UNION OF SOUTH AFRICA

SECOND AND FINAL REPORT

OF THE

COMMITTEE OF ENQUIRY
INTO THE
INCOME TAX ACT

PUBLISHED BY AUTHORITY

SECOND AND FINAL REPORT OF THE COMMITTEE OF ENQUIRY INTO THE INCOME TAX ACT (U.G. No. 63—1952).

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SECOND AND FINAL REPORT
of the Committee of Enquiry into the Income Tax Act.

THE HONOURABLE,

THE MINISTER OF FINANCE.

PRELIMINARY.

1. The Committee of Enquiry into the Income Tax Act appointed by you under Government Notice No. 351, dated 25th February, 1949, has pleasure in presenting its Second and Final Report for your consideration.

2. In our First Report we dealt particularly with those subjects upon which the need for amending legislation appeared to be more pressing. This Report deals with the remaining subjects covered by our terms of reference.

3. Although no public sittings have been held since the publication of our First Report, we have met regularly to deal with the matters covered by this Report.

CHAPTER 1.

DATE OF ACCOUNTS (ACCOUNTING PERIOD).

THE PRESENT LAW.

1. Section 55 of the Income Tax Act No. 31 of 1941 (as amended) prescribes the statutory rules relating to the rendering of returns of income by all persons liable for taxation under the provisions of that Act and, in sub-section (13), provides that "the return of income to be made by any person in respect of any year of assessment . . . shall be a full and true return for the whole period of twelve months ending upon the last day of the year of assessment under charge . . ."

2. As the "year of assessment" ends upon the 30th June, taxpayers are required each year to furnish a return of their income to that date. Cases arise, however, where it is inconvenient for taxpayers to declare their incomes to the 30th June, and to meet such cases the proviso to section 55 (13) was introduced into the Statute. This proviso authorises the Commissioner to accept returns made up to some other date agreed to by him from taxpayers who have established to his satisfaction that they cannot conveniently return their income for the twelve months ended upon the 30th June. Such returns are deemed for all purposes of the Act to be returns for the period covered by the year of assessment under charge, and taxpayers who render their returns on this basis may not render them to a date other than the agreed date in subsequent years without the consent of the Commissioner.

3. A not inconsiderable number of taxpayers—particularly limited liability companies—have been granted authority under the proviso to section 55 (13) referred to above to submit their returns of income to a date other than the 30th June.

4. Under the system presently in force it is the practice of the Commissioner to effect certain adjustments in respect of the initial and final assessments of those taxpayers whose returns are made to a date other than the 30th June. The details of these adjustments may vary between individual cases, according to whether the returns are prepared to a date prior or subsequent to the 30th June, but the purpose in each case is the same, namely, to determine an estimate of the taxable income or assessed loss produced as a result of the trading carried on by the taxpayer during that portion years during which the taxpayer has carried on trade for the entire period of the tax year, the taxable income disclosed by the accounts covering a period of twelve months drawn to a date other than the 30th June is deemed to be the taxable income for the year of assessment ended upon the 30th June each year.

SUBMISSIONS TO THE COMMITTEE.

5. The submissions which were made to us were generally aimed at a more liberal adoption of year-end dates other than 30th June for accounts reflecting the results of trading activities. While we agree that this facility should be made more readily available to taxpayers than it is at present, we are of the opinion, for reasons which will be explained, that it should not be made applicable to a taxpayer's entire return, but should be confined to the trading results of particular businesses the income from which can more conveniently be returned to a date other than 30th June. Moreover, we consider that this is a matter over which the Commissioner should retain control and in respect of which he should be vested with discretionary powers.

DISADVANTAGES OF THE PRESENT ARRANGEMENTS.

6. The present arrangement under which returns of income are accepted under the proviso to section 55 (13) of the 1941 Act has operated for many years, and has served to meet the difficulties of many taxpayers who cannot conveniently make returns of their incomes from business sources to the 30th June, and have been granted permission by the Commissioner to render returns to a date other than 30th June. The initial and final adjustments, which are an essential part of this arrangement, as we have explained in paragraph 4, result in the taxpayer being assessed upon estimated amounts, and we consider that this is an unsatisfactory feature of the system. As a simple illustration of the inequities and anomalies which are inherent in the present arrangement we would instance the example of the trader who, under the proviso to section 55 (13) of the 1941 Act, has been permitted to close the accounts of his business on a date other than the 30th June. Where in the initial stages the profits of the business, as frequently happens, are comparatively small, the adjustment which it is the practice of the Commissioner to make at this stage will be an estimated proportion of a small actual

earning comparatively large profits, so that the final adjustment to be made by the Commissioner in such a case would be an estimated proportion of a large actual profit. Conversely, the amount of the final adjustment may in particular cases be less than that of the initial adjustment. Clearly, the two adjustments will seldom, if ever, be equal which, in all equity, they should be. This position is aggravated by the operation of the system of progressive rates of tax, which we have recommended in our First Report should be retained, and by the fact that rates of taxation have an upward tendency. A further unsatisfactory feature of the present arrangement is that it permits of the rendering of the taxpayer's entire return of income to a date other than 30th June, whereas all that is really necessary is to grant facilities for the results of trading in respect of any particular business of the taxpayer, which can more conveniently be returned to a date other than 30th June, to be returned to such other date. For these reasons we consider that the present system should be discontinued.

Proposed new Arrangements.

7. Although we consider that the present arrangements for the acceptance of returns of income to a date other than the 30th June should be discontinued, we are of the opinion that the principle underlying the proviso to section 55 (13) of the 1941 Act is sound and equitable, and that that proviso should be retained in the Act in a modified form, with which matter we shall deal later in this Chapter. We are satisfied that the Commissioner's consent under the proviso to section 55 (13) of the 1941 Act is generally sought for good reasons, and we have, therefore, endeavoured to devise an alternative method of granting this concession which will retain the merits of the present system but from which the principal anomalies will be eliminated.

8. The system which in our view should be adopted is one which will permit all taxpayers who—

(1) commence business operations in the future; or

(2) at present make returns of their incomes from business operations to the 30th June,

and who satisfy the Commissioner that they can more conveniently return their incomes from such sources to a date other than 30th June, to close their accounts on such other date. The system should require no adjustments in respect of the assessments for either the trading period in which the financial year-end date selected by the taxpayer first becomes effective or the final trading period. We consider that such facilities should be granted only in respect of the trading results of particular businesses and not in respect of the taxpayer's entire return of income, which should reflect his income from all other sources to the 30th June, and we feel that the facility of so selecting financial year-end dates should continue to be granted to taxpayers at the discretion of the Commissioner, but that the Commissioner should not be restrictive in granting the concession.

9. Under the scheme which we contemplate, the taxpayer who submits, in support of his return of income, accounts drawn to a date falling within the period of twelve months from the 1st December of one year to the 30th November of the next will be taxed on the income of the business, disclosed by the accounts of the business, at the rates applicable to and as though it formed income of the year of assessment ended upon the 30th June falling within that period. We see no reason why the principles outlined above should not be applied also in cases where the trading operations result in a loss.

10. Under present practice the income disclosed in accounts which are drawn to a date falling within the period 1st July to 30th November is generally taxed ment ended upon the preceding 30th June, so that the adoption of the system proposed by us would involve no change in this respect in such cases.

11. It may perhaps be suggested that, having regard to the time normally required for the preparation of accounts, the Commissioner may be unable, before the 31st March, to raise an assessment upon, and collect the tax payable by, a taxpayer whose accounts are drawn to a date as late as the 30th November and whose income is subjected to tax in the manner outlined in paragraph 9 above. This may be conceded, but we are of the opinion that even if the Commissioner were unable so to collect the taxes payable by such a taxpayer before the end of the Fiscal year, the delay in such a case, which would not normally extend beyond April or May, would be far less serious than it would be if the income shown in accounts closing on the 30th November were subjected to tax as though it formed income of the year ended upon the succeeding 30th June. In the latter event the assessment and collection of the tax upon income disclosed by an account drawn to 30th November would be even further deferred, if treated as income of the year of assessment ending on the succeeding 30th June, since it would then not be capable of assessment and collection before about September or October of the year following that in which the taxpayer's financial year-end occurred.

12. Once having selected a financial year with a closing date other than the 30th June in respect of his business, the taxpayer should not be permitted to vary such financial year without the consent of the Commissioner, and, in order to prevent abuse, we propose that in respect of any trading periods not covering twelve months, namely, those in which the financial year-end date selected by the taxpayer first becomes effective and the final trading period, the Commissioner should be authorised to refuse to accept accounts covering a period which is in excess of fifteen months. As far as accounts for all other trading periods are concerned, it should be stipulated that, unless the Commissioner otherwise agrees, the accounts to be drawn should cover a full period of twelve months ending upon the selected date annually.

13. Where the accounts of the business cover a period of trading which is less than twelve months and which is terminated by the death of a taxpayer or by other circumstances, the income reflected therein should be subjected to tax as income of and at the rates applicable to the year of assessment into which the income of the financial year of which it forms a part would have fallen, had the trading operations not been terminated but continued to the end of the financial year. Thus, in the case of a taxpayer who has selected a financial year closing on the 31st March, and who dies or terminates his business on the 31st May, 1952, the income from trading operations for the period ending 31st March, 1952, would be subjected to tax in respect of the year of assessment ended upon the 30th June, 1952, while the income for the period 1st April, 1952, to 31st May, 1952, would be subjected to tax in respect of the year of assessment ended upon the 30th June, 1953. We consider that this course would be more equitable than that of adding the income for the broken period of trading to that of the previous year of assessment— a course which would otherwise result from the application of the principle explained in paragraph 9 of this Chapter—the effect of which might be to inflate unduly the taxpayer's taxable income and rate of tax.

14. It is necessary to clarify the position regarding the allowance of concessional deductions in respect of the assessment of income derived from a business the accounts of which are drawn to a date other than 30th June, in cases in which the taxpayer dies during the course of the year of assessment. We consider that the concessional deductions to be allowed in such circumstances should be calculated with reference to

assessment in respect of which an assessment is made upon him, and not with reference to the period he was alive during any financial year of the business the accounts of which are drawn to a date other than 30th June. Thus, in the example set out in the previous paragraph, where the taxpayer died on 31st May, 1952, no concessional deductions would be allowed in the assessment for the year of assessment ended 30th June, 1953, to be raised in respect of the income from trading operations for the period 1st April, 1952, to 31st May, 1952, since the taxpayer concerned would not have been alive during any portion of the year of assessment ended upon the 30th June, 1953.

15. Concerning a taxpayer who at present renders returns of income to a date other than 30th June under the proviso to section 55 (13), the position is that the initial adjustment referred to in paragraph 4 above will have been made by the Commissioner, and it would perhaps not be necessary to effect immediately any change as far as such a taxpayer is concerned, even if the scheme suggested by us were adopted. The final adjustment which will be necessary upon the termination of the business in such a case could remain to be made when the business terminates. However, it may be advantageous and may avoid confusion in the future if the appropriate adjustment were made in the assessment in respect of the first year in which the scheme which we have suggested, if accepted, is adopted. Such adjustment should, in our view, be made, as far as is practicable, on such a basis as will ensure that the aggregate of the taxable income assessed to tax in the various tax years during which the business has been carried on is equal to the aggregate of the taxable income for the entire period of trading based upon the trading results reflected by the accounts of the business. It is also our view that the Commissioner should be given statutory authority for the making of such adjustment.

Disadvantages of the Proposed System.

16. One of the principles underlying the Statute should be that all taxpayers should pay tax at the same rate in respect of income earned over the same period. Some violation of this principle—which is an important feature of the principle of equality of taxation—would occur, since a taxpayer whose accounts close on a date other than the 30th June would pay tax in respect of the whole of the income reflected in such accounts at the rate of tax applicable to the current year of assessment, while the rate applicable to a portion of such income should be that applicable to either the previous or the following year of assessment. A further disadvantage will arise from the fact that in such cases there will be a lack of correlation between returns of general information, which are rendered to the 30th June, and individual returns of income, which will reflect income to a date other than 30th June. We consider, however, that the latter disadvantage will be minimised by the requirement that taxpayers should make returns of their incomes to the 30th June, but that if income from a particular trading activity can be more conveniently returned to a date other than the 30th June, the taxpayer should be given the right to apply for the Commissioner's permission to render the return of such income from such trading activity only, to a date selected by the taxpayer.

Advantages of the Proposed System.

17. On the other hand, the proposed system contains a number of advantages which, in our opinion, outweigh its disadvantages. These are briefly as follows:—

(1) The system will meet the difficulties of taxpayers

(2) The need for adjustments in respect of the assessments for the trading period in which the financial year-end date selected by the taxpayer first becomes effective and the final trading period will be eliminated.

(3) The number of applications for extension of time, and therefore the amount of clerical work and the handling of files at present required in the offices of the Inland Revenue Department will be reduced.

(4) The difficulties of the accounting profession in preparing accounts for the majority of their clients to the same date each year will be eased.

(5) The work of the Department will in a measure be staggered.

Recommendations.

18. To sum up the position, **we recommend**—

(1) that all taxpayers be required to make returns of their incomes from all sources to the 30th June, save in the cases referred to under (2) and (3) below;

(2) that, where it is established to the satisfaction of the Commissioner that the income of a person from a particular business can more conveniently be returned to a date other than 30th June, and that revenue will not be materially prejudiced by the acceptance of accounts drawn to such other date, the Commissioner shall accept returns made up to a date other than 30th June agreed to by him;

(3) that, subject to the approval of the Commissioner, taxpayers who at present make returns of their incomes from business operations to the 30th June be permitted, if they so desire, to make such returns, in respect of such business operations only, for financial years with a closing date other than 30th June annually;

(4) that the system at present operating under the proviso to section 55 (13) of the 1941 Act be discontinued in respect of the taxpayers referred to under (2) and (3) above, and that in such cases no adjustments be made in the assessments for either the trading period during which the financial year-end date selected by the taxpayer first becomes effective or the final trading period;

(5) that income which is reflected by accounts for a completed financial year ending upon a date other than 30th June within the period of twelve months from the 1st December of one year to the 30th November of the next, or by accounts for part of a financial year which, if completed, would end upon a date within that period, be taxed at the rates applicable to and as though it formed income of the year of assessment ended upon the 30th June falling within that period;

(6) that in cases in which the taxpayer dies during the course of the year of assessment the concessional deductions to be allowed should be calculated with reference to the period the taxpayer was alive during any year of assessment in respect of which an assessment is made upon him, and not with reference to the period he was alive during any financial year of the business the accounts of which are drawn to a date other than 30th June;

(7) that in respect of the trading period during which the financial year-end date selected by the taxpayer first becomes effective and the final trading period the Commissioner be authorised to refuse to accept any accounts which cover a period which is in excess of fifteen months, and that in

wise agrees, the accounts to be drawn should cover a full period of twelve months ending upon the selected date annually;

(8) that where, in the initial year, an adjustment has been made on a basis of estimate, to the income of a taxpayer who at present renders returns of income to a date other than 30th June under the proviso to section 55 (13) of the 1941 Act, a corresponding adjustment be made, in the year of assessment in respect of which the recommendations contained in this Chapter, if accepted, first become operative, as far as is practicable on such a basis as will ensure that the aggregate of the taxable income assessed to tax in the various tax years during which the business has been carried on is equal to the aggregate of the taxable income for the entire period of trading based upon the trading results reflected by the accounts of the business, and that the Commissioner for Inland Revenue be given statutory authority for the making of such an adjustment.

CHAPTER 2.

THE SYSTEM OF SELF-ASSESSMENT.

PRELIMINARY.

1. During World War II a very heavy burden devolved upon the Inland Revenue Department. The Department was called upon to assess and collect taxes in addition to those normally payable by taxpayers in times of peace, notably excess profits duty, trade profits special levy, and personal and savings fund levy, while the additional staff required for this considerable task was not available. It was, therefore, not unexpected that the work of the Department would fall into arrear, and since the war strenuous efforts have been made to recover the ground so lost, both by means of increases in the staff of the Department and, in many cases, the working of overtime. Although the "back-log" of work has been reduced in this manner, it is inevitable that a fairly large number of taxpayers find themselves in the embarrassing position of not having received their assessments for two or more years. We appreciate the hardships which may be suffered by such taxpayers, many of whom may experience the greatest difficulty in meeting their income tax liabilities for several years in one payment, and we have, therefore, regarded it as incumbent upon us to endeavour to devise a system under which the present difficulties of both taxpayers and the Department in this respect may be avoided or at least reduced to a minimum in the future.

THE PRESENT LAW AND PRACTICE.

2. Under the system presently in force, taxpayers are called upon during August of each year to make returns of their incomes within thirty days. These returns are examined during the succeeding months by the staff of the Department, and an assessment is required to be raised in respect of each taxpayer. As has already been explained, owing to the circumstances occasioned by the war, it was found to be impossible in many cases for the Department to keep abreast of its work, with the result that many taxpayers are at present awaiting, or having to meet in one payment, assessments for several years.

