
trustees.

69.—(1.) With respect to every agent and with respect also to every trustee, the following provisions shall apply :—

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of any transaction, act or operation in relation to any goods the sale value of which is subject to tax under this Act.
- (b) He shall, in respect of any such transaction, act or operation, make the returns and be chargeable with tax on such sale value, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) Where as agent or trustee he pays sales tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person.
- (e) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the sales tax which is or will become due in respect of such sale value.
- (f) He is hereby made personally liable for the sales tax payable in respect of such sale value if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which sales tax could legally be paid, but he shall not be otherwise personally liable for the tax :

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

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

- (h) For the purpose of insuring the payment of sales tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other taxpayer in respect of sales tax, and in as full and ample a manner.

(2.) In such cases as are prescribed, an agent who is an auctioneer, and who, on behalf of a registered person, sells any goods on the sale value of which tax is payable under this Act shall, within seven days after the date of the sale, furnish a return and pay tax to the Commissioner in respect of the sale.

Added by
No. 25, 1931,
s. 8.

70. With respect to every person who has the receipt control or disposal of money belonging to a person resident out of Australia, and engaging in any transaction, act or operation in respect of goods the sale value of which is subject to tax under this Act, the following provisions shall, subject to this Act, apply:—

Person in
receipt or
control of
money for
absentee.

- (a) He shall when required by the Commissioner pay the sales tax due and payable by the person on whose behalf he has the control, receipt or disposal of money.
- (b) Where he pays sales tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person.
- (c) He is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the sales tax which is or will become due by that person.
- (d) He is hereby made personally liable for the sales tax payable by him on behalf of the person resident out of Australia after the tax becomes payable, or if, after the Commissioner has required him to pay the tax, he disposes of, or parts with, any fund or money then in his possession, or which comes to him from or out of which the tax could legally be paid, but he shall not be otherwise personally liable for the tax:

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

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

Amended by
No. 25 1931,
s. 9.

Alteration of
agreements
where rate of
tax altered.

Inserted by
No. 25, 1931,
s. 10.

70A. Where an agreement for the sale of goods has been made, whether before or after the commencement of this section, and, after the date of the agreement, an alteration has taken place in the rate of sales tax, as the result of which the amount of tax payable upon the sale value of any goods sold in pursuance of the agreement is affected, then, unless the agreement contains express written provision that the price at which the goods shall be sold shall not be altered on account of sales tax or any alteration in the rate of sales tax, or it is clear from the terms of the agreement that the alteration of the rate of tax has been taken into account in the agreed price of the goods, the agreement shall be altered as follows :—

- (a) If the rate of tax is increased, the vendor may add to the agreed price an amount equivalent to the amount of additional tax payable by him upon the sale value of those goods as the result of the alteration of the rate of tax ;
- (b) If the rate of tax is reduced, the purchaser may deduct from the agreed price an amount equivalent to the amount by which the tax payable upon the sale value of those goods is reduced as the result of the alteration of the rate of tax.

Alteration of
prices fixed
under certain
contracts.

Inserted by
No. 25, 1931,
s. 10.

70B.—(1.) Where, before or after the commencement of this section—

- (a) a contract has been made for the erection of any building or for the performance of any other work, and, under the terms of the contract, the person undertaking the erection of the building or the performance of the work (hereinafter in this section called the contractor) contracts to supply the material to be used in connexion therewith ; and
- (b) after the date of the contract an alteration has taken place in the rate of sales tax, as the result of which the cost of supplying the material is increased or reduced,

then, unless the contract contains express written provision to the contrary or it is clear from the terms of the contract that the alteration of the rate of tax has been taken into account in the contract price, the contract shall be altered as follows :—

- (i) If the cost of supplying the material has been increased, the contractor may add to the contract price an amount equivalent to the additional amount payable by him for the material (other than material which remains the property of the contractor) as the result of the alteration of the rate of tax ;
- (ii) If the cost of supplying the material has been reduced, the party liable to pay the contract price may require the contractor to deduct from that price an amount equivalent

to the amount by which the cost of supplying the material (other than material which remains the property of the contractor) has been reduced as the result of the alteration of the rate of tax.

(2.) Where the contract price is altered in pursuance of this section, the contractor shall deliver to the party liable to pay the contract price a statement in writing showing the amount of the increase or reduction of that price, and containing prescribed particulars of the items affected by the alteration of the rate of tax.

70C.—(1.) In the case of a sale of goods by wholesale by a taxpayer by reason whereof he becomes liable to pay sales tax, the taxpayer shall state upon the invoice delivered by him to the purchaser in respect of the transaction the amount of sales tax payable in respect thereof.

Sales tax to be specified in invoice.
Inserted by No. 25, 1931, s. 10.

Penalty : One hundred pounds.

(2.) Notwithstanding anything contained in section seventy A of this Act, the taxpayer shall have the same right to recover from the purchaser the amount of the sales tax payable by him and stated upon the invoice as he has to recover the price or other payment for or in respect of the goods.

70D.—(1.) Any person not liable to pay sales tax in respect of any goods shall not, upon the sale or offer for sale of those goods, demand or receive or seek to receive any sum of money (whether included in a larger sum or not) upon the pretence that that sum is chargeable to, and payable by, him as tax under this Act.

False pretence as to sales tax an offence.
Inserted by No. 47, 1933, s. 8

Penalty : One hundred pounds.

(2.) Any person who—

(a) has paid or is liable to pay an amount of sales tax in respect of any goods ; or

(b) has purchased goods at a price which includes an amount in respect of sales tax payable by the vendor under this Act,

shall not, upon the sale or offer for sale of those goods, demand or receive or seek to receive any sum of money (whether included in a larger sum or not) in excess of that amount upon the pretence that that sum has been paid or is payable by him as sales tax, or has been included in respect of sales tax in the price paid by him for the goods.

Penalty : One hundred pounds.

70E.—(1.) Every person who is a manufacturer or a wholesale merchant shall, for the purposes of this Act, keep proper books or accounts and shall preserve those books or accounts, including—

Books, accounts, etc., to be preserved.
Inserted by No. 47, 1933, s. 8.

(a) all copies of invoices, and all vouchers, relating to his business ;

(b) all documents upon which any endorsement, notice or certificate has been made or given to him upon or in connexion with the quotation of certificates by purchasers from him; and

(c) all certificates or other documents in respect of sales of goods treated by him as exempt from sales tax received by him from purchasers, and accepted by him as evidence that the goods have been sold under conditions which entitle him to exemption,

for a period of not less than five years after the completion of the transactions, acts or operations to which they relate.

Penalty: One hundred pounds.

(2.) This section shall not apply so as to require the preservation of any books, accounts or documents—

(a) in respect of which the Commissioner has notified a manufacturer or wholesale merchant that such preservation is not required,

(b) of a company which has gone into liquidation and which has been finally dissolved.

Access to
books, &c.

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

Construction of
Act.

72. This Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Regulations.

73. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular—

Substituted by
No. 8, 1935,
s. 8.

(a) for prescribing cases in which, and the extent to which in those cases, refunds or payments may be made for the purpose of relieving a taxpayer from double taxation (whether direct, or direct and indirect)—

(i) in respect of any goods where sales tax is imposed upon a sale value of those goods under one or more Acts relating to the payment of sales tax; or

(ii) under one or more Acts relating to the payment of sales tax, in respect of any goods and in respect of any materials used in, wrought into or attached to those goods in a process of manufacture or in any other process; and

(b) for prescribing penalties not less than One pound nor more than Twenty pounds for any breach of the Regulations.

THE SCHEDULES.

* * * * *

First Schedule
repealed by
No. 61, 1935,
s. 17.*

THE SECOND SCHEDULE.

Commonwealth of Australia.

Section 35.

Sales Tax Assessment Act (No. 1) 1930.

Order.

To _____ at _____

WHEREAS at the time of the death of _____ deceased, sales tax has not been levied and/or paid on the whole of the sale value of any goods the subject of any transaction, act or operation entered into or performed by the said _____ up to the date of his death:

AND WHEREAS probate has not been granted or letters of administration have not been taken out in respect of the estate of the said _____ deceased:

AND WHEREAS the amount of sales tax remaining due by the said _____ at the time of his death is _____

THESE ARE THEREFORE to require and authorize you forthwith to levy the said sum of _____ together with the costs of these presents by distress and sale of any property of the estate of the said _____ found by you and that you certify to me on the _____ day of _____ what you shall do by virtue of this warrant.

Dated this _____ day of _____ One thousand nine hundred and _____

Commissioner of Taxation.

SALES TAX ACT (No. 2) 1930-1931.^(a)

An Act to impose a Tax upon the Sale Value of Goods manufactured in Australia and sold by a Purchaser from the Manufacturer.

[Assented to 18th August, 1930.]^(b)

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

1. This Act may be cited as the *Sales Tax Act (No. 2) 1930-1931*.^(a)

Short title.

(a) The *Sales Tax Act (No. 2) 1930-1931* comprises the *Sales Tax Act (No. 2) 1930* (No. 28 of 1930) as amended by the *Sales Tax Act (No. 2) 1931* (No. 28 of 1931). See Act No. 28, 1931, s. 1.

Short title amended,
No. 32, 1918,
s. 2.

(b) This is the date of assent to the *Sales Tax Act (No. 2) 1930*; the *Sales Tax Act (No. 2) 1931* was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931).

* See now the *Sales Tax Exemptions Act 1935*, *infra*, p. 2698. See also footnote * (*supra*, p. 2629).

Incorporation,
Amended by
No. 28, 1931,
s. 3.

2. The *Sales Tax Assessment Act* (No. 2) 1930-1931^(a) shall be incorporated and read as one with this Act.

Imposition
of tax.
Amended by
No. 28, 1931,
s. 3.

3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods manufactured in Australia which are sold, before the eleventh day of July, One thousand nine hundred and thirty-one, by a taxpayer who purchased them from the manufacturer, and at the rate of six^(b) per centum upon the sale value of goods manufactured in Australia, which are sold, on or after that date, by a taxpayer who purchased them from the manufacturer.

SALES TAX ASSESSMENT ACT (No. 2) 1930-1935.^(c)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods manufactured in Australia and sold by a Purchaser from the Manufacturer, and for other purposes.

[Assented to 18th August, 1930.]^(d)

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

PART I.—PRELIMINARY.

Short title,
Short title
amended. No. 32,
1918, s. 2.

1. This Act may be cited as the *Sales Tax Assessment Act* (No. 2) 1930-1935.^(e)

(a) *Infra.*

(b) By section 19 of the *Financial Relief Act* 1933 the tax imposed at the rate of six per centum by this Act has been reduced to five per centum.

(c) The *Sales Tax Assessment Act* (No. 2) 1930-1935 comprises the *Sales Tax Assessment Act* (No. 2) 1930 (No. 27 of 1930) as amended by the *Sales Tax Assessment Act* (No. 2A) 1930 (No. 64 of 1930); the *Sales Tax Assessment Act* (No. 2) 1931 (No. 27 of 1931); the *Sales Tax Assessment Act* (No. 2) 1932 (No. 40 of 1932); the *Financial Relief Act* 1932 (No. 64 of 1932); the *Financial Relief Act* 1933 (No. 17 of 1933); the *Sales Tax Assessment Act* (No. 2) 1933 (No. 48 of 1933); the *Financial Relief Act* 1934 (No. 16 of 1934); the *Sales Tax Assessment Act* (No. 2) 1934 (No. 30 of 1934); the *Sales Tax (Financial Relief) Act* 1935 (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act* 1935 (No. 61 of 1935). See Acts No. 64, 1930, s. 1; No. 27, 1931, s. 1; No. 40, 1932, s. 1; No. 48, 1933, s. 1; No. 30, 1934, s. 1; and No. 61, 1935, s. 1 (5).

(d) This is the date of assent to the *Sales Tax Assessment Act* (No. 2) 1930. The *Sales Tax Assessment Act* (No. 2A) 1930 was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act* (No. 2) 1930); the *Sales Tax Assessment Act* (No. 2) 1931 on 10th August, 1931; the *Sales Tax Assessment Act* (No. 2) 1932 on 5th October, 1932; the *Financial Relief Act* 1932 on 5th December, 1932; the *Financial Relief Act* 1933 on 26th October, 1933 (excepting section 18 which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts, commenced on the date of assent); the *Sales Tax Assessment Act* (No. 2) 1933 on 12th December, 1933; the *Financial Relief Act* 1934 on 1st August, 1934; the *Sales Tax Assessment Act* (No. 2) 1934 on 4th August, 1934; the *Sales Tax (Financial Relief) Act* 1935 on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act* 1935 on 7th December, 1935.

2. This Act is divided into Parts, as follows :—

Parts.

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act*
(No. 1) 1930.

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 2) 1930*^(a) shall be levied and paid upon the sale value of goods manufactured in Australia, either before or after the commencement of this Act, and sold on or after the first day of August One thousand nine hundred and thirty by a taxpayer who purchased them from the manufacturer.^(b)

Sales Tax.
Amended by
No. 64, 1930,
s. 3.

4.—(1.) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, who purchased the goods from the manufacturer thereof, to an unregistered person or to a registered person who has not quoted his certificate in respect of that purchase :

Sale value of goods.
Amended by
No. 40, 1932,
s. 2.*

Provided that where goods are sold by retail by a registered person who has quoted his certificate when purchasing the goods the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Added by
No. 27, 1931,
s. 2.

(2.) Notwithstanding anything contained in the last preceding sub-section, where, in respect of any sale to which that sub-section applies—

(a) the vendor and the purchaser are companies the shareholding interests of which are, in the opinion of the Commissioner, directly or indirectly in substantially the same hands ;

(a) *Supra*, p. 2651. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 2) 1930-1931* has been reduced to the rate of five per centum.

(b) (f. footnote (a) to section 17 of the *Sales Tax Assessment Act (No. 1) 1930-1935 (supra*, p. 2626).

* By s. 5 of the *Sales Tax Assessment Act (No. 2) 1933* this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 2) 1930*.

(b) the vendor or the purchaser is a company in which, in the opinion of the Commissioner, the purchaser or the vendor, as the case may be, directly or indirectly controls the voting power of the company: or

(c) the circumstances are such that, in the opinion of the Commissioner, the vendor or the purchaser is, directly or indirectly, in substantial control of the business operations of the other,

and it appears to the Commissioner that the amount for which those goods were sold is less than their fair market value in the ordinary course of trade, the sale value shall be altered by the Commissioner to the value which, in his opinion, would be the fair market value of the goods if sold by that person in the ordinary course of trade, and the altered value shall be the sale value of those goods for the purposes of this Act.

Substituted by
No. 27, 1931,
s. 2.

(3.) For the purposes of this section, the sale value of goods shall not be taken to include any amount payable in respect of sales tax but, when the goods are sold in bond, the sale value shall be taken to include the amount of any duty of Excise to which the goods would be subject if entered for home consumption at the time at which they are sold.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

Liability for
tax.

5. Sales tax shall be paid by the vendor of goods the sale value of which is specified in the last preceding section.

Rebates.
Inserted by
No. 27, 1931,
s. 3.

5A.—(1.) Where a registered person has quoted his certificate in respect of goods purchased by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between the amount of tax payable by him in respect of that sale and the amount of tax which would have been payable if the rate of tax payable in respect of such sale had been two and one-half per centum of the sale value of the goods.

Added by No.
40, 1932, s. 3.

(2.) Where, upon the death or bankruptcy of a registered person to whom this section applies, or otherwise by devolution of the estate of that person, the ownership of goods purchased as specified in this section becomes vested in some other person, that other person shall, if he becomes liable to pay tax in respect of any sale by retail of those goods, be entitled to a rebate of that tax to the extent specified in this section.

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

Exemptions.
Substituted by
No. 61, 1935,
s. 5*.

PART III.—RETURNS.

7. Every person who during any month makes any of the sales specified in sub-section (1.) of section four of this Act shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

Returns, &c.
Amended by
No. 48, 1933,
s. 2.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

Further
returns.

PART IV.—COLLECTION AND RECOVERY OF TAX.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods sold by him during any month shall, within twenty-one days after the close of that month, pay sales tax upon that sale value.

Time of
payment
of tax.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

Further tax.

- (a) assess the sale value upon which tax should be or should have been paid; and
- (b) calculate the tax or further tax which is payable.

(2.) Where, under sub-section (2.) of section four of this Act, the sale value of any goods has been altered, the Commissioner shall calculate the further tax (if any) payable in consequence of that alteration.

(2A.) Where—

- (a) any person makes default in furnishing any return; or
- (b) the Commissioner is not satisfied with the return made by any person; or
- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

Inserted by
No. 48, 1933,
s. 3.

(a) *Infra*, p. 2698.

* Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(3.) As soon as conveniently may be after an assessment is made or a sale value is altered, the Commissioner shall cause notice in writing of the assessment or alteration and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(4.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(5.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

Refunds
of tax.

Sub-section (1.)
substituted by
No. 48, 1933,
s. 4.

Amended by
No. 27, 1931,
s. 5.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

(2.) Where a registered person has sold goods upon the sale value of which he has paid tax, and has subsequently written off as a bad debt the whole or any part of the amount for which the goods were sold, the Commissioner may—

(a) on proof to his satisfaction that the whole amount is a bad debt—refund to the registered person the amount of tax paid on the sale value of the goods ;

(b) on proof to his satisfaction that a part of the amount is a bad debt—refund to the registered person so much of the tax as bears to the total amount of tax the same proportion as the amount so proved to be a bad debt bears to the total amount for which the goods were sold :

Proviso
substituted by
No. 48, 1933,
s. 4.

Provided that if any amount in respect of which tax has been so refunded is at any time wholly or partly recovered by the taxpayer, he shall, within twenty-one days after the close of the month in which the amount is so recovered, repay to the Commissioner so much of the tax refunded as bears to the total amount of that tax the proportion which the amount so recovered bears to the amount in respect of which tax was so refunded.

Added by No.
40, 1932, s. 5.

(3.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State, and the Commissioner is satisfied—

Amended by
No. 61, 1935,
s. 14.

(a) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act* 1935,^(a) and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,

(a) *Infra*, p. 2698.

(b) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,

(c) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

(d) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold before the date of assent to the law making the alteration.

Added by No.
48, 1933, s. 4.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act section twenty-nine of the *Sales Tax Assessment Act (No. 1) 1930*^(a) shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

Application of
provisions of
*Sales Tax
Assessment Act
(No. 1) 1930.*

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make

(a) *Supra*, p. 2616.

regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

Schedule
repealed by
No. 61, 1935,
s. 17."

* * * * *

SALES TAX ACT (No. 3) 1930-1931.^(b)

An Act to impose a Tax upon the Sale Value of
Goods manufactured in Australia and
sold by a person not being either the
Manufacturer or a Purchaser from the
Manufacturer.

[Assented to 18th August, 1930.]^(c)

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

Short title.

Short title
amended.
No. 32, 1918,
s. 2.

Incorporation.

Amended by
No. 30, 1931,
s. 3.

Imposition
of tax.

Amended by
No. 30, 1931,
s. 4.

1. This Act may be cited as the *Sales Tax Act* (No. 3) 1930-1931.^(b)

2. The *Sales Tax Assessment Act* (No. 3) 1930-1931^(d) shall be incorporated and read as one with this Act.

3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods manufactured in Australia, which are sold, before the eleventh day of July, One thousand nine hundred and thirty-one, by a taxpayer not being either the manufacturer of those goods or a purchaser of those goods from the manufacturer, and at the rate of six^(e) per centum upon the sale value of goods manufactured in Australia, which are sold, on or after that date, by a taxpayer not being either the manufacturer of those goods or a purchaser of those goods from the manufacturer.

(a) *Supra*, p. 2616.

(b) The *Sales Tax Act* (No. 3) 1930-1931 comprises the *Sales Tax Act* (No. 3) 1930 (No. 30 of 1930) as amended by the *Sales Tax Act* (No. 3) 1931 (No. 30 of 1931). See Act No. 30, 1931, s. 1.

(c) This is the date of assent to the *Sales Tax Act* (No. 3) 1930. The *Sales Tax Act* (No. 3) 1931 was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931).

(d) *Infra*, p. 2659.

(e) By section 19 of the *Financial Relief Act* 1933 the amount of tax imposed at the rate of six per centum by this Act has been reduced to the rate of five per centum.

* See now the *Sales Tax Exemptions Act* 1935 (*infra*, p. 2698). See also footnote * (*supra*, p. 2655).

SALES TAX ASSESSMENT ACT (No. 3) 1930-1935.^(a)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods manufactured in Australia and sold by a Person not being either the Manufacturer or a Purchaser from the Manufacturer, and for other purposes.

[Assented to 18th August, 1930.]^(b)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 3) 1930-1935*.^(a)

Short title.
Short title
amended, No. 32,
1918, s. 2.
Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930*.

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 3) 1930*^(c) shall be levied and paid upon the sale value of goods manufactured in Australia, either before or after the commencement of this Act, and sold on or after the first day of August One thousand nine hundred and thirty by a taxpayer, not being either the manufacturer of those goods or a purchaser of those goods from the manufacturer.^(d)

Sales tax.
Amended by
No. 63, 1930,
s. 3.

(a) The *Sales Tax Assessment Act (No. 3) 1930-1935* comprises the *Sales Tax Assessment Act (No. 3) 1930* (No. 29 of 1930) as amended by the *Sales Tax Assessment Act (No. 3A) 1930* (No. 65 of 1930); the *Sales Tax Assessment Act (No. 3) 1931* (No. 29 of 1931); the *Sales Tax Assessment Act (No. 3) 1932* (No. 41 of 1932); the *Financial Relief Act 1932* (No. 64 of 1932); the *Financial Relief Act 1933* (No. 17 of 1933); the *Sales Tax Assessment Act (No. 3) 1933* (No. 49 of 1933); the *Financial Relief Act 1934* (No. 16 of 1934); the *Sales Tax (Financial Relief) Act 1935* (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act 1935* (No. 61 of 1935). See Acts No. 63, 1930, s. 1; No. 29, 1931, s. 1; No. 41, 1932, s. 1; No. 49, 1933, s. 1; No. 16, 1934, s. 3 (3.); and No. 61, 1935, s. 1 (6.).

(b) This is the date of assent to the *Sales Tax Assessment Act (No. 3) 1930*. The *Sales Tax Assessment Act (No. 3A) 1930* was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act (No. 3) 1930*); the *Sales Tax Assessment Act (No. 3) 1931* on 10th August, 1931; the *Sales Tax Assessment Act (No. 3) 1932* on 5th October 1932; the *Financial Relief Act 1932* on 5th December, 1932; the *Financial Relief Act 1933* on 26th October, 1933 (excepting section 18 which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts commenced on the date of assent); the *Sales Tax Assessment Act (No. 3) 1933* on 12th December, 1933; the *Financial Relief Act 1934* on 1st August, 1934; the *Sales Tax (Financial Relief) Act 1935* on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act 1935* on 7th December, 1935.

(c) *Supra*, p. 2658. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 3) 1930-1931* has been reduced to five per centum.

(d) Cf. footnote (a) to s. 17 of the *Sales Tax Assessment Act (No. 1) 1930-1935* (*supra*, p. 2626).

Sale value of
goods.
Amended by
No. 41, 1932,
s. 2.*

4.—(1.) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, not being either the manufacturer of those goods or a purchaser of those goods from the manufacturer, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

Added by
No. 29, 1931,
s. 2.

Provided that where goods are sold by retail by a registered person who has quoted his certificate when purchasing the goods the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

(2.) Notwithstanding anything contained in the last preceding sub-section, where, in respect of any sale to which that sub-section applies—

- (a) the vendor and the purchaser are companies the shareholding interests of which are, in the opinion of the Commissioner, directly or indirectly in substantially the same hands;
- (b) the vendor or the purchaser is a company in which, in the opinion of the Commissioner, the purchaser or the vendor, as the case may be, directly or indirectly controls the voting power of the company; or
- (c) the circumstances are such that, in the opinion of the Commissioner, the vendor or the purchaser is directly or indirectly in substantial control of the business operations of the other,

and it appears to the Commissioner that the amount for which those goods were sold is less than their fair market value in the ordinary course of trade, the sale value shall be altered by the Commissioner to the value which, in his opinion, would be the fair market value of the goods if sold by that person in the ordinary course of trade, and the altered value shall be the sale value of those goods for the purposes of this Act.

Substituted by
No. 29, 1931,
s. 2.

(3.) For the purposes of this section, the sale value of goods shall not be taken to include any amount payable in respect of sales tax, but, when the goods are sold in bond, the sale value shall be taken to include the amount of any duty of Excise to which the goods would be subject if entered for home consumption at the time at which they are sold.