CONSIDERATION OF ALTERNATIVE NEW SCHEMES.

3. We have examined the "self-assessment" systems which operate in the United States of America and Canada. Under these systems taxpayers are required to complete their returns of income, calculate the amount of the taxes payable upon the income reflected therein by reference to tax tables which are incorporated "self-assessments" are usually verified by the taxation authorities, and adjustments are then effected, where necessary, for over or under payments.

4. The systems of compulsory self-assessment, which we have described briefly above, were probably necessitated in the countries concerned primarily by the huge number of taxpayers therein, but they have a number of attractive features, and we have considered the practicability of the introduction of a similar system in the Union.

5. We have no doubt that the introduction of a system of compulsory self-assessment in the Union would have many advantages. The taxpayer would pay his taxes at the same time each year shortly after the conclusion of the year during which his income was earned, and the necessity for the taxpayer to hold funds available for an uncertain period each year pending the arrival of a notice of assessment would disappear. The bulk of the tax would be received before the end of the financial year, thereby assisting the Treasury, and the work of the Department of Inland Revenue would be made easier and would be far less likely to fall seriously into arrear in abnormal circumstances. In our opinion, therefore, there is much to be gained by the introduction of self-assessment as a part of the income tax system of the Union.

6. We do not, however, favour the introduction of provisions to bring such a system into full force and effect on a compulsory basis, in relation to all classes of taxpayers simultaneously. Apart from the embarassment which might be caused to some of the taxpaying community through advancing the date for payment of the taxes to a date considerably earlier than that to which they have become accustomed, and other less readily foreseeable implications of a sudden and complete change of system of tax collection, such a move would be likely to have serious repercussions on the banking system and thereby on the general economy of the Union. Under the present taxation system the withdrawal of funds from the commercial banking system for the payment of taxes is spread throughout the year as assessments are issued. The introduction of a system whereby the bulk of the taxes became payable simultaneously, or within a very restricted period, would undoubtedly impose a severe strain on the banking system which might well have a disruptive effect on the national economy.

7. We have, therefore, come to the conclusion, that to meet these difficulties, it is desirable that the system of self-assessment should at this stage be introduced on a restricted basis so that all assessments are not immediately made payable simultaneously or within a relatively short period. To achieve this, the system of self-assessment could in the first instance be confined to taxpayers other than companies, leaving companies, which are liable for a large proportion of the total taxation payments, to be dealt with as at present. In addition the system, as extended to individuals, could initially be put upon a voluntary basis, which would mean that only a proportion, representing the amounts due by those who elected to avail themselves of the facility of paying on a self-assessment basis, would become payable at the time returns were rendered.

8. The present method of progression in the rates of tax by fractions of a penny, and the multiplicity of taxes presently imposed, would be an obstacle to the introduction of a system of compulsory self-assessment as far as individual taxpayers are concerned. In order that taxpayers may be in a position to assess themselves it will be necessary to incorporate in their income tax return forms tax tables drawn up on a basis which will enable calculations of tax to be readily made. For its success any scheme of self-assessment would, therefore, require the introduction of a bracket system of rates of tax, similar to that recommended in Chapter 5 of our First Report, and a tax structure and a system of concessional deductions along the lines

9. All self-assessments would require to be verified by the staff of the Inland Revenue Department, and such adjustments for over or under assessments would be made by means of the machinery presently in existence.

10. We believe that, when the advantages of clearing their tax liabilities as early as possible are realised, many individual taxpayers would avail themselves of the facility of voluntarily making self-assessment and tendering payment of their taxes, but it may be found practicable, in order that the scheme may be made more attractive, to give those taxpayers who avail themselves of this facility a discount of 2½ per cent, subject to a maximum of, say, £100, if their voluntary payments are made within a specified period. It is our opinion that the advantages which the State would derive from receiving earlier payment of a substantial proportion of the annual taxes, and from having the taxpaying community brought and kept up to date, would amply repay the Treasury for the sacrifice of revenue involved in the granting of the discount suggested.

11. As far as the period during which taxpayers would qualify for the discount is concerned, we consider that it would be reasonable to specify a period of three months from the 30th June and, in the case of taxpayers who, under the proviso to section 55 (13) of the present Act, close their annual accounts on a date later than 30th June, a period of three months from such later date. Such a period would accord roughly with present practice, under which the majority of taxpayers, whose financial year corresponds with the year of assessment, receive early in August each year income tax return forms for completion within thirty days, or about 2½ months after the 30th June.

12. In addition to the discount of 2½ per cent, subject to a maximum of £100, which we visualise, taxpayers would continue to be able to avail themselves of the benefits to be derived from the purchase of Tax Redemption Certificates, the interest rate of which has recently been raised, so that taxpayers, by placing their income tax affairs on a sound basis, would be in a position to enjoy a material reduction in their tax liabilities. It should also be possible to give the discount to taxpayers who, because of their particular circumstances, require extensions of time for the rendering of their income tax returns, provided such taxpayers tender payment of the estimated amount of their tax within the specified period. Taxpayers would, therefore, not only be able to settle their tax liabilities at the earliest possible opportunity, but would, in fact, be encouraged to do so by the benefits which would accrue to them from such a course, and the possibility of the accumulation of tax liabilities for a number of years would be materially diminished.

13. It is our view that under such a system of voluntary self-assessment a substantial amount of tax would reach the Treasury earlier than it would have done under the present arrangements. We do not anticipate, however, that the amount involved would be sufficiently large to embarrass unduly the banking system of the Union.

14. We have already expressed the view that the scheme should not at this stage be extended to companies. Apart from the features to which we have already drawn attention making it undesirable for the system to be extended at this stage to companies, we consider that, as a rule, companies are in a better position to finance their income tax payments than wage earners, who constitute the great majority of taxpayers.

15. In the light of the experience gained as the result of the introduction of a restricted system of self-assessment along the lines contemplated by us, further consideration could be given to the practicability of

Recommendations of the Committee.

16. To give effect to the views expressed in this Chapter, **we recommend—**

(1) that individual taxpayers be afforded the facility of voluntarily assessing themselves, and paying the tax so computed by them when rendering their returns each year;

(2) that a discount of 2½ per cent, subject to a maximum of, say, £100, be given to individual taxpayers who so voluntarily assess themselves and tender payment of their taxes within three months from the 30th June, or, if their annual accounts close on a date later than 30th June, within three months from such later date;

(3) that the income tax return form be amended so as to contain such information as will be necessary to enable a taxpayer to compute his tax liability should he desire to assess himself;

(4) that the system be not extended to companies; and

(5) that, in the light of the experience gained as the result of the introduction of such a restricted system of self-assessment, consideration be given to the practicability of the introduction of a system of compulsory self-assessment applicable to all taxpayers at some future date.

CHAPTER 3.

ASSESSMENTS ON THE BASIS OF RECEIPTS OR ACCRUALS.

The Present Law and Practice.

1. The taxes imposed under the present Income Tax Act (Act No. 31 of 1941) are payable in respect of income "received by or accrued to" the taxpayer during any year of assessment. An amount is regarded as having accrued to a taxpayer when he has become entitled to it so that the taxpayer is by the Law made liable for tax in respect of any amount of income in the tax year in which his right to it arose even though he may not yet have received it. Where, as is normally the case, income is so taxed upon accrual, no further tax is, of course, imposed upon the receipt of the amount of such income in a later tax year since that would involve taxing the same amount twice. If, however, an amount has not for any reason been taxed in the year of accrual it is competent for the Commissioner to tax the amount in any later tax year in which the taxpayer may receive it. The use of the words "received by or accrued to" in the Law has been held to confer upon the Commissioner the right to tax an amount of income either when it has accrued to the taxpayer or alternatively when it has been received by him [*Commissioner for Inland Revenue* v. *Delfos* (1933 A.D. 246; 6 S.A.T.C. 92)].

2. The Act also contains provisions under which a deduction from the taxable income of the taxpayer is admissible in respect of the amount of any debts due to the taxpayer which are proved to the satisfaction of the Commissioner to be bad and which were included in the taxpayer's taxable income, either in the year in which the deduction is made or in a previous year. These provisions enable the necessary adjustment to be effected in respect of any amount which may have been subjected to tax in a taxpayer's hands at the time of its accrual but which he does not ultimately receive. In the final result, therefore, the taxpayer is not taxed on more than is actually received by him.

3. The provisions under which a taxpayer is required to pay income tax in respect of income received by or accrued to him follow the same principle as that which

deductions to the liabilities which he has actually paid, but he is also permitted to deduct those which he has incurred during the year of assessment, and which he is liable to pay, although he has not actually done so.

4. Provisions requiring the computation of a taxpayer's taxable income to be made with reference to amounts received by or accrued to him during the year of assessment have formed part of the Income Tax Laws of the Union since 1914. Except in a limited number of cases, notably those of taxpayers deriving incomes from the carrying on of professions to whom the Inland Revenue Department has granted the concession of making returns of their incomes on the basis of amounts actually received, there has been no departure from this principle. In recent years the Department has refrained from granting this concession to such taxpayers who commence practising, and such taxpayers have been required to render their returns on the so-called "accrued" basis.

Submissions to the Committee.

5. It was submitted to us that, in the long run, it makes no difference to the yield of revenue whether taxpayers deriving income from the carrying on of professions are subjected to tax on the basis of fees actually received, or fees earned subject to deductions in respect of bad debts. It was contended that in the initial years of their practices such taxpayers in general, and medical and dental practitioners in particular, may be subject to undue hardship if they are required to include in their taxable income all fees earned, irrespective of whether such fees have been actually received. It was also explained to us that it is necessary for them to grant credit facilities to their patients, sometimes for lengthy periods, and that they are debarred by the rules of some of their associations from resorting to legal proceedings for the recovery of outstanding fees, so that they are often required to pay income tax in respect of fees which will never be received. To meet these difficulties it was suggested to us that taxpayers deriving incomes from the carrying on of professions, when they commence practising should be permitted, if they so elect, to deduct from the fees which they have earned during the year of assessment the amount of such income as they satisfy the Commissioner for Inland Revenue has not actually been received by them during that year, and should be taxed only on the balance so determined, the deduction so made to be subject to reversal in the following year, when a fresh allowance should be calculated. In other words, it was submitted that such taxpayers commencing their practices should be permitted to elect to render their returns of income on the basis of actual receipts. It was also contended that the present arrangement under which the incomes of certain taxpayers are subjected to tax on the receipts basis should not be disturbed.

6. The Commissioner for Inland Revenue is opposed to permitting taxpayers who commence to derive income in the future whether from the carrying on of a profession or from engaging in trade to make returns of their incomes on the basis of receipts. He has also urged that the facility afforded to certain taxpayers at present of rendering returns of their incomes on the receipts basis should be withdrawn, and that in future, their incomes should be dealt with on a proper basis of accruals. The Commissioner has further recommended that the adjustment which will be necessary to bring about the changeover should be effected in such a manner as to avoid imposing hardship upon the taxpayers affected. He has suggested that a possible means of achieving this might be to spread over three years the aggregate of the accrued amounts which have not previously been subjected to tax, subject to a suitable deduction being allowed in respect of the amounts

Conclusions and Recommendations.

7. We are of opinion that the general principle which has for so long been followed in the Union Income Tax Acts of imposing tax on the basis of the amounts received by or accrued to the taxpayer is sound and should not be departed from. That principle accords with the normal accountancy procedure followed for purposes of determining the profits or losses of persons engaged in trade. If the Income Tax Act were to require the determination of taxable income to be calculated on the basis of actual receipts and actual payments within the year of assessment it would no longer be possible, as it is at present, for persons engaged in trade to base their returns of income on accounts drawn in the normal manner. Moreover, the amounts on which tax had to be paid in any given year on such a basis might well be far removed from the trading profits disclosed by accounts drawn in accordance with ordinary accounting principles. It is obviously desirable that the amount on which income tax is chargeable in respect of income from trade should accord as closely as possible with the amount of the profits of such trade determined in accordance with the accepted principles of accountancy practice. It seems to us further to be proper and equitable that, if the taxable income of taxpayers deriving income from trade is to be based on amounts accrued but not collected, the taxable incomes of persons deriving income from the rendering of professional and other services should be based on similar principles.

8. We appreciate the difficulties which may face a taxpayer in the early years of a newly established trade or profession, when he may be called upon to pay tax upon amounts accrued but not yet collected, and the collection of which may be delayed for considerable periods. We do not consider that it would be justifiable, however, to abandon the present eminently sound general principle of taxation on the basis of receipts or accruals and to base taxation on receipts only, in order to meet those difficulties.

9. As we have indicated, the attitude of the Commissioner is that he is opposed to any further extension of the facility of rendering returns on the basis of receipts to taxpayers who may commence to derive income from any trade or profession in the future, and he urges that the concession presently being enjoyed by certain taxpayers in this respect should be withdrawn.

10. As the Act stands at present, when a taxpayer who has been permitted to render returns on the basis of receipts dies, no machinery exists whereby the amount of any untaxed accruals relating to tax years prior to that in which death takes place can be required to be brought to account for taxation purposes, in the assessment for the final period up to the date of the taxpayer's death. In such cases there is considerable danger of loss of revenue to the State.

11. The practice of permitting certain taxpayers to render their returns on the basis of amounts actually received has certain other undesirable features. The accounting records maintained for purposes of rendering such returns are frequently of an unsatisfactory and unreliable nature making it difficult for the Commissioner to satisfy himself that a full and true return has been made. The Commissioner also utilises, as a check upon the returns of income of a taxpayer, information disclosed in the returns of other taxpayers. If the returns of some taxpayers are rendered on a basis of amounts actually received and others on a basis of accruals such a check is obviously made more difficult of application and is bound to lose some of its value.

12. Mention should also be made of the fact that the Act contains provisions whereby an allowance may be granted in respect of any debts due to the taxpayer which the Commissioner may consider to be doubtful.

in respect of any amounts the ultimate collection of which may be doubtful. The provision for a deduction to be allowed from the amount of the taxpayer's income in respect of any amount on which he may have been required to pay tax upon its accrual to him, if and when such amount may prove to be a bad debt and incapable of collection also serves to avoid any permanent hardship arising out of the application of the principle of imposing tax on the basis of amounts accrued. The contention advanced in the submission made to us and referred to above that professional taxpayers are often required to pay income tax in respect of fees which they will never receive probably arose from a misapprehension regarding the conditions which would have to be met before the Commissioner would be satisfied, for the purpose of allowing a deduction from the taxpayer's income in respect of irrecoverable debts, that a debt was in fact bad. The fact that a taxpayer is precluded by the rules of his profession from resorting to legal proceedings for the recovery of debts would not in our opinion present an obstacle to the recognition by the Commissioner of a debt as bad, on proof that all reasonable steps to obtain settlement had been taken without success.

13. In all the circumstances we regard the present position under which certain taxpayers are permitted to render returns on the basis of receipts as unsatisfactory, and we feel that steps should be taken to put matters on to a proper footing. The present lack of uniformity of methods of assessment of taxpayers in this important respect is, in our opinion, undesirable.

14. It seems to us that if the present practice of permitting certain taxpayers to render returns on the basis of receipts were to be continued, it would at the least be essential to amend the Law to obviate the loss of revenue which arises when a taxpayer who has been permitted to render his returns on a basis of receipts dies before he has received the full amount of any income which has accrued but has not been taxed in tax years prior to that in which death takes place. This could be done by introducing into the Act provisions whereby the amount of any untaxed accruals under such circumstances were deemed to be income of the final period of assessment up to the date of the taxpayer's death. The adoption of that course might, however, result in an unduly high rate of tax on the progressive scales being imposed in the final assessment due to the inclusion of large amounts of accruals relating to earlier tax years. In view of the hardship which might thereby be created, we do not favour that course.

15. We think it better that the Commissioner should refrain in the future from permitting taxpayers to render returns of income derived from trade or from fees for services, on a basis of receipts. In addition, provisions should in our opinion be enacted to enable the position of those taxpayers who have been rendering returns on the receipts basis to be brought into line with that of taxpayers whose returns are based on accruals. In framing such provisions, suitable safeguards should in our opinion be included to avoid any undue hardship upon the taxpayers concerned resulting from the application of the changed basis of assessment.