* By section 5 of the *Sales Tax Assessment Act* (No. 3) 1933 this amendment is deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act* (No. 3) 1930.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

5. Sales tax shall be paid by the vendor of goods the sale value of which is specified in the last preceding section.

Liability for tax.

5A.—(1.) Where a registered person has quoted his certificate in respect of goods purchased by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between the amount of tax payable by him in respect of that sale and the amount of tax which would have been payable if the rate of tax payable in respect of such sale had been two and one-half per centum of the sale value of the goods.

Rebates.

Inserted by
No. 29, 1931,
s. 9.

(2.) Where, upon the death or bankruptcy of a registered person to whom this section applies, or otherwise by devolution of the estate of that person, the ownership of goods purchased as specified in this section becomes vested in some other person, that other person shall, if he becomes liable to pay tax in respect of any sale by retail of those goods, be entitled to a rebate of that tax to the extent specified in this section.

Added by
No. 41, 1932,
s. 3.

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

Exemptions.
Substituted by
No. 61, 1935,
s. 5.*

PART III.—RETURNS.

7. Every person who during any month makes any of the sales specified in sub-section (1.) of section four of this Act shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

Returns, &c.
Amended by
No. 49, 1933,
s. 2.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

Further returns.

* Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

(a) *Infra*, p. 2693.

PART IV.—COLLECTION AND RECOVERY OF TAX.

Time of
payment of tax.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods sold by him during any month shall, within twenty-one days after the close of that month, pay sales tax on that sale value.

Further tax.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

(a) assess the sale value upon which tax should be or should have been paid; and

(b) calculate the tax or further tax which is payable.

(2.) Where, under sub-section (2.) of section four of this Act, the sale value of any goods has been altered, the Commissioner shall calculate the further tax (if any) payable in consequence of that alteration.

Inserted by
No. 49, 1933,
s. 3.

(2A.) Where—

(a) any person makes default in furnishing any return; or

(b) the Commissioner is not satisfied with the return made by any person; or

(c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(3.) As soon as conveniently may be after an assessment is made or a sale value is altered, the Commissioner shall cause notice in writing of the assessment or alteration and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(4.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(5.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

Refunds of tax.
Sub-section (1.)
substituted by
No. 49, 1933,
s. 4.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

Amended by
No. 29, 1931,
s. 5.

(2.) Where a registered person has sold goods upon the sale value of which he has paid tax, and has subsequently written off as a bad debt the whole or any part of the amount for which the goods were sold, the Commissioner may—

(a) on proof to his satisfaction that the whole amount is a bad debt—refund to the registered person the amount of tax paid on the sale value of the goods;

- (b) on proof to his satisfaction that a part of the amount is a bad debt—refund to the registered person so much of the tax as bears to the total amount of tax the same proportion as the amount so proved to be a bad debt bears to the total amount for which the goods were sold :

Provided that if any amount in respect of which tax has been so refunded is at any time wholly or partly recovered by the taxpayer, he shall, within twenty-one days after the close of the month in which the amount is so recovered, repay to the Commissioner so much of the tax refunded as bears to the total amount of that tax the proportion which the amount so recovered bears to the amount in respect of which tax was so refunded.

Proviso substituted by No. 49, 1933, s. 4.

(3.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State, and the Commissioner is satisfied—

Added by No. 41, 1932, s. 5.

- (a) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act* 1935,^(a) and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,

Amended by No. 61, 1935, s. 14.

- (b) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,

- (c) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

- (d) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold before the date of assent to the law making the alteration.

Added by No. 49, 1933, s. 4.

(a) *Infra*, p. 2698.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT
(No. 1) 1930.

Application of
provisions of
*Sales Tax
Assessment Act*
(No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act section twenty-nine of the *Sales Tax Assessment Act* (No. 1) 1930^(a) shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

Schedule
repealed by
No. 61, 1935,
s. 17.*

* * * * *

SALES TAX ACT (No. 4) 1930-1931.^(b)

An Act to impose a Tax upon the Sale Value of
certain Goods manufactured in Australia and
applied by the Purchaser to his own use.

[Assented to 18th August, 1930.]^(c)

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

1. This Act may be cited as the *Sales Tax Act* (No. 4) 1930-1931.^(b)

^(a) *Supra*, p. 2616.

^(b) The *Sales Tax Act* (No. 4) 1930-1931 comprises the *Sales Tax Act* (No. 4) 1930 (No. 32 of 1930) as amended by the *Sales Tax Act* (No. 4) 1931 (No. 32 of 1931). See Act No. 32, 1931, s. 1.

^(c) This is the date of assent to the *Sales Tax Act* (No. 4) 1930. The *Sales Tax Act* (No. 4) 1931 was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931).

* See now the *Sales Tax Exemptions Act* 1935 (*infra*, p. 2698). See also footnote * (*supra*, p. 2661).

Short title.

Short title
amended.
No. 32, 1918,
s. 2.

2. The *Sales Tax Assessment Act* (No. 4) 1930-1931^(a) shall be incorporated and read as one with this Act.

Incorporation.

Amended by
No. 32, 1931,
s. 3.

Imposition
of tax.

Amended by
No. 32, 1931,
s. 4.

3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods manufactured in Australia and sold to a taxpayer who has, before the eleventh day of July, One thousand nine hundred and thirty-one, applied those goods to his own use, and at the rate of six^(b) per centum upon the sale value of goods manufactured in Australia and sold to a taxpayer who has, on or after that date, applied those goods to his own use.

SALES TAX ASSESSMENT ACT (No. 4) 1930-1935.^(c)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of certain Goods manufactured in Australia and applied by the Purchaser to his own use, and for other purposes.

[Assented to 18th August, 1930.]^(d)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act* (No. 4) 1930-1935.^(c)

Short title.

Short title
amended.
No. 32, 1931,
s. 2.

Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act* (No. 1) 1930.

(a) *Infra*.

(b) By section 19 of the *Financial Relief Act* 1933 the tax imposed at the rate of six per centum by this Act has been reduced to the rate of five per centum.

(c) The *Sales Tax Assessment Act* (No. 4) 1930-1935 comprises the *Sales Tax Assessment Act* (No. 4) 1930 (No. 31 of 1930), as amended by the *Sales Tax Assessment Act* (No. 4A) 1930 (No. 66 of 1930); the *Sales Tax Assessment Act* (No. 4) 1931 (No. 31 of 1931); the *Sales Tax Assessment Act* (No. 4) 1932 (No. 42 of 1932); the *Financial Relief Act* 1932 (No. 64 of 1932); the *Financial Relief Act* 1933 (No. 17 of 1933); the *Sales Tax Assessment Act* (No. 4) 1933 (No. 50 of 1933); the *Financial Relief Act* 1934 (No. 16 of 1934); the *Sales Tax (Financial Relief) Act* 1935 (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act* 1935 (No. 61 of 1935). See Acts No. 66, 1930, s. 1; No. 31, 1931, s. 1; No. 42, 1932, s. 1; No. 50, 1933, s. 1; No. 16, 1934, s. 3 (4); and No. 61, 1935, s. 1 (7).

(d) This is the date of assent to the *Sales Tax Assessment Act* (No. 4) 1930. The *Sales Tax Assessment Act* (No. 4A) 1930 was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act* (No. 4) 1930; the *Sales Tax Assessment Act* (No. 4) 1931 on 10th August, 1931; the *Sales Tax Assessment Act* (No. 4) 1932 on 5th October, 1932; the *Financial Relief Act* 1932 on 5th December, 1932; the *Financial Relief Act* 1933 on 26th October, 1933 (excepting section 18 which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessments Acts, commenced on the date of assent); the *Sales Tax Assessment Act* (No. 4) 1933 on 12th December, 1933; the *Financial Relief Act* 1934 on 1st August, 1934; the *Sales Tax (Financial Relief) Act* 1935 on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act* 1935 on 7th December, 1935.

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by
No. 66, 1930,
s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 4) 1930*^(a) shall be levied and paid upon the sale value of goods which have been, either before or after the commencement of this Act, manufactured in Australia and sold to a taxpayer who has, on or after the first day of August One thousand nine hundred and thirty, applied those goods to his own use.^(b)

Sale value
of goods.Amended by No.
42, 1932, s. 2.*

4. For the purposes of this Act, the sale value of goods purchased by a registered person who has quoted his certificate in respect of those goods, and has applied those goods to his own use shall be the amount for which the goods were so purchased.

Liability for
tax.

5. Sales tax shall be paid by the registered person specified in the last preceding section.

Exemptions.

Substituted by
No. 61, 1935,
s. 7.†

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(c) exempt from sales tax under this Act.

PART III.—RETURNS.

Returns, &c.

7. Every person who during any month applies to his own use any goods purchased by him in respect of the purchase of which he has quoted his certificate shall, within twenty-one days after the close of that month, furnish to the Commissioner a return in the prescribed form setting forth full particulars of the goods so applied, and such other information as is prescribed.

Further
returns.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

PART IV.—COLLECTION AND RECOVERY OF TAX.

Time of
payment of
tax.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods applied to his own use during any month shall, on or before the date specified in the notice served on

(a) *Supra*, p. 2664. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 4) 1930-1931* has been reduced to the rate of five per centum.

(b) Cf. footnote (a) to section 17 of the *Sales Tax Assessment Act 1930-1935* (*supra*, p. 2626).

(c) *Infra*, p. 2698.

* Section 4 of the *Sales Tax Assessment Act (No. 4) 1933* is as follows:—

"4. Notwithstanding anything contained in section two of the *Sales Tax Assessment Act (No. 4) 1932*, the provisions of section four of the *Sales Tax Assessment Act (No. 4) 1930-1931*, as in force immediately prior to the commencement of the *Sales Tax Assessment Act (No. 4) 1932*, shall continue, and be deemed to have at all times continued, in force for all purposes in connexion with liability to sales tax in respect of goods applied by a person to his own use prior to such commencement."

† Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first-mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

him by post by the Commissioner, stating the amount of the sales tax payable by him upon the sale value of those goods, pay that amount to the Commissioner.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

- (a) assess the sale value upon which tax should be or should have been paid; and
- (b) calculate the tax or further tax which is payable.

(1A.) Where—

- (a) any person makes default in furnishing any return; or
- (b) the Commissioner is not satisfied with the return made by any person; or
- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

Inserted by
No. 50, 1933,
s. 2.

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(2.) As soon as conveniently may be after an assessment is made, the Commissioner shall cause notice in writing of the assessment and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(3.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(4.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid, he may refund the amount of tax found to be overpaid.

Refunds
of tax.

(2.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods applied by a taxpayer to his own use before the date of assent to the law making the alteration.

Added by
No. 50, 1933,
s. 3.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax

Application of
provisions of
Sales Tax
Assessment Act
(No. 1) 1930.

(a) *Supra*, p. 2616.

chargeable under that Act, but for the purposes of this Act section twenty-nine of the *Sales Tax Assessment Act (No. 1) 1930*^(a) shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act (No. 1) 1930*^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act (No. 1) 1930*^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

Schedule
repealed by
No. 61, 1935,
s. 17.*

* * * * *

SALES TAX ACT (No. 5) 1930-1931.^(b)

An Act to impose a Tax upon the Sale Value of Goods imported into Australia.

[Assented to 18th August, 1930.]^(c)

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

1. This Act may be cited as the *Sales Tax Act (No. 5) 1930-1931*.^(b)
2. The *Sales Tax Assessment Act (No. 5) 1930-1931*^(d) shall be incorporated and read as one with this Act.
3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods imported into Australia by a taxpayer before the eleventh day of July, One thousand nine hundred and thirty-one, and at the rate of six^(e) per centum upon the sale value of goods imported into Australia by a taxpayer on or after that date.

(a) *Supra*, p. 2616.

(b) The *Sales Tax Act (No. 5) 1930-1931* comprises the *Sales Tax Act (No. 5) 1930* (No. 34 of 1930) as amended by the *Sales Tax Act (No. 5) 1931* (No. 34 of 1931). See Act No. 34, 1931, s. 1.

(c) This is the date of assent to the *Sales Tax Act (No. 5) 1930*. The *Sales Tax Act (No. 5) 1931* was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931).

(d) *Infra*, following page.

(e) By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by this Act is reduced to the rate of five per centum.

* See now the *Sales Tax Exemptions Act 1935* (*infra*, p. 2698). See also footnote † (*supra*, p. 2666).

Short title.
Short title
amended,
No. 32, 1918,
s. 2.
Incorporation.
Amended by
No. 34, 1931,
s. 3.
Imposition
of tax.
Amended by
No. 34, 1931,
s. 4.

SALES TAX ASSESSMENT ACT (No. 5) 1930-1935.^(a)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia, and for other purposes.

[Assented to 18th August, 1930.]^(b)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 5) 1930-1935*.^(a)

Short title.
Short title
amended,
No. 32, 1918,
s. 2.
Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Entries.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930*.

Part VI.—Miscellaneous.

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 5) 1930*^(c) shall be levied and paid on the sale value of goods imported into Australia by a taxpayer on or after the first day of August One thousand nine hundred and thirty.

Sales tax.
Amended by
No. 87, 1939,
s. 3.

(a) The *Sales Tax Assessment Act (No. 5) 1930-1935* comprises the *Sales Tax Assessment Act (No. 5) 1930* (No. 33 of 1930) as amended by the *Sales Tax Assessment Act (No. 5A) 1930* (No. 67 of 1930); the *Sales Tax Assessment Act (No. 5) 1931* (No. 33 of 1931); the *Sales Tax Assessment Act (No. 5) 1932* (No. 43 of 1932); the *Financial Relief Act 1932* (No. 64 of 1932); the *Financial Relief Act 1933* (No. 17 of 1933); the *Sales Tax Assessment (New Zealand Imports) Act 1933* (No. 25 of 1933); the *Sales Tax Assessment Act (No. 5) 1933* (No. 51 of 1933); the *Financial Relief Act 1934* (No. 16 of 1934); the *Sales Tax Assessment (Fiji Imports) Act 1934* (No. 62 of 1934); the *Sales Tax (Financial Relief) Act 1935* (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act 1935* (No. 61 of 1935). See Acts No. 67, 1930, s. 1; No. 33, 1931, s. 1; No. 43, 1932, s. 1; No. 51, 1933, s. 1; No. 16, 1934, s. 3 (5.); and No. 61, 1935, s. 1 (8.).

(b) This is the date of assent to the *Sales Tax Assessment Act (No. 5) 1930*. The *Sales Tax Assessment Act (No. 5A) 1930* was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act (No. 5) 1930*; the *Sales Tax Assessment Act (No. 5) 1931* on 10th August, 1931; the *Sales Tax Assessment Act (No. 5) 1932* on 5th October, 1932; the *Financial Relief Act 1932* on 5th December, 1932; the *Financial Relief Act 1933* on 26th October, 1933 (excepting section 18, which is deemed to have commenced on 23rd September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts commenced on the date of assent); the *Sales Tax Assessment (New Zealand Imports) Act 1933* on 24th November, 1933 (proclaimed to commence on 1st December, 1933; see *Gazette* 1933, p. 1649); the *Sales Tax Assessment Act (No. 5) 1933* on 12th December, 1933; the *Financial Relief Act 1934* on 1st August, 1934; the *Sales Tax Assessment (Fiji Imports) Act 1934* on 17th December, 1934 (proclaimed to commence on 17th January, 1935; see *Gazette* 1935, p. 57); the *Sales Tax (Financial Relief) Act 1935* on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act 1935* on 7th December, 1935.

(c) *Supra*, previous page. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 5) 1930-1931* has been reduced to the rate of five per centum.

Sale value of
imported goods.

4.—(1.) For the purposes of this Act, the sale value of goods imported into Australia on or after the first day of August One thousand nine hundred and thirty—

(a) by an unregistered person ; or

(b) by a registered person who does not quote his certificate on the Customs entry relating to the goods,

shall be an amount which exceeds by twenty per centum the sum of the following :—

(i) the value for duty of those goods ; and

(ii) the duty of Customs payable in respect of the goods.

(2.) For the purposes of this section, "value for duty" means—

(a) where the goods are subject to an ad valorem duty upon importation into Australia under the law relating to duties of Customs—the value ascertained in accordance with that law for the purpose of calculating that duty ; and

(b) where the goods are not so subject—the value upon which, in the opinion of the Commissioner, an ad valorem duty would have been calculated if the goods had been so subject :

Provided that, pending the ascertainment of the value required to be ascertained under paragraph (a) or (b) of this sub-section, the value for duty of the goods to which this section applies shall be taken to be the value at which the goods are entered for home consumption under the law relating to the Customs :

Added by
No. 83, 1931,
s. 2.*

Provided further that, in the case of goods in respect of which a Customs entry has been passed, and which have subsequently been sent out of the Commonwealth for repairs with the approval of the Minister for Trade and Customs, the sale value of the goods upon their re-importation into Australia shall be the sum of the value for duty of the goods and the duty of Customs payable in respect of the goods.

Liability
for tax.

5. Sales tax shall be paid by the importer of goods the sale value of which is specified in sub-section (1.) of section four of this Act.

Exemptions.
Substituted by
No. 61, 1935,
s. 8.†

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

Refund of tax
in certain
cases where
goods
re-exported.

Inserted by
No. 33, 1931,
s. 3.‡ and
amended by
No. 51, 1932,
s. 2.

6A.—(1.) Sales tax payable in respect of imported goods entered for home consumption under the law relating to the Customs may, in prescribed cases, be paid to the Collector of Customs and retained by him on deposit for a period not exceeding twelve months.

(a) *Infra*, p. 2698.

* By section five of the *Sales Tax Assessment Act* (No. 5) 1931, this section is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act* (No. 5) 1930.

† Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first-mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

‡ By section five of the *Sales Tax Assessment Act* (No. 5) 1931, section 6A inserted by section three of that Act is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act* (No. 5) 1930."

(2.) If the goods are exported from Australia by the taxpayer within such time as is prescribed, the Collector may return to the taxpayer the amount deposited.

(3.) If the goods are not exported as specified in the last preceding sub-section, the Collector shall pay the amount deposited into the Consolidated Revenue Fund.

PART III.—ENTRIES.

7.—(1.) Where any person imports into Australia goods to the importation of which section four of this Act applies, he shall, at the time of the entry of the goods under the law relating to the Customs, lodge, for the purposes of this Act, with the Collector of Customs at the port of importation, an entry in the prescribed manner and form. Entries.

(2.) For the purposes of the section, the expression "Collector of Customs" has the same meaning as it has in the *Customs Act 1901-1930.*^(a)

8. Any person who is required by or under the last preceding section to lodge any entry or to furnish any prescribed information and who fails to lodge that entry or to furnish that information shall be guilty of an offence. Failure to lodge entry or furnish information.

Penalty: One hundred pounds.

PART IV.—COLLECTION AND RECOVERY OF TAX.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods imported by him into Australia shall pay sales tax at the time of the entry of those goods for home consumption under the law relating to the Customs: Time of payment of tax.

Provided that, in the case of goods the value for duty of which is, under sub-section (2.) of section four of this Act, ascertained in accordance with the opinion of the Commissioner, the person liable to pay sales tax upon the sale value of those goods shall, on or before the date specified in the notice by the Commissioner stating the sale value of those goods and the amount of any additional sales tax payable thereon and attributable to an excess in the value for duty so ascertained over the sale value of the goods at the time of entry, pay that additional tax.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may— Further tax.

(a) assess the sale value upon which tax should be or should have been paid; and

(b) calculate the tax or further tax which is payable.

(2.) As soon as conveniently may be after an assessment is made, the Commissioner shall cause notice in writing of the assessment and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(a) *Supra*, p. 490.

(3.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act

(4.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

Refunds of tax.

Sub-sec. (1.)
substituted by
No. 51, 1933,
s. 2.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

(2.) Where a taxpayer sells goods in respect of the sale value of which tax has been paid under this Act, and the whole or any part of the amount for which the goods were sold has actually been written off by the taxpayer as a bad debt, the Commissioner may, to the extent to which it is proved to his satisfaction that the debt is a bad debt, refund so much of the tax as bears to the tax the same proportion as the amount so proved to be a bad debt bears to the total amount for which the goods were sold:

Provided that, if the whole or any part of any amount in respect of which tax has been so refunded is at any time recovered by the taxpayer, he shall within seven days notify the Commissioner in writing accordingly and repay the whole or a proportionate part of the tax so refunded.

Added by
No. 43, 1932,
s. 2.

(3.) Where tax has been paid under this Act on the importation of goods by a person who has subsequently sold the goods to the Government of the Commonwealth or the Government of a State or to a Commonwealth or State authority and the Commissioner is satisfied that—

Amended by
No. 51, 1933,
s. 15.

(a) the Government of the Commonwealth or the Government of a State would have been entitled to exemption from tax under item 74 in the Schedule to the *Sales Tax Exemptions Act 1935*^(a) if that Government had imported the goods, and

(b) the amount of that tax has been excluded wholly or in part from the price for which the goods were so sold, the Commissioner may refund to the person who so sold the goods the amount which, in the opinion of the Commissioner, was so excluded.

Added by
No. 51, 1933,
s. 3.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods imported before the date of assent to the law making the alteration.

Drawback.

Inserted by
No. 43, 1932,
s. 3.

11A. (1.) Where, on or after the twenty-seventh day of May, One thousand nine hundred and thirty-two, drawback of import duty paid in respect of any goods is allowed pursuant to section one

(a) *Infra*, p. 2698.

hundred and sixty-eight of the *Customs Act* 1901-1930^(a) and the regulations thereunder, drawback of the sales tax paid under this Act in respect of those goods shall be allowed.

(2.) Where sales tax has been paid under this Act in respect of goods which are not subject to import duty, and, in the opinion of the Collector of Customs, drawback of duty would have been allowable under section one hundred and sixty-eight of the *Customs Act* 1901-1930^(a) and the regulations thereunder if the goods had been subject to such duty, drawback of the sales tax so paid shall be allowed and the provisions of the *Customs Act* 1901-1930^(a) and the regulations thereunder, in relation to drawback of import duty, shall apply in respect of drawback of sales tax as if the goods had been subject to import duty.

Added by
No. 51, 1932,
s. 4.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act* (No. 1) 1930,^(b) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act—

Application of
provisions of
*Sales Tax
Assessment Act*
(No. 1) 1930.

(a) section eleven of the *Sales Tax Assessment Act* (No. 1) 1930^(b) shall be read as if sub-sections (7.) and (8.) were omitted and the following sub-section inserted in their stead:—

“(7.) In respect only of the period commencing on the first day of August One thousand nine hundred and thirty and ending on the expiration of twenty-eight days after the commencement of this Act the following provisions shall apply:—

(a) Any person required by this Act to be registered shall be deemed to be a registered person until in fact so registered;

(b) every person so deemed to be a registered person shall upon every importation of goods by him for the purpose of sale or for use in the manufacture of goods for sale certify in writing to the Collector of Customs on the entry of those goods that the goods have been imported for that purpose;

(c) where in respect of any importation of goods the importer does not so certify he shall be deemed for the purposes of this Act not to have quoted his certificate in respect of the importation of those goods.”;

(a) *Supra*, p. 521.

(b) *Supra*, p. 2616.

(b) section twenty-nine of that Act shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and

(c) sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

PART VI.—MISCELLANEOUS.

Non-application
of sales tax
under other Acts
in certain cases.

13. Where sales tax is payable under this Act upon the sale value of goods entered for home consumption on or after the first day of August One thousand nine hundred and thirty, and prior to the commencement of this Act, sales tax shall not be payable upon the sale value of those goods under any other Act.

Schedule
repealed by
No. 61, 1935,
s. 17.*

* * * * *

SALES TAX ACT (No. 6) 1930-1932.^(b)

Title amended
by No. 48, 1932,
s. 2.

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer, or applied to his own use.

[Assented to 18th August, 1930.]^(c)

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

1. This Act may be cited as the *Sales Tax Act* (No. 6) 1930-1932.^(b)

2. The *Sales Tax Assessment Act* (No. 6) 1930-1931^(d) shall be incorporated and read as one with this Act.

(a) *Supra*, p. 2616.

(b) The *Sales Tax Act* (No. 6) 1930-1932 comprises the *Sales Tax Act* (No. 6) 1930 (No. 36 of 1930) as amended by the *Sales Tax Act* (No. 6) 1931 (No. 36 of 1931) and by the *Sales Tax Act* (No. 6) 1932 (No. 48 of 1932). See Acts No. 36, 1931, s. 1 and No. 48, 1932, s. 1.

(c) This is the date of assent to the *Sales Tax Act* (No. 6) 1930. The *Sales Tax Act* (No. 6) 1931 was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931) and the *Sales Tax Act* (No. 6) 1932 on 5th October, 1932.

(d) *Infra*, following page.