16. **We accordingly recommend** that provisions be introduced into the Act whereby—

(1) the taxable income of any taxpayer who has hitherto rendered returns and been taxed on the basis of receipts in respect of any trade, business or profession shall, with effect from the year of assessment in respect of which such provisions are made operative, be determined on the basis of all amounts accrued to

(2) any amounts which accrued to the taxpayer during any previous years of assessment and which were not included in his taxable income for such previous years of assessment shall be included in the taxpayer's income for the first year of assessment in respect of which such provisions are made operative, subject to the proviso that the amount so included shall not be taken into account for purposes of determining the progressive rates of normal and super taxes payable by the taxpayer;

(3) no super tax shall be chargeable on the amount of any accruals of previous years which are so included in the taxpayer's taxable income and the rate of normal tax thereon shall be a flat rate of 1s. 6d. per £ in the case of married persons and 1s. 9d. per £ in the case of unmarried persons and companies;

(4) where the taxpayer has an assessed loss, he be permitted the option of either paying the tax at the rates referred to in sub-paragraph (3) on the amount of the untaxed accruals or of having his assessed loss reduced by such amount; and

(5) if the Commissioner is satisfied that the circumstances of the case warrant it, the amount of the tax chargeable at the rates referred to in sub-paragraph (3) shall be spread so as to become payable as to one-third with the assessment for the current year and one-third with the assessments for each of the two succeeding tax years, any balance remaining unpaid upon the death or insolvency of the taxpayer before the full amount has been assessed and paid to rank as a claim against the deceased or insolvent estate.

17. These recommendation follow closely the proposals made in Chapter 12 of our First Report, as modified by our recommendations in paragraphs 39 to 48 of Chapter 16 of this Report, in dealing with a somewhat similar problem in relation to the variation of the basis of assessment of farmers and will, we feel, provide a reasonable and equitable method of avoiding any hardship arising from the alteration in the basis of assessment of the taxpayers concerned.

18. We understand that many taxpayers in receipt of investment income are permitted to return such income in the year in which it is received, and that it is not the practice of the Commissioner to insist in all cases on such income being returned in the year of accrual. It is not our intention that the recommendations we have made in this Chapter should be regarded as necessitating any change in that practice, which we regard as reasonable and convenient, and the continuance of which is unlikely to have any material effect on the yield of the revenue.

CHAPTER 4.

THE PRESERVATION OF SECRECY IN INCOME TAX MATTERS.

The Present Law and Practice.

1. Provision has been made in section 4 of the Income Tax Act of the Union (Act No. 31 of 1941, as amended) to ensure that secrecy shall be preserved by every person employed in carrying out the provisions of the Act. Such officers may not disclose any information to a person other than the taxpayer concerned or his lawful representative, and may not act under

and imprisonment for a period not exceeding two years of any person who fails to preserve secrecy in connection with matters which come to his notice in the course of his duties, and for the imposition of a fine not exceeding ten pounds upon a person acting in the execution of his office before he has subscribed to the prescribed oath.

2. At present the only circumstances under which the Commissioner may divulge information to a person other than the taxpayer or his lawful representative, without committing a breach of the provisions of section 4 of the Act, are as follows:—

(1) When he is required to do so under an Order of Court, although no such order will be made if the Commissioner deems it necessary to raise the plea that the required disclosure would be contrary to public policy; and

(2) under the provisions of section 94 (6) of the Act, which authorise the Commissioner to disclose within certain limits such information as may be necessary to enable him to render assistance to any authorised officer of a country or territory with which the Government of the Union has entered into an agreement for the prevention of Fiscal evasion with respect to taxes upon income.

3. The right to raise a plea of public policy for the purpose of resisting the making of an Order of Court for the disclosure of information is one which is enjoyed at common law by all public officials who are entrusted with the care of State documents. In proper cases the Commissioner may avail himself of this right for the purpose of protecting either the Fiscus or the taxpayer. According to circumstances, he may deem it necessary merely to draw the attention of the Court to the necessity of an Order before he can make a disclosure of information which is in his possession, or he may deem it necessary on the grounds of public policy to raise the plea that such an Order should not be made.

4. In other countries the secrecy provisions of the income tax laws are generally less stringent than those in force in the Union. Thus, in some countries, officials of the Departments concerned are not required to subscribe to any special oath of secrecy, while in others members of the public have access to such official records as will enable them to ascertain the amount of a taxpayer's income.

5. The preservation of secrecy in regard to income tax matters is a question of considerable importance both to the taxpaying community and the taxing authority. In our view it is essential that taxpayers should have the assurance that no disclosures concerning their ordinary income earning activities will be made by the Commissioner. It would in our opinion militate against the full and frank disclosure of information by taxpayers if their confidence in the preservation by the Commissioner and his staff of the strictest secrecy in regard to such information were to be shaken by any general relaxation of the statutory rules regarding secrecy. We are also of the opinion that the position of the Commissioner would become untenable if he were to be deprived of his statutory rights in this connection. For example, such a course may lead to the Commissioner's being drawn into civil disputes between debtor and creditor, and having to contend with many enquires from individuals seeking information for their own purposes. While we consider that there should be no general relaxation of the secrecy provisions of the Act, we nevertheless feel that in certain particular cases, with which we shall deal specifically later in this Chapter, certain modifications thereto could with advantage be intro-

SUBMISSIONS TO THE COMMITTEE.

6. The principle of the preservation of secrecy in relation to taxation matters was generally supported in the submissions which were made to us, but it was suggested that we should give consideration to the relaxation of the secrecy provisions contained in the Act to the extent that will permit of the reporting to the proper authorities of criminal practices revealed in the course of any appeals. A similar suggestion was made by the Commissioner for Inland Revenue, namely, that where an appeal has been lodged against his decision not to exercise his discretionary power to remit "penalty" taxes for which a taxpayer has incurred liability, the Court should be empowered to report the matter to the proper authorities with a view to the institution of criminal action in respect of any offence or crime of which it may appear to the Court that the taxpayer may have been guilty. We consider that it would be desirable to amend the Statute along lines which will vest in the Income Tax Special Court the power, exercisable at its discretion, to direct the Commissioner to report to the Attorney-General criminal practices which are revealed in the course of the hearing of any appeal.

FURTHER MATTERS CONSIDERED BY THE COMMITTEE.

7. We have also examined the question of whether the Act should be amended so as to provide for the relaxation of its secrecy provisions, thus permitting of income tax information being made available for the following purposes:—

(1) For use by the Commissioner in the administration by him of laws other than the Income Tax Act;

(2) for use by Departments other than the Inland Revenue Department in the administration of other laws; and

(3) for the purpose of reporting to the Attorney-General criminal practices of which it might appear to the Commissioner, from information at his disposal, that the taxpayer may have been guilty.

8. As regards paragraph 7 (1) above, the position is that the Commissioner is at present entrusted with the administration of a number of taxation laws and ordinances other than the Income Tax Act—for example, those relating to Death Duties, Transfer Duty, Stamp Duty and Provincial Taxation. We can find no reason why the Commissioner should not be permitted to utilise income tax information, which is in his possession, for the purpose of administering such other laws, and we consider that it is unreasonable to withhold from him the right to use such information.

9. The position concerning the matter referred to under paragraph 7 (2) above is that, under the present Act, the Commissioner is not permitted to divulge income tax information to officers of other Departments for the purpose of administering laws other than the Income Tax Act. We consider that, as far as possible, such information should be preserved within the Inland Revenue Department, thus minimising the possibility of leakages of information which, by its nature, should be treated confidentially. Generally, the requirements of such other Departments could be met by their calling upon the taxpayer concerned to obtain from the Commissioner a certificate containing such information as may be required. For these reasons we are unable to recommend any change in the law in this respect.

10. We have expressed the view, in paragraph 6 of this Chapter, that the Income Tax Special Court

sioner to report to the proper authorities any criminal practices revealed during the hearing of appeals. In considering the question raised under paragraph 7 (3) above we have come to the conclusion that, to be consistent with this view, the Act should be further amended to provide that where, from information available to the Commissioner, it appears to him that the taxpayer has been guilty of an offence or crime, the Commissioner shall be empowered to report the case to the Attorney-General. We do not consider that such a course would conflict with the principles which we have discussed in paragraph 5 of this Chapter.

11. We have also considered the necessity of the retention of section 4 (4) of the Act, which provides for the imposition of a fine not exceeding ten pounds upon a person acting in the execution of his office before subscribing to the prescribed oath of secrecy or fidelity. Under the present Departmental arrangements great care is exercised that no officer will be permitted to act under the Statute before subscribing to the oath in question, and we are satisfied that the sub-section serves no useful purpose. Moreover, the sub-section has the effect of imposing upon a subordinate officer a penalty for an offence which may well be attributable to the negligence of his superior officers. For these reasons we consider that it should be deleted from the Act.

Recommendations.

12. In order that effect may be given to the views which we have expressed in this Chapter, **we recommend**—

(1) that, subject to our recommendations under subparagraphs (2) to (5) below, the secrecy provisions of the Act be retained;

(2) that the Income Tax Special Court be vested with the right, exercisable at its discretion, to direct the Commissioner to report to the Attorney-General any criminal practices which are revealed in the course of the hearing of any appeal;

(3) that the Commissioner be permitted, at his discretion, to report to the Attorney-General any case in which it might appear to him, from information which is in his possession, that a taxpayer has been guilty of an offence or crime;

(4) that the Commissioner be granted statutory authority to utilise income tax information for the purposes of the administration by him of taxation laws and ordinances other than the Income Tax Act; and

(5) that section 4 (4) of the Act be withdrawn.

CHAPTER 5.

DISCRETIONARY POWERS CONFERRED BY THE INCOME TAX ACT.

The Present Law.

1. The Income Tax Act, as at present framed, vests a large number of discretionary powers in the Commissioner for Inland Revenue and, in a limited number of cases and for special purposes, vests discretionary powers also in the Government Mining Engineer.

Discretionary Powers of the Commissioner for Inland Revenue.

2. From a study of the Act and the many discretionary powers so vested in the Commissioner for Inland Revenue by its provisions, it becomes immediately apparent that the considerations which have

3. Certain of these have as their obvious purpose the protection of the revenue and the prevention of tax avoidance or evasion. As examples of discretions vested in the Commissioner with this object, the following may be cited:—

(1) The power to estimate the income of a taxpayer if he is not satisfied with the return or information furnished by him (section 64);

(2) the power to disregard transactions entered into by a taxpayer and to assess the taxpayer as though the transaction had not taken place, if he is satisfied that the transaction was entered into to avoid tax (section 90).

4. In other cases the primary purpose of the granting of discretionary power to the Commissioner, is to enable relief to be granted or reasonable concessions to be extended to the taxpayer rather than to protect the revenue. The following are examples of discretions vested in the Commissioner with this apparent object:—

(1) The power to determine, in the case where the period assessed is less than twelve months terminating at the death of the taxpayer or commencing at the death of the spouse of the taxpayer, whether special circumstances exist justifying a departure from the normal rule that the full rebates to which the taxpayer is entitled shall be reduced proportionately on a time basis [sections 13 (3) and 29 (2)];

(2) the power to remit additional taxation imposed in the event of default in rendering returns or omissions of income, if he is satisfied that such default or omission was not due to any intent to postpone payment of tax or evade payment thereof [section 65 (2)].

5. A third type of case is that in which the granting of discretionary powers to the Commissioner is clearly designed to facilitate administration in purely routine matters, examples of which are as follows:—

(1) The power to prescribe the forms of return required for the administration of the Act (section 57);

(2) the power to deliver notices of assesment to taxpayers by post or " in such other manner as the Commissioner may consider convenient " (section 67).

6. The decisions of the Commissioner in the exercise of certain of the discretionary powers vested in him have been specifically made subject to objection and appeal to the Income Tax Special Court. In these cases it has been held by the Courts that the Income Tax Special Court enjoys the right to review the decision of the Commissioner and, if it sees fit, to substitute its decision for that of the Commissioner. No right of appeal lies to the Supreme Court against the findings of the Income Tax Special Court in such a matter.

7. On the other hand it has been held that no right of objection and appeal lies to the Courts in regard the many discretionary powers vested in him as have not specifically been made subject to objection and appeal. In these cases it has been accepted by the Courts that the ordinary rule of law applies, viz., that where a matter is left to the discretion or opinion of an administrative officer no appeal lies against the decision of that officer unless it can be shown that he has acted *mala fide* or has not applied his mind to the matter.

8. The present Income Tax Law (Act No. 31 of 1941, as amended) as we find it then provides for the

sions of the Commissioner in the exercise of those powers in certain cases to be subject to appeal to the Income Tax Special Court and in other cases not.

Submissions Made to the Committee.

9. The submissions made to us generally recognised the need for and supported those discretionary powers which deal with matters of routine administration and tax collection. Those discretionary powers, the decisions of the Commissioner in the exercise of which would materially affect the extent of the taxpayer's liability to taxation were, however, subjected to some criticism. It was stressed that the fundamental principle should be followed that government should be by Law and not by individuals and that the income tax Statute should, therefore, lay down unequivocal and definite rules of tax assessment which do not call for the arbitrary decision of any one particular individual or body. With this in view it has been suggested to us that—

(1) discretionary powers should be granted to the Commissioner only where it is absolutely necessary to do so; and

(2) taxpayers should have the right to challenge, in the courts of appeal, all discretionary decisions, except those bearing on matters of routine administration and collection of tax.

10. The Commissioner for Inland Revenue, in his submissions to the Committee, stressed the point that the removal of discretionary powers would result in the need for a cumbersome Act with complicated and meticulous provisions, in order to prevent the evasion and avoidance of tax.

General Problems for Consideration.

11. The problems which present themselves for consideration, arising out of the foregoing analysis of the existing Law and the summary of the submissions received by the Committee, appear to us to be the following:—

(1) Is it practicable to eliminate from the Income Tax Law all discretionary powers and to lay down unequivocal and definite rules of tax assessment capable of being applied with fairness and equity both to the taxpaying community and the Fiscus, without the exercise of any discretionary powers on the part of the taxing authority?

(2) If the answer to (1) is in the negative, what general principles should be applied in determining the matters which should be entrusted to the Commissioner's discretion?

(3) To what extent should the decisions of the Commissioner in the exercise of such discretionary powers as it may be found necessary or expedient to entrust to him, be made subject to objection and appeal?

(4) To what body should appeal lie in pursuance of any right which might be conferred by the Law upon persons aggrieved by decisions of the Commissioner in the exercise of discretionary powers vested in him?

General Conclusions and Recommendations in Regard to the Discretionary Powers of the Commissioner.

12. As regards the first question, it does not appear to us to be practicable to eliminate from the Income Tax Law all discretionary powers and to make specific provisions which will have the effect of bringing about the results in all cases which are clearly intended to

13. By way of illustration of the difficulties which would be presented were the discretionary power of the Commissioner to be eliminated and an attempt made to deal with all matters by rigid statutory rules, consideration might be given to the discretionary power vested in the Commissioner by section 9 (8) of the Act. In terms of that section the Commissioner is vested with the power to regard as income amounts paid as entertainment or travelling allowances which he is satisfied were not so expended by the taxpayer.

14. The mischief at which the provision is aimed is clearly the evasion of tax by the device of labelling as entertainment or travelling allowances amounts far in excess of what the recipient would normally expend in this respect and which in truth represent ordinary remuneration for services rendered, and as such, income which should be taxed in the hands of the recipient. The need for some provision to check evasion of tax by this means is obvious. To deal with the matter in some manner which would preclude the necessity for the exercise of any discretion on the part of the Commissioner, it might be provided that all amounts received as entertainment or travelling allowances are to be taxed in the hands of recipients, excepting any such amounts as are proved by the production of receipts to have been expended on such entertainment or travelling. The adoption of such a rule would eliminate the need for the exercise of any discretionary power by the Commissioner, but in our opinion would not be reasonable and would lead to unfairness and injustice being done to many taxpayers whose expenditure in this respect by its nature is frequently incapable of being accurately vouched. An alternative might be to tax all such amounts received as income without any deduction, but this would be even more unfair, since it would result in tax being imposed upon the recipients in respect of amounts with do not in any sense represent income in their hands but rather a re-imbursement of amounts laid out on behalf of their employers.

15. The method which has been adopted of vesting the Commissioner with power to treat as income amounts paid as entertainment or travelling allowances which he is satisfied were not so expended, appears to us to be the only practicable and reasonable method of dealing with the matter. The Commissioner is thereby put in a position to relieve the recipient of taxation on amounts which, even though their expenditure cannot be accurately vouched and proved, he is satisfied, having regard to the nature and extent of the taxpayer's activities, have been so expended. At the same time the Commissioner is put in a position to protect the Fiscus in cases in which amounts purporting to be in respect of entertainment and travelling expenses are flagrantly excessive and obviously represent disguised remuneration for services and as such, income to the recipient, on which it is proper that he should be taxed.

16. We are satisfied that in this case, as also in the case of many of the other discretionary powers vested in the Commissioner under the Income Tax Act, it is impracticable to eliminate discretionary powers without creating anomalies and hardships and opening the door to tax evasion. We are, therefore, driven to the conclusion, as far as the first question posed in paragraph 11 is concerned, that it is NOT practicable to eliminate from the Income Tax Law all discretionary powers.

17. At the same time we recognise that the vesting of discretionary powers in the taxing authority has the undesirable effect in many cases of rendering the extent of the liability of taxpayers uncertain. As regards the

powers should be vested in the Commissioner only in relation to—

(1) matters of routine administration and tax collection not affecting the extent of the taxpayers' liability to taxation; and

(2) matters in respect of which rigid rules of assessment are incapable of being drawn without unduly endangering the proper and legitimate claims of the Fiscus, or giving rise to anomalies and hardships.