* See now the *Sales Tax Exemptions Act* 1935 (*infra*, p. 2698). See also footnote † (*supra*, p. 2670).

Short title.
Short title
amended, No.
32, 1913, s. 2.

Incorporation.
Amended by
No. 36, 1931,
s. 3.

3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods imported into Australia, which are sold, before the eleventh day of July, One thousand nine hundred and thirty-one, by a taxpayer who imported those goods, and at the rate of six^(a) per centum upon the sale value of goods imported into Australia, which are sold, on or after that date, by a taxpayer who imported those goods, and upon the sale value of goods imported after the commencement of this Act which are, on or after the date of the commencement of the *Sales Tax Act (No. 6) 1932* applied to his own use by a taxpayer who imported those goods.

Imposition
of tax.
Amended by
No. 36, 1931,
s. 4 and by
No. 48, 1932,
s. 3.

SALES TAX ASSESSMENT ACT (No. 6) 1930-1935.^(b)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia and sold by the Importer or applied to his own use, and for other purposes.

Title amended,
No. 44, 1932,
s. 2

[Assented to 18th August, 1930.]^(c)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 6) 1930-1935*^(b).

Short title.
Short title
amended,
No. 32, 1918,
s. 2.
Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930*.

(a) By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by this Act has been reduced to the rate of five per centum.

(b) The *Sales Tax Assessment Act (No. 6) 1930-1935* comprises the *Sales Tax Assessment Act (No. 6) 1930* (No. 35 of 1930) as amended by the *Sales Tax Assessment Act (No. 6A) 1930* (No. 68 of 1930); the *Sales Tax Assessment Act (No. 6) 1931* (No. 35 of 1931); the *Sales Tax Assessment Act (No. 6) 1932* (No. 44 of 1932); the *Financial Relief Act 1932* (No. 64 of 1932); the *Financial Relief Act 1933* (No. 17 of 1933); the *Sales Tax Assessment (New Zealand Imports) Act 1933* (No. 25 of 1933); the *Sales Tax Assessment Act (No. 6) 1933* (No. 52 of 1933); the *Financial Relief Act 1934* (No. 16 of 1934); the *Sales Tax Assessment (Fiji Imports) Act 1934* (No. 62 of 1934); the *Sales Tax (Financial Relief) Act 1935* (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act 1935* (No. 61 of 1935). See Acts No. 68, 1930, s. 1; No. 35, 1931, s. 1; No. 44, 1932, s. 1; No. 52, 1933, s. 1; No. 16, 1934, s. 3 (6.); and No. 61, 1935, s. 1 (9.).

(c) This is the date of assent to the *Sales Tax Assessment Act (No. 6) 1930*. The *Sales Tax Assessment Act (No. 6A) 1930* was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act (No. 6) 1930*; the *Sales Tax Assessment Act (No. 6) 1931* on 10th August, 1931; the *Sales Tax Assessment Act (No. 6) 1932* on 5th October, 1932; the *Financial Relief Act 1932* on 5th December, 1932; the *Financial Relief Act 1933* on 26th October, 1933 (excepting section 18, which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts commenced on the date of assent); the *Sales Tax Assessment (New Zealand Imports) Act 1933* on 24th November, 1933 (proclaimed to commence on 1st December, 1933; see *Gazette* 1933, p. 1649); the *Sales Tax Assessment Act (No. 6) 1933* on 12th December, 1933; the *Financial Relief Act 1934* on 1st August, 1934; the *Sales Tax Assessment (Fiji Imports) Act 1934* on 17th December, 1934 (proclaimed to commence on 17th January, 1935; see *Gazette* 1935, p. 57); the *Sales Tax (Financial Relief) Act 1935* on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act 1935* on 7th December, 1935.

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by
No. 68, 1930,
s. 3, and by
No. 44, 1932,
s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 6) 1930*^(a) shall be levied and paid upon the sale value of goods imported into Australia by a taxpayer—

(a) either before or after the commencement of this Act and sold by him on or after the first day of August, One thousand nine hundred and thirty; or

(b) after the commencement of this Act, and applied by him to his own use on or after the date of the commencement of the *Sales Tax Act (No. 6) 1932*.^(b)

Sale value
of goods.Amended by
No. 44, 1932,
s. 4.†

4.—(1.) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, who imported those goods, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods:

Added by
No. 85, 1931,
s. 2.*

Provided that where goods are sold by retail by a registered person who has quoted his certificate when importing the goods the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Inserted by
No. 44, 1932,
s. 4.

(1A.) For the purposes of this Act the sale value of goods imported by a registered person who quoted his certificate on the Customs entry relating to those goods, and who applies those goods to his own use, shall be the amount which would have been the sale value of those goods for purposes of the *Sales Tax Assessment Act (No. 5) 1930-1931*^(c) if that person had not so quoted his certificate.

Amended by
No. 44, 1932,
s. 4.

(2.) Notwithstanding anything contained in sub-section (1.) of this section, where, in respect of any sale to which that sub-section applies—

(a) the vendor and the purchaser are companies the shareholding interests of which are, in the opinion of the Commissioner, directly or indirectly in substantially the same hands;

(a) *Supra*, p. 2674. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 6) 1930-1932* has been reduced to the rate of five per centum.

(b) 5th October, 1932.

(c) *Supra*, p. 2669.

* By section seven of the *Sales Tax Assessment Act (No. 6) 1931*, this section is deemed to have commenced on 11th July, 1931.

† By section 5 of the *Sales Tax Assessment Act (No. 6) 1933* this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 6) 1930*.

(b) the vendor or the purchaser is a company in which, in the opinion of the Commissioner, the purchaser or the vendor, as the case may be, directly or indirectly controls the voting power of the company; or

(c) the circumstances are such that, in the opinion of the Commissioner, the vendor or the purchaser is directly or indirectly in substantial control of the business operations of the other,

and it appears to the Commissioner that the amount for which those goods were sold is less than their fair market value in the ordinary course of trade, the sale value shall be altered by the Commissioner to the value which, in his opinion, would be the fair market value of the goods if sold by that person in the ordinary course of trade, and the altered value shall be the sale value of those goods for the purposes of this Act.

(3.) For the purposes of this section, the sale value of goods shall not be taken to include any amount payable in respect of sales tax, but, when the goods are sold in bond, the sale value shall be taken to include the amount of any duty of Customs to which the goods would be subject if entered for home consumption at the time at which they are sold.

Substituted by
No. 35, 1931,
s. 2.*

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

5. Sales tax shall be paid by the importer of goods the sale value of which is specified in the last preceding section.

Liability for
tax.
Amended by
No. 44, 1932,
s. 5.

5A.—(1.) Where a registered person has quoted his certificate in respect of goods imported by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between the amount of tax payable by him in respect of that sale and the amount of tax which would have been payable if the rate of tax payable in respect of such sale had been two and one-half per centum of the sale value of the goods.

Rebates.
Inserted by
No. 35, 1931,
s. 3.*

(2.) Where, upon the death or bankruptcy of a registered person to whom this section applies, or otherwise by devolution of the estate of that person, the ownership of goods purchased as specified in this section becomes vested in some other person, that other person shall, if he becomes liable to pay tax in respect of any sale by retail of those goods, be entitled to a rebate of that tax to the extent specified in this section.

Added by
No. 44, 1932,
s. 6.

* By section seven of the *Sales Tax Assessment Act (No. 6) 1931*, this section is deemed to have commenced on 11th July, 1931.

Exemptions.
Substituted by
No. 61, 1935,
s. 9.*

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

PART III.—RETURNS.

Returns, &c.
Substituted by
No. 44, 1932,
s. 7, and
amended by No.
52, 1933, s. 2.

7. Every person who, during any month—

(a) makes any of the sales specified in sub-section (1.) of section four of this Act; or

(b) applies to his own use any goods specified in sub-section (1A.) of section four of this Act,

shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales or, as the case may be, of those goods in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

Further
returns.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

PART IV.—COLLECTION AND RECOVERY OF TAX.

Time of
payment
of tax.
Amended by
No. 44, 1932,
s. 8.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods sold by him or applied to his own use during any month shall, within twenty-one days after the close of that month, pay sales tax upon that sale value.

Further tax.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

(a) assess the sale value upon which tax should be or should have been paid; and

(b) calculate the tax or further tax which is payable.

(2.) Where, under sub-section (2.) of section four of this Act, the sale value of any goods has been altered, the Commissioner shall calculate the further tax (if any) payable in consequence of that alteration.

Inserted by
No. 52, 1933,
s. 3.

(2A.) Where—

(a) any person makes default in furnishing any return; or

(b) the Commissioner is not satisfied with the return made by any person; or

^(a) *Infra*, p. 2698.

* Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first-mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(3.) As soon as conveniently may be after an assessment is made or a sale value is altered, the Commissioner shall cause notice in writing of the assessment or alteration and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(4.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(5.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

Refunds of tax
Sub-section (1.)
substituted by
No. 52, 1933,
s. 4.

(2.) Where a registered person has sold goods upon the sale value of which he has paid tax, and has subsequently written off as a bad debt the whole or any part of the amount for which the goods were sold, the Commissioner may—

Amended by
No. 35, 1931,
s. 5.*

(a) on proof to his satisfaction that the whole amount is a bad debt—refund to the registered person the amount of tax paid on the sale value of the goods;

(b) on proof to his satisfaction that a part of the amount is a bad debt—refund to the registered person so much of the tax as bears to the total amount of tax the same proportion as the amount so proved to be a bad debt bears to the total amount for which the goods were sold:

Provided that if any amount in respect of which tax has been so refunded is at any time wholly or partly recovered by the taxpayer, he shall, within twenty-one days after the close of the month in which the amount is so recovered, repay to the Commissioner so much of the tax refunded as bears to the total amount of that tax the proportion which the amount so recovered bears to the amount in respect of which tax was so refunded.

Proviso
substituted by
No. 52, 1933,
s. 4.

* By section seven of the *Sales Tax Assessment Act (No. 6) 1931*, this section is deemed to have commenced on 11th July, 1931.

Added by
No. 44, 1932,
s. 9.

(3.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State, and the Commissioner is satisfied—

Amended by
No. 61, 1935,
s. 16.

(a) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act 1935*,^(a) and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,

(b) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,

(c) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and

(d) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government authority, the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

Added by
No. 52, 1933,
s. 4.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold by a taxpayer or applied by him to his own use before the date of assent to the law making the alteration.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

Application of
provisions of
*Sales Tax
Assessment Act*
(No. 1) 1930.

12.—(1). The following sections and Parts of the *Sales Tax Assessment Act* (No. 1) 1930,^(b) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act section twenty-nine of the *Sales Tax Assessment Act* (No. 1) 1930^(b) shall be read as if the words “section nine or ten of this Act” were substituted for the words “section twenty-four or twenty-five of this Act” (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words “Part III. of this Act” were substituted for the words “Part V. of this Act”.

(a) *Infra*, p. 2608.

(b) *Supra*, p. 2616.

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

* * * * *

Schedule
repealed by
No. 61, 1935,
s. 17.*

SALES TAX ACT (No. 7) 1930-1931.^(b)

An Act to impose a Tax upon the Sale Value of Goods imported into Australia and sold by a person other than the Importer.

[Assented to 18th August, 1930.]^(c)

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

1. This Act may be cited as the *Sales Tax Act (No. 7) 1930-1931*.^(b)
2. The *Sales Tax Assessment Act (No. 7) 1930-1931*^(d) shall be incorporated and read as one with this Act.
3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods imported into Australia, which are sold, before the eleventh day of July, One thousand nine hundred and thirty-one, by a taxpayer not being the importer of those goods, and at the rate of six^(e) per centum upon the sale value of goods imported into Australia, which are sold, on or after that date, by a taxpayer not being the importer of those goods.

Short title.

Short title
amended,
No. 32, 1918,
s. 2.

Incorporation
Amended by
No. 38, 1931,
s. 3.

Imposition
of tax.
Amended by
No. 38, 1931,
s. 4.

(a) *Supra*, p. 2616.

(b) The *Sales Tax Act (No. 7) 1930-1931* comprises the *Sales Tax Act (No. 7) 1930* (No. 38 of 1930) as amended by the *Sales Tax Act (No. 7) 1931* (No. 38 of 1931). See Act No. 38, 1931, s. 1.

(c) This is the date of assent to the *Sales Tax Act (No. 7) 1930*. The *Sales Tax Act (No. 7) 1931* was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931).

(d) *Infra*, following page.

(e) By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by this Act has been reduced to the rate of five per centum.

* See now the *Sales Tax Exemptions Act 1935* (*infra*, p. 2698). See also footnote * (*supra*, p. 2678).

SALES TAX ASSESSMENT ACT (No. 7) 1930–1935.^(a)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Goods imported into Australia and sold by a Person other than the Importer, and for other purposes.

[Assented to 18th August, 1930.]^(b)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 7) 1930–1935*.^(a)

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930*.

PART II.—LIABILITY TO TAXATION.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act (No. 7) 1930*^(c) shall be levied and paid upon the sale value of goods imported into Australia, either before or after the commencement of this Act, and sold on or after the first day of August One thousand nine hundred and thirty by a taxpayer not being the importer of the goods.

(a) The *Sales Tax Assessment Act (No. 7) 1930–1935* comprises the *Sales Tax Assessment Act (No. 7) 1930* (No. 37 of 1930) as amended by the *Sales Tax Assessment Act (No. 7A) 1930* (No. 69 of 1930); the *Sales Tax Assessment Act (No. 7) 1931* (No. 37 of 1931); the *Sales Tax Assessment Act (No. 7) 1932* (No. 45 of 1932); the *Financial Relief Act 1932* (No. 64 of 1932); the *Financial Relief Act 1933* (No. 17 of 1933); the *Sales Tax Assessment (New Zealand Imports) Act 1933* (No. 25 of 1933); the *Sales Tax Assessment Act (No. 7) 1933* (No. 53 of 1933); the *Financial Relief Act 1934* (No. 16 of 1934); the *Sales Tax Assessment (Fiji Imports) Act 1934* (No. 62 of 1934); the *Sales Tax (Financial Relief) Act 1935* (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act 1935* (No. 61 of 1935). See Acts No. 69, 1930, s. 1; No. 37, 1931, s. 1; No. 45, 1932, s. 1; No. 53, 1933, s. 1; No. 16, 1934, s. 3 (7.); and No. 61, 1935, s. 1 (10.).

(b) This is the date of assent to the *Sales Tax Assessment Act (No. 7) 1930*. The *Sales Tax Assessment Act (No. 7A) 1930* was assented to on 16th December, 1930 (deemed to have commenced on date of commencement of the *Sales Tax Assessment Act (No. 7) 1930*); the *Sales Tax Assessment Act (No. 7) 1931* on 10th August, 1931; the *Sales Tax Assessment Act (No. 7) 1932* on 5th October, 1932; the *Financial Relief Act 1932* on 5th December, 1932; the *Financial Relief Act 1933* on 26th October, 1933 (excepting section 18 which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts, commenced on the date of assent); the *Sales Tax Assessment (New Zealand Imports) Act 1933* on 24th November, 1933 (proclaimed to commence on 1st December, 1933; see *Gazette* 1933, p. 1649); the *Sales Tax Assessment Act (No. 7) 1933* on 12th December, 1933; the *Financial Relief Act 1934* on 1st August, 1934; the *Sales Tax Assessment (Fiji Imports) Act 1934* on 17th December, 1934 (proclaimed to commence on 17th January, 1935 (see *Gazette* 1935, p. 57); the *Sales Tax (Financial Relief) Act 1935* on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act 1935* on 7th December, 1935.

(c) *Supra*, previous page. By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by the *Sales Tax Act (No. 7) 1930–1931* has been reduced to the rate of five per centum.

Short title.
Short title
amended,
No. 32, 1918.
s. 2.

Parts.

Sales tax.
Amended by
No. 69, 1930,
s. 3.

4.—(1.) For the purposes of this Act, the sale value of goods which are sold on or after the first day of August One thousand nine hundred and thirty shall be the amount for which those goods are sold by a registered person, or a person required to be registered, not being the importer of those goods, to an unregistered person or to a registered person who has not quoted his certificate in respect of the purchase of those goods :

Sale value
of goods.
Amended by
No. 45, 1932,
s. 2.*

Provided that, where goods are sold by retail by a registered person who has quoted his certificate when purchasing the goods, the sale value of the goods shall be the amount which would be the fair market value of those goods if sold by him by wholesale, but if the Commissioner is of opinion that the amount set forth in any return by the registered person as the sale value of any such goods is less than the amount which would be their fair market value if sold by wholesale, the Commissioner may alter the amount set forth in the return to the amount which, in his opinion, would be the fair market value of the goods if sold by wholesale, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

Added by
No. 37, 1931,
s. 2.†

(2.) Notwithstanding anything contained in the last preceding sub-section, where, in respect of any sale to which that sub-section applies—

- (a) the vendor and the purchaser are companies the shareholding interests of which are, in the opinion of the Commissioner, directly or indirectly in substantially the same hands ;
- (b) the vendor or the purchaser is a company in which, in the opinion of the Commissioner, the purchaser or the vendor, as the case may be, directly or indirectly controls the voting power of the company ; or
- (c) the circumstances are such that, in the opinion of the Commissioner, the vendor or the purchaser is directly or indirectly in substantial control of the business operations of the other,

and it appears to the Commissioner that the amount for which those goods were sold is less than their fair market value in the ordinary course of trade, the sale value shall be altered by the Commissioner to the value which, in his opinion, would be the fair market value of the goods if sold by that person in the ordinary course of trade, and the altered value shall be the sale value of those goods for the purposes of this Act.

(3.) For the purposes of this section, the sale value of goods shall not be taken to include any amount payable in respect of sales tax, but, when the goods are sold in bond, the sale value shall be taken to include the amount of any duty of Customs to which the goods would be subject if entered for home consumption at the time at which they are sold.

Substituted by
No. 37, 1931,
s. 2.†

* By section 5 of the *Sales Tax Assessment Act (No. 7) 1933* this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act (No. 7) 1930*.

† By section 7 of the *Sales Tax Assessment Act (No. 7) 1931*, this section is deemed to have commenced on 11th July, 1931.

(4.) In the case of goods delivered on or after the first day of August One thousand nine hundred and thirty under a contract of sale made on or after the tenth day of July One thousand nine hundred and thirty and before the first day of August One thousand nine hundred and thirty the goods shall, for the purposes of this Act, be deemed to have been sold on the date of their delivery.

Liability for tax.

5. Sales tax shall be paid by the vendor of goods the sale value of which is specified in the last preceding section.

Rebates.
Inserted by
No. 37, 1931,
s. 3.*

5A.—(1.) Where a registered person has quoted his certificate in respect of goods purchased by him prior to the eleventh day of July, One thousand nine hundred and thirty-one, he shall be entitled, in respect of any sale of those goods by retail made by him on or after that date, to a rebate of tax of the difference between the amount of tax payable by him in respect of that sale and the amount of tax which would have been payable if the rate of tax payable in respect of such sale had been two and one-half per centum of the sale value of the goods.

Added by
No. 46, 1932,
s. 2.

(2.) Where, upon the death or bankruptcy of the registered person to whom this section applies, or otherwise by devolution of the estate of that person, the ownership of goods purchased as specified in this section becomes vested in some other person, that other person shall, if he becomes liable to pay tax in respect of any sale by retail of those goods, be entitled to a rebate of that tax to the extent specified in this section.

Exemptions.
Substituted by
No. 61, 1935,
s. 10.†

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

PART III.—RETURNS.

Returns, &c.
Amended by
No. 53, 1933,
s. 2.

7. Every person who during any month makes any of the sales specified in sub-section (1.) of section four of this Act shall, within twenty-one days after the close of that month, furnish to the Commissioner a return of those sales in the prescribed form, setting forth such information as is prescribed or is required for the due completion of that form.

Further returns

8. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

(a) *Infra*, p. 2698.

*By section 7 of the *Sales Tax Assessment Act (No. 7) 1931*, this section is deemed to have commenced on 11th July, 1931.

† Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first-mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

PART IV.—COLLECTION AND RECOVERY OF TAX.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods sold by him during any month shall, within twenty-one days after the close of that month, pay sales tax upon that sale value.

Time of
payment
of tax.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

Further tax.

- (a) assess the sale value upon which tax should be or should have been paid ; and
- (b) calculate the tax or further tax which is payable.

(2.) Where, under sub-section (2.) of section four of this Act, the sale value of any goods has been altered, the Commissioner shall calculate the further tax (if any) payable in consequence of that alteration.

(2A.) Where—

Inserted by
No. 53, 1933,
s. 3.

- (a) any person makes default in furnishing any return ; or
- (b) the Commissioner is not satisfied with the return made by any person ; or
- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(3.) As soon as conveniently may be after an assessment is made or a sale value is altered, the Commissioner shall cause notice in writing of the assessment or alteration and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(4.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(5.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

Refunds
of tax.
Sub-section (1.)
substituted by
No. 53, 1933,
s. 4.

Amended by
No. 37, 1931,
s. 5.*

(2.) Where a registered person has sold goods upon the sale value of which he has paid tax, and has subsequently written off as a bad debt the whole or any part of the amount for which the goods were sold, the Commissioner may—

- (a) on proof to his satisfaction that the whole amount is a bad debt—refund to the registered person the amount of tax paid on the sale value of the goods;
- (b) on proof to his satisfaction that a part of the amount is a bad debt—refund to the registered person so much of the tax as bears to the total amount of tax the same proportion as the amount so proved to be a bad debt bears to the total amount for which the goods were sold:

Proviso
substituted by
No. 53, 1933,
s. 4

Provided that if any amount in respect of which tax has been so refunded is at any time wholly or partly recovered by the taxpayer, he shall, within twenty-one days after the close of the month in which the amount is so recovered, repay to the Commissioner so much of the tax refunded as bears to the total amount of that tax the proportion which the amount so recovered bears to the amount in respect of which tax was so refunded.

Added by
No. 45, 1932,
s. 4.

(3.) Where goods are sold by any person to the Government of the Commonwealth or the Government of a State and the Commissioner is satisfied—

Amended by
No. 61, 1935,
s. 16.

- (a) that the goods are for the official use of a Government Department or of an authority specified in item 74 in the Schedule to the *Sales Tax Exemptions Act* 1935,^(a) and are not for re-sale, and, in the case of goods sold to the Government of a State, an arrangement of the kind specified in that item has been made between the Governor-General and the Governor of the State,
- (b) that tax has been paid or is payable under this Act in respect of some prior act, operation or transaction in relation to those goods, or goods used in, wrought into or attached to those goods,
- (c) that the amount of that tax has been paid or is payable by the person who so sold the goods, or has been wholly or partly included in the price for which that person purchased those goods, or the goods used in, wrought into or attached to those goods, and
- (d) that the amount of that tax has been excluded wholly or in part from the price for which the goods were sold by that person to the Government or Government Authority,

the Commissioner may refund or pay to that person the amount which, in the opinion of the Commissioner, was so excluded.

(a) *Infra*, p. 2698.

* By section 7 of the *Sales Tax Assessment Act* (No. 7) 1931, this section is deemed to have commenced on 11th July, 1931.

(4.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods sold before the date of assent to the law making the alteration.

Added by
No. 53, 1933,
s. 4.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act section twenty-nine of the *Sales Tax Assessment Act* (No. 1) 1930^(a) shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

Application of
provisions of
*Sales Tax
Assessment Act*
(No. 1) 1930.

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

* * * * *

Schedule
repealed by
No. 61, 1935,
s. 17.*

(a) *Supra*, p. 2616.

* See now the *Sales Tax Exemptions Act* 1935 (*infra*, p. 2698). See also footnote † (*supra*, p. 2684).

SALES TAX ACT (No. 8) 1930-1931.^(a)

An Act to impose a Tax upon the Sale Value of certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use.

[Assented to 18th August, 1930.]^(b)

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

Short title.
Short title
amended,
No. 32, 1918,
s. 2.

Incorporation.
Amended by
No. 40, 1931,
s. 3.

Imposition of
tax.
Amended by
No. 40, 1931,
s. 4.

1. This Act may be cited as the *Sales Tax Act (No. 8) 1930-1931*.^(a)

2. The *Sales Tax Assessment Act (No. 8) 1930-1931*^(c) shall be incorporated and read as one with this Act.

3. Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods imported into Australia which are sold to a taxpayer and applied, before the eleventh day of July, One thousand nine hundred and thirty-one, to his own use, and at the rate of six^(d) per centum upon the sale value of goods imported into Australia which are sold to a taxpayer and are applied, on or after that date, to his own use.

(a) The *Sales Tax Act (No. 8) 1930-1931* comprises the *Sales Tax Act (No. 8) 1930* (No. 40 of 1930) as amended by the *Sales Tax Act (No. 8) 1931* (No. 40 of 1931). See Act No. 40, 1931, s. 1.

(b) This is the date of assent to the *Sales Tax Act (No. 8) 1930*. The *Sales Tax Act (No. 8) 1931* was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931).

(c) *Infra*, following page.

(d) By section 19 of the *Financial Relief Act 1933* the tax imposed at the rate of six per centum by this Act has been reduced to five per centum.

SALES TAX ASSESSMENT ACT (No. 8) 1930-1935.^(a)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of Certain Goods imported into Australia, purchased by a Taxpayer, and applied to his own use, and for other purposes.

[Assented to 18th August, 1930.]^(b)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act (No. 8) 1930-1935.*^(a)

Short title.
Short title
amended,
No. 32, 1918,
s. 2.
Parts.

2. This Act is divided into Parts, as follows :—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act (No. 1) 1930.*

(a) The *Sales Tax Assessment Act (No. 8) 1930-1935* comprises the *Sales Tax Assessment Act (No. 8) 1930* (No. 39 of 1930) as amended by the *Sales Tax Assessment Act (No. 8A) 1930* (No. 70 of 1930); the *Sales Tax Assessment Act (No. 8) 1931* (No. 39 of 1931); the *Sales Tax Assessment Act (No. 8) 1932* (No. 46 of 1932); the *Financial Relief Act 1932* (No. 64 of 1932); the *Financial Relief Act 1933* (No. 17 of 1933); the *Sales Tax Assessment (New Zealand Imports) Act 1933* (No. 25 of 1933); the *Sales Tax Assessment Act (No. 8) 1933* (No. 54 of 1933); the *Financial Relief Act 1934* (No. 16 of 1934); the *Sales Tax Assessment (Fiji Imports) Act 1934* (No. 62 of 1934); the *Sales Tax (Financial Relief) Act 1935* (No. 45 of 1935); and by the *Sales Tax (Securities and Exemptions) Act 1935* (No. 61 of 1935). See Acts No. 76, 1930, s. 1; No. 39, 1931, s. 1; No. 46, 1932, s. 1; No. 54, 1933, s. 1; No. 16, 1934, s. 3 (8.); and No. 61, 1935, s. 1 (11.).

(b) This is the date of assent to the *Sales Tax Assessment Act (No. 8) 1930*. The *Sales Tax Assessment Act (No. 8A) 1930* was assented to on 16th December, 1930 (deemed to have commenced on the date of commencement of the *Sales Tax Assessment Act (No. 8) 1930*); the *Sales Tax Assessment Act (No. 8) 1931* on 10th August, 1931; the *Sales Tax Assessment Act (No. 8) 1932* on 5th October, 1932; the *Financial Relief Act 1932* on 5th December, 1932; the *Financial Relief Act 1933* on 26th October, 1933 (excepting section 18 which is deemed to have commenced on 29th September, 1933, Part IV., which effected amendments to the several Sales Tax Assessment Acts commenced on the date of assent); the *Sales Tax Assessment (New Zealand Imports) Act 1933* on 24th November, 1933 (proclaimed to commence on 1st December, 1933; see *Gazette* 1933, p. 1649); the *Sales Tax Assessment Act (No. 8) 1933* on 12th December, 1933; the *Financial Relief Act 1934* on 1st August, 1934; the *Sales Tax Assessment (Fiji Imports) Act 1934* on 17th December, 1934 (proclaimed to commence on 17th January, 1935; see *Gazette* 1935, p. 57); the *Sales Tax (Financial Relief) Act 1935* on 25th October, 1935; and the *Sales Tax (Securities and Exemptions) Act 1935* on 7th December, 1935.

PART II.—LIABILITY TO TAXATION.

Sales tax.
Amended by
No. 70, 1930,
s. 3.

3. Subject to, and in accordance with, the provisions of this Act, the sales tax imposed by the *Sales Tax Act* (No. 8) 1930^(a) shall be levied and paid upon the sale value of goods which have been, either before or after the commencement of this Act, imported into Australia and sold to a taxpayer who has, on or after the first day of August One thousand nine hundred and thirty, applied those goods to his own use.

Sale value
of goods.
Amended by
No. 45, 1932,
s. 2. †

4. For the purposes of this Act, the sale value of goods purchased by a registered person who has quoted his certificate in respect of those goods, and has applied the goods to his own use shall be the amount for which the goods were so purchased.

Liability for
tax.

5. Sales tax shall be paid by the registered person specified in the last preceding section.

Exemptions.
Substituted by
No. 61, 1935,
s. 11.*

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act* 1935,^(b) exempt from sales tax under this Act.

PART III.—RETURNS.

Returns, &c.

7. Every person who during any month applies to his own use any goods purchased by him in respect of the purchase of which he has quoted his certificate shall, within twenty-one days after the close of that month, furnish to the Commissioner a return in the prescribed form setting forth full particulars of the goods so applied and such other information as is prescribed.

Further returns.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may by notice in writing call upon any person to furnish to him, within the time specified in the notice, such return or such further or fuller return as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

PART IV.—COLLECTION AND RECOVERY OF TAX.

Time of
payment
of tax.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods applied by him to his own use

(a) *Supra*, p. 2688. By section 19 of the *Financial Relief Act* 1933 the tax imposed at the rate of six per centum by the *Sales Tax Act* (No. 8) 1930–1931 has been reduced to the rate of five per centum.

(b) *Infra*, p. 2698.

* Section 18 of the *Sales Tax (Securities and Exemptions) Act* 1935 reads—

“18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first-mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act.”

† Section 4 of the *Sales Tax Assessment Act* (No. 8) 1933 is as follows :—

“4. Notwithstanding anything contained in section two of the *Sales Tax Assessment Act* (No. 8) 1932, the provisions of section four of the *Sales Tax Assessment Act* (No. 8) 1930–1931, as in force immediately prior to the commencement of the *Sales Tax Assessment Act* (No. 8) 1932, shall continue, and be deemed to have at all times continued, in force for all purposes in connexion with liability to sales tax in respect of goods applied by a person to his own use prior to such commencement.”

during any month shall, on or before the date specified in the notice served on him by post by the Commissioner, stating the amount of the sales tax payable by him upon the sale value of those goods, pay that amount to the Commissioner.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

- (a) assess the sale value upon which tax should be or should have been paid ; and
- (b) calculate the tax or further tax which is payable.

(1A.) Where—

- (a) any person makes default in furnishing any return ; or
- (b) the Commissioner is not satisfied with the return made by any person ; or
- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

Inserted by
No. 54, 1933.
s. 2.

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(2.) As soon as conveniently may be after an assessment is made, the Commissioner shall cause notice in writing of the assessment and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(3.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act.

(4.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid, he may refund the amount of tax found to be overpaid.

Refund
of tax.

(2.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods applied by a taxpayer to his own use before the date of assent to the law making the alteration.

Added by
No. 54, 1933,
s. 3.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) namely, section three, Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive,

Application of
provisions of
*Sales Tax
Assessment Act
(No. 1) 1930.*

(a) *Supra*, p. 2616.

and Parts VII., VIII., IX. and X., and the Second Schedule, shall *mutatis mutandis* apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but, for the purposes of this Act, section twenty-nine of the *Sales Tax Assessment Act (No. 1) 1930*^(a) shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act (No. 1) 1930*,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

Schedule
repealed by
No. 61, 1935,
s. 17.*

* * * * *

SALES TAX ACT (No. 9) 1930-1935.^(b)

An Act to impose a Tax upon the Sale Value of certain Goods in Australia dealt with by lease.

[Assented to 18th August, 1930.]^(c)

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

1. This Act may be cited as the *Sales Tax Act (No. 9) 1930-1935*.^(b)
2. The *Sales Tax Assessment Act (No. 9) 1930-1931*^(d) shall be incorporated and read as one with this Act.

Short title.
Short title
amended.
No. 32, 1918
s. 2.
Incorporation.
Amended by
No. 42, 1931
s. 3.

(a) *Supra*, p. 2616.
(b) The *Sales Tax Act (No. 9) 1930-1931* comprises the *Sales Tax Act (No. 9) 1930* (No. 42 of 1930) as amended by the *Sales Tax Act (No. 9) 1931* (No. 42 of 1931); and by the *Sales Tax Act (No. 9) 1935* (No. 10 of 1935). See Acts No. 42, 1931, s. 1; and No. 10, 1935, s. 1.
(c) This is the date of assent to the *Sales Tax Act (No. 9) 1930*. The *Sales Tax Act (No. 9) 1931* was assented to on 10th August, 1931 (deemed to have commenced on 11th July, 1931); and the *Sales Tax Act (No. 9) 1935* on 10th April, 1935.
(d) *Infra*, following page.

* See now the *Sales Tax Exemptions Act 1935* (*infra*, p. 2698). See also footnote * (*supra*, p. 2690).

3.—(1.) Sales tax is imposed at the rate of two and one-half per centum upon the sale value of goods in Australia, leased by a taxpayer before the eleventh day of July, One thousand nine hundred and thirty-one, and at the rate of six^(a) per centum upon the sale value of goods in Australia, leased by a taxpayer on or after that date.

Imposition of
Tax.
Amended by
No. 42, 1931,
s. 4.

(2.) On and after the date of the commencement of this sub-section, the goods leased by a taxpayer upon the sale value of which tax is imposed by sub-section (1.) of this section, as affected by section nineteen of the *Financial Relief Act* 1933,^(a) shall include goods which have gone into use or consumption in Australia and which are leased by a taxpayer on or after that date.

Added by
No. 10, 1935,
s. 2.

SALES TAX ASSESSMENT ACT (No. 9) 1930-1935.^(b)

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Sale Value of certain Goods in Australia, dealt with by lease, and for other purposes.

[Assented to 18th August, 1930.]^(c)

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

PART I.—PRELIMINARY.

1. This Act may be cited as the *Sales Tax Assessment Act* (No. 9) 1930-1935.^(b)

Short title.
Short title
amended.
No. 32, 1918,
s. 2.

(a) By section 19 of the *Financial Relief Act* 1933 the tax imposed at the rate of six per centum by this Act has been reduced to the rate of five per centum.

(b) The *Sales Tax Assessment Act* (No. 9) 1930-1935 comprises the *Sales Tax Assessment Act* (No. 9) 1930 (No. 41 of 1930) as amended by the *Sales Tax Assessment Act* (No. 9A) 1930 (No. 71 of 1930); the *Sales Tax Assessment Act* (No. 9) 1931 (No. 41 of 1931); the *Sales Tax Assessment Act* (No. 9) 1932 (No. 47 of 1932); the *Sales Tax Assessment Act* (No. 9) 1933 (No. 55 of 1933); the *Sales Tax Assessment Act* (No. 9) 1935 (No. 9 of 1935); and by the *Sales Tax (Securities and Exemptions) Act* 1935 (No. 61 of 1935). See Acts No. 71, 1930, s. 1; No. 41, 1931, s. 1; No. 47, 1932, s. 1; No. 55, 1933, s. 1; and No. 61, 1935, s. 1 (12.).

(c) This is the date of assent to the *Sales Tax Assessment Act* (No. 9) 1930. The *Sales Tax Assessment Act* (No. 9A) 1930 was assented to on 16th December, 1930 (deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act* (No. 9) 1930; the *Sales Tax Assessment Act* (No. 9) 1931 on 10th August, 1931; the *Sales Tax Assessment Act* (No. 9) 1932 on 5th October, 1932; the *Sales Tax Assessment Act* (No. 9) 1933 on 12th December, 1933; the *Sales Tax Assessment Act* (No. 9) 1935 on 10th April, 1935; and the *Sales Tax (Securities and Exemptions) Act* 1935 on 7th December, 1935.

Parts.

2. This Act is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Liability to Taxation.

Part III.—Returns.

Part IV.—Collection and Recovery of Tax.

Part V.—Application of *Sales Tax Assessment Act*
(No. 1) 1930.

Definition.

Inserted by
No. 9, 1935,
s. 2.

2A. In this Act, unless the contrary intention appears—

“goods” includes—

(a) commodities; and

(b) goods or commodities which have gone into use or
consumption in Australia.

PART II.—LIABILITY TO TAXATION.

Sales tax.

Amended by
No. 71, 1930,
s. 3.

3. Subject to, and in accordance with, the provisions of this Act the sales tax imposed by the *Sales Tax Act* (No. 9) 1930^(a) shall be levied and paid upon the sale value of goods in Australia, leased by a taxpayer to a lessee on or after the first day of August One thousand nine hundred and thirty.

Sale value
of goods.Amended by
No. 47, 1932,
s. 2,* and by
No. 9, 1935,
s. 3.

4.—(1.) For the purposes of this Act, the sale value of goods which are leased by a registered person, or a person required to be registered, to a lessee on or after the first day of August One thousand nine hundred and thirty shall, subject to this section, be such amount as, in the opinion of the Commissioner, having regard to the terms of the lease and the market value (if any) of the goods the subject of the lease, is fair and reasonable.

Added by
No. 9, 1935,
s. 3.

(2.) Where goods are leased under a hire purchase agreement by a registered person, or a person required to be registered, to a lessee, the sale value of those goods shall, for the purposes of this Act, be the amount which, at the time the lease is effected, is the fair wholesale value of the goods, but if the Commissioner is of opinion that the amount set forth in any return by the registered person, or person required to be registered, as the sale value of any such goods, is less than the amount which is the fair wholesale value of the goods, the Commissioner may alter the amount set forth in the

(a) *Supra*, p. 2692. By section 19 of the *Financial Relief Act* 1933 the tax imposed at the rate of six per centum by the *Sales Tax Act* (No. 9) 1930–1931 has been reduced to the rate of five per centum.

* By section 4 of the *Sales Tax Assessment Act* (No. 9) 1933 this amendment is deemed to have commenced on the date of the commencement of the *Sales Tax Assessment Act* (No. 9) 1930.

return to the amount which, in his opinion, is the fair wholesale value of the goods, and the amount as so altered shall be the sale value of the goods for the purposes of this Act.

(3.) Where the Commissioner, at any time, forms the opinion that goods have been leased by a taxpayer to a lessee for the purpose of relieving the taxpayer from liability to pay tax under any other Act relating to the imposition of sales tax, the sale value of the goods so leased—

Added by
No. 9, 1935,
s. 2.

(a) where a sale value of those goods has not been determined under sub-section (1.) of this section—shall be the amount which, in the opinion of the Commissioner, is the fair wholesale value of the goods; and

(b) where a sale value of those goods has been so determined—shall be increased to the amount which, in the opinion of the Commissioner, is the fair wholesale value of the goods:

Provided that where the Commissioner subsequently becomes satisfied that the goods were not leased by the taxpayer for the purpose specified in this sub-section, the sale value of the goods under this sub-section shall be altered to an amount determined in accordance with sub-section (1.) of this section.

5. Sales tax shall be paid by the registered person specified in the last preceding section.

Liability for
tax.

6. Notwithstanding anything contained in section five of this Act, sales tax shall not be payable under this Act by the person specified in that section upon the sale value of goods the sale value of which is, by virtue of the *Sales Tax Exemptions Act 1935*,^(a) exempt from sales tax under this Act.

Exemptions.
Substituted by
No. 61, 1935,
s. 12.†

PART III.—RETURNS.

7. Every registered person who during any month leases any goods to a lessee as specified in section four of this Act, shall within twenty-one days after the close of that month, furnish to the Commissioner a return in the prescribed form setting forth full particulars of the lease and the goods subject to the lease, and such other information as is prescribed.

Returns, &c.

8. In addition to any return that may have been required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice, such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or a trustee.

Further
returns.

(a) *Infra*, p. 2698.

† Section 18 of the *Sales Tax (Securities and Exemptions) Act 1935* reads—

"18. Notwithstanding anything contained in sections four to twelve (inclusive) and section seventeen of this Act, the sections and Schedules repealed by the first-mentioned sections shall continue in force for all purposes in connexion with liability for sales tax arising out of transactions, acts or operations which were entered into, done or carried out prior to the commencement of this Act."

PART IV.—COLLECTION AND RECOVERY OF TAX.

Time of
payment of tax.

9. Every person liable to pay tax under section five of this Act upon the sale value of any goods leased by him during any month shall, on or before the date specified in the notice served on him by post by the Commissioner, stating the amount of the sales tax payable by him upon the sale value of those goods, pay that amount to the Commissioner :

Proviso added
by No. 9, 1935,
s. 5.

Provided that every person liable to pay tax upon the sale value of any goods leased by him during any month under a hire purchase agreement as specified in sub-section (2.) of section four of this Act shall, within twenty-one days after the close of that month, pay tax upon the sale value of the goods so leased, and, where, in pursuance of section four of this Act, the sale value of any goods leased is increased the person liable to pay tax shall, within the time specified in a notice by the Commissioner to him of the increased sale value, pay further tax upon the sale value of the goods.

Further tax.

10.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any person, the Commissioner may—

- (a) assess the sale value upon which tax should be or should have been paid ; and
- (b) calculate the tax or further tax which is payable.

Inserted by
No. 55, 1933,
s. 2.

(1A.) Where—

- (a) any person makes default in furnishing any return ; or
- (b) the Commissioner is not satisfied with the return made by any person ; or
- (c) the Commissioner has reason to believe or suspect that any person (though he may not have furnished any return) is liable to pay sales tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, sales tax ought to be levied, and the person shall be liable to sales tax thereon, excepting so far as he establishes on objection that the assessment is excessive.

(2.) As soon as conveniently may be after an assessment is made, the Commissioner shall cause notice in writing of the assessment and of the tax or further tax to be given to the person liable to pay the tax or further tax.

(3.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice, together with any other amount which may be payable in accordance with any other provision of this Act.

(4.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

11.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

Refunds
of tax.
Substituted by
No. 55, 1933,
s. 3.

(2.) Notwithstanding anything contained in this section, if, either before or after the commencement of this sub-section, any alteration is made in the rate of sales tax payable in respect of any goods, no refund, repayment or reduction shall, by reason of that alteration, be made of any amount paid or payable by any person as sales tax in respect of goods leased before the date of assent to the law making the alteration.

PART V.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930.

12.—(1.) The following sections and Parts of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) namely, section three (except the definition of "goods"), Parts II. and III., section twenty-three, sections twenty-seven to thirty-nine inclusive, and Parts VII., VIII., IX. and X., and the Second Schedule shall apply, with such modifications and adaptations as are prescribed, in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under that Act, but for the purposes of this Act section twenty-nine of the *Sales Tax Assessment Act* (No. 1) 1930^(a) shall be read as if the words "section nine or ten of this Act" were substituted for the words "section twenty-four or twenty-five of this Act" (wherever occurring), and sub-section (2.) of section thirty-five of that Act shall be read as if the words "Part III. of this Act" were substituted for the words "Part V. of this Act".

Application of
provisions of
*Sales Tax
Assessment Act*
(No. 1) 1930.
Amended by
No. 9, 1935,
s. 6.

(2.) The power to make regulations, conferred by the application, by the last preceding sub-section, of section seventy-three of Part X. of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) shall include the power to make regulations for enabling registrations, certificates and securities made, issued or given for the purposes of that Act, to be treated as, or to be deemed to be, made, issued or given for the purposes also of this Act, and shall include the power generally to make regulations for treating acts, matters and things done, for the purposes of the *Sales Tax Assessment Act* (No. 1) 1930,^(a) under the sections and Parts of that Act made applicable to this Act, as done or deemed to be done under this Act.

Amended by
No. 41, 1931,
s. 3.

(a) *Supra*, p. 2616.

SALES TAX EXEMPTIONS ACT 1935.

No. 60 of 1935.

An Act relating to exemptions from Sales Tax.

[Assented to 7th December, 1935.]

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

Short title.

1. This Act may be cited as the *Sales Tax Exemptions Act* 1935.

Definitions.

2. In this Act, unless the contrary intention appears—

“Sales Tax Assessment Act” means any Act, as in force for the time being, relating to the imposition, assessment and collection of a tax upon the sale value of goods ;

“the Schedule” means the Schedule to this Act.

Interpretation.

3.—(1.) Expressions used in the *Sales Tax Assessment Act* (No. 1) 1930–1935^(a) shall, where used in this Act, have, unless the contrary intention appears, the same meanings as in that Act.

(2.) The headings to the respective Divisions in the Schedule shall not be read as affecting the interpretation of any item in the Schedule.

(3.) Any reference in the second column of the Schedule to the numbers 1, 2, 3, 4, 5, 6, 7, 8 or 9 shall be read respectively as a reference to the—

Sales Tax Assessment Act (No. 1) 1930–1935,^(a)

Sales Tax Assessment Act (No. 2) 1930–1935,^(b)

Sales Tax Assessment Act (No. 3) 1930–1935,^(c)

Sales Tax Assessment Act (No. 4) 1930–1935,^(d)

Sales Tax Assessment Act (No. 5) 1930–1935,^(e)

Sales Tax Assessment Act (No. 6) 1930–1935,^(f)

Sales Tax Assessment Act (No. 7) 1930–1935,^(g)

Sales Tax Assessment Act (No. 8) 1930–1935,^(h) or

Sales Tax Assessment Act (No. 9) 1930–1935.⁽ⁱ⁾

(4.) Any reference in the second column of the Schedule to two numbers which are connected by the word “to” shall be read as including a reference to each of the numbers intervening between those two numbers.

(5.) Where any reference which, by sub-section (3.) of this section, is to be read as a reference to the *Sales Tax Assessment Act* (No. 9) 1930–1935,⁽ⁱ⁾ appears in the second column of the Schedule, goods covered by the item or sub-item opposite that reference shall, for the purposes of the exemption of the sale value of those goods from sales tax under that Act, include goods which have gone into use or consumption in Australia.

(a) *Supra*, p. 2616. (b) *Supra*, p. 2652. (c) *Supra*, p. 2659. (d) *Supra*, p. 2665. (e) *Supra*, p. 2669. (f) *Supra*, p. 2675. (g) *Supra*, p. 2682. (h) *Supra*, p. 2689. (i) *Supra*, p. 2693.

4.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

Delegation by
the
Commissioner.

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

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

5.—(1.) Notwithstanding anything contained in any Sales Tax Assessment Act, sales tax shall not, subject to this section, be payable upon the sale value of any goods covered by any item or sub-item in the first column of the Schedule, under any Act specified in the second column of the Schedule opposite that item or sub-item.

Exemptions.

(2.) Where, in the second column of the Schedule reference is made, opposite an item or sub-item in the first column of the Schedule, to the *Sales Tax Assessment Act (No. 9) 1930-1935^(e)* and to any one or more of the following Acts :—

Sales Tax Assessment Act (No. 1) 1930-1935,^(a)

Sales Tax Assessment Act (No. 2) 1930-1935,^(b)

Sales Tax Assessment Act (No. 3) 1930-1935,^(c)

Sales Tax Assessment Act (No. 4) 1930-1935,^(d)

but to no other Sales Tax Assessment Act, the goods covered by that item or sub-item shall not be deemed to include goods which are imported into Australia.

(3.) Where, in the second column of the Schedule reference is made, opposite an item or sub-item in the first column of the Schedule, to the *Sales Tax Assessment Act (No. 9) 1930-1935^(e)* and to any one or more of the following Acts :—

Sales Tax Assessment Act (No. 5) 1930-1935,^(f)

Sales Tax Assessment Act (No. 6) 1930-1935,^(g)

Sales Tax Assessment Act (No. 7) 1930-1935,^(h)

Sales Tax Assessment Act (No. 8) 1930-1935,⁽ⁱ⁾

but to no other Sales Tax Assessment Act, the goods covered by that item or sub-item shall not be deemed to include goods which are manufactured or produced in Australia.

(a) *Supra*, p. 2616. (b) *Supra*, p. 2652. (c) *Supra*, p. 2659. (d) *Supra*, p. 2665. (e) *Supra*, p. 2698. (f) *Supra*, p. 2669. (g) *Supra*, p. 2675. (h) *Supra*, p. 2682. (i) *Supra*, p. 2689.

THE SCHEDULE.