18. As regards the third question raised in paragraph 11, the present position is that no appeal lies against the decisions of the Commissioner in the exercise of the discretionary powers vested in him in those cases in which no right of objection and appeal is specifically provided in the Act in relation to the decision of the Commissioner in the particular matter in respect of which he has been vested with a discretionary power unless, as has already been pointed out, it can be shown that he has acted *mala fide* or has not applied his mind to the matter. A second class of case in which no such right of appeal to the Income Tax Special Court generally arises is where the dispute between the taxpayer and the Commissioner relates to a matter other than the determination of the taxpayer's taxable amount—see *Commissioner for Inland Revenue v. Taylor* (1934 A.D. 388; 7 S.A.T.C. 1) in which it was held that the jurisdiction of the Special Court as constituted by the Act did not extend to the determination of disputes relating to matters other than the determination of the taxable amount fixed by the Commissioner. This would exclude generally appeals in respect of disputes arising from the discretions exercisable by the Commissioner in routine matters and matters of collection of tax. The only exception to the rule that appeal does not lie in respect of matters other than disputes concerning the determination of taxable amount is in the case of the Commissioner's determination of the status of a company as public or private in regard to which special provision is contained in the Act permitting an appeal to the Special Court.

19. We see no reason to disturb the existing position as regards decisions of the Commissioner in the exercise of his discretionary powers in routine administrative matters and matters of tax collection not affecting the amount of the tax payable by the taxpayer or the amount of his assessed loss for the year of assessment, and **we recommend** no change in the Law in this respect.

20. In those cases in which the decision of the Commissioner in the exercise of a discretionary power affects the amount of tax payable by the taxpayer or the amount of his assessed loss for the year of assessment, we are of opinion and **we recommend** that the Law should so provide that the taxpayer should, with certain exceptions which are dealt with in paragraph 21, be entitled to bring objection and appeal against any decision of the Commissioner about which he might be aggrieved, the body set up to adjudicate upon the dispute having the power to substitute its decision for that of the Commissioner. **We further recommend** that, as at present, no appeal should lie beyond the Income Tax Special Court in these matters, and that suitable provisions should be inserted in the Statute so as to make this position clear.

21. The cases in which, notwithstanding that the decision of the Commissioner may affect the tax payable or the amount of the taxpayer's assessed loss, we are of the opinion and **we recommend** that no right of objection and appeal should lie against the Commissioner's decision, are the following:—

implements, etc., used by the taxpayer for purposes of his trade [section 11 (2) (*d*) of Act No. 31 of 1941].

The granting of annual allowances for wear and tear is part of the scheme of the Act for allowing the taxpayer engaged in trade to deduct the cost of machinery and plant, etc., which is consumed in the course of trade. The annual allowances are in the nature of interim estimates subject to the adjustments for which the Act provides whereby if the allowances made up to the time the asset is scrapped amount to less than the full cost of the asset, a further allowance of the balance of the cost is made, or if any portion of the amounts allowed annually is later recovered or recouped by the taxpayer on disposal of the asset that portion is then subjected to tax. In all these circumstances and particularly since the rights of the taxpayer to a full and proper deduction over the course of the life of the asset are fully protected, we are of opinion that the present practice whereby the decisions of the Commissioner as to the amount of the annual allowances are not subject to objection and appeal should not be disturbed.

(2) The decision as to whether to permit the percentage of gross profit to turnover in the case of hire purchase transactions to be calculated, for the purpose of arriving at the allowance for unearned profits, by viewing all transactions of this nature collectively. (As recommended in paragraph 9 of Chapter 21 of our First Report.)

This discretionary power is designed purely to facilitate the administration of the Act. Should the exercise thereof by the Commissioner aggrieve a taxpayer, such taxpayer may avail himself of the facility of making a separate calculation in the case of each individual transaction. In these circumstances we do not consider that the matter is of such a nature as would warrant its being made subject to objection and appeal.

(3) The decision as to whether lump sum contributions by an employer to any pension or benefit fund established for the benefit of his employees or lump sums given by an employer *ex gratia* to his employees who retire on the grounds of old age, ill-health or infirmity, should be deducted in one sum or in a series of annual instalments [section 11 (2) (i) *bis.* of Act No. 31 of 1941, and see also our recommendation in paragraph 76 of Chapter 5 of our First Report].

In these cases the clear purpose of vesting the Commissioner with the discretionary power to determine whether the deduction shall be made in one sum or in a series of annual instalments is to minimise the loss to the Fiscus which would result from the allowance of the deduction in one sum in the year of assessment in which it is paid, in certain cases. The case in which the loss to the Fiscus would be substantial is where the employer's income without the deduction is big and his rate of tax would be substantially reduced if the deduction were allowed in one sum. A lump sum paid in these circumstances does not represent expenditure which actually relates to the income of the year in which it is paid and should not properly form a charge against one year's profits. It seems to us to be perfectly reasonable and proper that the deduction of the amount should be spread where the taxpayer's rate of tax

The decision is one which must be based on the extent of the prejudice to the Fiscus which would result from the allowance of the deduction in one sum or in a series of instalments, and in our opinion the Commissioner is in the best position to adjudicate upon that matter in in the light of the records available to him.

(4) The power to decide that amounts which have been included in an assessment should not have been so included (see our recommendations in Chapter 8 of this Report), and that any amount made payable by means of an assessment was in excess of the amount properly chargeable under the Act [section 89 (1)], for the purpose of reducing the assessment and, where necessary, making a refund.

These powers are designed to be applied principally as a means of affording relief to a taxpayer who has failed to avail himself within the prescribed time of the right he enjoys, by the normal procedure of objection and appeal, to obtain rectification by reduction of any over-assessment made upon him, and it seems to us to be not unreasonable in those circumstances that the relief should be confined to cases in which it is proved to the satisfaction of the Commissioner that an over-assessment has been made. If the Act were to be amended to provide a right of objection and appeal against a decision of the Commissioner in such circumstances it would necessarily involve a review by the Income Tax Special Court of the assessment in respect of which reduction is sought and thus effectively revive the taxpayer's rights of objection against that assessment in cases in which they may have lapsed. The finality of assessments would thus be largely destroyed. We are, therefore, of the opinion that the present practice whereby the decision of the Commissioner as to whether or not he is satisfied that an amount claimed to have been overpaid is in excess of the amount properly chargeable under the Act is not subject to objection and appeal, should not be disturbed, and that the decision of the Commissioner in the exercise of the discretionary power which it is proposed should be vested in him to decide whether an amount which has been included in an assessment under the Act should not have been so included, should similarly not be subject to objection and appeal.

(5) The power to decide that reasonable grounds exist for delay in lodging an objection [section 77 (4)], and the power to decide that reasonable grounds exist for delay in giving notice of an appeal (see our recommendations in Chapter 6 of this Report), for the purpose of entertaining objections or appeals which have not been lodged within the prescribed periods.

Under the Act one of the most effective safeguards afforded to the taxpayer is the right of objection and appeal, and by the machinery thus provided a taxpayer has the means of challenging any assessment about which he is aggrieved. At present the Act provides that an objection to an assessment must be lodged within twenty-one days of the date of the relative assessment, and that notice of an appeal must be given within thirty days after the date of the notice in which the Commissioner's decision concerning the taxpayer's objection is conveyed to the taxpayer. We have recommended elsewhere in this Report that the former period should be extended to thirty days, but otherwise consider that adequate provision has been made in the Act for the and appeal. Circumstances beyond the control of the taxpayer may arise, however, which would prevent him from lodging an objection or appeal within the prescribed periods, and to meet such a contingency we have recommended that, in addition to the powers which the Commissioner already enjoys under the Act whereby he is permitted to entertain an objection for the late lodging of which he is satisfied that reasonable grounds exist, the Commissioner should be authorised to accept an appeal which, for similar reasons, has not been lodged within the statutory period. The question as to the reasonableness of grounds advanced for delay is not one calling for judicial decision as in the case of the ordinary objections and appeals against assessments for the determination of which the Income Tax Special Court has been created. The question is one readily capable of being determined by the officer charged with the administration of the Act, namely, the Commissioner, and the taxpayer has always the remedy available to him, in the highly unlikely event of the Commissioner acting *mala fide* or flagrantly failing to apply his mind to the question properly, of seeking appropriate redress by the ordinary processes of law. We do not consider, therefore, that the vesting in the taxpayer of the right of objection and appeal against the decision of the Commissioner in the exercise of his discretionary power to decide whether reasonable grounds exist for the delay in the lodging of an objection or an appeal is warranted.

(6) The power to determine the extent of the element of improvement present in the replacement of a fixed asset, for the purpose of calculating the amount of the replacement allowance to be granted to a taxpayer (see our recommendations in paragraph 24 of Chapter 10 of this Report).

The granting of a replacement allowance in respect of fixed assets is a matter which is bound up with the granting of annual wear and tear allowances. While such an allowance would have the effect of accelerating the writing off of an asset for income tax purposes, the withholding of a portion thereof, in cases where the replacement of an asset is accompanied by an element of improvement, would not result in any permanent prejudice to a taxpayer, since his rights to a full and proper deduction of the cost of the asset over its life are fully protected under the present Act. For these reasons, and those stated in paragraph 21 (1) above, therefore, we do not consider that the decision of the Commissioner in the exercise of this discretionary power should be subject to objection and appeal.

22. As regards the fourth question raised in paragraph 11, the present position is that where provision is made for the decisions of the Commissioner in the exercise of discretionary powers vested in him to be subject to objection and appeal, such appeal lies to the Special Court for hearing income tax appeals as at present constituted. The Court as so constituted consists of a judge of the Provincial Division of the Supreme Court, as President, and a qualified accountant and a representative of either the commercial community or the mining community as circumstances may warrant. Such a court appears to us to be a body eminently suitable in its composition to deal with appeals against the decisions of the Commissioner in the exercise of the discretionary powers vested in him, and **we recommend** that the Special Court should continue as at present to adjudicate upon objections

the exercise of such discretionary powers vested in him as the Law provides should be subject to objection and appeal. We see no reason for the setting up of a separate Board of Referees or other similar body for the purpose. Even if the numbers of cases in which it is provided that objection and appeal may be brought against the Commissioner's decisions in this respect is extended, as we have recommended, it does not seem to us to be likely that the volume of appeals would show any such increase as would make it impracticable for the Income Tax Special Court to deal with them.

The Discretionary Powers of the Commissioner to Remit Additional "Penalty" Taxes.

23. We have thus far dealt with the problem of the discretionary powers of the Commissioner along general lines. The great importance attaching to the discretionary power presently vested in the Commissioner to remit additional "penalty" taxes imposed by the Act upon taxpayers, in respect of failure to render returns or in respect of omissions of income from returns, appears to us, however, to make it necessary to give the matter special consideration.

24. As the Act is presently framed, a taxpayer, in the event of certain defaults or omissions, is required, by section 65 (1), to pay certain amounts in addition to the taxes ordinarily chargeable. These additional amounts are—

(1) if he makes default in rendering a return, an amount equal to twice the normal and super taxes ordinarily chargeable on his income;

(2) if he omits from his return an amount which ought to have been included, an amount equal to twice the difference between the normal and super taxes on his income as returned and the normal and super taxes on his income including the amount omitted;

(3) if he makes an incorrect statement in his return, an amount equal to twice the difference between the tax as assessed in accordance with the return made and the tax payable if the incorrect statement had not been made.

25. By section 65 (2) of the Act it is provided that "if the Commissioner is satisfied that the default in rendering the return was not due to any intent either to defraud the revenue or to postpone the payment by the taxpayer of income tax chargeable, or that any such omission or incorrect statement was not due to any intent to evade taxation on the part of the taxpayer, he may remit such part or all of the said additional charge as he may think fit".

26. The broad effect of these provisions is automatically to impose a liability for treble tax upon the taxpayer on the whole of his income if he fails to render a return within the proper time, or on the additional amount on which tax is payable if he makes an omission from his return or an incorrect statement in the return. The Commissioner is then given power to remit the whole or part of the "penalty" tax if satisfied that there was no intent to defraud the revenue or to postpone or evade the payment of tax. The taxpayer has no right of appeal against the decision of the Commissioner in the exercise of his powers of remission.

27. The form in which the discretionary power of remission is granted to the Commissioner by the section appears to call for consideration. The Commissioner's powers of remission as stated are limited to those cases in which he is satisfied that there was no intent to defraud the revenue or to postpone or evade the payment of tax. Unless the Commissioner is so satisfied the section as worded would not appear to admit of makes it permissible for such part or all of the penalty, as he may think fit, to be remitted. The power of partial remission thus conferred upon the Commissioner would appear to have been intended to enable the Commissioner to enforce the penalty to such extent as he might consider appropriate where he is satisfied that the default or omission was not the result of an intention to defraud the revenue or to postpone or evade the payment of tax, but arose from other causes such as carelessness or negligence on the taxpayer's part.

28. We feel that it is unreasonable that the Commissioner should thus be restricted in his powers of remission. There might well be circumstances in which it would be reasonable and proper that a partial remission of the penalties imposed by the Law should be made even though the Commissioner may not be entirely satisfied that there was no intent to defraud the revenue or to postpone or evade the payment of tax. Degrees of culpability must exist in offences relating to default in the rendering of income tax returns and omissions or incorrect statements in such returns, just as in the case of other offences against the laws of the land. In the case of such other offences an unfettered discretion within certain limits, is usually vested in the judicial authority responsible for dealing with charges in respect of such offences, to impose an appropriate penalty and to make the punishment fit the crime. Under the present Law, however, the penalty cannot be varied in any case in which the Commissioner is not satisfied of the absence of an intent to defraud the revenue or to postpone or evade the payment of tax. The Law in this respect is in our opinion altogether too rigid, and **we recommend** that the provisions of section 65 (2) of the Act should be repealed and replaced by provisions which would admit of the remission of all or such part of the penalties as the Commissioner may think fit, in such cases as he is satisfied that there was no intention to defraud the revenue or to postpone or evade taxation and also where other reasons exist for such remission which in his opinion are proper and sufficient.

29. Turning now to the question of whether the decisions of the Commissioner in the exercise of his powers of remission should be made appealable, whether such powers remain in their present restricted form or are extended in the manner we have recommended, we are of opinion that it is just and proper that such decisions should be made subject to objection and appeal to the Income Tax Special Court. We feel, however, that in granting such right of objection and appeal, it should be provided that—

(1) the Court shall be empowered not only to affirm the decision of the Commissioner or to reduce the penalty imposed but also, where the Commissioner has granted any partial remission, to increase the penalty up to the full amount of the penalty imposable; and

(2) no appeal shall lie to the Court where the amount of the penalty imposed either—

(*a*) amounts to a sum representing less than 20 per cent of the total additional tax chargeable in respect of the default, omission or incorrect statement in the taxpayer's return; or

(*b*) is less than £100.

We recommend accordingly.

Revisions by the Commissioner of Discretionary Decisions.

30. A further aspect of the discretionary powers of the Commissioner which requires consideration is the question of whether, once a decision has been given

a taxpayer should be entitled to object and appeal against any decision of the Commissioner in the exercise of a discretionary power affecting the amount of tax payable by the taxpayer or the amount of his assessed loss, and that the Law should so specifically provide.

(5) The first appeal from the decision of the Commissioner should be to an Appeal Board consisting of a number of persons appointed by the Minister of Finance and an equal number of persons representing taxpayers.

We have already had occasion to consider the question of the suitability of the Income Tax Special Court as a body to adjudicate in income tax appeals with special reference to appeals lodged against the decisions of the Commissioner in the exercise of discretionary powers vested in him, and have dealt with this aspect of the matter in paragraph 22 of Chapter 5 of this Report. In that paragraph we recorded the view that the Court as presently constituted appears to us to be a body eminently suitable in its composition to deal with appeals in those particular cases then under consideration. We are of the opinion that, for purposes of any appeals in income tax matters, the Court is eminently suitable to adjudicate and we are unable to support the suggestion that an appeal board of the nature of that proposed should be set up in its place. On the contrary, we believe that a board, constituted as suggested, would be less suitable in its composition than the Income Tax Special Court as presently constituted.

7. We shall now deal with the remainder of the submissions which were made to us on the subject of objections and appeals.

8. It was suggested to us that the Act should be amended so as to provide that the Commissioner shall be responsible for costs where he has lost an appeal case. We have considered this submission in the light of section 79 (16) of the present Act, which provides that the Income Tax Special Court shall not make any order as to costs save when the claim of the Commissioner is held to be unreasonable or the grounds of appeal therefrom by the taxpayer to be frivolous. If the Law is to be tightened against the Commissioner, consideration would have to be given to the introduction of a stricter rule against the taxpayer, and if that were done taxpayers might be discouraged from bringing their appeals on account of a fear that costs may be awarded against them. As it appears to us that the present arrangements are satisfactory we are unable to recommend any change in the Law in this respect.