In this Schedule, unless the contrary intention appears—

“agricultural” means of or pertaining to agriculture and, for the purposes of this definition, “agriculture” includes viticulture, horticulture, pasturage, apiculture, poultry farming, dairy farming, and other operations connected with the cultivation of the soil, the gathering in of crops and the rearing of live stock; and

“n.e.i.” means not covered by any other item or sub-item in this Schedule.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|---|----------------------------------|
| DIVISION I.—AGRICULTURAL MACHINERY, IMPLEMENTS, EQUIPMENT AND MATERIALS. | |
| 1. Agricultural machinery, implements and apparatus (and parts therefor), viz. :— | |
| (1) Bag loaders and bag rammers for use in agricultural industry | Nos. 1 to 9 |
| (2) Baling presses | Nos. 1 to 9 |
| (3) Blade shears | Nos. 1 to 9 |
| (4) Bore drain delvers | Nos. 1 to 9 |
| (5) Broadcast seed sowers | Nos. 1 to 9 |
| (6) Cane chippers and cane planters | Nos. 1 to 9 |
| (7) Chaff cutters | Nos. 1 to 9 |
| (8) Clover brooms for harvesting subterranean seed | Nos. 1 to 9 |
| (9) Corn, grain or feed grinders | Nos. 1 to 9 |
| (10) Corn shellers, corn huskers and corn baggers | Nos. 1 to 9 |
| (11) Cotton gins | Nos. 1 to 9 |
| (12) Cultivators | Nos. 1 to 9 |
| (13) Drills—seed, grain and fertilizer | Nos. 1 to 9 |
| (14) Engines for use in agricultural industry, and shafting, belting, pulleys and other transmission gear for use therewith | Nos. 1 to 9 |
| (15) Fencing wire strainers and fencing tools for use in agricultural industry | Nos. 1 to 9 |
| (16) Fertilizer spreaders | Nos. 1 to 9 |
| (17) Field mowers | Nos. 1 to 9 |
| (18) Fire rakes and fire ploughs | Nos. 1 to 9 |
| (19) Flax machinery, viz. :— | |
| (a) Binders | Nos. 1 to 9 |
| (b) Breakers | |
| (c) Scutchers | |
| (d) Threshers | |
| (e) Winnowers | |
| (20) Harrows | Nos. 1 to 9 |
| (21) Hay forks | Nos. 1 to 9 |
| (22) Hay knives | Nos. 1 to 9 |
| (23) Hay presses | Nos. 1 to 9 |
| (24) Hay rakes | Nos. 1 to 9 |
| (25) Hay, straw and lucerne stackers | Nos. 1 to 9 |
| (26) Hay tedders | Nos. 1 to 9 |
| (27) Hoes | Nos. 1 to 9 |
| (28) Hooks and slashers of a kind used in clearing land | Nos. 1 to 9 |
| (29) Lucerne bunchers | Nos. 1 to 9 |
| (30) Machines for planting seedlings | Nos. 1 to 9 |
| (31) Machines for use in agricultural industry in grinding or sharpening knives, tools and other implements | Nos. 1 to 9 |
| (32) Maize harvesters and maize binders | Nos. 1 to 9 |
| (33) Peanut picking machines, peanut shellers and peanut graders | Nos. 1 to 9 |
| (34) Ploughs, including road ploughs; plough mould-board plates in the flat | Nos. 1 to 9 |
| (35) Potato planters, raisers, diggers, sorters, forks and draggers | Nos. 1 to 9 |
| (36) Reapers and binders | Nos. 1 to 9 |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
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| DIVISION I.—AGRICULTURAL MACHINERY, IMPLEMENTS, EQUIPMENT AND MATERIALS—continued. | |
| 1. Agricultural machinery, implements and apparatus (and parts therefor), viz.:—continued. | |
| (37) Reaper threshers and harvesters | Nos. 1 to 9 |
| (38) Sack-sewing machines for use in agricultural industry .. | Nos. 1 to 9 |
| (39) Scarifiers, including road scarifiers | Nos. 1 to 9 |
| (40) Scoops for use in agricultural industry | Nos. 1 to 9 |
| (41) Scrub rollers | Nos. 1 to 9 |
| (42) Sheep shearing plant | Nos. 1 to 9 |
| (43) Sickles and scythes | Nos. 1 to 9 |
| (44) Soil packers and soil pulverizers for use in agricultural industry .. | Nos. 1 to 9 |
| (45) Strippers and stripper harvesters | Nos. 1 to 9 |
| (46) Stump extractors and lifting jacks for use in agricultural industry .. | Nos. 1 to 9 |
| (47) Threshing machines | Nos. 1 to 9 |
| (48) Tractors for use in agricultural industry, and covers therefor .. | Nos. 1 to 9 |
| (49) Wagons, drays and spring drays for use in agricultural industry .. | Nos. 1 to 9 |
| (50) Wheat grading and pickling machines | Nos. 1 to 9 |
| (51) Winnowers and winnowing forks (wood and steel) .. | Nos. 1 to 9 |
| (52) Wool presses | Nos. 1 to 9 |
| 2. Agricultural equipment and materials, viz.:— | |
| (1) Binder twine | Nos. 1 to 9 |
| (2) Coir yarn for use in supporting hop vines .. | Nos. 1 to 9 |
| (3) Covers (and parts therefor) for haystacks .. | Nos. 1 to 9 |
| (4) Equipment (and parts therefor), and materials for use therewith, for use in agricultural industry in combating frosts .. | Nos. 1 to 9 |
| (5) Ethylene gas for use in the colouring of vegetables by persons engaged in the vegetable growing industry .. | Nos. 1 to 9 |
| (6) Explosives and chemicals for clearing land for use in agricultural industry .. | Nos. 1 to 9 |
| (7) Glass and substitutes therefor, for horticultural purposes; clips, galvanized nails and galvanized iron rafters for roofing glass houses for horticultural purposes .. | Nos. 1 to 9 |
| (8) Hessian for use in agricultural industry | Nos. 1 to 9 |
| (9) Manufactured field wire fencing and gates (and attachments therefor), and fencing droppers and posts for wire fencing, which are of a kind ordinarily used in agricultural industry .. | Nos. 1 to 9 |
| (10) Paper hotkaps and other similar materials for protecting, and promoting the growth of, plants .. | Nos. 1 to 9 |
| (11) Portable grain storage bins and silos (and parts therefor) for use in agricultural industry .. | Nos. 1 to 9 |
| (12) Twine for use in supporting tomato plants .. | Nos. 1 to 9 |
| 3. Equipment (and parts therefor), and preparations and materials, for the checking or eradication of diseases and pests, viz.:— | |
| (1) Agricultural spraying and dusting materials .. | Nos. 1 to 9 |
| (2) Blow-fly traps | Nos. 1 to 9 |
| (3) Equipment, preparations and materials, for use in the checking or destruction of weeds, scrub and noxious plants, plant and seed insect pests, and plant and seed diseases .. | Nos. 1 to 9 |
| (4) Fly traps and fly lure for fruit flies | Nos. 1 to 9 |
| (5) Fumigators for the extermination of rabbits .. | Nos. 1 to 9 |

THE SCHEDULE—*continued.*

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
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| DIVISION I.—AGRICULTURAL MACHINERY, IMPLEMENTS, EQUIPMENT AND MATERIALS— <i>continued.</i> | |
| 3. Equipment (and parts therefor), &c.— <i>continued.</i> | |
| (6) Poison carts, poison bait layers and poison bait distributors | Nos. 1 to 9 |
| (7) Poisons and other preparations for use in the checking or destruction of rats and mice | Nos. 1 to 9 |
| (8) Rabbit poisons | Nos. 1 to 9 |
| (9) Traps for rabbits and dingoes | Nos. 1 to 9 |
| 4. Seeds and fertilizers, viz. :— | |
| (1) Agricultural seeds not subject to duty under any law (not being a law relating to primage duties) relating to duties of Customs | } Nos. 5 to 9 |
| (2) Fertilizers and raw materials for use in the manufacture of fertilizers | Nos. 1 to 9 |
| (3) Rape seed for pasture purposes | Nos. 5 to 9 |
| 5. Livestock imported solely for breeding purposes | Nos. 5 to 9 |
| 6. Goods (and parts therefor) for use in the maintenance of livestock, viz. :— | |
| (1) Bullnose punches | Nos. 1 to 9 |
| (2) Dips and washes for cattle or sheep | Nos. 1 to 9 |
| (3) Drenching guns and syringes | Nos. 1 to 9 |
| (4) Foods for livestock | Nos. 1 to 4 and 9 |
| (5) Lamb-marking cradles | Nos. 1 to 9 |
| (6) Marking and branding oils | Nos. 1 to 9 |
| (7) Preparations for use in the prevention, cure or eradication of diseases or pests in livestock | Nos. 1 to 9 |
| (8) Rock salt and licks for livestock | Nos. 1 to 9 |
| (9) Rugs for horses, cattle, sheep and pigs | Nos. 1 to 9 |
| (10) Sheep and stock feeders for use in agricultural industry | Nos. 1 to 9 |
| (11) Sheep jetting plant | Nos. 1 to 9 |
| (12) Tar brands, fire brands, tattoo brands, ear pliers, ear tags and ear markers, for marking or branding livestock | } Nos. 1 to 9 |
| (13) Veterinary instruments, appliances and materials of a kind ordinarily used by veterinary surgeons | Nos. 1 to 9 |
| 7. Dairying machinery and equipment (and parts therefor) and dairying materials, viz. :— | |
| (1) Cheese presses | Nos. 1 to 9 |
| (2) Churns | Nos. 1 to 9 |
| (3) Cream and milk bottles, and wads, caps or stoppers therefor | Nos. 1 to 9 |
| (4) Cream cans, milk cans and dairy utensils but not including buckets of a kind ordinarily used for other than dairying purposes | } Nos. 1 to 9 |
| (5) Cream separators | Nos. 1 to 9 |
| (6) Dairy coolers | Nos. 1 to 9 |
| (7) Equipment and materials for use in the dairying industry in the testing, pasteurization and cooling of milk and cream | } Nos. 1 to 9 |
| (8) Filter wads | Nos. 1 to 9 |
| (9) Machinery, implements and apparatus for use in the manufacture of butter and cheese | Nos. 1 to 9 |
| (10) Machinery, implements and apparatus, n.e.i., for use by dairy-farmers or dairymen if, in the opinion of the Commissioner, they are goods of a kind used exclusively, or primarily and principally, by such persons in the production, treatment, storage or distribution of milk or cream, but not including vehicles | } Nos. 1 to 9 |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|--|----------------------------------|
| DIVISION I.—AGRICULTURAL MACHINERY, IMPLEMENTS, EQUIPMENT AND MATERIALS—continued. | |
| 8. Equipment (and parts therefor) and materials for use in the fruit-growing industry, viz. :— | |
| (1) Ethylene gas for use in the colouring of fruits .. | Nos. 1 to 9 |
| (2) Fruit picking bags, baskets and buckets, not being of a kind ordinarily used for any other purposes | Nos. 1 to 9 |
| (3) Fruit wrapping paper | Nos. 1 to 9 |
| (4) Grafting wax and greftex | Nos. 1 to 9 |
| (5) Secateurs, pruning shears, pruning saws, pruning knives, pruning hoops, tree pruners and branch shears | Nos. 1 to 9 |
| (6) Wire fruit cleansing baskets | Nos. 1 to 9 |
| 9. Equipment (and parts therefor) and materials for use in the dried fruit industry, viz. :— | |
| (1) Carbonate of potash, caustic soda and olive oil .. | Nos. 1 to 9 |
| (2) Dehydrators and evaporators, and materials to be used in the construction or repair of, and wrought into or attached to, so as to form part of, built-in or fixed dehydrators or evaporators | Nos. 1 to 9 |
| (3) Dip tins, sweat boxes and drying trays | Nos. 1 to 9 |
| (4) Engines, and shafting, belting, pulleys and other transmission gear for use therewith | Nos. 1 to 9 |
| (5) Hessian | Nos. 1 to 9 |
| (6) Sisalkraft and materials having similar uses .. | Nos. 1 to 9 |
| (7) Spraying materials | Nos. 1 to 9 |
| 10. Equipment (and parts therefor) and materials, for the handling or treatment of fruit, viz. :— | |
| (1) Cranes for use in connexion with the dipping of fruit | Nos. 1 to 9 |
| (2) Fruit grading rings | Nos. 1 to 9 |
| (3) Fruit grading, sorting and cleansing machines .. | Nos. 1 to 9 |
| (4) Machinery, implements, apparatus and refrigerating agents, for the regulation of atmospheric conditions for the purpose of preserving, ripening or storing fruit | Nos. 1 to 9 |
| 11.—(1) Poultry imported solely for breeding purposes .. | Nos. 5 to 9 |
| (2) Foods for poultry | Nos. 1 to 4 and 9 |
| (3) Poultry farmers' equipment (and parts therefor), viz. :— | |
| (a) Bone cutters | Nos. 1 to 9 |
| (b) Brooders | |
| (c) Egg cleaning tables | |
| (d) Egg fillers and flats | |
| (e) Egg graders | |
| (f) Egg scales | |
| (g) Feeders | |
| (h) Feed mixers | |
| (i) Fountains | |
| (j) Green feed cutters | |
| (k) Hoppers | |
| (l) Incubators | |
| (m) Poultry coops | |
| (n) Root pulpers | |
| (o) Root slicers | |
| (p) Trap-nests | |
| (q) Waterers | |
| (4) Preparations for use in the prevention, cure or eradication of diseases or pests in poultry | Nos. 1 to 9 |
| 12.—(1) Bees imported solely for breeding purposes | Nos. 5 to 9 |
| (2) Bee-keepers' equipment (and parts therefor), but not including articles ordinarily used for any other purpose | Nos. 1 to 9 |

THE SCHEDULE—*continued.*

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|---|----------------------------------|
| DIVISION I.—AGRICULTURAL MACHINERY, IMPLEMENTS, EQUIPMENT AND MATERIALS—<i>continued.</i> | |
| 13.—(1) Machinery, implements and apparatus, n.e.i., (and parts therefor), for use in agricultural industry if, in the opinion of the Commissioner, they are goods of a kind used exclusively, or primarily and principally, in that industry | } Nos. 1 to 9 |
| (2) Accessories (being machines, implements or apparatus) of any goods (being machines, implements or apparatus) covered by any item or sub-item in Division I. in this Schedule, if those accessories are of a kind ordinarily sold with those goods | |
| (3) Attachments (being machines, implements or apparatus, n.e.i.) for any goods (being machines, implements or apparatus) covered by any other item or sub-item in Division I. in this Schedule, if the purpose of the attachments is to facilitate or supplement the primary function of those goods; and parts therefor | |
| DIVISION II.—MINING MACHINERY AND EQUIPMENT. | |
| 14. Machinery, implements and apparatus (and parts therefor), for use in the mining industry in carrying out mining operations and in the treatment of the products of those operations | } Nos. 1 to 9 |
| 15. Materials for use in the mining industry, viz. :— | |
| (1) Brattice cloth | Nos. 1 to 9 |
| (2) Carbide of calcium | Nos. 1 to 9 |
| (3) Explosives | Nos. 1 to 9 |
| (4) Substances for use in the recovery of metals by the flotation, cyaniding, electrolytic or similar processes | } Nos. 1 to 9 |
| | |
| DIVISION III.—FISHING AND PEARLING MACHINERY AND EQUIPMENT. | |
| 16. Fishing equipment (and parts therefor), viz. :— | } Nos. 1 to 9 |
| (1) Boats (including oars, sails, life-belts, life-boats and other similar accessories) for use in the fishing industry | |
| (2) Crayfish pots | |
| (3) Engines for use in the fishing industry | |
| (4) Nets and netting for fishing, and cotton, hemp twine and other materials for the repair thereof | } Nos. 1 to 9 |
| 17. Machinery and equipment (and parts therefor), and materials, for use in the pearling industry | |
| DIVISION IV.—IRRIGATION, WATER SUPPLY, DRAINAGE AND SEWERAGE EQUIPMENT. | |
| 18.—(1) Piping, channelling and guttering (and materials for use as integral parts thereof when constructed in situ), for drainage, sewerage, water supply or irrigation purposes | } Nos. 1 to 9 |
| (2) Fittings for goods covered by sub-item (1) of this item, (but not including baths, basins, sinks, troughs, cisterns, pans or other fittings, or taps or water meters, for installation in or in connexion with houses or other buildings) | |
| (3) Water pipes (galvanized) not exceeding 3 inches in diameter, and galvanized pipe fittings therefor | |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|---|----------------------------------|
| DIVISION IV.—IRRIGATION, WATER SUPPLY, DRAINAGE AND SEWERAGE EQUIPMENT—continued. | |
| 19. Pumping and other machinery, implements and apparatus (and parts and fittings therefor), for use in agricultural industry or in mining activities, viz.:— | |
| (1) Windmills and windmill towers | Nos. 1 to 9 |
| (2) Pumps | Nos. 1 to 9 |
| (3) Tanks and tank stands | Nos. 1 to 9 |
| (4) Troughing | Nos. 1 to 9 |
| (5) Water sprinklers | Nos. 1 to 9 |
| (6) Machinery, implements and apparatus, n.e.i., for pumping, water supply or irrigation purposes | Nos. 1 to 9 |
| 20.—(1) Water bore casings, and parts and fittings therefor .. | Nos. 1 to 9 |
| (2) Water boring plant and equipment (and parts therefor), and tools for use therewith | Nos. 1 to 9 |
| DIVISION V.—PRIMARY PRODUCTS. | |
| 21. Goods, being primary products which are derived directly from operations carried on in Australia in— | |
| (i) mining; | Nos. 1 to 4 and 9 |
| (ii) the cultivation of land; | |
| (iii) the maintenance of animals, poultry and bees; | |
| (iv) fisheries; or | |
| (v) timber-getting, | |
| and which have not been subject to any process or treatment resulting in an alteration of the form, nature or condition of the goods | |
| 22. Metals as recovered from ores | Nos. 1 to 4 and 9 |
| DIVISION VI.—FOODSTUFFS, BEVERAGES AND TOBACCO. | |
| 23.—(1) Bread | Nos. 1 to 4 and 9 |
| (2) Bread sandwiches | Nos. 1 to 4 and 9 |
| (3) Pastry, ^(a) scones, buns, cakes and mixtures, or articles made from mixtures, substantially similar to any one or more of those from which bread or any of the preceding articles are made, but not including biscuits unless covered by any other item or sub-item in this Schedule | Nos. 1 to 4 and 9 |
| (4) Baby rusks, milk arrowroot biscuits, baby rice biscuits and shortbread biscuits | Nos. 1 to 4 and 9 |
| 24.—(1) Meat and meat products (whether or not marketed in containers), viz., raw meat, cooked meat and poultry, sausages, sausage meat, mince meat, suet, dripping, lard and butchers' small goods | Nos. 1 to 4 and 9 |
| (2) Bacon and hams | Nos. 1 to 4 and 9 |
| (3) Mutton birds | Nos. 1 to 4 and 9 |
| 25.—(1) Fish of Australian origin, including oysters, crayfish, prawns, crabs and other marine animals (whether cooked, canned or otherwise processed) | Nos. 1 to 4 and 9 |
| (2) Fish preserved by cold process, smoked, dried, salted or otherwise cured, but not including fish imported in tins or air-tight containers and cooked or otherwise prepared for human consumption in the condition in which it is imported | Nos. 5 to 9 |
| 26.—(1) Milk products, viz., casein, milk powder, milk (condensed or concentrated), or any food containing not less than 95 per centum of milk or milk powder | Nos. 1 to 4 and 9 |
| (2) Butter, including margarine and similar substitutes for butter | Nos. 1 to 4 and 9 |
| (3) Cheese | Nos. 1 to 4 and 9 |
| (4) Cream | Nos. 1 to 4 and 9 |

(a) For a discussion on the meaning of an item in the *Sales Tax Assessment Act (No. 1) 1930* reading "pastry but not including cakes or biscuits" see *Herbert Adams Pty. Ltd. v. Federal Commissioner of Taxation*, (1932) 47 C.L.R. 222; 6 A.L.J. 151.

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|--|---|
| DIVISION VI.—FOODSTUFFS, BEVERAGES AND TOBACCO—continued. | |
| 27.—(1) Vegetables, canned or bottled (2) Mixtures of vegetables and meat, canned or bottled .. (3) Dried vegetables (4) Potatoes, cooked, dried or otherwise processed .. (5) Split peas and flaked peas (6) Pea sausage, pea meal and brose meal (7) Soups, canned or bottled (8) Soup powders and soup cubes (9) Tomato puree and tomato paste | Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 |
| 28.—(1) Fruits, canned or bottled (2) Fruits, dried (3) Fruit pulp (4) Jam (5) Honey jelly | Nos. 1 to 9 Nos. 1 to 4 and 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 |
| 29.—(1) Sauces (2) Pickles, olives and capers (3) Vinegar | Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 |
| 30.—(1) Prepared breakfast foods consisting of processed grain (2) Barley (3) Rice (4) Sago (5) Tapioca | Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 Nos. 1 to 9 |
| 31.—(1) Sugar (2) Treacle, molasses, golden syrup and other syrups produced by sugar refineries | Nos. 1 to 4 and 9 Nos. 1 to 4 and 9 |
| 32. Flour, ^(a) including self-raising flour, bran and pollard .. | Nos. 1 to 4 and 9 |
| 33. Nuts, shelled, roasted or otherwise processed, including nut meal, nut paste and peanut butter | Nos. 1 to 4 and 9 |
| 34. Ice | Nos. 1 to 9 |
| 35. Food for infants and invalids, and materials for the preparation thereof, viz.:— | |
| (1) All-am-bi Food (2) Allenbury's Diabetic Rusks for Diabetics (3) Allenbury's Diet for Invalids and Children (4) Allenbury's Food (5) Allenbury's Malted Food (No. 3) (6) Allenbury's Malted Rusks for Infants (7) Anchor Groats (8) Arab Groats (9) Baked Flour (10) Barley Malt Extract (11) Barnes' Sago Food (12) Bemax (13) Bengers' Food (14) Bourn-Vita (15) Bono-Lactin (16) Bread, Van Abbotts' Gluten (17) Bronamalt (18) Callard's Kalari Biscuits (19) Callard's Casoid Biscuits (20) Callard's Vitmar (21) Calvesfoot Jelly (22) Carnick's Soluble Food (23) Carnick's Liquid Peptonoids (24) Clinic Baby Food (25) Cocolac (26) Corn Cob Baby Syrup (27) "D.C.L." Cherry Flavoured Malt Extract with Cod Liver Oil and Parrish's Food (28) "D.C.L." Irradiated Malt | Nos. 1 to 9 |

(a) For a discussion on the meaning of the word "flour" see *Jackett v. Deputy Federal Commissioner of Taxation*, 1932 S.A.S.R. 405. (The Court there held that "flour" did not include "self-raising flour" but "self-raising flour" has since been included in the item.)