9. Under the provisions of the present Act a taxpayer is obliged to state the grounds of his objection, while the Commissioner is not specifically obliged by the Law itself to explain the reasons for the disallowance of the objection. It was contended that this arrangement leads to confusion and results in the bringing before the Income Tax Special Court of cases which may not otherwise have been so contested. We are satisfied, however, that this is not the case, since by the mere repudiation of the stated grounds of an objection the Commissioner would clearly convey to the taxpayer the reasons for his disallowance of the objection. Clearly, it would be impracticable for the Commissioner to furnish the taxpayer in advance with all the detailed arguments he may use during the hearing of the case since his arguments will in any event depend upon the facts elicited in evidence and the arguments advanced by the taxpayer at the hearing of the appeal. In the same way, the taxpayer is only required to state the grounds of his objection, and is not required to disclose all the arguments that may be adduced in support of his objection. For these reasons we consider that the

10. We were also urged to recommend that a taxpayer should not be confined to the grounds of his objection in contesting an appeal. We support this submission to the extent that we consider that it would be desirable to amend the Law so as to vest in the Commissioner the explicit right to permit an extension of the original grounds of objection if application for such an extension is made within a reasonable period. The Income Tax Special Court should, in our opinion, likewise be empowered to permit such an extension, subject if necessary to the postponing of the case to give the Commissioner time to consider any new grounds of appeal which may be advanced by the taxpayer, and subject to the awarding at the discretion of the Court of wasted costs against the taxpayer in such an eventuality. **We recommend accordingly.**

11. As we have explained in paragraph 4 of this Chapter, the rights of a taxpayer to appeal from a decision of the Income Tax Special Court are limited under the Act to questions of law and are not permitted on questions of fact, and one of the submissions which we received suggested that a taxpayer's right of appeal should not be so limited. We believe that the Income Tax Special Court is well equipped by its composition to determine finally any questions of fact, and that if its decisions on such questions were made appealable it would necessitate further evidence and a complete rehearing of the case by the Supreme Court. We do not consider that this is warranted, and we are, therefore, unable to support the submission under review.

12. We have also been urged to recommend that all Income Tax Special Court judgments should be published immediately, with a view to reducing the number of cases which are brought before the Court. We agree that the early publication of judgments would be desirable, but we are unable to subscribe to the view that all judgments should be published. Under existing Regulations the Commissioner may, with the consent of the appellant concerned, and in such form as the appellant may approve, arrange for the publication of such decisions and judgments of the Income Tax Special Court as he may consider to be of general interest. We consider that in the interests of the taxpayers concerned the publication of decisions and judgments of the Income Tax Special Court should continue to be limited as at present and we are unable to make any recommendation which would have the effect of going beyond such limitation.

13. Under the provisions of section 80 of the Act the obligation to pay and the right to receive and recover any tax chargeable under the Act is not suspended by any appeal or pending the decision of a Court of Law, unless the Commissioner otherwise directs. This matter formed the subject of a submission in which it was proposed that payment of the amount of tax which is in dispute should not be required to be made forthwith, but should be postponed subject to the lodging with the Commissioner of adequate security. The object sought to be achieved by the submission was stated to be to obviate hardships to which the taxpayer might be subject under the present Law. We are satisfied, however, that the system which is presently in force admits of arrangements being made in appropriate cases for the postponement of the payment of the tax which is in dispute, and we do not consider that it is necessary to amend the Law in this respect.

14. It was also submitted to us that section 78 of the Act unfairly and unreasonably places the burden of proof on a taxpayer, in any appeal brought by him, not only on questions of fact but also on questions of law, and we were urged to recommend the modification of the section so as to confine the burden of proof of the taxpayer to questions of fact only. It appears to us, however, that in the submission in question an

matters capable of proof, and under the Statute in its present form it appears to us that the onus is upon the taxpayer only to the extent of proving the facts. As far as the law is concerned, the onus tends to shift on to the Commissioner, since the Courts usually follow the principle of *in dubio contra fiscum*. In the circumstances while we do not think that any material change from the existing position will thereby be brought about, it might be as well for the sake of clarity, and **we recommend**, that section 78 be amended so as to place it beyond doubt that the onus of proof on the taxpayer extends to questions of fact only and not to questions of law.

15. Concerning section 78 it was further submitted in evidence before us that an undue burden was placed upon the taxpayer by the inclusion in the section of the words "and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong". We have examined the section, which was amended to include these words in 1941, in the light of this suggestion. The reason for the addition thereto of the words in question, it would seem to us, is probably to be found in the fact that at the time the amendment was introduced in 1941, some doubt, based on dicta in the case of *Commissioner of Taxes* v. *Booysens Estates, Ltd.* (1918 A.D. 576), had arisen as to whether or not once the taxpayer had established by evidence a *prima facie* case in favour of his contention that an amount was not taxable or a deduction was admissible, the onus shifted to the Commissioner to prove by evidence that the amount was taxable or the deduction was not admissible. The difficulties with which the Commissioner would be faced if such a position were established are obvious, and it was presumably to obviate those difficulties that the amendment was made. The effect of the words in question have, however, been considered in several cases decided since 1941, notably the cases of *Reliance Land and Investment Co., (Pty.), Ltd.,* v. *Commissioner for Inland Revenue* (14 S.A.T.C. 47), *Commissioner for Inland Revenue* v. *Goodrick* (12 S.A.T.C. 279) and certain other cases decided in the Income Tax Special Court, which indicate that, while no real difference is made in the extent of the onus of the taxpayer by these words, they have nevertheless served to place beyond any doubt that the onus in regard to the proof of facts does not shift to the Commissioner, even after a *prima facie* case may have been established by evidence by the taxpayer. It has not been shown to us that any injustice has been done to any taxpayer whose case has been decided against him by reason of his failure to discharge the onus under section 78 in its present form. We consider that it is desirable that it should be made clear in the Act what is the real extent of the onus upon the taxpayer in this respect, and we are of the opinion that the deletion of the words in question would possibly only create confusion and doubt and, by opening up the field afresh, render worthless valuable and comprehensive Case Law on the subject. In all these circumstances we are unable to recommend any change in the Law in this respect.

16. In a further submission it was suggested that provisions should be introduced into the Act which would have the effect of making all decisions of the Income Tax Special Court binding upon the Commissioner until such decisions are altered by a higher Court or by the Income Tax Special Court itself in a later judgment. In this connection the position is that in the case of *Commissioner for Inland Revenue* v. *City Deep Limited* (1 S.A.T.C. 18, 1924 A.D. 298) it was held that the Commissioner is not bound by a ruling given by the Income Tax Special Court in a previous case because, although it was a competent are unable to agree that the present position should be disturbed. At present there are a number of Income Tax Special Courts operating under different Presidents in each of the Provinces, and there may not be unanimity among these Courts on any particular point. The difficulties of the Commissioner in such an eventuality are obvious.

17. Another matter in respect of which we were urged to make a recommendation is the extension from 21 to 60 days of the statutory period within which objections must be lodged. While we do not agree with the proposed extension, we see no reason why the statutory period should not be extended to 30 days. This would be consistent with other statutory periods under the Act, especially those for the payment of tax and for the lodging of appeals, and would thus obviate any confusion which may exist in regard to the matter. **We recommend accordingly.**

18. Certain suggestions for the amendment and improvement of the present Act were received from the Commissioner for Inland Revenue. In its present form section 79 (2) provides that the Income Tax Special Court shall consist of a judge of the Supreme Court, an accountant of not less than ten years' standing and, at the option of the appellant, either a representative of the commercial community or a qualified mining engineer. The Commissioner has proposed that he should also be vested with the right to elect that the third member of the Court shall be a qualified mining engineer. We consider that this right should be vested in both the appellant and the Commissioner, and **we therefore recommend** that the sub-section be amended accordingly.

19. The Commissioner has also suggested that section 79 (8) should be re-drafted so as to remove any doubts which may exist in connection with a taxpayer's rights of objection and appeal against an additional assessment or an assessment which has been reduced as the result of an objection. The object of the Commissioner's submission is to ensure that in such cases a taxpayer shall be precluded from challenging any decision of the Commissioner which was incorporated in the original assessment and in respect of which the taxpayer's rights of objection and appeal have lapsed. The right of objection of a taxpayer in such circumstances has been interpreted by the Courts to be so limited, and we feel that the position would be clarified if the Act were suitably amended. **We recommend accordingly.** The Commissioner has also suggested that the sub-section should be amended by the introduction of a provision which will explicitly preclude a taxpayer from lodging an objection and appeal against any assessment which may be issued in connection with any refund which may be made in terms of section 89 of the Act. For the reasons given in paragraph 21 (4) of Chapter 5 of this Report we share the Commissioner's view that no right of objection and appeal should lie against assessments issued in connection with any such refunds and **we recommend** that the Act should be suitably amended as suggested.

20. The Commissioner has further suggested an amendment to section 81 of the Act, under which the Income Tax Special Court is required to state a case for an appeal from its decision to the Supreme Court. He has drawn our attention to the fact that the Income Tax Special Court must sometimes be convened for the purpose of resolving a disagreement between the parties as to the terms of such stated case, and that difficulties may arise in such an event if one or more of the members of that Court, which originally decided the case, is no longer available. To meet these difficulties **we recommend** that section 81 should be amended by the addition of the following new sub-section:—

3. The statutory rules to be followed by the Commissioner in the making of refunds which do not arise as the result of a successful appeal by a taxpayer are laid down in section 89 of the Act, and the effect of these provisions is to permit the Commissioner to authorise a refund of tax overpaid only if—

(1) he is satisfied that any amount paid by a taxpayer was in excess of the amount properly chargeable under the Act; and

(2) the claim therefor is made within three years after the date when the relative assessment was made.

In addition, the section provides that no amount paid in respect of an assessment made in accordance with the practice prevailing at the time when that assessment was made and accepted by the taxpayer shall be deemed to have been otherwise than properly chargeable. The section contains no provision for the payment of interest by the Commissioner on the amounts refunded.

4. The provisions of section 89 have, however, been modified in two respects by section 80, which prescribes the statutory rules to be followed in cases where refunds are payable as the result of a successful appeal by a taxpayer. It is conceivable that a period of more than three years may elapse between the making of an assessment and the conclusion of taxation proceedings in connection therewith, and, but for the provisions of section 80, a taxpayer would in such a case be disqualified by the effluxion of time from claiming a refund of tax under section 89. This contingency has, however, been met by the terms of section 80, which provides, *inter alia*, that if an assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess of the amounts properly chargeable under the Act shall be refunded. The taxpayer is thus automatically relieved of the obligation to claim a refund of tax within the prescribed period of three years if the refund arises out of the successful prosecution of an appeal against his assessment. The second modification of section 89 which is brought about by the provisions of section 80 is that under the latter section interest is payable by the Commissioner on any amount refunded as the result of a successful appeal by the taxpayer. At present the rate of such interest has been fixed by the Treasury at 6 per cent per annum.

SUBMISSIONS MADE TO THE COMMITTEE AND OUR RECOMMENDATIONS IN CONNECTION THEREWITH.

5. In several of the submissions which were made to us we were urged to recommend that in all cases the period during which a taxpayer may claim a refund should be extended to six years. We have given due consideration to this suggestion but do not consider that its adoption would be justifiable. The present provisions of the Act allow to a taxpayer who has failed to avail himself of his rights of objection and appeal a period of nearly three years in which to seek a revision of any assessment about which he is aggrieved. It is our view that the Statute goes far enough towards meeting the difficulties of such a taxpayer, and that the relevant provisions are equitable and should not be disturbed.

6. It was also suggested to us that the Commissioner's discretionary power to decide whether it has been proved to his satisfaction that any amount paid by a taxpayer was in excess of the amount properly chargeable under the Act should be made subject to objection and appeal. We have dealt fully with this matter in Chapter 5 of this Report and, as we have indicated in paragraph 21 (4) of that Chapter, we do not subscribe to this view.

7. In another submission which was made to us, the Commissioner to authorise a refund under the provisions of that section, instead of merely permissive, as at present. We are satisfied that, in practice, the Commissioner invariably authorises a refund if the application therefor complies with the provisions of the section in question, but we feel that, for the sake of clarity, it would be desirable to amend the section in the manner suggested. **We therefore recommend** that the word "shall" be substituted for the word "may" in section 89 (1) of the present Act.

8. A further matter to which we were urged to give consideration is the question of whether the rate of interest payable by the Commissioner on amounts refunded as the result of successful appeals by taxpayers should be increased from 6 per cent. to a rate equivalent to that payable by taxpayers in respect of overdue taxes. We are unable to support this proposal, as we are of the opinion that there is no connection between the two payments. We believe that the interest payable in respect of amounts of tax which are paid after the due date thereof should remain at a punitive level, and that the interest payable by the Commissioner should be at a rate approximating to that charged on overdrafts by commercial banks. **We recommend accordingly.**

9. We have also been urged to recommend that the Commissioner be bound by the decision of the Income Tax Special Court and be obliged to make any refunds of tax which may be necessary in terms of the decision of that Court, immediately the decision of the Special Court is given and notwithstanding that he may have appealed from such decision to a higher Court. Under the present Law the Commissioner is not required to make a refund until a final judgment has been given in respect of his dispute with the taxpayer. We are unable to support the suggestion made in this submission. If the Commissioner succeeds in the final result in establishing that his original assessment was properly made, despite the adverse decision of the Income Tax Special Court, the tax would once again have to be recovered from the taxpayer and should reasonably carry interest, since the State will have been deprived for a period of money to which it was entitled. When the proceedings are protracted, recovery of the tax and interest may well prove difficult and, in some cases, impossible, and revenue would be prejudiced. Should the taxpayer succeed in the final result, on the other hand, the Act already provides that he shall receive a refund of the amount involved, with interest, and he therefore suffers no permanent prejudice. We are, therefore, unable to recommend any change in the Law in this respect.

FURTHER MATTERS CONSIDERED BY THE COMMITTEE.

10. We have dealt with some aspects of the re-opening of assessments by the Commissioner in Chapter 6 of this Report, and in paragraph 21 of that Chapter have made a recommendation which, if accepted, will resolve the apparent conflict between section 77 (7) of the Act on the one hand, which provides that, were no objection is lodged against an assessment or an objection has been allowed or withdrawn, such assessment shall be final and conclusive, and sections 66 and 89 on the other, which respectively vest in the Commissioner the power to raise additional assessments and authorise refunds of tax.

11. Notwithstanding this recommendation, we consider that the rights of the Commissioner to re-open an assessment or authorise a refund should be clarified in cases where a taxpayer has lodged no objection or has not claimed a refund in respect of an assessment which includes amounts which the Commissioner is satisfied should not have been so included, or reflects an amount of tax which the Commissioner is satisfied was in excess of the amount properly chargeable under the Act. The

those in which the Commissioner is satisfied that such an error has occurred in an assessment in cases where—

(1) the taxpayer's rights of objection have not lapsed but no objection is lodged; or

(2) the taxpayer's rights of objection have lapsed but the tax assessed has not been paid; or

(3) no refund is claimed by the taxpayer.

In its present form the Act contains no specific provisions authorising the Commissioner to alter an assessment under such conditions. The re-opening of the assessment in question would, however, usually be warranted unless, in cases in which double taxation is not involved, undue delay on the taxpayer's part occurs in seeking the adjustment. We are, therefore, of the opinion that the finality provisions of section 77 (7) should be modified further to remove any doubts as to the Commissioner's rights to alter an assessment in the cases described above. We also consider that, for the reasons stated in paragraph 21 (4) of Chapter 5 of this Report, the discretionary power which we propose should be vested in the Commissioner in relation to these matters should not be subject to objection and appeal, and that the Commissioner should be entitled, without any time limit, to alter an assessment as the result of which the double taxation of a taxpayer in respect of any amount, or the taxation of the same amount in the hands of more than one person, would otherwise occur.

12. The object of the income tax law should be to provide machinery whereby the ultimate burden imposed upon the taxpayer is strictly in accordance with its provisions, notwithstanding that mistakes or errors may occur in the calculation of the taxpayer's liability in the first assessment made upon him for any year. The introduction of provisions into the Act to enable alterations to be effected in adjustment of over-assessments is, in our opinion, a logical and proper counterpart of the statutory provisions contained in the Act for the adjustment by way of additional assessments in the case of under-assessments.

13. In order that effect may be given to our proposals, we **recommend** that section 89 of the Act be redrafted along the following lines:—

"89. (1) If, notwithstanding that an assessment may have become final and conclusive, it is proved to the satisfaction of the Commissioner that—

(*a*) any amounts which have been included in any such assessment either under this Act or any previous Income Tax Act of the Union should not have been so included; or

(*b*) any amount made payable by means of any such assessment was in excess of the amount properly chargeable under this Act or any previous Income Tax Act of the Union,

the Commissioner shall, to the extent that may be necessary, alter the assessment and/or authorise a refund of any tax overpaid: Provided that no amount included in an assessment in accordance with the practice generally prevailing at the time when that assessment was made shall be deemed to have been otherwise than properly so included.