THE SCHEDULE—*continued*.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
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| DIVISION VI.—FOODSTUFFS, BEVERAGES AND TOBACCO— <i>continued</i> . | |
| 35. Food for infants and invalids, &c.— <i>continued</i> . | |
| (29) "D.C.L." Malt and Oil | |
| (30) "D.C.L." Malt and Oil with Parrish's Food | |
| (31) "D.C.L." Vitamine Malt | |
| (32) Diabetic Flour, Diabetic Biscuits and Diabetic Rolls, being goods which are marketed primarily as foods for diabetics | |
| (33) Digestin | |
| (34) Eledon | |
| (35) Elliott's Special Clinic Emulsion | |
| (36) Energen Bran Biscuits | |
| (37) Energen Digestive Biscuits | |
| (38) Energen Endobran Biscuits | |
| (39) Extract of Malt | |
| (40) Extract of Malt and Cod Liver Oil | |
| (41) Fairchild's and Foster's Panopepton | |
| (42) Faliere's Phosphatine | |
| (43) Farewell Flour | |
| (44) Faulding's Farinaceous Food | |
| (45) Foster's Farinaceous Food | |
| (46) Foster's Malted Food | |
| (47) Frame Food | |
| (48) Glac-Ovo | |
| (49) Glaxo | |
| (50) Gluten Flour, Gluten Meal and Gluten Biscuits | |
| (51) Herogen | |
| (52) Hewlett's Malted Food | |
| (53) Intarvin | |
| (54) Jellerta | |
| (55) Karil | Nos. 1 to 9 |
| (56) Karilac | |
| (57) Kariol | |
| (58) Kellogg's Malted Nuts | |
| (59) Kemp's Emulsion | |
| (60) Lactogen | |
| (61) Lactogol | |
| (62) Lactone Syrup | |
| (63) Lactose | |
| (64) Malted Milk | |
| (65) Maltogen | |
| (66) Maltovine Milk Food Biscuits | |
| (67) Mellin's Food | |
| (68) Mellin's Food Biscuits | |
| (69) Milk Powder, Peptogenic | |
| (70) Milo | |
| (71) Moseley's Foods | |
| (72) Murdoch's Liquid Food | |
| (73) McKenzie's Patent Barley | |
| (74) McKenzie's Patent Groats | |
| (75) Neave's Food | |
| (76) Neave's Health Diet | |
| (77) Neave's Milfo | |
| (78) Neave's Milk Food | |
| (79) Nestle's Milk Food | |
| (80) Neurogen | |
| (81) Nutritive Liquid Peptone | |
| (82) Ovalact | |
| (83) Ovaltine | |
| (84) Ovaltine Rusks | |
| (85) Paramount Vitamin Malt | |

THE SCHEDULE—*continued.*

| Sales Tax Exemption Items. | | Acts to which Exemption Applies. |
|--|--|-------------------------------------|
| DIVISION VI.—FOODSTUFFS, BEVERAGES AND TOBACCO— <i>continued.</i> | | |
| 35. Food for infants and invalids, &c.— <i>continued.</i> | | |
| (86) Parson's Caledonian Groats | | } Nos. 1 to 9 |
| (87) Parson's Prepared Barley | | |
| (88) Plasmon Food | | |
| (89) Prescription Glaxo | | |
| (90) Radio Malt | | |
| (91) Rhines Manhu Special Flour | | |
| (92) Robinson's Patent Barley | | |
| (93) Robinson's Patent Groats | | |
| (94) Roboleine | | |
| (95) Rumford's Groats | | |
| (96) Russell Prepared Green Bone (lime food) | | |
| (97) Sanatogen | | |
| (98) Saunder's Haemovita | | |
| (99) Saunder's Maltocret | | |
| (100) Saunder's Starch-free Bran | | |
| (101) Savory and Moore's Food | | |
| (102) "Scotia Brand" Malt and Oil | | |
| (103) Smedley's, Dr., Malted Food | | |
| (104) Somatose in liquid or powder form | | |
| (105) Soul's Clinic Emulsion | | |
| (106) Storer's Ivaline Ivatone No. 7 | | |
| (107) Sugar of Milk | | |
| (108) Suppositories, meat (pre-digested) | | |
| (109) Suppositories, milk (pre-digested) | | |
| (110) Swallow and Ariell's Glutamon Biscuits | | |
| (111) Vi-Lactogen | | |
| (112) Vimos Tonic Food | | |
| (113) Virol | | |
| (114) Vitamin | | |
| (115) Vitamina | | |
| (116) Vito B | | |
| (117) Foods, n.e.i., which, in the opinion of the Commissioner, are marketed primarily as foods for infants and invalids | | |
| 36.—(1) Beer | | Nos. 1 to 4 and 9 |
| (2) Cider | | Nos. 1 to 4 and 9 |
| (3) Essences (being substantially juices of Australian fruits) from which non-alcoholic beverages are made | | Nos. 1 to 4 and 9 |
| (4) Australian wine | | Nos. 1 to 4 and 9 |
| 37.—(1) Tobacco | | Nos. 1 to 9 |
| (2) Cigarettes | | Nos. 1 to 9 |
| (3) Cigars | | Nos. 1 to 9 |
| DIVISION VII.—DRUGS, MEDICINES AND SURGICAL GOODS. | | |
| 38. Drugs and medicines (including patent and proprietary medicines) used in the prevention, cure or treatment of sickness or disease in human beings, and in the compounding or preparation of such drugs or medicines, but not including— | | |
| (i) Drugs and preparations put up and sold for the purposes of photography; | | } Nos. 1 to 9 |
| (ii) Toilet preparations (including soaps, tooth pastes, cosmetics, pomades, perfumes and hair lotions); or | | |
| (iii) Dyes, methylated spirits, naphthaline, turpentine, olive oil, castor oil, linseed oil, bicarbonate of soda, carbonate of soda, cream of tartar, caustic soda, sodium chloride, alum, borax, glycerine, petroleum jelly, lead salts, zinc salts, citric acid, chromic acid, formic acid, hydrochloric acid, hydrofluoric acid, nitric acid, pyrogallie acid, stearic acid, sulphuric acid and tartaric acid | | |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|---|----------------------------------|
| DIVISION VII.—DRUGS, MEDICINES AND SURGICAL GOODS—continued. | |
| 39.—(1) Goods, n.e.i., manufactured and sold by a dispensing chemist who sells goods exclusively by retail | No. 1 |
| (2) Goods, being medicines, n.e.i., manufactured and sold by a society duly registered under any Friendly Societies' Act of the Commonwealth or a State | No. 1 |
| 40. Rectified spirits for use in making medicines and essences | Nos. 1 to 9 |
| 41. Surgical instruments and appliances, n.e.i., (and parts therefor) and surgical materials, n.e.i., being instruments, appliances or materials which are of a kind— | |
| (i) sold exclusively or principally by manufacturers or distributors of such instruments, appliances and materials; and | |
| (ii) used exclusively or principally in hospitals or by medical practitioners, | |
| but not including the following articles:— | |
| Air cushions; atomizers | |
| Bed rests; bed tables; brackets | |
| Chairs, bedside or commode | |
| Depilatory forceps; dispensing plant; drip feed lamps | |
| Electric urns; enemas; eye-baths, eye droppers, eye shells and eye shades | |
| Kettles | |
| Linen cupboards | Nos. 1 to 9 |
| Magnifying lenses; measure glasses; medicament bottles and glasses; microscopes which are not for use in hospitals or by medical practitioners or medical students | |
| Name plates; nasal douches; nipple aerators | |
| Pessaries | |
| Restraint apparatus, viz., anklets, wristlets, straps and sheets; rubber finger stalls; rubber surgical syringes | |
| Scales, baby weighing and personal; sprays, disinfectant; staining bottles; surgeons', nurses' and attendants' aprons, gowns and overalls; surgery and gate lamps | |
| Towel cupboards, hangers and stands | |
| Ward cupboards, lockers and chairs; wash basins and stands | |
| 42. Surgical appliances (and parts therefor), and surgical materials, viz.:— | |
| (1) Abdominal belts | Nos. 1 to 9 |
| (2) Absorbent cotton wool, gauzes and lint | Nos. 1 to 9 |
| (3) Adhesive plaster and strapping | Nos. 1 to 9 |
| (4) Articles designed for the alleviation of deafness, but not including articles for public use in buildings or other places | Nos. 1 to 9 |
| (5) Artificial eyes | Nos. 1 to 9 |
| (6) Artificial limbs | Nos. 1 to 9 |
| (7) Bandages and bandage winders | Nos. 1 to 9 |
| (8) Crutches | Nos. 1 to 9 |
| (9) Elastic bandages, knee caps and stockings | Nos. 1 to 9 |
| (10) Invalid chairs | Nos. 1 to 9 |
| (11) Spectacles, eye-glasses and lorgnettes, (and cases and wipers therefor), but not including goggles, sun glasses, field glasses or similar optical goods | Nos. 1 to 9 |
| (12) Surgical boots, braces and irons | Nos. 1 to 9 |
| (13) Surgical, medical and first-aid outfits | Nos. 1 to 9 |
| (14) Trusses | Nos. 1 to 9 |
| (15) Umbilical belts | Nos. 1 to 9 |
| 43. (1) Surgical X-ray apparatus and accessories (and parts therefor), but not including accessories of a kind ordinarily used for other purposes | Nos. 1 to 9 |
| (2) Diathermy apparatus and appliances, and parts therefor | Nos. 1 to 9 |

THE SCHEDULE—*continued.*

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
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DIVISION VII.—DRUGS, MEDICINES AND SURGICAL GOODS—*continued.*

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| 44. Oxygen, carbogen, nitrous oxide, ethylene and other medical gases, and any mixture of such gases, for use in hospitals or by medical practitioners | Nos. 1 to 9 |
| 45. Dental instruments and appliances (and parts therefor) and materials, which are of a kind exclusively or principally sold by manufacturers or distributors of such instruments, appliances and materials for use by dentists or dental mechanics, and dentures, gold, alloys, amalgams, porcelain, gold inlays, bridges, crowns and other articles for similar dental use, which are to be disposed of (whether in an altered form or condition or not) to patients in the course of dental treatment | Nos. 1 to 9 |
| 46.—(1) Machinery and equipment (and parts therefor), for use by life saving clubs, mines' rescue stations and ambulance societies, in connexion with the preservation of human life or the transport of persons for the purpose of medical or surgical treatment | Nos. 1 to 9 |
| (2) Ambulances (and parts therefor) for use by hospitals .. | Nos. 1 to 9 |

DIVISION VIII.—FUEL, POWER AND LIGHT.

| | |
|--|-------------------|
| 47.—(1) Briquettes | Nos. 1 to 4 and 9 |
| (2) Charcoal | Nos. 1 to 4 and 9 |
| (3) Coke | Nos. 1 to 4 and 9 |
| (4) Firewood | Nos. 1 to 4 and 9 |
| 48.—(1) Crude oil and fuel oils for use in the production of power | Nos. 1 to 9 |
| (2) Crude tar sold to a manufacturer for use by him as a fuel or applied by the manufacturer thereof as a fuel for use in the manufacture of goods | Nos. 1 to 4 and 9 |
| (3) Ethyl-fluid, dyes and other substances for use in the blending of petrol | Nos. 1 to 9 |
| (4) Kerosene | Nos. 1 to 9 |
| (5) Petrol | Nos. 1 to 9 |
| (6) Power alcohol produced in Australia and mixtures produced in Australia of petrol and power alcohol | Nos. 1 to 4 and 9 |
| 49.—(1) Compressed air | Nos. 1 to 4 and 9 |
| (2) Hydraulic power | Nos. 1 to 4 and 9 |
| (3) Steam | Nos. 1 to 4 and 9 |
| 50.—(1) Electric current for lighting or power | Nos. 1 to 4 and 9 |
| (2) Gas, commercially known as coal gas | Nos. 1 to 4 and 9 |

DIVISION IX.—BOOKS, PRINTED MATTER AND PAPER.

| | |
|---|-------------|
| 51. Books and printed matter, viz. :— | |
| (a) Books and pamphlets of a literary or educational nature ; | |
| (b) Other books, but not including (unless covered by any other item or sub-item in this Schedule)— | |
| (i) books of account; books of receipts, cheques, deposit slips, bank withdrawal forms, tickets, dockets, labels or order forms; books of blotting paper, books of blank sheets, or of sheets ruled or printed, for writing notes, letters, exercises, accounts or for record purposes, or for sketching, drawing or painting; albums, books of samples, menus and calendars; booklets of printed matter conveying greetings or sympathy; other stationery in book form ; | Nos. 1 to 9 |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
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| DIVISION IX.—BOOKS, PRINTED MATTER AND PAPER—continued. | |
| 51. Books and printed matter—continued. | |
| (b) Other books, &c.—continued. | |
| (ii) race books, betting books and programmes of entertainments and events ; | Nos. 1 to 9 |
| (iii) catalogues, price lists and other advertising matter ; and | |
| (iv) memoranda and articles of association ; balance sheets, statements of account and associated reports and prospectuses of trading concerns ; and | |
| (c) Periodicals, magazines and printed music | |
| 52.—(1) Linotypes, stereotypes, electrotypes, electrotype moulds, matrices, blocks and photographs for use in the production of newspapers | Nos. 1 to 4 and 9 |
| (2) Linotypes, stereotypes, electrotypes, electrotype moulds and matrices, n.e.i., (but not including raw materials therefor) | Nos. 1 to 9 |
| 53. Maps, including road and tourist maps and navigators' charts | Nos. 1 to 9 |
| 54. Newspapers | Nos. 1 to 4 and 9 |
| 55. Newsprint | Nos. 5 to 9 |
| 56. Paper patterns and paper transfers, and direction sheets and envelopes for sale or distribution therewith, for dress-making, tailoring, knitting, crocheting and other needle-work | Nos. 1 to 9 |
| 57. Postage stamps | Nos. 1 to 9 |
| 58. Posters, display signs, pamphlets, books and other printed matter issued by Government Tourist Bureaux, Railways Authorities, Airways Authorities, or Steamship Companies, advertising or having reference to places beyond the Commonwealth | No. 5 |
| 59. Trade catalogues not imported for sale or distribution .. | No. 5 |
| 60. Vegetable parchment paper and grease proof paper .. | Nos. 1 to 9 |
| DIVISION X.—SCIENTIFIC, EDUCATIONAL AND RELIGIOUS GOODS, AND WORKS OF ART. | |
| 61. Anthropological specimens imported into Australia for use by research workers | No. 5 |
| 62. Fauna for public zoological gardens | Nos. 1 to 9 |
| 63. Goods for use in universities and schools, viz. :— | |
| (1) Scientific instruments and scientific apparatus (and parts therefor), and materials for use therewith | Nos. 1 to 9 |
| (2) Charts, wall sheets and diagrams | Nos. 1 to 9 |
| (3) Examination papers, and direction sheets and envelopes for use therewith | Nos. 1 to 9 |
| 64. Exchange publications (including manuscripts, typescripts, pictures, maps and plans which the Commissioner is satisfied are of such historical educational value or historical interest as to justify their inclusion in a national or State institution within the Commonwealth) consigned to international exchange centres in Australia, and publications donated to a Commonwealth or State Government Department or to an institution or society and not intended to be sold by the donee | No. 5 |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|---|----------------------------------|
| DIVISION X.—SCIENTIFIC, EDUCATIONAL AND RELIGIOUS GOODS, AND WORKS OF ART—continued. | |
| 65. Equipment for use in churches and church services and articles for use in religious devotion, viz. :— | |
| (1) Furniture, furnishings, ornaments, vestments and other articles for use for the purposes of church services | } Nos. 1 to 9 |
| (2) All articles for use in religious devotion except any article of a kind which is ordinarily and primarily used for purposes of a non-religious character | } Nos. 1 to 9 |
| 66.—(1) Memorial boards, memorial tablets, statues and stained glass windows, in memory of deceased persons | Nos. 1 to 9 |
| (2) Tombstones and other articles for erection on graves and tombs | Nos. 1 to 9 |
| 67. Articles for exhibition in a museum or an art gallery controlled by a public authority or by a committee or trustees appointed by a public authority, if those articles are purchased or imported by or for, or are donated or bequeathed to, the authority, committee or trustees for such exhibition | } Nos. 1 to 9 |
| 68.—(1) Works of art intended for continuous public exhibition free of charge | Nos. 1 to 9 |
| (2) Works of art produced in Australia or abroad by Australian artists | Nos. 1 to 9 |
| 69. Goods covered by sub-item B of item 333, by item 405 or 406, by paragraph (2) of sub-item B of item 410, or by item 412, in the Schedule to the <i>Customs Tariffs</i> 1933, viz. :— | |
| (1) Printed matter and photographs the property of any public institution and intended for deposit or exhibition therein | } No. 5 |
| (2) Models of inventions and other improvements in the arts and manufactures and models of ships | No. 5 |
| (3) Natural history, specimens of; models and wall diagrams for illustrations of natural history | No. 5 |
| (4) Oil or water colour paintings presented or bequeathed to the owner and not imported for sale | No. 5 |
| (5) Pictorial illustrations and casts and models for teaching purposes, when imported by or for the use of universities, colleges, schools or public institutions | } No. 5 |
| 70. Trophies won abroad, and decorations, medallions and certificates awarded or to be awarded and sent from abroad to individuals, and trophies or prizes sent by donors resident abroad for presentation or competition in Australia, as prescribed by Departmental By-laws under the law relating to Customs | } No. 5 |
| DIVISION XI.—GOODS FOR USE BY GOVERNMENTS, REPRESENTATIVES OF GOVERNMENTS, AND PUBLIC BODIES. | |
| 71. Articles and personal effects owned and imported by members of the Consular or Diplomatic Services or by Trade Commissioners and their staffs, who are nationals of the countries they represent, and are not, nor will be, engaged in any other business, occupation or profession during their residence in Australia, provided such goods are imported within six months of the arrival of the official concerned or within such further time as the Minister for Trade and Customs allows | } No. 5 |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|--|----------------------------------|
| DIVISION XI.—GOODS FOR USE BY GOVERNMENTS, REPRESENTATIVES OF GOVERNMENTS, AND PUBLIC BODIES—continued. | |
| 72. Articles for official use by Trade Commissioners representing a British country or by Consuls, provided such Trade Commissioners or Consuls are citizens of the countries they represent and are not engaged in any other trade or profession | Nos. 1 to 9 |
| 73. Articles imported or purchased in bond for the official use of the Governor-General or the Governor of a State and declared as being for such official use | No. 5 |
| 74. Goods for official use (whether as goods or in some other form), and not for sale, by a department of the Government of the Commonwealth or of a State, or an authority which is completely controlled by, and the expenditure of which is exclusively borne by, that Government, provided that, in the case of goods for the use of a department or an authority of the Government of a State, an arrangement has been made between the Governor-General and the Governor-in-Council of the State for the collection and payment by the State of sales tax upon the sale value of goods sold by the Government of the State, and by every such authority established under the law of the State, in the conduct of an enterprise which, in the opinion of the Commissioner, is a trading enterprise | Nos. 1 to 9 |
| 75. Goods which are for official use (whether as goods or in some other form), and not for sale, by a technical school the expenditure of which is wholly or partly borne by the Government of the Commonwealth or the Government of a State | Nos. 1 to 9 |
| 76. Goods produced by the Commonwealth Bank of Australia . . | Nos. 1 and 2 |
| 77. Trams, trolley omnibuses and motor omnibuses (and parts therefor), for use by public transport authorities | Nos. 1 to 9 |
| 78. Materials for use in the formation or maintenance of roads, or of bridges, culverts, crossings or embankments in connexion therewith, (being materials which are to be wrought into or attached to, so as to form part of, any of those works) by or for any public authority responsible for the formation or maintenance of public roads | Nos. 1 to 9 |
| 79. Water supplied by public bodies or public authorities . . | Nos. 1 to 4 and 9 |
| 80. Goods which, at the time of their entry for home consumption under the law relating to Customs, have been donated or bequeathed to any society or institution established in Australia solely for public purposes | No. 5 |
| 81. Goods for use (whether as goods or in some other form), and not for sale, by a public hospital, or a public benevolent institution, or any public organization which the Commissioner is satisfied is established and maintained for the relief of unemployed persons | Nos. 1 to 9 |
| DIVISION XII.—BUILDING MATERIALS. | |
| 82.—(1) Bricks, blocks, shapes, tiles, sections, slabs, and other structural or architectural building units, whether made of burnt clay, marble, granite, stone, cement, concrete, magnesite, cinder-cement, asbestos-cement, fibro-cement, coke-breeze, terra cotta, gypsum, terrazzo, or of any other materials or mixtures of materials | Nos. 1 to 9 |
| (2) Stone, including synthetic stone, crushed metals, crushed bricks, furnace slag (crushed or uncrushed), screenings, toppings and dust | Nos. 1 to 9 |
| (3) Fireclay, refractory cement, plastic refractory cement, mortar, and other agents for bonding or setting any of the goods specified in sub-item (1) of this item | Nos. 1 to 9 |

THE SCHEDULE—*continued.*

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|--|----------------------------------|
| DIVISION XII.—BUILDING MATERIALS—<i>continued.</i> | |
| 83. Plaster and plaster products, and goods having similar structural uses, and boards, sheets and linings made of metal, wood, wood-pulp, asbestos or fibro-cement, or of bituminous or other compositions, being products or sheets of a kind used in the construction or repair of, and wrought into or attached to, so as to form part of, buildings or other fixtures | Nos. 1 to 9 |
| 84. Metal rods, bars, wire, sheets, mesh and lathing, and fabricated units composed of any such articles, (and attachments therefor), for use in reinforcing or keying concrete, brick-work, plaster, stucco or other similar work in buildings or other fixtures, but not including girders or fabricated metal units for constructional work of the kind for which girders are ordinarily used | Nos. 1 to 9 |
| 85. Roofing materials, viz.:— | |
| (1) Tiles, slates and shingles | Nos. 1 to 9 |
| (2) Fibro-cement, asbestos-cement, metal and other sheets for roofings | Nos. 1 to 9 |
| (3) Asphalt mineral or bituminous roll roofings and asbestos roofing felt | Nos. 1 to 9 |
| (4) Mastic asphalt and other asphalt mineral or bituminous mixtures or compositions of a kind used for roofings | Nos. 1 to 9 |
| (5) Materials for use as integral parts of roofings made or mixed in situ (but not including nails, screws, washers, bolts, nuts, clips or other similar materials, or paints or similar waterproofing materials or caulking compounds) | Nos. 1 to 9 |
| (6) Ridging, flashing, finials, vanes, gable rolls, barge boards and similar roofing accessories | Nos. 1 to 9 |
| 86. Sheet iron and sheet steel, flat or corrugated, galvanized or black, of gauge 10 or lighter (Birmingham gauge) | Nos. 1 to 9 |
| 87.—(1) Compositions (and materials for use as integral parts thereof) for application in a plastic condition so as to form the flooring of buildings | Nos. 1 to 9 |
| (2) Dampcourse, and materials for use as, or in the construction of, dampcourse in buildings | Nos. 1 to 9 |
| 88.—(1) Wall, roof or ceiling ventilators, but not including forced draught ventilating or air-conditioning systems | Nos. 1 to 9 |
| (2) Wall ties | Nos. 1 to 9 |
| 89.—(1) Concrete | Nos. 1 to 9 |
| (2) Cement | Nos. 1 to 9 |
| (3) Lime | Nos. 1 to 9 |
| 90. Timber, including— | |
| (a) timber (not being joinery or turnery) which has been mortised, tenoned, bevelled, chamfered, checked, bored, trimmed or shaped at an end or ends, or cut into lengths; | Nos. 1 to 9 |
| (b) floorings, linings, mouldings, weatherboards, parquet blocks, plywood, veneers and sawdust; and | |
| (c) joinery and turnery of a kind used in the construction or repair of, and wrought into or attached to, so as to form part of, buildings or other fixtures, and glass for use in the glazing of any such joinery or turnery which is of a kind produced as goods in the form of glazed joinery or turnery | |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|--|----------------------------------|
| DIVISION XIII.—CONTAINERS. | |
| 91. Containers, viz., the inner or outer coverings in which goods are packed or secured, or to be packed or secured, in the ordinary course of business, including— (a) inside linings and inside packing materials, and goods which are ordinarily used to secure or seal those coverings or to describe the contents thereof and which form an actual part of the completed coverings; and (b) paper bags for the marketing of cement, lime, fertilizers and other goods which are customarily placed on the market for sale by wholesale or by the manufacturer thereof in paper bags, but not including— (c) other paper bags or wrapping paper, string, lashing, adhesive strips and similar goods which are used to wrap up and secure goods for delivery, for use in marketing, or imported containing, goods covered by any item or sub-item in this Schedule, except goods covered by sub-item (1) or (2) of item 39 or by item 76, 100, 101, 102 or 103, provided that the property in the container passes to the purchaser, importer or lessee of the contents | Nos. 1 to 9 |
| 92. Bags and sacks used for fertilizers or chaff or for marketing goods covered by any item or sub-item in this Schedule, except goods covered by sub-item (1) or (2) of item 39 or by item 76, 100, 101, 102 or 103 | Nos. 1 to 9 |
| 93. Boxes, cases and crates manufactured in Australia, and wood in shooks for the manufacture thereof, for use in marketing goods manufactured in Australia and covered by any item or sub-item in this Schedule, except goods covered by sub-item (1) or (2) of item 39 or by item 76, 100, 101, 102 or 103 ^(a) | Nos. 1 to 4 and 9 |
| 94. Bottles, bearing a moulded notification that they remain the property of the lessor, leased to manufacturers for use in marketing the goods manufactured by them, or to wholesale merchants for use in marketing the goods sold by them | No. 9 |
| 95.—(1) Fruit bottling outfits and parts therefor | Nos. 1 to 9 |
| (2) Fruit preserving jars and parts therefor | Nos. 1 to 9 |
| 96. Sulphite wrapping paper for use by proprietors or publishers of newspapers in wrapping newspapers | Nos. 1 to 9 |
| 97. Sewing twine | Nos. 1 to 9 |
| 98. Stockinette and hessian for use in the manufacture of meat wraps | Nos. 1 to 9 |
| 99. Wool packs | Nos. 1 to 9 |
| DIVISION XIV.—MANUFACTURES OF SMALL BUSINESSES. | |
| 100. Goods, n.e.i., sold by retail by the manufacturer thereof (not being a person who manufactures articles for human wear) whose principal business consists of the manufacture of goods to the order of individual customers and the total value of whose average yearly sales of goods so manufactured is not, or would not be, in the opinion of the Commissioner, in excess of Five hundred pounds | No. 1 |
| 101. Goods, n.e.i., manufactured and sold by retail by a person (not being a manufacturer of the class specified in item 100 or item 102 in this Schedule) the total value of whose average yearly sales of all goods is not, or would not be, in the opinion of the Commissioner, in excess of One thousand pounds | No. 1 |

^(a) Held by the High Court that a similar item in the First Schedule to the *Sales Tax Assessment Act (No. 1) 1930* did not include a kilderkin cask. *Federal Commissioner of Taxation v. Fisher's Coöperation Pty. Ltd.*, (1933) 7 A.L.J. 281.