(2) The Commissioner shall not under this section alter any assessment nor authorise any refund if the application for such alteration or the claim for such refund is made on a date later than three years after the due date of the assessment, unless the alteration of the assessment or the refund is necessary to avoid the taxation of the same amount in the hands of the same taxpayer in respect of more than one

CHAPTER 9.

THE PENALTIES IMPOSABLE UNDER THE INCOME TAX ACT.

Preliminary.

1. The penalties which may become imposable under the Income Tax Act (Act No. 31 of 1941, as amended) upon taxpayers who fail to comply with its provisions are severe. It is clear that the existence of the relevant provisions must act as a strong deterrent to those taxpayers who, in the absence of these provisions, might contemplate the deliberate contravention of the Act. Such a course would naturally lead to the incomplete collection of taxes upon income to the detriment of the Fiscus and of those members of the taxpaying community who comply strictly with the provisions of the Act, who would, as a result of the contraventions and evasions of others, be called upon to bear a correspondingly heavier burden of taxation. In these circumstances we believe that it will be generally accepted that penalty provisions are a necessary part of any income tax statute.

The Present Law.

2. The following are the main circumstances under which penalties may become imposable upon a taxpayer and the nature of the penalty in each case:—

(1) Failure to render a return of income or to submit such further information as may be required by the Commissioner, the under-statement of income, the obstruction of an officer in the discharge of his duties, the submission of a false certificate covering accounts prepared by him, and the failure to retain the books of account of his business for a period of five years from the date of the last entry therein—a fine not exceeding fifty pounds or imprisonment for a period not exceeding three months, or both such fine and imprisonment [section 63 (1)].

(2) After having been convicted under section 63 (1) of the Act (see preceding paragraph), for continued default—a fine of five pounds for each day during which such default continues, or imprisonment without the option of a fine for a period not exceeding three months [section 63 (2)].

(3) Failure to render returns of income, the omission of income and the making of false statements in returns of income—additional taxes commonly known as "treble tax" [section 65 (1)].

(4) Failure by a company to appoint a public officer or a place for the service or delivery of notices under the Act, or failure to keep the office of public officer constantly filled or to maintain a place for the service or delivery of notices under the Act—a penalty not exceeding one pound for each day during which the default continues [section 76 (8)].

(5) Failure to respond to a subpoena to give evidence before the Income Tax Special Court or, unless excused by the President of the Court, to remain in attendance throughout the proceedings of the Court— a fine not exceeding twenty-five pounds or, in default, imprisonment for a period not exceeding one month [section 79*bis* (2)].

(6) For contempt of the Income Tax Special Court—a fine not exceeding fifty pounds or imprisonment for a period not exceeding one month [section 79*ter* (1)].

(7) The making of false entries in a return of income, the giving of any false answer to any request for information under the Act, the preparation or

vance for the purpose of evading tax or assisting another to do so—a fine not exceeding five hundred pounds or imprisonment for a period not exceeding two years, or to both such fine and such imprisonment (section 91).

(8) Failure to comply with any regulation made by the Governor-General—a fine as fixed by the relevant regulation not exceeding twenty pounds [section 93 (2)].

3. In respect of the additional taxes imposable under section 65 (1) of the Act, known as "treble tax", the Commissioner for Inland Revenue is vested with discretionary powers of remission under section 65 (2). At present the Act does not provide for the right of appeal against the decision of the Commissioner, acting under these discretionary powers, not to grant such remission, but we have recommended in paragraph 29 of Chapter 5 of this Report that his decisions on this matter should be made appealable subject to certain conditions.

Representations to the Committee and the Consideration thereof.

4. Although the principles underlying the penalties and additional taxes for which provision has been made in the Act were supported in the submissions which were made to us, certain modifications were suggested.

5. We were urged to recommend that the penalties imposable under the Act should be dealt with by the Courts only and not by the Commissioner, but we do not consider that it is desirable that the Commissioner should be divested of any of the powers which he enjoys in those cases enumerated in paragraph 2 above in which he is vested with the power to impose a penalty. We believe that it is proper that the Commissioner, as the officer responsible for the administration of the Income Tax Act, should be vested with the rights which he at present enjoys. We are satisfied that the present arrangements in this connection are satisfactory, and that any restriction of the rights of the Commissioner in this respect would lead to administrative difficulties and confusion. For these reasons we are unable to support the suggestion that the Commissioner should be deprived of any rights to impose penalties with which he is vested within the limits prescribed by the Act.

6. It was also suggested to us that the names of taxpayers who have incurred liability for penalties under the Act should be published. We have already examined fully the question of the preservation of secrecy in relation to income tax matters and, in Chapter 4 of this Report, have expressed the view that, except in certain limited cases only, such secrecy should be preserved, While we have no doubt that the publication of the names of taxpayers who have incurred liability for penalties under the Act would act as a deterrent in the matter of the evasion of tax, we believe that it would also have effects which would be undesirable, both from the point of view of the Department and that of the taxpayer. Under the Act the Commissioner is empowered, within prescribed limits, to impose penalties upon a taxpayer, and, while we have had no evidence that such penalties are unreasonably imposed, the publication of this information concerning a taxpayer who has not enjoyed the protection afforded by a trial in the ordinary courts of law might conceivably result in some injustice being done to such a taxpayer. If the circumstances of any particular case warrant the institution of criminal action the proceedings will be public and the name of the taxpayer will be available for publication automatically. In the circumstances we are unable to recommend any change in the law in this respect.

7. It was also advocated that the Act should be addition to the imposition of monetary penalties upon them. Both sections 63 and 91 (1) of the present Act provide for alternative or additional sentences of imprisonment. In our opinion these sections are adequate in this respect and do not require to be supplemented.

8. The Commissioner for Inland Revenue has suggested that section 63 (1), the provisions of which we have explained in paragraph 2 (1) of this Chapter, should be modified so as to include, as a deterrent against the non-disclosure of items of expenditure which may be challengeable, the following new sub-paragraph:—

"(*h*) Any taxpayer who in determining his taxable income derived from trade adds to the price which he has contracted to pay for stock in trade acquired by him or deducts from the sale price of stock in trade disposed of by him during the year of assessment any item of expense whatsoever without clearly disclosing to the Commissioner the nature and value of that expense."

9. The effect of an amendment to the Statute along these lines would be that, in the circumstances described, a taxpayer would be guilty of an offence and liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

10. We have given due consideration to this proposal, but we are unable to support it on the grounds that we do not regard it as practicable. Generally, the cost of stock in trade is made up of a number of items other than the cost of the merchandise itself, particularly in the case of imported goods. Such other items may include the cost of handling, railage, loading, freight, storage, exchange, buying commission and customs dues, and we consider that the furnishing of such details in all cases would be a source of considerable inconvenience to taxpayers which would not be justified by the results which may be obtained thereby.

11. The Commissioner has also suggested the following amendments to section 63 (2) of the Act:—

(1) In its present form this sub-section mentions failure to "furnish any return, information or reply", but does not mention failure to produce any document or book, which is an offence under section 63 (1) (*a*) and (*b*) of the Act. The sub-section would be more comprehensive if the words "of failing to furnish any return, information or reply" after "sub-section 1" were deleted therefrom, and if the words "or to produce any book or document" were added thereto after the word "reply" where it occurs the second time.

(2) The sub-section makes provision for a fine of five pounds per day, but does not admit of a remission or reduction of this fine at the discretion of the Court. The words "not exceeding" should, therefore, be inserted therein before the words "five pounds".

12. We agree with these suggestions and **we recommend** that section 63 (2) of the Act be re-drafted along the following lines:—

"63. (2) Any person who has been convicted under the provisions of sub-section (1) shall, if he fails within any period deemed by the Commissioner to be reasonable and of which notice has been given to him by the Commissioner, to furnish the return, information or reply, or to produce any book or document, in respect of which the offence was committed, be guilty of an offence and shall be liable to a fine not exceeding five pounds for each day during which such default continues or to imprisonment

FURTHER MATTERS CONSIDERED BY THE COMMITTEE.

13. The penalty which is imposable by the Commissioner under section 76 (8) of the Act upon a company which is guilty of default in connection with the appointment of a public officer or a place for the service or delivery of notices under the Act is limited at present to an amount not exceeding one pound for every day during which the default continues. The section, although permitting of a reduction of the amount of the penalty, does not explicitly vest in the Commissioner the power of total remission. **We therefore recommend** that the sub-section be re-drafted along the following lines:—

"(8) Any company which makes default in appointing a public officer or appointing a place for service or delivery of notices in accordance with this Act, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices or which fails to notify to the Commissioner any change of public officer or of the place for the service or delivery of notices, and every person who acts within the Union as agent or manager or representative of such company, shall incur a penalty of one pound for every day during which the default continues, and every such penalty shall be recoverable by the Commissioner by action in any Court of competent jurisdiction: Provided that the Commissioner may remit such part or all of the said penalty as he may think fit."

14. We have also examined the provisions of section 63 (1) (*c*) and (*d*) of the present Act. Under these provisions a person shall be guilty of an offence and liable to a fine not exceeding £50, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment if he—

(1) Understates his gross income in his returns of income, or fails to disclose to the Commissioner, when making such returns, any material facts which should have been disclosed [section 63 (1) (*c*)]; or

(2) understates the gross income of any other person in returns prepared or rendered by him on behalf of such other person, or fails to disclose to the Commissioner, when making such returns, any facts which, if so disclosed, might result in increased taxation [section 63 (1) (*d*)].

15. It would appear to us that under these subsections in their present form it would be difficult for the Commissioner to prosecute successfully a taxpayer who had appointed an agent to make a return of income on his behalf and that agent had omitted some portion of the taxpayer's gross income. In such a case the only remedy at present available to the Commissioner would appear to be to prosecute the agent under section 63 (1) (*d*) and, in such an event, the agent might with justification plead mitigation on grounds that he was unaware of the existence of the particular item of income which was omitted from the taxpayer's return. Section 63 (1) (*c*) appears to us to relate only to a taxpayer who has failed, in a return which he has made himself, to disclose some portion of his gross income, and we regard it as undesirable that the Commissioner should be so limited in his powers of prosecution. The difficulty seems to us to be capable of being resolved by combining and re-wording sub-sections (*c*) and (*d*) of section 63 (1), so as to provide that the taxpayer *and* his agent shall be deemed to be guilty of an offence in every case in which the return of that taxpayer's income, whether signed by the taxpayer himself or the agent, fails to disclose any portion of the taxpayer's gross income. The Commissioner would then be in a position to prosecute either the taxpayer or his agent, or both parties, if necessary. **We therefore recommend** that sub-sections (*c*) and (*d*) of section 63 (1) be amended accordingly.

16. A similar difficulty would appear to arise from are imposable upon a taxpayer if he fails to render a return of his income, omits from his return any amount which ought to have been included therein, or makes any incorrect statement in his return resulting in the assessment of taxes at an amount which is less than the tax properly chargeable.

17. It would appear to us that, in its present form, this section enables the Commissioner to impose the penalty taxes upon the taxpayer only if the taxpayer himself has contravened the provisions of the Act, and that the additional taxes cannot be imposed if the default, omission or incorrect statement was made by the taxpayer's agent.

18. We are of the opinion that the Commissioner should be enabled to impose the penalty taxes upon the taxpayer in cases where the agent, and not the taxpayer himself, is guilty of the default, omission or incorrect statement, and to remove any doubts which may exist in regard to this matter, **we recommend** that section 65 (1) be re-drafted along the following lines:—

"65. (1) A taxpayer shall be required to pay, in addition to the tax chargeable in respect of his taxable income or income subject to super tax—

(*a*) if default is made in rendering a return of the income of the taxpayer in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income or income subject to super tax for that year of assessment; or

(*b*) if there is omitted from the return of income of the taxpayer any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income or income subject to super tax returned and the tax properly chargeable in respect of his taxable income or income subject to super tax as finally determined after including the amount omitted; or

(*c*) if any incorrect statement is made in any return of the income of the taxpayer which results or would, if accepted, result in the assessment of the normal or the super tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made and the tax properly chargeable if the incorrect statement had not been made."

19. Under section 63 (1) (*f*) of the present Act a taxpayer shall be guilty of an offence and liable to a fine not exceeding fifty pounds, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment if he fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, invoices and all other books of account relating to any trade carried on by him and recording the details from which his returns of income were prepared. It has been suggested that the records which must so be retained by the taxpayer should include stock sheets, and as we agree with this suggestion **we recommend** that the section be suitably amended.

CHAPTER 10.

THE EFFECTS OF INFLATION UPON THE CALCULATION OF TAXABLE INCOME.

INTRODUCTORY.

1. Problems which are being much discussed at the moment are those arising out of the fairly rapidly falling value of money which commenced with the beginning of World War II and still continues to-day. The view is being strongly pressed that conventional

since accounts drawn on a basis which disregards the fall in the value of the currency in which it is expressed cannot accurately and truly reflect the profits or gains of the trade. Adherence to conventional accounting methods and failure to take account of the fall in the value of currency in the determination of income for income tax purposes, it is contended, results in the unfair and discriminatory taxation of persons engaged in trade. In particular it was urged, in submissions made to us, that to enable a trader to preserve his capital intact in the face of the present steady decrease in the purchasing power of money, and to arrive at a fair and proper determination of the profits of his trade for purposes of assessment to income tax, he should be permitted to deduct—

(1) allowances, additional to and distinct from the wear and tear allowances ordinarily allowed for income tax purposes, in respect of the plant and machinery and other fixed assets used by him in the course of his trade; and

(2) allowances to enable him to meet the additional costs of replacement of his stock in trade.

2. The problem has been described in simple terms in a submission which was made to us. It was contended that, as prices have more than doubled since 1939, amounts set aside in respect of depreciation based upon the historical cost of capital assets provide at the end of the life of the assets only about one-half of the funds required to replace those assets. The remaining half, it was stated, must therefore be borrowed or subscribed, or drawn from reserves created out of earlier profits, and the business is therefore deprived of a sum of money in order to enable it to retain the same assets or means of production.

3. In regard to stock in trade, it was argued, in this submission, that the amount of devalued money that is now required to maintain trading stocks at the same quantity or volume is far higher than the amount of pre-devalued money which was necessary to do so.

Suggested Methods of Countering the Effects of Inflation.

4. The problems which are being encountered, as the result of the effects of inflation, by persons engaged in trade have been studied by a number of organisations in other countries, and various schemes have been suggested and discussed with a view to solving these problems, or, as far as possible, minimising the effects of such inflation. The extent of inflation is not the same in all countries, but to the extent that it does take place in any given country some erosion of capital resulting from the fall in the purchasing power of currency would seem to be inevitable.

5. We have examined a number of schemes the object of which is to counter the effects of inflation upon the calculation of taxable income, and to obtain a measure of relief for the taxpayer. These schemes were designed to be applied in circumstances which it may perhaps be said exist in countries like the Union, where it is not necessary to deal with runaway inflation, and a brief reference thereto may therefore be of interest when dealing with the question as it affects this country.

6. As the problem of inflation in relation to the computation of taxable income manifests itself in two ways, namely, in the cost of the replacement of plant and machinery and other assets, on the one hand, and in the cost of replacement of stock in trade, on the other, we have found it convenient to deal separately with these aspects of the matter.

(1) *Schemes relative to the replacement of Plant and Machinery and other Fixed Assets.*

7. We have had the opportunity of studying several schemes the object of which is to obtain a measure of relief for taxpayers in respect of the cost of replace-

8. Those falling under the first class or group and which contemplate the granting of the allowance in advance, are broadly as follows:—

(1) A system known as "Revalorisation", under which depreciation allowances are based not upon actual cost but upon a notional value related to the existing cost of replacement. This method involves the revaluation of the assets by the application of price co-efficients and the maintenance of detailed asset accounts. It was stated, however, that the system could be simplified by discarding any refinements which may prove to be impracticable, and by merely doubling the cost of assets purchased in 1940 and prior years, and thereafter depreciating the written-up value, after deducting the depreciation already allowed, in determining taxable income over the remainder of the life of the assets.

(2) A method of calculating the amount of the allowance to be given without involving the revaluation of the assets. Such a system involves the granting of allowances in addition to and distinct from those ordinarily made annually in respect of depreciation. The amount of such additional allowances is arrived at by multiplying that proportion of the ordinary annual depreciation allowances for the current year which relates to assets which were acquired in previous years by a factor which represents the increase in costs between the date upon which such assets were acquired and the current year.

9. The schemes which we have thus far explained, and which fall under the first class or group of schemes, differ only in the detailed methods of calculating the amount of the allowance to be given, but, as we have already indicated, they all involve the granting of such allowance in anticipation of the replacement of the assets concerned.