THE SCHEDULE—*continued.*

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|--|----------------------------------|
| DIVISION XIV.—MANUFACTURES OF SMALL BUSINESSES—continued. | |
| 102. Goods, n.e.i., manufactured by a person exclusively in his own home the total value of whose average yearly sales of all goods is not, or would not be, in the opinion of the Commissioner, in excess of Five hundred pounds. | } Nos. 1 and 2 |
| 103. Goods manufactured by a person who satisfies the Commissioner that the average amount of sales tax which, but for this item, would be payable by him is not, or would not be, in excess of Three pounds per annum : Provided that— (a) where that person has on hand goods in respect of the purchase or importation of which he has quoted his certificate, he has paid to the Commissioner an amount equivalent to the sales tax which would have been payable in respect of the sale to or importation by him of those goods if he had not so quoted his certificate ; and (b) the Commissioner has issued to that person a statement in writing to the effect that he has been satisfied as specified in this item, and that statement has not been revoked by notice in writing | |
| DIVISION XV.—MISCELLANEOUS. | |
| 104. Aeroplanes (and parts therefor), and parachutes, life-belts, collapsible boats, Verry lights and similar accessories for use therewith | } Nos. 1 to 9 |
| 105.—(1) Axes and tomahawks (2) Tool handles of wood | |
| 106. Coffins, cremation caskets and urns, and fittings and trimmings therefor | Nos. 1 to 9 |
| 107. Films, viz. :— (1) Exposed or developed films which are imported into Australia and which represent dramatic or Australian subjects, but not including films suitable for use only with home kinematographs (2) Films in respect of which certificates have been issued by the International Educational Cinematographic Institute in pursuance of the convention for facilitating the international circulation of films of an educational character, as prescribed by Departmental By-laws under the law relating to Customs | } Nos. 5 to 9 |
| 108.—(1) Foods for birds (2) Preparations for use in the prevention, cure or eradication of diseases or pests in birds | |
| 109. Gold bullion, gold coin, and gold recovered by crushing, washing, dollying or sweeping, where the bullion, coin or gold is imported for treatment by the Royal Mint | } No. 5 |
| 110. Goods exported or to be exported or goods sold by any person for export by the purchaser from him | |
| 111.—(1) Goods the produce or manufacture of New Zealand, Fiji, the Territory of Papua, or the Territory of New Guinea, being goods of the same class or kind as goods upon the sale value of which, if produced or manufactured in Australia, sales tax is not payable (2) Goods imported from Norfolk Island (3) Goods, secondhand, owned by a person resident in the Territory of Papua or the Territory of New Guinea and sent to the Commonwealth for repair and return to that person | } Nos. 5 to 9 |
| | |
| | } No. 5 |

THE SCHEDULE—continued.

| Sales Tax Exemption Items. | Acts to which Exemption Applies. |
|---|----------------------------------|
| DIVISION XV.—MISCELLANEOUS—continued. | |
| 112. Machinery and plant (and parts therefor), for the bulk handling of wheat | Nos. 1 to 9 |
| 113. Materials sold to or imported by an unregistered manufacturer to be used in, wrought into, or attached to, so as to form part of, goods to be manufactured by him, being goods covered by any item or sub-item in this Schedule except goods covered by sub-item (1) or (2) of item 39, by sub-item (2) of item 52, or by item 76, 100, 101, 102 or 103 | Nos. 1 to 8 |
| 114.—(1) Passengers' furniture and household goods which have been in actual use by such passengers for at least one year, not exceeding £100 in value for each adult passenger (two members of a family, being children, being for the purposes of this item reckoned as one adult) | No. 5 |
| (2) Passengers' personal effects | No. 5 |
| 115.—(1) Pasteurisers | Nos. 1 to 9 |
| (2) Jacketed vats or jacketed tanks and enamelled vats or tanks not jacketed (including those fitted with agitators or stirrers) for use as storage receptacles or capable of use as pasteurisers or coolers | Nos. 1 to 9 |
| 116. Re-imported goods which are covered by item 401 of the <i>Customs Tariffs</i> 1933, viz.:— | |
| (1) Goods the produce of Australia and samples of duty-paid goods on which drawback has not been paid, subject to such conditions as may be prescribed under the law relating to Customs | No. 5 |
| (2) Goods, other, which after having been properly entered for home consumption in Australia were exported without drawback having been paid thereon and which have been brought back to Australia by the exporter and which remained the property of such exporter from the time of exportation until the time of re-importation, as prescribed by Departmental By-laws under the law relating to Customs | No. 5 |
| 117. Saddlery and harness (and parts therefor), trace chains (complete), collar check, kersey and saddle serge | Nos. 1 to 9 |
| 118. Secondhand goods, viz.:— | |
| (1) Plant, machinery or equipment which has been used as such by a person in the ordinary course of his business and is leased by him, or by the grantee of a Bill of Sale of which that person was the grantor, or by any trustee in whom the ownership of that business becomes vested or who becomes entitled to the possession, management or control of that business or of the goods of that business | No. 9 |
| (2) Goods which are leased under a hire purchase agreement by the taxpayer to a lessee and which, prior to that leasing, had gone into use or consumption in Australia | No. 9 |
| 119.—(1) Ships and power driven vessels of over 1,000 tons gross register | Nos. 1 to 9 |
| (2) Ships engaged in or suitable for ocean navigation | No. 9 |
| 120. Sole leather | Nos. 1 to 9 |
| 121. Wireless valves, including rectifying valves for wireless telegraphy or telephony | Nos. 1 to 9 |
| 122. Wire netting, barbed wire and iron or steel wire of gauges 6 to 14 | Nos. 1 to 9 |
| 123.—(1) Wreaths, and covers and mounts therefor | Nos. 1 to 9 |
| (2) Floral tributes (including bouquets, posies, floral baskets and sheaves) containing natural flowers | Nos. 1 to 9 |

SALES TAX PROCEDURE ACT 1934-1935.^(a)

An Act to provide Procedure in relation to the
Collection and Recovery of Sales Tax and
for other purposes.

[Assented to 15th December, 1934.]^(b)

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

Short title.
Short title
amended.
No. 32, 1918,
s. 2.

1. This Act may be cited as the *Sales Tax Procedure Act*
1934-1935.^(a)

Commencement.

2. This Act shall be deemed to have commenced on the eighteenth
day of August, One thousand nine hundred and thirty.

Definitions.

3. In this Act unless the contrary intention appears—

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

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

Amended by
No. 12, 1935,
s. 12.

“Goods” includes commodities, but (except in the application
of this Act to goods to which the *Sales Tax Assessment Act* (No. 9)
1930,^(c) or that Act as amended from time to time, applies) does not
include goods which have, either through a process of retailing or
otherwise, gone into use or consumption in Australia;

“Person” includes a company;

(a) The *Sales Tax Procedure Act* 1934-1935 comprises the *Sales Tax Procedure Act* 1934 (No. 53 of 1934) as amended by the *Sales Tax Procedure Act* 1935 (No. 12 of 1935). See Act No. 12, 1935, s. 1.

(b) This is the date of assent to the *Sales Tax Procedure Act* 1934. The *Sales Tax Procedure Act* 1935 was assented to on 11th April, 1935.

(c) *Supra*, p. 2693.

“Sales tax” or “tax” means the tax imposed and as in force from time to time under any one or more of the following Acts:—

- the *Sales Tax Act* (No. 1) 1930,^(a)
- the *Sales Tax Act* (No. 2) 1930,^(b)
- the *Sales Tax Act* (No. 3) 1930,^(c)
- the *Sales Tax Act* (No. 4) 1930,^(d)
- the *Sales Tax Act* (No. 5) 1930,^(e)
- the *Sales Tax Act* (No. 6) 1930,^(f)
- the *Sales Tax Act* (No. 7) 1930,^(g)
- the *Sales Tax Act* (No. 8) 1930,^(h) and
- the *Sales Tax Act* (No. 9) 1930,⁽ⁱ⁾

or under any one or more of those Acts as amended from time to time, and, in respect of sales tax payable in respect of transactions, acts or operations which took place, or in respect of goods which were imported, on or after the twenty-sixth day of October, One thousand nine hundred and thirty-three, means that tax as varied by section nineteen of the *Financial Relief Act* 1933 or by any subsequent Act;

“Sales Tax Assessment Act” means any of the following Acts:—

- the *Sales Tax Assessment Act* (No. 1) 1930,^(j)
- the *Sales Tax Assessment Act* (No. 2) 1930,^(k)
- the *Sales Tax Assessment Act* (No. 3) 1930,^(l)
- the *Sales Tax Assessment Act* (No. 4) 1930,^(m)
- the *Sales Tax Assessment Act* (No. 5) 1930,⁽ⁿ⁾
- the *Sales Tax Assessment Act* (No. 6) 1930,^(o)
- the *Sales Tax Assessment Act* (No. 7) 1930,^(p)
- the *Sales Tax Assessment Act* (No. 8) 1930,^(q) and
- the *Sales Tax Assessment Act* (No. 9) 1930,^(r)

and includes any of those Acts as amended from time to time;

“the Commissioner” means the Commissioner of Taxation;

“the Second Commissioner” means the Second Commissioner of Taxation;

“the Regulations” means the Regulations made under this Act;

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

- (a) an executor or administrator, guardian, committee, receiver, or liquidator; and
- (b) every person having or taking upon himself the administration or control of goods affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the goods of a person under any legal or other disability;

(a) *Supra*, p. 2615. (b) *Supra*, p. 2651. (c) *Supra*, p. 2658. (d) *Supra*, p. 2664. (e) *Supra*, p. 2688. (f) *Supra*, p. 2674. (g) *Supra*, p. 2681. (h) *Supra*, p. 2688. (i) *Supra*, p. 2692. (j) *Supra*, p. 2616. (k) *Supra*, p. 2652. (l) *Supra*, p. 2659. (m) *Supra*, p. 2665. (n) *Supra*, p. 2669. (o) *Supra*, p. 2675. (p) *Supra*, p. 2682. (q) *Supra*, p. 2689. (r) *Supra*, p. 2693.

Delegation
by the
Commissioner.

4.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to the Second Commissioner, a Deputy Commissioner of Taxation or other person all or any of his powers or functions under this Act or the Regulations (except this power of delegation) so that the delegated powers or functions may be exercised by the Second Commissioner, the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

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

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

Returns.

5.—(1.) Notwithstanding anything contained in any Sales Tax Assessment Act, any person who is registered or required to be registered under any such Act and who, during any month—

- (a) sells goods;
- (b) being a manufacturer of goods, treats those goods as stock for sale by him by retail;
- (c) applies goods to his own use; or
- (d) leases goods to a lessee,

shall, within twenty-one days after the close of that month, furnish to the Commissioner of Taxation, for the purposes of the ascertainment of the liability of that person to sales tax in respect of those goods, a return of those goods.

(2.) Every return furnished under the last preceding sub-section shall be in the prescribed form and shall set forth such information as is prescribed or, where no such form is prescribed, shall be in such form as is authorized by the Commissioner, and, in either case, shall set forth such information as is required for the due completion of that form.

(3.) Without restricting the generality of the foregoing provisions of this section, forms of returns may, for the purposes of those provisions, be prescribed or authorized which will permit, in cases provided for in the forms, a person required to furnish a return under this section in respect of goods sold by him or applied by him to his own use, to furnish a return without specifying which of the Sales Tax Assessment Acts applies to those goods.

(4.) Any return furnished before the date upon which this Act receives the Royal Assent, by any person specified in sub-section (1.) of this section of any goods so specified, and made or purporting to be made under any one or more of the Sales Tax Assessment Acts, shall be deemed to be a return furnished under this section.

(5.) Any return furnished under this section by any person in respect of any goods shall, subject to this Act, be in lieu of any return required to be furnished by him under any Sales Tax Assessment Act in respect of those goods.

6. In addition to any return required to be furnished under the last preceding section the Commissioner may, by notice in writing, call upon any person to furnish to him, within the time specified in the notice—

Further
Returns.

- (a) such return, or such further or fuller return, as the Commissioner requires, whether in that person's own behalf or as an agent or trustee; or
- (b) a return which shall be a return under, subject to the provisions of, and in the form prescribed under, any Sales Tax Assessment Act.

7.—(1.) Any person who—

Offences in
relation to
returns.

- (a) fails or neglects duly to furnish or lodge any return required in accordance with either of the last two preceding sections, or to furnish information or to comply with any requirement of the Commissioner as and when required by this Act or the Regulations, or by the Commissioner; or
- (b) without just cause shown by him, refuses or neglects to attend and give evidence or to answer truly and fully any questions put to him, or to produce any books or papers when so required, in pursuance of this Act or the Regulations, by the Commissioner or by any officer duly authorized by him; or
- (c) makes or delivers a return which is false in any particular or makes any false answer whether verbally or in writing; or
- (d) contravenes any provision of this Act for the contravention of which no penalty is expressly provided,

shall be guilty of an offence.

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

(2.) Any person who, after conviction for an offence against this section in respect of failure, refusal or neglect to comply with any requirement of, or made in pursuance of, this Act or the Regulations, continues to fail, refuse or neglect to comply with that requirement, shall be guilty of an offence.

Penalty: Not less than Fifty pounds nor more than Five hundred pounds.

(3.) In any prosecution, for an offence against paragraph (c) of sub-section (1.) of this section, of any person who has not previously been convicted of an offence against this Act or against any Sales Tax Assessment Act, it shall be a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and

- (b) that the false particulars were given or (as the case may be) the false statement was made through ignorance or inadvertence.

Penalty in
certain cases.

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

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations or by the Commissioner;
- (b) fails to include, in accordance with the requirements of this Act and the Regulations, any particulars of goods in any return; or
- (c) understates in any return, in respect of any goods, the amount specified, in paragraph (a), (b) or (c) (as the case may be) of sub-section (1.) of section eleven of this Act, in respect of those goods,

shall, if a taxpayer to whom paragraph (a) of this sub-section applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax assessable to him, under any one or more of the Sales Tax Assessment Acts (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater, and shall, if a taxpayer to whom paragraph (b) or (c) of this sub-section applies, be liable to pay by way of additional tax the amount of One pound or double the amount of the difference between the tax properly payable and the tax payable upon the basis of the return lodged, whichever is the greater:

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 action is taken to recover the penalty provided by the last preceding section, or by section eleven of this Act, the additional tax payable under this section shall not be charged in respect of the failure, neglect or understatement in respect of which that action is taken.

False
declarations.

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

Recovery of
Tax.

10.—(1.) Notwithstanding anything contained in any Sales Tax Assessment Act, where, in any proceedings for the recovery of sales tax, the defendant denies liability, it shall not be necessary for the plaintiff to allege or prove under which of the Sales Tax Assessment Acts the sales tax became payable, and, upon the production of a

certificate purporting to be signed by the Commissioner, the Second Commissioner or a Deputy Commissioner of Taxation and stating that an amount of sales tax, not exceeding the amount claimed, is due by the defendant in respect of goods and that those goods have been either—

- (a) sold by the defendant ;
- (b) manufactured by the defendant and treated by him as stock for sale by retail ;
- (c) applied by the defendant to his own use ; or
- (d) leased by the defendant to a lessee,

the plaintiff shall be entitled to judgment for the amount of sales tax stated in the certificate except in so far as the defendant proves that the sales tax so stated or any portion thereof is not payable.

(2.) For the purposes of this section "sales tax" includes any additional tax for which the defendant is liable under this Act or under any Sales Tax Assessment Act.

11.—(1.) Notwithstanding anything contained in any Sales Tax Assessment Act, if any person—

Offences in respect of avoidance of tax.

- (a) has sold goods in such circumstances that sales tax is payable by him under some one or other of the Sales Tax Assessment Acts, upon the amount for which those goods were sold ;
- (b) has sold by retail goods which he has purchased in such circumstances that sales tax is payable by him under some one or other of the Sales Tax Assessment Acts, upon the amount which would be the fair market value of those goods if sold by him by wholesale ; or
- (c) has applied to his own use goods which he has purchased in such circumstances that sales tax is payable by him under some one or other of the Sales Tax Assessment Acts, upon the amount for which those goods were so purchased,

and that person—

- (d) with intent to defraud understates in any return, whether under this Act or under any Sales Tax Assessment Act, the amount for which those goods were sold, the amount which would be the fair market value of those goods if sold by him by wholesale, or the amount for which those goods were purchased by him, as the case may be ; or
- (e) by some wilful act, default or neglect, or by some fraud, art or contrivance, avoids or attempts to avoid sales tax in respect of goods so sold, sold by retail or applied to his own use, as the case may be,

he shall be guilty of an offence.

Penalty :

- (i) for any offence to which paragraph (d) of this sub-section applies—not less than Fifty pounds and the amount of sales tax which would have been avoided, if the amount stated in

the return had been accepted as the correct amount, nor more than Five hundred pounds and treble the amount of sales tax which would have been so avoided; and

- (iii) for any offence to which paragraph (e) of this sub-section applies—not less than Fifty pounds and the amount of sales tax avoided or attempted to be avoided, nor more than Five hundred pounds and treble the amount of sales tax avoided or attempted to be avoided.

(2.) In any proceedings for an offence against this section it shall not be necessary to allege or prove which of the Sales Tax Assessment Acts applies in respect of the goods in relation to which the offence was committed.

(3.) Without derogating from the generality of the provisions for the facilitation of proof contained in any other Act, a certificate purporting to be signed by the Commissioner, the Second Commissioner or a Deputy Commissioner of Taxation and stating—

(a) that a person named in the certificate—

- (i) has sold goods in such circumstances that sales tax is payable by that person, under some one or other of the Sales Tax Assessment Acts, upon the amount for which those goods were sold;
- (ii) has sold by retail goods which he has purchased in such circumstances that sales tax is payable by that person, under some one or other of the Sales Tax Assessment Acts, upon the amount which would be the fair market value of those goods if sold by him by wholesale; or
- (iii) has applied to his own use goods which he has purchased in such circumstances that sales tax is payable by that person, under some one or other of the Sales Tax Assessment Acts, upon the amount for which those goods were so purchased; or

- (b) the amount of sales tax avoided, attempted to be avoided or which would have been avoided if the amount stated in the return had been accepted as the correct amount, as the case may be,

shall, in any proceedings for an offence against this section, be *prima facie* evidence of the matters stated in the certificate.

12. The provisions of Part IX. of the *Sales Tax Assessment Act* (No. 1) 1930–1934^(a) shall, *mutatis mutandis*, apply in relation to offences against this Act.

12A.—(1.) Notwithstanding the provisions of any Sales Tax Assessment Act (other than provisions relating to objections and appeals) or of any regulations made under any such Act, where any person has paid any amount either as sales tax or for sales tax in

Application of
Part IX. of
*Sales Tax
Assessment Act*
(No. 1) 1930–
1934.

Refunds.

Inserted by
No. 12, 1935,
s. 3.

(a) *Supra*, p. 2042.

respect of any goods, by reason of any transaction, act or operation effected or done in relation to those goods, that person shall not be entitled to any refund of that amount—

- (a) if the amount was paid prior to the thirteenth day of December, One thousand nine hundred and thirty-four—upon any ground to the effect, expressly or impliedly, that those goods had gone into use or consumption in Australia prior to that transaction, act or operation ; or
- (b) if the amount was paid either before or after that date—upon a prescribed ground as defined in this section, unless that person finally succeeds in an action, upon that ground, brought, in pursuance of this section, for the recovery of that amount:

Provided that where any person has paid any amount either as sales tax or for sales tax by reason of the sale of any goods which prior to that sale had gone into use or consumption in Australia and the Commissioner, upon the production of such evidence (other than, or additional to, the statement, whether by statutory declaration or otherwise, of that person) as the Commissioner considers sufficient, is satisfied—

- (a) that the amount was paid within one month after the close of the month in which the sale took place or within such further time as had been allowed by or under the authority of the Commissioner upon a request made by or on behalf of that person during that first mentioned month ; and
- (b) that the amount has not been passed on by that person to the purchaser of the goods in the total sum paid by the purchaser to the vendor in respect of the sale,

the Commissioner may refund to that person the amount so paid by him.

(2.) Where any amount has been or is paid as specified in the last preceding sub-section by any person, and that person has paid or pays the amount under protest, as provided in the next succeeding sub-section, upon a prescribed ground as defined in this section, that person may, within six months after the date on which the amount was paid, bring an action upon that ground against the Commonwealth, in any Commonwealth or State Court of competent jurisdiction, for the recovery of the amount so paid.

(3.) A person shall not be deemed to have paid any amount under protest in pursuance of this section unless, at the time of the payment, that person has lodged or lodges, at the office at which the payment is made, a statement in writing bearing the endorsement "Paid under protest", and stating the prescribed ground upon which the protest is made.

(4.) For the purposes of this section—

" goods " includes—

- (a) commodities ; and
- (b) goods or commodities which have gone into use or consumption in Australia ;

“prescribed ground” means—

(a) in relation to any amount paid by a person either as sales tax or for sales tax payable under the *Sales Tax Assessment Act* (No. 1) 1930^(a) or that Act as amended from time to time—any ground to the effect, expressly or impliedly, that the goods in respect of which the amount was paid were not, within the meaning of that Act, or of that Act as amended from time to time, goods manufactured in Australia by that person; and

(b) in relation to any amount paid by a person either as sales tax or for sales tax payable under any other Act relating to the imposition, assessment and collection of tax upon the sale value of goods manufactured in Australia—any ground to the effect, expressly or impliedly, that the goods in respect of which the amount was paid were not, within the meaning of that Act, goods manufactured in Australia;

“sale” includes a lease of goods under a hire purchase agreement.

Regulations.

13. The Governor-General may make Regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular—

(a) authorizing the Commissioner to obtain information and evidence;

(b) relating to the service of process in any proceedings for the recovery of tax;

(c) for defining the liabilities of the executors and administrators of deceased persons in relation to sales tax payable by those persons during their lifetime;

(d) for prescribing the times within which prosecutions for offences against this Act or the Regulations may be commenced;

(e) relating to the liability under this Act of companies and of liquidators of companies and for defining the liability of any persons who, for the purposes of any Sales Tax Assessment Act, are the public officers of companies;

(f) for defining the liabilities of agents and trustees under this Act;

(g) for defining, in relation to the liabilities under this Act of persons who are resident out of Australia, the liabilities of persons who have the receipt, control or disposal of money belonging to persons so resident;

(h) for prescribing matters relating to the giving of certificates under this Act and the acceptance of any such certificate as proof in legal proceedings;

(i) for prescribing penalties for any breach of the Regulations; and

(a) *Supra*, p. 2616.

- (j) for requiring persons who execute or perform, or who have executed or performed, any power or duty under this Act to observe secrecy.

14.—(1.) Nothing in this Act shall affect—

Saving.

(a) any judicial proceeding determined prior to the date upon which this Act receives the Royal Assent; or

(b) any judicial proceedings instituted and pending on or before the twenty-ninth day of November, One thousand nine hundred and thirty-four,

and any proceedings so instituted and pending may be heard and determined as if this Act had not been passed.

(2.) Nothing in this Act shall, except where otherwise expressly provided, take away the remedies, or alter the liabilities, provided for in any Sales Tax Assessment Act.

TAXATION OF LOANS ACT 1923.

No. 30 of 1923.

An Act relating to the Taxation of Interest derived from certain Loans.

[Assented to 1st September, 1923.]

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

1. This Act may be cited as the *Taxation of Loans Act 1923*.

Short title.

2. In this Act "loan" includes a conversion loan and a loan raised for the redemption or repayment of an existing loan.

Definition.

3. Notwithstanding anything contained in any Act or State Act, the interest on any loan raised in Australia after the thirty-first day of December One thousand nine hundred and twenty-three, by the Commonwealth or by a State, or by any authority constituted by or under any law of the Commonwealth or a State, shall be subject to taxation under any law of the Commonwealth relating to Income Tax, and, for the purpose of that taxation, shall be deemed to be part of the income of the respective persons or bodies to whom the interest is payable.

Liability of interest on Commonwealth and State loans to Commonwealth Income Tax.

4.—(1.) Notwithstanding anything contained in any Act, the interest on any loan raised in Australia, after the date of the commencement of this section, by the Commonwealth, or by any authority constituted by or under any law of the Commonwealth, shall be subject to taxation under the laws of the respective States relating to Income Tax :

Liability of interest on Commonwealth loans to income tax under State law.