10. The second class of scheme, which provides for relief to be granted not in advance but upon the actual replacement of the assets, takes the form of a replacement allowance and operates in the following manner. When an asset is replaced, a deduction is permitted for income tax purposes of an amount equivalent to the excess of the replacement cost over the sum of the proceeds realised by the sale of the old asset and the annual depreciation allowances already granted thereon. This method involves the calculation of future amortisation allowances being based for income tax purposes on an amount equivalent to the cost of the original asset, irrespective of the number of occasions upon which the asset is replaced, and has the further feature of combining in one calculation the determination of the allowance and the balancing charge or allowance arising from the disposal or scrapping of the asset.

(2) *Schemes relative to the replacement of Stock in Trade.*

11. As we have indicated earlier in this Chapter, the fall in the purchasing power of currency is a matter which also affects the replacement of stock in trade. The argument has been propounded that while a given quantity of stock might have a certain value expressed in to-day's currency, a few years ago its value, expressed in the then existing currency, would have been considerably less, and that the variation in the expressed value of such stock was not a true profit and could not be distributed without reducing the volume of resources and level of production, nor should any part of it in fairness be required to be paid away in taxation. Furthermore, in many cases the selling price of the stock in trade has been based, not on the historical cost of the stocks, but on the cost of their replacement. If, therefore, the method of computation of taxable income results in the basic stocks held being advanced in price as replacement costs increase, the profits will be

prices of the basic quantity of stock that must necessarily be retained in hand to permit the business to be conducted.

12. Various schemes have been suggested and discussed from time to time to counter the difficulties thus claimed to exist, by means of the creation of tax-free stock replacement reserves or the adoption of LIFO (Last in—First Out) or other methods of stock valuation.

RECOMMENDATIONS OF THE TUCKER COMMITTEE AND THE NEW ZEALAND TAXATION COMMITTEE ON THE SUBJECT.

13. The question of the effects of inflation upon the calculation of taxable income was one of the matters recently investigated by the Committee which was appointed, under the Chairmanship of Mr. Millard Tucker, to consider the taxation of trading profits in the United Kingdom.

14. The Committee disagreed with the view that a proper system of computing profit must necessarily take into account changes in the value of money, and strongly opposed the adoption of any system " which involves departing from known measures of value and dealing in abstractions ". The Committee found that all the schemes which were submitted to it had one common objection, namely, that they favoured the owners of businesses as against other classes of taxpayers, for example, investors or pensioners. It also found that schemes based upon the revalorisation of assets, if adopted, would benefit established and stationary businesses and not new or expanding businesses, and would give relief to the taxpayer who has not replaced his assets since the war, while affording none to the taxpayer who has done so. In addition, the Committee objected to revalorisation schemes on practical grounds, and drew attention to the considerable amount of work in which such schemes would involve both the taxpayer and the taxing authority. It was also of the opinion that unwarranted benefits would accrue under such schemes to the owners of obsolete plant, which is not in regular use but is retained in case of emergencies, or which has not been scrapped through the inertia of the owners. On the grounds that the granting of special allowances dependant upon the actual replacement of plant would result in discriminatory taxation, would be inequitable between taxpayers and would be impracticable in administration, the Committee was also unable to support such a system.

15. The Committee was unable to recommend that an allowance should be made, for tax purposes, in respect of the cost of replacement of stock in trade mainly on the grounds that it would involve treating an application of profit as a deduction in arriving at that profit.

16. In its recommendations the Tucker Committee advocated the granting of initial allowances, the rate of which is capable of variation according to the merits and circumstances of the particular case, in respect of the cost of replacement of fixed assets.

17. The question of the effects of inflation upon the calculation of taxable income was also studied by a recently appointed New Zealand Taxation Committee and, like the Tucker Committee, it was unable to recommend the introduction of the system known as revalorisation on the grounds that it would be impracticable. Instead, the Committee recommended that, in lieu of the special and initial depreciation allowances which were in force in New Zealand at the time, taxpayers should be entitled, at their discretion, to allowances for depreciation at rates up to 20 per cent per annum on the diminishing value basis, ... be permitted to write off more than 100 per cent of the cost of any asset, and that provision should be made for a balancing charge when the asset is sold. It was of the opinion that the allowance of tax-free reserves in the valuation of stock in trade would not be justified.

CONCLUSIONS OF THIS COMMITTEE ON THE SUBJECT.

18. In view of the importance of the problem. we have regarded it as incumbent upon us to endeavour to evolve a method of affording a measure of relief in this connection to taxpayers in the Union.

19. The Income Tax Act of the Union (Act No. 31 of 1941. as amended) contains provisions, in section 11 (2) (*d*) *bis*, under which a concession was granted to taxpayers who acquired new plant for use in a process of manufacture in pursuance of an order placed and accepted within a period of two years ending upon the 30th June, 1947, or who manufactured such plant during such period. This concession, which is granted in respect of the year of assessment ending not later than the 30th June, 1949, takes the form of a special initial allowance of 15 per cent of the cost of such plant. Among the features of this concession are the following:—

(1) It is not applicable in respect of any year of assessment subsequent to that ended upon the 30th June, 1949;

(2) it does not permit a taxpayer to write off more than 100 per cent of the cost of any asset;

(3) its application does not extend to all assets but is limited to specified types of assets; and

(4) it accelerates the rate at which such assets are written off.

Apart from this concession, which was granted with the object of encouraging industry to re-equip and expand its factories in the face of rising costs, the Act contains no provisions either directly or indirectly connected with tax relief measures to counter the fall in the purchasing power of currency.

20. Viewed in the light of the effects of inflation upon the calculation of taxable income, the main difference between fixed assets and stock in trade appears to us to be that in regard to fixed assets the cost of replacement is usually only incurred at comparatively long intervals, whereas the cost of replacement of stock in trade must be incurred more or less continuously. In respect of fixed assets the issue is related to the deductions in regard to depreciation or wear and tear allowances, while in connection with stock in trade it is related principally to the cost of stock sold and the valuation of stock on hand.

21. We have given careful consideration to the question of granting relief to taxpayers who are faced with the necessity of replacing their fixed assets at inflated prices, and are of the opinion that a measure of relief in the case of such taxpayers is warranted in respect of such fixed assets as are presently subject to a wear and tear allowance for income tax purposes. We do not, however, favour the introduction of the system of revalorisation. We share the view expressed by the Tucker Committee that such a system would involve departing from known measures of value and dealing in abstractions, and the doubts expressed by both that Committee and the New Zealand Committee as to the practicability of such a system.

22. We feel that provisions should be introduced into the Income Tax Act whereby taxpayers who utilize plant and machinery and other fixed assets which are presently subject to the wear and tear allowances provided for under the Income Tax Act, may be granted relief in suitable form, according to ...

23. Under the scheme which we visualise, any taxpayer making application for the replacement allowance should be required each year to satisfy the Commissioner, either by means of a certificate or in such other manner as may be prescribed, as to the estimated increase in the cost of replacement of the fixed asset in question as at the end of the tax year concerned. The Commissioner should then determine each year the amount of the replacement allowance for that year by—

(1) establishing the excess of the cost of replacement over the original cost of the asset in question;

(2) reducing the amount under sub-paragraph (1) above by an amount representing the value of the element of improvement, if any, present in the anticipated replacement;

(3) determining the just and reasonable percentage by which the value of the asset has been diminished by reason of wear and tear during the year of assessment; and

(4) applying the percentage so determined to the net sum arrived at in sub-paragraph (2).

24. As far as the element of improvement present in the anticipated replacement of an asset is concerned, it is obvious that an allowance in respect of such improvement would not be warranted. We therefore regard it as necessary that the Commissioner should be vested with the discretionary power to decide the value of such improvement, for the purpose of the calculation of the allowance. For the reasons given in paragraph 21 (6) of Chapter 5 of this Report, we are of opinion that the decisions of the Commissioner in the exercise of this discretionary power should not be subject to objection and appeal.

25. To illustrate the operation of the scheme which we have described thus far, the following example is given:—

Assume that an asset cost £1,000 originally, that it has been in use for seven years during which wear and tear allowances totalling £700 have been granted, and that application for the replacement allowance is first made in respect of the eighth year, at the end of which its replacement value is estimated at £3,000, including an element of improvement estimated at £500. Assume further that the allowance continues to be claimed in the ninth year when the estimated replacement value has risen to £3,250, including an element of improvement of £500 and that in the tenth year replacement takes place at £3,500, including again an element of improvement valued at £500. The percentages determined by the Commissioner as the just and reasonable percentages by which the value of the asset has been diminished by reason of wear and tear during the tax years concerned (which percentages are also applied in the calculation of the normal wear and tear allowances based on the original cost of the asset), are 10 per cent in respect of the eighth year, 15 per cent in respect of the ninth year, and 5 per cent in respect of the tenth year.

The replacement allowance will be calculated as follows in respect of the eighth, ninth and tenth years:—

Eighth Year.
10% of [(£3,000 – £1,000) – £500], i.e.— £1,500 = £150. 0s.

Ninth Year.
15% of [(£3,250 – £1,000) – £500], i.e.— £1,750 = £262. 10s.

Tenth Year.
5% of [(£3,500 – £1,000) – £500], i.e.— £2,000 = £100. 0s.

Aggregate of replacement allowances £512. 10s.

26. Having determined the amount of the replacement allowance for any year, we contemplate that the Commissioner should permit the taxpayer, subject to the conditions referred to in paragraph 28 below, to deduct from, and set aside out of, his income for income tax purposes, during that year, the amount of such replacement allowances in anticipation of the actual replacement of the fixed assets in question, and in addition to the normal wear and tear allowance. Thus, in the example given in the preceding paragraph the taxpayer would be permitted to deduct, during the eighth, ninth and tenth years the following amounts:—

(1) *Eighth Year.*
(*a*) Replacement allowance: £150.
(*b*) Wear and tear allowance: £100.

(2) *Ninth Year.*
(*a*) Replacement allowance: £262. 10s.
(*b*) Wear and tear allowance: £150.

(3) *Tenth Year.*
(*a*) Replacement allowance: £100.
(*b*) Wear and tear allowance: £50.

27. Upon the actual replacement of the asset in question we visualise that the wear and tear calculations to be made in respect of the new asset will be based upon the amounts remaining after deducting from the cost of the new asset the aggregate of the amounts of the replacement allowances previously made in respect of the replaced asset. We also regard it as necessary to provide specifically that such aggregate of the amounts of the replacement allowances granted in respect of any asset should be taken into account in the calculation of the balancing charges or allowances which will require to be made when the asset purchased in replacement is sold or otherwise dealt with.

28. The granting of the replacement allowance year by year and before replacement actually takes place should, in our opinion, be conditional upon the taxpayer setting aside and investing cash to an amount equivalent to the amount of the allowance, in a special form of security to be issued by the Treasury and bearing interest at a reasonable rate. Such securities should be suitably endorsed as to the amount of the income tax relief obtained by the taxpayer as a result of the granting of the replacement allowance, and it should be a condition of issue that the securities may only be redeemed at their full value, without any deduction for the amount of the income tax relief endorsed thereon, if the amount for which they are redeemed is utilised to replace the asset concerned. Should the securities be redeemed for other purposes, the tax relief granted when they were purchased should be forfeited by the taxpayer, who should nevertheless still be entitled, if the asset concerned is actually replaced at some later date at an inflated price, to the benefit of the deferred allowance described in paragraph 30 below. If the taxpayer is unable to establish that the entire amount in respect of which allowance has been granted has been expended on replacement of assets but only part of that amount, we consider that the amount of the tax relief so to be forfeited by the taxpayer should bear to the total tax relief which he has enjoyed the same proportion as the value of the securities which are not utilised for the replacement of assets bears to the total value of the securities. By these means the use of the proposed scheme as a means of tax avoidance would be prevented.

29. It will also be necessary to provide that the securities so purchased will not be transferable from one taxpayer to another. Thus, when a taxpayer dies or sells the assets in respect of which replacement allowances have been granted, without replacing such assets, the securities should be required to be redeemed within a period of six months, or such further period as the Commissioner may deem to be reasonable, and subject to the forfeiture of the income tax relief granted in

30. We realise that some taxpayers may not have sufficient cash resources available for the purchase of such approved securities each year, but we see no reason why they should be disqualified by such circumstances from obtaining appropriate relief in respect of fixed assets if and when they are replaced at inflated prices. In such cases we consider that the granting of the annual replacement allowances should be deferred and the allowances should be aggregated and granted in respect of the year of assessment in which the replacement actually takes place. To meet such cases it will be necessary to provide that the application for the relief in this form should be made in advance by the taxpayer in anticipation of the actual replacement of the fixed asset concerned. The Commissioner should then determine the amount of the annual replacement allowances on the same basis as that outlined in paragraph 25 above, and the amounts so determined should be advised to the taxpayer and recorded in the Commissioner's records. Assuming that the data given in paragraph 25 above applies, we visualise that the taxpayer would receive, in respect of the year of assessment in which the replacement takes place, a total replacement allowance of £512. 10s., and that the value of the new asset would be reduced, for purposes of the normal wear and tear allowances, by the amount of such allowance. It is true that such a course might bring about some distortion in the taxable income of the taxpayer in respect of the year of replacement, but if Treasury requirements render the granting of the full allowance in one year impracticable the allowance could be spread over a period of years. In order that the granting of the allowance should not lose its effectiveness, we are of opinion, however, that the allowance should not be spread over a period of more than, say, three years.

31. We are of the opinion that the replacement allowances contemplated by us should be granted at the option of the taxpayer. We think so because in certain circumstances it might be more equitable or advantageous to the taxpayer if the writing off of the cost of the new asset were permitted for income tax purposes in the usual manner by way of wear and tear allowances in substantially equal amounts annually over the life of the asset, instead of in the manner contemplated by us. For this reason, therefore, we feel that the taxpayer should be given the right to elect to have his taxable income computed with or without taking into account the proposed replacement allowances.

32. The effect of our proposal that replacement allowances be granted only in respect of assets which are presently subject to wear and tear allowances will be that such replacement allowances will not be granted in respect of assets used for purposes of deriving income from mining operations since assets used for such purposes are not subject to wear and tear allowances. In our opinion, however, the special allowances presently granted in lieu of wear and tear allowances in terms of sections 20 and 21 of the Act in respect of assets used in the production of income from mining operations generally provide adequate relief to persons engaged in such operations, even where replacement takes place at enhanced prices due to the fall in the value of currency, and we do not feel that any variation is called for in the existing rules relating to the amortisation of assets employed in the production of income from mining beyond the proposals we have already made in this connection in Chapter 14 of our First Report.

33. In our view the proposed system would have a number of important advantages. Briefly, these are as follows:—

(1) While it does not permit a taxpayer to deduct for income tax purposes more than 100 per cent of the cost of the assets, it affords effective relief by providing the taxpayer with some measure of

(2) it would not be difficult to operate;

(3) it would not cast an undue burden of work upon either the taxpayer or the taxing authority; and

(4) in times of falling prices it would automatically fall away.

34. While the concession which we propose should be granted to taxpayers under this system will afford effective relief to taxpayers who have to replace their fixed assets, its scope will be limited to such taxpayers and it will not be of application in the case of those with new or expanding businesses. It is our view, however, that while justification exists for the introduction of provisions along the lines we have proposed for accelerating the writing off of the cost of fixed assets purchased at increased prices, as a means of assisting taxpayers to replace assets for purposes of the continuance of an existing business, other considerations apply in the case of new or expanding businesses. Where a taxpayer embarks upon a new business or the expansion of his existing business, it seems to us that no justification exists for any departure from the normal rules contained in the Act, whereby he is permitted to write off the cost of fixed assets by means of the ordinary wear and tear allowances over the life of such assets. If such new business or expansion of an existing business is embarked upon at a time when high prices prevail, then it simply means that more capital is required for the purpose of acquiring the new or additional assets than would be the case if prices for such assets were lower. The additional capital so expended, however, results in the taxpayer becoming entitled to greater amounts by way of wear and tear allowances, and in the final result, upon exhaustion of the assets concerned, full allowance is made for the entire amount so expended. Provision for accelerated allowances in the case of new or expanding businesses is in our opinion justified only as a temporary expedient at such times as it may be regarded as necessary in the interests of the national economy to encourage the commencement of new businesses or the expansion of existing businesses, as was presumably felt to be the case in 1947 when the provisions of section 11 (2) (*d*) *bis*, referred to in paragraph 19 above, were enacted and brought into force for a limited period. Such arrangements should not in our opinion form a permanent part of the tax system.

35. It is appreciated that replacement allowances calculated on this basis would afford relief to taxpayers only in respect of the years which follow its introduction. We feel that it would not be practicable to make the allowance retroactive in respect of inflation " losses " already suffered by taxpayers in respect of their fixed assets.

36. It now remains for us to deal with the question of the granting of an allowance in respect of the increase in the cost of replacement of stock in trade.