Provided that the taxation imposed by any State in pursuance of this section shall be at a rate not exceeding that applicable, under the law of that State, to interest on any loan raised by it, and shall not apply to a greater extent than it would apply if the interest on the loan raised by the Commonwealth, or by any authority constituted by or under any law of the Commonwealth, had been interest on a loan raised by that State.

(2.) This section shall not commence until a date to be fixed by proclamation.^(a)

Taxation of
loans raised
in Australia
by Governments
outside the
Commonwealth.

5.—(1.) Subject to sub-section (2.) of this section, the interest accruing on loans raised in Australia, after the thirty-first day of December One thousand nine hundred and twenty-three, by the Government of any Country or Dominion outside the Commonwealth, or by any authority constituted by or under any law of any such Country or Dominion, shall be subject to taxation under any law of the Commonwealth relating to Income Tax in the same manner as if it were interest taxable in pursuance of section three of this Act, and were derived from a source within Australia.

(2.) Sub-section (1.) of this section shall not apply in relation to any interest unless either—

- (a) the interest is received directly or indirectly by a person resident in Australia ; or
- (b) the person to whom the interest is paid or credited is, apart from this section, a taxpayer within the meaning of the *Income Tax Assessment Act 1922–1923*.

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

WAR-TIME PROFITS TAX ACT 1917.

No. 34 of 1917.

An Act to impose a Tax upon Profits.

[Assented to 22nd September, 1917.]

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

Short title.

1. This Act may be cited as the *War-time Profits Tax Act 1917*.

Duration.

2. This Act shall cease to have effect on a date to be fixed by Proclamation.

^(a) No proclamation has yet been issued (1st April, 1936).

3. The *War-time Profits Tax Assessment Act* 1917 shall be incorporated and read as one with this Act.

4. War-time profits tax is imposed on the war-time profits liable to tax under the *War-time Profits Tax Assessment Act* 1917 arising from any business at the following rates, namely :—

- (a) on the war-time profits arising in the financial year ending at the thirtieth day of June One thousand nine hundred and sixteen—fifty per centum of those profits ;
- (b) on the war-time profits arising in each succeeding financial year—seventy-five per centum of those profits.

THE WAR-TIME PROFITS TAX ASSESSMENT ACT 1917-1918.^(a)

An Act relating to the Imposition Assessment and Collection of a Tax upon Profits.

[Assented to 22nd September, 1917.]^(b)

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

PART I.—INTRODUCTORY.

1. This Act may be cited as the *War-time Profits Tax Assessment Act* 1917-1918.^(a)

2. This Act shall apply to the profits of any business arising up to the thirtieth day of June One thousand nine hundred and nineteen.

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

- Part I.—Introductory.
- Part II.—Administration.
- Part III.—War-time Profits Tax.
- Part IV.—Computation of Profits.
- Part V.—Pre-war Standard.
- Part VI.—Capital.
- Part VII.—Returns and Assessments.
- Part VIII.—Objections and Appeals.
- Part IX.—Collection and Recovery of Tax.
- Part X.—Miscellaneous.

Short title.
Short title
amended.
No. 32, 1918.
s. 2.
Duration.
Amended by
No. 40 of 1919,
s. 2.
Parts.

(a) The *War-time Profits Tax Assessment Act* 1917-1918 comprises the *War-time Profits Tax Assessment Act* 1917 (No. 33 of 1917), as amended by the *War-time Profits Tax Assessment Act* 1918 (No. 40 of 1918). See Act No. 40, 1918, s. 1.

(b) This is the date of assent to the *War-time Profits Tax Assessment Act* 1917. The *War-time Profits Tax Assessment Act* 1918 was assented to on 25th December, 1918. Section 13 of the *War-time Profits Tax Assessment Act* 1918 reads as follows :—

"13.—(1.) The amendments made to the Principal Act by paragraphs (d) and (e) of section nine of this Act shall be deemed to have come into operation on the twenty-second day of September One thousand nine hundred and seventeen.
(2.) All amendments to the Principal Act made by this Act, other than the amendments referred to in sub-section (1.) of this section, shall, subject to this Act, apply to assessments made for the financial year commencing on the first day of July One thousand nine hundred and sixteen and all subsequent years."

Part I, ss. 4-5;
Part II, s. 6.
Definitions.
Cf. 1915,
No. 34, s. 3.
Amended by
No. 40, 1918,
s. 3.

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

"Agent" includes every person who in Australia, for or on behalf of any person out of Australia (in this section called "the principal"), carries on any business belonging to the principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act.

"Australia" includes the Territory of Papua.

"Business" includes any profession or trade and any transaction not in the course of a person's business for the sale and purchase of any commodity.^(a)

"Capital" means the capital of a business employed in Australia.

"The Commissioner" means the Commissioner administering this Act.

"Company" includes all bodies or associations corporate or unincorporate.

"Established business" means a business other than a new business.

"New business" means a business which, in the opinion of the Commissioner, was not commenced until on or after the fourth day of August One thousand nine hundred and twelve and was not reasonably established until on or after the fourth day of August One thousand nine hundred and fourteen.

"Partnership" includes beneficiaries under a will, settlement, or other deed of trust who are carrying on business jointly.

"Person" includes a company.

"Taxpayer" means any person chargeable with war-time profits tax.

"Trustee" in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a Court, or by operation of law, includes an executor or administrator, guardian, committee, receiver, or liquidator.

"Wasting asset" means mines (other than coal mines), quarries, timber rights, and any similar asset which, through gradual removal of the substance of the asset, becomes exhausted.

Added by
No. 40, 1918,
s. 3.

Added by
No. 40, 1918,
s. 3.

Act to extend to
Papua.

5. This Act shall extend to the Territory of Papua.

PART II.—ADMINISTRATION.

Commissioner.
Ib. s. 5.

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

(a) The extension of meaning given to the word "business" by s. 4 operates to the extent of attaching to a business carried on by a taxpayer the profits made by him on transactions of sale and purchase of a commodity which are outside the ordinary course of carrying on that business. Per Knox, C.J., *Hickman v. Federal Commissioner of Taxation*, (1922) 31 C.L.R. 232, at p. 241; 28 A.L.R. 433, at p. 436. The words do not make liable to taxation transactions for the sale and purchase of any commodity apart from a profession or trade carried on by a taxpayer, but include only the transactions which are carried on or carried out within or as part of the business, whether covered by the ordinary course or scope of the business or not. Per Starke J., 31 C.L.R., at p. 243; 28 A.L.R., at p. 437.

For an example of transactions held by the High Court to amount to the carrying on of a business, see *Coglin v. Federal Commissioner of Taxation* (1930) 47 C.L.R. 109; 6 A.L.J. 150.

(2.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to the Assistant Commissioner of Taxation or to a Deputy Commissioner of Taxation or other person all or any of his powers or functions under this Act (except this power of delegation), so that the delegated powers or functions may be exercised by the Assistant Commissioner or Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation.

Part II., s. 6;
Part III., s. 7.

Delegation
by the
Commissioner.

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

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

Report by the
Commissioner.

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

(6.) Every Officer executing any power or duty conferred or imposed on any officer under this Act or the regulations shall, before entering upon his duties or exercising any power under this Act, make, before a Justice of the Peace or a Commissioner for taking affidavits or a Commissioner for Declarations, a declaration in the form prescribed.

Officers to
observe secrecy.

(7.) Any officer who acts in the execution of his office before he has made the prescribed declaration, or who, after making the declaration, divulges any information relating to the affairs of a taxpayer except in the performance of his duty, shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

PART III.—WAR-TIME PROFITS TAX.

7.—(1.) There shall be levied and paid on all war-time profits from any business to which this Act applies^(a) arising after the thirtieth day of June One thousand nine hundred and fifteen a tax (hereinafter referred to as "war-time profits tax") at such rate as is declared by the Parliament.

War-time
profits tax.

(2.) The war-time profits arising in a financial year shall be calculated as follows :—

(a) by ascertaining the monthly average of the profit or loss arising in the accounting period ending in the financial year and separately the monthly average of the profit or loss arising in the accounting period beginning in the financial year ;

(b) by multiplying the respective monthly averages of profit or loss (as the case may be) by the number of months of the respective accounting periods falling within the financial year ;

(a) See footnote (a) to s. 4, on previous page.

Part III., s. 7.

(c) by adding together the amounts of the profit or deducting the amount of the loss from the amount of the profit (as the case may be) and deducting from the sum so obtained the pre-war standard of profits as defined for the purposes of this Act; and

(d) by deducting from the sum remaining in paragraph (c) hereof the deduction (if any) allowed by the next succeeding sub-section.

(3.) From the sum remaining under paragraph (c) of the last preceding sub-section—

(a) in the case of a business in which the pre-war standard of profits does not exceed Five hundred pounds, there shall be deducted the sum of Two hundred pounds;

(b) in all other cases, where the sum remaining under paragraph (c) of the last preceding sub-section—

(i) does not exceed Two hundred pounds, the total sum shall be deducted;

(ii) exceeds Two hundred pounds, there shall be deducted the sum of Two hundred pounds less—

(i) in the financial year ending on the thirtieth day of June One thousand nine hundred and sixteen, One pound for every Two pounds by which the excess exceeds Two hundred pounds:

(ii) in all succeeding financial years, One pound for every Four pounds by which the excess exceeds Two hundred pounds.

Accounting
period.

(4.) For the purposes of this Act the accounting period shall be taken to be the period of twelve months for which the accounts of the business have been made up for the purposes of the *Income Tax Assessment Act* 1915-1916, and where the accounts of any business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up, shall be taken to be such period not being less than six months or more than a year as the Commissioner determines ending on such a date as the Commissioner determines.^(a)

(5.) Where a business has not been in existence during the whole of the financial year or a business has changed ownership in a financial year this section shall have effect as if there were substituted for Two hundred pounds a proportionately reduced amount.

(a) Held, by Knox C.J. and Gavan Duffy J. (Isaacs J. dissenting), that s. 7 (4.) impliedly provides that, where the accounts of a business have not been made up for the purposes of income tax but have been made up as usual for the purposes of the business, "the accounting period" shall be the period for which the accounts of the business have been so made up. *Walker and Co. v. Federal Commissioner of Taxation*, (1923) 32 C.L.R. 401; 30 A.L.R. 64.

8.—(1.) The businesses to which this Act applies are all businesses (whether continuously carried on or not) of any description deriving profits from sources within Australia, excepting—

- (a) businesses carried on by a municipal corporation or other local governing body or by a public authority; or by a society registered under a Friendly Societies Act of the Commonwealth or a State or Territory and not carried on for pecuniary profit; or by or for the exclusive benefit of a religious, charitable, or public educational institution; or any company carrying on the business of life insurance so far as regards its life insurance business but not excluding so much of the profits of that business as is available for distribution to the shareholders; and
- (b) agriculture, fruitgrowing, the maintenance of dairy herds for the supply of dairy products, pig and poultry raising, and the business of co-operative companies engaged for the main part in the manufacture, preparation, or wholesale distribution of foodstuffs, the produce of Australia so far as regards the manufacture, preparation, or wholesale distribution of foodstuffs, the produce of Australia; and
- (c) offices or employments^(a); and
- (d) any profession^(b) the profits of which depend mainly on the personal qualifications of the person by whom it is carried on, and in which comparatively little or no capital expenditure is required^(c); and
- (e) businesses where the principal business consists of mining for gold; and
- (f) businesses commenced since the fourth day of August, One thousand nine hundred and fourteen which in the opinion of the Commissioner derive the whole of their profits from the recovery from waste manufactured products of any materials which are used for the production of munitions of war; and
- (g) businesses commenced since the fourth day of August One thousand nine hundred and fourteen for the purposes of mining for wolfram, molybdenite, tungsten, scheelite, or any other rare metal used in the manufacture of munitions of war, if the output of the mine is disposed of to the Imperial Government; and

Part III., s. 8.

Businesses to which tax applies.

Cf. 5 & 6 Geo. 5, c. 89, s. 39.

Exemptions.

Amended by No. 40, 1918, s. 4.

(a) Held, by the High Court, that the business of training racehorses for their various owners, separately and individually, is not a "profession", nor is it an "employment" within the meaning of s. 8 (1) (c). *Bradfield v. Federal Commissioner of Taxation*, (1924) 34 C.L.R. 1; 30 A.L.J.R. 69.

(b) As to what constitutes a "profession" within the meaning of this paragraph, see *Robbins Herbal Institute v. Federal Commissioner of Taxation*, (1923) 32 C.L.R. 457; 30 A.L.J.R. 118.

(c) Held, by the High Court, that the words "comparatively little or no capital expenditure" do not refer to the capital, such as business premises, actually being used, but refer generally to capital expenditure, such as for stock, required for a profession of the character referred to in s. 8 (1) (d). *Robbins Herbal Institute v. Federal Commissioner of Taxation*, *supra*. Held, by the High Court, that, in order to bring his business within the exception of s. 8 (1) (d), it is not sufficient for the taxpayer to show that his profits depend mainly on his personal qualifications and that comparatively little or no capital is required, but he must also show that his occupation can properly be called a "profession". *Bradfield v. Federal Commissioner of Taxation*, *supra*.

Part III., s. 8.

Added by
No. 40,
1918, s. 4 (a).

(h) shipbuilding so far as regards contracts made with the Commonwealth Government since the fourth day of August One thousand nine hundred and fourteen and before the declaration of peace; and

Added by
No. 40, 1918,
s. 4. (a).

(i) such mining businesses or such classes of mining businesses (not including any coal mining business) as are specified by proclamation, as from the date, to the extent and on the conditions, set forth in the proclamation. The proclamation shall be laid before both Houses of the Parliament within seven days of the making thereof, or, if the Parliament is not then sitting, within seven days after the next meeting of the Parliament, but if either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation, the proclamation shall cease to have effect as from the making thereof; and

Added by
No. 40, 1918,
s. 4 (b).

(j) any agency (in which little or no capital expenditure is required) to the extent to which the Commissioner is satisfied that the profits arise from commissions in respect of purchases sales leases loans insurances or collections of money made on behalf of any other person, including commercial travellers and agents whose remuneration consists wholly of a fixed and definite sum not dependent on the amount of the business done or any other contingency; and

Added by
No. 40, 1918,
s. 4 (c).

(k) businesses deriving profits from the raising and sale of stud live-stock bred by the owner of the business to the extent of the profits so derived where the profits so derived do not exceed Two thousand pounds.

Added by
No. 40, 1918,
s. 4 (d).

(1A.) For the purposes of this section "Co-operative Company" means a company in which not less than two-thirds of the shares are held by members who are *bona fide* primary producers or suppliers to the Company.

(2.) With respect to a business which, under this section, is exempt from the provisions of this Act, the exemption shall be limited to that business and shall not extend to any business which supplies to or purchases from that business any commodities.

Amended by
No. 40, 1918,
s. 4 (e) (f).

(3.) When any resident of Australia, who is on active service outside Australia with the naval or military forces of any of the Allied Powers in connexion with the present war, is the owner of, or is a partner in a business to which this Act applies or is a shareholder of a company the number of shareholders of which does not exceed twenty, and which carries on a business to which this Act applies, and who before he went on active service devoted the whole or the greater part of his time in connexion with the management of the business, or, in the case of a company as aforesaid, was wholly

Part III., ss.
8-10.

employed in the service of the company, and whose military or naval duties require him to be in any part of the field of operations in connexion with the war where there is danger to life as a result of the operations of enemy forces, such person shall—

- (a) when the sole owner of a business be exempt from liability to pay the war-time profits tax;
- (b) when a partner in a business be entitled to a refund from the Commissioner of the part of the tax payable by the partnership which bears the same proportion to the tax payable by the partnership as his interest in the profits of the partnership bears to the total profits; and
- (c) when a shareholder in a company as aforesaid be entitled to a refund of the part of the tax payable by the company which bears the same proportion to the tax payable by the company as the dividends received by him bear to the total dividends distributed by the company.

Added by
No. 40, 1918.
s. 4 (g).

9. In any case where war-time profits are chargeable with war-time profits tax under this Act, and are also chargeable in Great Britain with excess-profits duty under any Act of the Imperial Parliament imposing an excess-profits duty, the Treasurer may agree with the Chancellor of the Imperial Exchequer, or other authorized person, for the apportionment between the Imperial and the Commonwealth Governments towards the supplies necessary for the services of His Majesty of the war-time profits tax derived pursuant to this Act or the excess-profits duty derived pursuant to the Imperial Act (whichever provides the greater amount), and may further agree that in any such case the tax or duty (as the case may be) chargeable pursuant to the other of these Acts shall not be collected.

Treasurer may agree for apportionment between Imperial and Commonwealth Governments of tax.

10.—(1.) The profits arising from any business^(a) shall be separately determined for the purposes of this Act, but shall be so determined on the same principles as the profits and gains of the business are or would be determined for the purpose of Commonwealth income tax, subject to the modifications set out in Part IV. and to any other provisions of this Act:^(b)

Determination of profits and pre-war standard.
Cf. 5 & 6 Geo. 5, c. 89, s. 40 (1).

Provided that where a person carries on more businesses than one, and this Act applies to some or all of such businesses, he may deduct proportionately from the profits of each business on

(a) Held, by the High Court, that the expression "profits arising from any business" as used in the Act means profits arising from the carrying on or carrying out of a business, or, in other words the trading profits of a business. *Dickman v. Federal Commissioner of Taxation*, (1922) 31 C.L.R. 232; 28 A.L.R. 433. In this case a person who carried on the pastoral business of breeding, buying, and selling cattle, sold substantially the whole of the assets of his business, consisting of his pastoral property with all improvements and cattle, specified portions of the purchase price being allocated to the land and to the cattle respectively. Held, that no portion of the purchase price paid for the cattle was profit liable to war-time profits tax under the statute.

(b) Held, by the High Court, that in determining, for the purposes of this Act, the profits of a business carried on by a company, neither s. 10 (1) nor s. 15 (2) of this Act entitled that company to deduct from the profits of the business five per centum of the total amount paid in the year in which the profits were derived in respect of calls on the shares of another company carrying on business in Australia, although the acquisition of those shares was within the objects for which the former company was established. *Australian Knitting Mills Ltd. (In liquidation) v. Federal Commissioner of Taxation*, (1923) 31 C.L.R. 511; 29 A.L.R. 112.

Part III.,
ss. 10-11.

which, apart from this proviso, war-time profits tax would be payable by him—

(a) the loss (if any) on any of such businesses to which this Act applies ; and

(b) the excess (if any) of the losses over the profits of all of such businesses (if any) to which this Act does not apply,

if either of these losses have been recouped out of the profits of a business to which this Act applies :

Provided further that the profits or losses in any business to which this Act does not apply shall be calculated in the same manner as the profits or losses in any business to which this Act applies.

(2.) The war-time profits tax payable on the profits derived by a business carried on by partners shall be payable by the partnership, but, for the purposes of this section, the tax shall be deemed to have been paid by each partner in proportion to his interest in the profits.

(3.) A person who carries on more than one business in partnership shall be deemed to be carrying on separate businesses for the purposes of this section, and shall, if the loss on any business carried on by him either alone or in partnership is recouped by him out of the profits of any partnership business which pays tax, be entitled to a refund from his share of the tax paid by the partnership business of the difference between his share of that tax and the amount that would have been payable by him in respect of his share of the profits if the loss made by him had been deducted from his share of the profits of the partnership business paying tax in calculating the amount of tax payable by that partnership.

Modifications.

Cf. 5 & 6
Geo. 5, c. 89,
s. 40 (3).

11.—(1.) Where it appears to the Commissioner, on the application of a taxpayer in any particular case, that any provisions of Parts IV., V., and VI. of this Act should be modified in his case, owing to—

- (a) a change in the constitution of a partnership ; or
- (b) the postponement or suspension, as a consequence of the present war, of renewals or repairs ; or
- (c) exceptional depreciation or obsolescence of assets employed in the business due to the war ; or
- (d) the necessity in connexion with the war of providing plant which will not be wanted for the purposes of the business after the war ; or
- (e) liabilities incurred in a business at the instance of the Commonwealth Government in pursuance of the war-time policy of the Government ; or

- (f) the fact that the business has only commenced to be remunerative since the fourth day of August One thousand nine hundred and fourteen ;

Part III.,
ss. 11-12.

Amended by
No. 40, 1918,
s. 5 (a).

- (g) any other special circumstances specified in the regulations,

the Commissioner shall have power—

- (i) to allow as deductions such sums (which apart from this section would not be deductible) as he thinks necessary in order to meet the particular case ;
- (ii) to vary the pre-war standard of profits to such an extent as he thinks necessary in order to meet the particular case ; and
- (iii) to calculate the amount of the capital employed in the business in such manner as he thinks necessary in order to meet the particular case.

* * * * *

Proviso omitted
by No. 40, 1918,
s. 5 (b).

(1A.) In the case of a new business, carrying on the same class of business as established businesses, the Commissioner may, on the application of the owner of the business, allow as the pre-war standard of profits of the new business such percentage on the average amount of capital employed during the accounting period as the Commissioner determines by reference to the pre-war standard of profits of the established businesses (carrying on the same class of business), which are taxable under this Act.

Added by
No. 40, 1918,
s. 5 (c).

(1B.) In the case of a new business, not carrying on the same class of business as established businesses, the Commissioner may, on the application of the taxpayer, allow as the pre-war standard of profits such sum as the Commissioner thinks necessary in order to meet the particular case.

Added by
No. 40, 1918,
s. 5 (c).

(2.) A taxpayer who is dissatisfied with the decision of the Commissioner under this section may require the Commissioner to refer his case to the Board of Referees constituted under this Act and the Commissioner shall refer the case accordingly.

12.—(1.) Where during the accounting period increased capital has been employed in a business, a deduction shall be made from the profits of the accounting period of the greater of the following sums :—

Special
provisions as
to pre-war
standard.
Increase of
capital.
Cf. 5 & 6 Geo. 5
c. 89, s. 41.

- (a) the statutory percentage per annum on the amount by which the capital has been increased ; or
- (b) the percentage per annum (on the amount by which the capital has been increased) of the profits standard on the average capital and borrowed money (if any) used

Part III.,
s. 12.

in the pre-war trade years by reference to which the profits standard has been arrived at :^(a)

Added by No. 40
1918, s. 6 (a).

Provided that paragraph (b) of this sub-section shall not apply to assessments made for the financial year beginning on the first day of July One thousand nine hundred and eighteen and any subsequent year.

(2.) The deduction specified in the last preceding sub-section shall be proportionate to the part of the accounting period during which the additional capital has been employed.

Decrease of
capital.

(3.) Where during the accounting period decreased capital has been employed in a business owing to withdrawal of capital, an addition shall be made to the profits of the accounting period of the greater of the following sums :—

(a) the statutory percentage per annum on the amount by which the capital has been decreased ; or

(b) the percentage per annum (on the amount by which the capital has been decreased) of the profits standard on the average capital and borrowed money (if any) used in the pre-war trade years by reference to which the profits standard has been arrived at :

Provided that where the capital has been decreased during the accounting period through compulsory dispossession, the profits of the accounting period shall not be increased as provided by this section :

Added by
No. 40, 1918,
s. 6 (b).

Provided further that paragraph (b) of this sub-section shall not apply to assessments made for the financial year beginning on the first day of July One thousand nine hundred and eighteen, and any subsequent year.

(4.) The addition specified in the last preceding sub-section shall be proportionate to the part of the accounting period during which the capital was reduced.

Where pre-war
standard is a
profits standard.

(5.) For the purposes of this section, capital shall be taken to be increased or decreased, as the case may be—

(a) where the pre-war standard of profits is a profits standard—
if the capital employed in the business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and

(b) where the pre-war standard of profits is a percentage standard—
if the capital exceeds or is less than the capital on which the percentage standard has been calculated.^(a)

Capital
employed for
first time.

(6.) Where any capital employed in a business, which was so employed for the first time within three years before the

(a) Held, by Knox C.J., Isaacs, Gavan Duffy and Starke J.J., that, notwithstanding the provisions of s. 12 (5), the provisions of s. 12 (1) (b) apply to cases where owing to the recent commencement of the business there has not been one pre-war trade year. *Jones and Stearns v. Federal Commissioner of Taxation* (No. 1), (1928) 41 C.L.R. 83 ; 34 A.L.R. 142 ; 2 A.L.J. 36. Held, by Isaacs J., that the phrase "pre-war standard of profits" was not identical with the phrase "profits standard" used in the Act, and that the provision in s. 16 (3) that the profits standard "shall not in any case be less than the sum of five hundred pounds" was not applicable where it had been decided by the High Court that the pre-war standard of profits of a business was £372, and, consequently, that the sum of £372 was the profits standard to be applied when making the deduction from the said profits required by s. 12 (1) (b). *Jones and Stearns v. Federal Commissioner of Taxation* (No. 2), (1928) 41 C.L.R. 99.