37. Under the arrangements presently in force, taxpayers are generally permitted, for income tax purposes, to value their stock in trade at the close of their financial years, at the lower of cost or current market value, and we understand that it is accepted that the present Law permits of the determination of the cost price of such stock for this purpose on the " Last In—First Out " (or LIFO) basis. The effect of the application of the LIFO basis of stock valuation is that where the selling price of stock is based upon the cost of replacement of such stock, as will frequently be the case, the closing stock of the trader will generally be valued at the initial price of the basic quantity of stock that must be retained in hand to ensure the continuance of the business, so that the profit reflected by the accounts will not be inflated by the unrealised profit represented by the difference in the initial and replace-

38. This method of determining the cost of stock in trade appears to us to be reasonable, and to have the merit of counteracting to an adequate extent the effects of inflation upon the cost of the replacement of stock. Moreover, if the value of the stock in trade arrived at on this basis is lower than, and is adopted instead of, the current market price of such stock, no permanent prejudice to the Fiscus will result. We are, therefore, of opinion that, in determining the cost of stock on hand and unsold at the closing date of their accounts, taxpayers should be permitted, at their option, to adopt the LIFO basis of valuation. It will, of course, be necessary to provide that, once a taxpayer has elected to adopt the LIFO method of determining the cost of stock on hand, he should not be permitted to depart therefrom in the future except with the consent of the Commissioner and subject to such conditions as he may impose.

39. We appreciate that the proposals we have made do not supply the answer to all phases of the financial problems created by the fall in the value of currency. The difficulties related particularly to income tax to which the fall in the value of currency gives rise are, however, in our opinion met as far as it is practicable for them to be met, by our proposals.

40. To sum up the views which we have expressed in this Chapter, **we recommend**—

(1) that in any case in which it is established to the satisfaction of the Commissioner that the replacement cost of a fixed asset used by the taxpayer in his trade and which is subject to the wear and tear allowances presently provided for in the Act exceeds the cost of such asset, the taxpayer should be entitled, at his option to a replacement allowance in respect of such asset, subject to the conditions described in the following paragraphs;

(2) that the amount of the replacement allowance be calculated each year by—

(*a*) establishing the excess of the cost of replacement over the original cost of the assets in question;

(*b*) reducing the amount under sub-paragraph (*a*) above by an amount which, in the opinion of the Commissioner, represents the value of the element of improvement, if any, present in the anticipated replacement;

(*c*) determining the just and reasonable percentage by which the value of the asset has been diminished by reason of wear and tear during the year of assessment; and

(*d*) applying the percentage so determined to the net sum arrived at under sub-paragraph (*b*) above;

(3) (*a*) that, each year during the remainder of the life of the asset which is to be replaced, and in anticipation of its actual replacement, the taxpayer should be permitted to deduct from his income for income tax purposes the amount of such replacement allowance, provided that amounts equivalent to the sums so deducted are invested by the taxpayer in a special form of security issued by the Treasury and bearing interest at a reasonable rate; or

(*b*) that, if the taxpayer so elects, the granting of the annual replacement allowances be deferred and such allowances be aggregated and granted in full in respect of the year of assessment in which the replacement actually takes place, but that if Treasury requirements render such a course impracticable, such allowance be spread equally over a period not exceeding three years;

(4) that the securities required to be taken out by annual replacement allowances in accordance with sub-paragraph (3) (*a*) above be suitably endorsed as to the amount of the income tax relief obtained by the taxpayer as a result of the granting of the allowance;

(5) that such securities be made redeemable at their full value only upon production of proof of the purchase of fixed assets in replacement of the assets in respect of which the allowances were granted, and that if and to the extent that they are redeemed for any other purpose the taxpayer shall forfeit the tax relief which was granted when the securities were purchased, subject to the right which should continue to vest in the taxpayer to the benefit of the deferred allowance referred to in sub-paragraph (3) (*b*) above in the event of the asset concerned being replaced at some later date at an inflated price;

that the securities should not be transferable from one taxpayer to another, but that when a taxpayer dies or disposes of the assets in respect of which replacement allowances have been granted, without replacing such assets, the securities should be required to be redeemed within a period of six months of the death of the taxpayer or the disposal of the assets, or such further period as the Commissioner may deem to be reasonable, and subject to the forfeiture of the income tax relief granted in respect thereof;

that the calculation of future wear and tear allowances in respect of any asset in respect of which a replacement allowance has been granted in accordance with these recommendations, should be based upon the balance of the cost of such asset after deducting the amount of the replacement allowance;

that the amount of any replacement allowance granted in respect of any asset in accordance with these recommendations should be taken into account in the calculation of the scrapping allowance or the amount of any recoupment in respect of any asset purchased in replacement of such asset;

that the Commissioner for Inland Revenue be vested with discretionary power to determine the extent of the element of improvement present in the replacement of a fixed asset, for the purpose of calculating the amount of the replacement allowance to be granted to the taxpayer, and that the decision of the Commissioner in the exercise of this discretionary power be not subject to objection and appeal;

that, in determining the cost of stock on hand and unsold at the closing date of their accounts, taxpayers should be permitted, at their option, to adopt the "Last In—First Out" basis of valuation, but that the taxpayer shall not be permitted to vary such basis of valuation except with the consent of the Commissioner and subject to such conditions as he may impose.

CHAPTER 11.

THE PREVENTION OF THE AVOIDANCE OR EVASION OF TAX.

PRELIMINARY.

1. Our investigation of the income tax system of the Union has satisfied us that the great majority of taxpayers do not seek to escape or reduce their income tax liabilities but fully accept their financial responsibilities towards the State and pay the taxes for which they may become liable under the income tax laws. At the same time there undoubtedly exists a minority of taxpayers who continually seek to escape or reduce

fraudulent devices or by other means which, although they do not constitute a breach of the Law, achieve the same results.

2. It is clearly desirable in accordance with the fundamental principles of taxation that the burden of income tax should be spread as equitably as possible between all taxpayers. If the taxation system is such as to make it possible for a taxpayer to manipulate his affairs and thereby reduce or escape his liability for taxation, he would gain an unfair advantage over other taxpayers who comply strictly with the provisions of the Law, and the loss of revenue so occasioned would inevitably have to be off-set by the imposition of increased taxation on all taxpayers.

The Present Law.

3. The Income Tax Act of the Union (Act No. 31 of 1941, as amended) contains provisions whereunder penalties are imposable or criminal prosecutions may be instituted in cases where fraudulent devices are employed for the evasion of tax. This matter has been dealt with in Chapter 9 of this Report.

4. The other aspect of the matter, with which we are now principally concerned, is that of the avoidance of tax by methods the use of which do not constitute a breach of the provisions of the Act.

5. In addition to the provisions to which we have referred in paragraph 3 above and which deal with the evasion of tax by fraudulent means, the Act contains a number of clauses which are designed to frustrate specific and known schemes of tax avoidance. In addition, the Act contains general provisions obviously designed to counter transactions, operations and schemes entered into with the object of tax avoidance, for which simple and specific provision could not be made. These general provisions are to be found in section 90 of the present Act.

6. In its present form, section 90 of the Act provides—

(1) that if the Commissioner is satisfied that any transaction, operation or scheme has been entered into for the purpose of avoiding or reducing liability for the payment of tax, and has the effect of so avoiding or reducing liability for the payment of tax, he may determine the taxable income of the taxpayer concerned as though the transaction, operation or scheme had not been entered into;

(2) that if the Commissioner is satisfied that a change in the shareholding in a company has been brought about for the sole or main purpose of utilizing the balance of the assessed loss of that company in order to avoid or reduce the liability for the payment of tax, he may disallow the set-off of such balance of assessed loss;

(3) that the decision of the Commissioner under sub-paragraphs (1) and (2) above shall be subject to objection and appeal;

(4) that whenever it is proved that tax avoidance would result from any such transaction, operation or scheme or any such change in shareholding, the onus of rebutting the presumption that such transaction, operation or scheme or change in shareholding was entered into for the purpose of such tax avoidance shall rest upon the taxpayer.

How the Matter has been Dealt With in Other Countries.

7. We have examined the income tax laws of other countries in order to ascertain how the question of the avoidance of tax has been dealt with elsewhere. Union Law, designed to prevent avoidance or evasion of the taxes imposed in specific circumstances dealt with in such provisions. In addition, provisions empowering the taxing authority to disregard, for taxation purposes, the legal effects brought about by transactions entered into for the purpose of avoiding tax or having the effect of defeating the tax laws, are to be found in the taxation laws of the United Kingdom, Australia, New Zealand and Canada. While the scope of the transactions which the taxing authority is empowered to attack varies under the provisions enacted in these different countries, the provisions in question have this in common with section 90 of the Union Act, that their application depends upon the existence of a motive of tax avoidance and they are designed to render such transactions void as against the taxing authority only, and not to affect the validity of such transactions for other purposes.

Submissions to the Committee and our Views Thereon.

8. In a submission to the Committee, exception was taken to the fact that under the present Act, after it has been proved that the taxpayer's action has resulted in the reduction of his liability, the onus is thrown upon the taxpayer to rebut the presumption that his intention was to avoid tax, and it was contended that the determination of a taxpayer's purpose is entirely a matter of conjecture upon which it is undesirable that the Courts should be required to adjudicate. It seems to us, however, that if section 90 of the present Act is to serve its purpose, an enquiry as to the taxpayer's intention must be undertaken, and that since his intention must depend for its proof upon facts and circumstances peculiarly within his own knowledge, it is not unreasonable, and indeed it is scarcely capable of being avoided, that the onus of proof should be cast upon him. We would point out further that it is not only in the application of this section that the necessity arises under the Act for the determination of the taxpayer's purpose or intention. The determination of intention is also of considerable importance in resolving the question of the capital or revenue nature of accruals representing the proceeds of realisation of assets, where the intention with which the asset was acquired often becomes material. The Courts have not found it impracticable, on grounds of it being a matter of conjecture, to adjudicate upon the question of intention. We do not consider the criticism of the provisions of the present Act in this respect to be well founded.

9. It was also argued that in any country where rule of law is accepted, a person's tax liability should be fixed by law, and not by the arbitrary decisions of any individual or body. To maintain that condition it was submitted that the law should state unequivocally the circumstances in which liability arises, and the taxpayer should be in a position to determine how the income tax legislation will affect any transaction into which he desires to enter. In deciding questions of liability, the Courts have consistently had regard, on the one hand, to the clear words of the taxing statute and, on the other, to the legal circumstances of the taxpayer. While this does not imply that it is open to any person to evade his lawful dues by subterfuge or dishonest practices, it is open to any person to avoid liability by preferring the kind of transaction that is not taxed. It was not considered reasonable to suppose that a taxpayer can be taxed because it can be shown that his object in performing a tax-free operation, which is genuine in substance and not mere artifice, was the avoidance of the liability which would have arisen from the performance of some other operation. In the submission it was stated that the Courts have refused to be bound by mere forms and have considered the substance of the transaction, but, quoting from the

substance is that which results from the legal rights and obligations of the parties ascertained upon ordinary legal principles". The essence of this submission, therefore, is that every person is entitled to order his affairs for the purpose of avoiding or reducing his liability for the payment of tax.

10. We feel that this argument is fully answered by what was said, in regard to section 90, by Schreiner, J. A., in his judgment in the case of *Commissioner for Inland Revenue* v. *King* (14 S.A.T.C. pp. 198-9), as follows:—

"I do not read section 90 as a penalty section or as widening the net beyond the general scope of the Act. It seems to aim at a truer or fairer determination of the liability to the taxes imposed by the Act and at their due payment when so determined. It is intended, I think, to deal with cases in which the Commissioner, as representing the *fiscus*, is properly aggrieved by a transaction or operation designed to enable one of the parties thereto to escape tax.

The Commissioner is not properly aggrieved merely because at a stage before income has accrued to a taxpayer it might have been predicted with confidence amounting even to certainty, that if the taxpayer took no steps in the matter such income would accrue to him and because he then takes the avoiding steps. But the Commissioner would be properly aggrieved if a transaction or operation were entered into which prevented income from accruing to the taxpayer, while leaving him in the position of one to whom the income would normally and naturally accrue. The section is not, in my opinion, designed to implement the expectations, however reasonable, of the Commissioner that there will be no change in the taxpayer's affairs which will result in his getting less income, it is designed to meet the Commissioner's objections to the creation of abnormal or unnatural situations, to the detriment of the *fiscus*. Now normally and naturally the owner of an income-producing asset receives the income and the labourer receives the reward of his labour. Any departure from this order of things, if done with the object of prejudicing the *fiscus*, is the subject of legitimate objection by the Commissioner, which is met by the machinery of the section.".

We feel that while section 90, in its present form, is expressed in terms which are too wide, there is every justification for the existence of a provision providing the Commissioner with the necessary machinery to attack transactions resulting in the "creation of abnormal or unnatural situations, to the detriment of the *fiscus*", as referred to in the judgment just quoted, notwithstanding that such provisions might represent an encroachment on the rights of a person to order his affairs for the purpose of avoiding or reducing his liability for the payment of tax. We do not contemplate that these provisions should be designed to destroy those rights, but we consider that, within the limits indicated, it is reasonable that such provisions should exist. The amendments to section 90, which we shall recommend later in this Chapter, are therefore designed to ensure that the section shall operate within that limited field only.

11. It may be said that, having regard to the success of the Department in the case of *Bailey* v. *Commissioner for Inland Revenue* (A.D. 1933), revenue is sufficiently protected by common law, and that the retention of a general clause along the lines of section 90 is unnecessary. However, this does not appear to us to be the case. As we have pointed out, there is a difference between tax evasion, in which sham transactions or transactions *in fraudem legis* are involved and tax avoidance, which results from the employment of means which do not constitute a breach of the law. [...]cedent for an attack upon a sham transaction or a transaction *in fraudem legis*, designed to evade taxation, it would be of no avail in an attack upon a real transaction designed to avoid taxation by legal means. It is cases of this latter class that are intended to be hit by the provisions of section 90 and the necessity for such provisions is in no way lessened by the fact that the Commissioner has inherent powers supported by the decision in the *Bailey* case to attack simulated or sham transactions.

12. In his submission to the Committee on the subject of tax avoidance the Commissioner for Inland Revenue expressed the view that statutory provisions were necessary to counter the devices of tax avoidance the frustration of which was the reason for the introduction of section 90 into the Act. As an alternative to that section, the efficacy of which has become somewhat limited as the result of the judgment in the *King* case, the Commissioner suggested that the income of a person acquiring an asset from another person, whether by gift or purchase, should be increased by the excess of true market value over the consideration, if any, payable for its acquisition. We do not, however, consider that the Commissioner's suggestion would satisfactorily meet the difficulty. In the first place, we do not subscribe to the view that the straightforward donation of an asset, of the ownership of which the donor has completely divested himself, can be regarded as constituting a scheme for the avoidance of tax. The alienation of an asset for an inadequate consideration also involves an element of donation, the measure of which is the difference between the consideration given and the true worth of the asset, but even in these circumstances we see no justification for including the amount of such difference as taxable income in the hands of the alienee. Whatever justification might exist for the introduction of a Donations Tax as a separate tax forming part of the fiscal system, we are of opinion that the incorporation of such a tax into the income tax system, which is what the proposal under consideration amounts to, would be contrary to all accepted principles of income taxation, and we are unable to support it. The proposal has, moreover, been put forward as a means of checking avoidance of income tax, presumably on the assumption that the making of donations will generally, or at least sometimes, be resorted to for purposes of reducing the donor's income tax liability. Even in those cases where the reduction of the donor's income tax liability may have been the motive of the donation, which in our opinion will be the exception rather than the rule, the logical course would seem to us to be to impose upon the donor seeking to avoid the tax some additional burden bearing some reasonable relationship to the tax avoided, rather than to seek to impose upon the donee an additional burden measured with reference to his own income plus the amount of the donation.

Conclusions and Recommendations.

13. As we have indicated in paragraph 5 above, the Legislature has made specific provisions, wherever possible, to counter schemes of tax avoidance. We have examined the possibility of extending these specific provisions so as to cover schemes of avoidance which at present may only be countered under the general provisions of section 90.

14. A scheme of tax avoidance for which we consider that specific provision may conveniently be made in the Act is that under which private companies, instead of paying out dividends, make loans, with or without a charge for interest, to their directors or shareholders, where the lending of money is not part of the normal business of the company, and where such loans are later remitted or written off as irrecoverable by the companies. By so utilizing its cash

bution of dividends, thus affecting the yield of super tax. The imposition of an undistributed profits tax upon private companies, as recommended by us, although it would go far towards minimising the possibilities of the adoption of this device, would not completely eliminate such possibilities. As a counter to schemes of this nature, **we recommend** that the Act be amended so as to provide that loans advanced by private companies, with or without interest, to their directors or shareholders, not in the ordinary course of the business of such companies, be deemed to constitute dividends to the recipients in the year of assessment in which the liability is waived or remitted or written off as irrecoverable by the companies concerned. There is precedent for such a provision in the Canadian Income Tax Law.

15. Tax may be avoided by means of contractual arrangements. Such arrangements sometimes have as their purpose the splitting of income between the parties so as to negative the effect of the system of progressive rates of tax, which we have recommended should be retained. In other instances they seek to secure for a taxpayer the reduction of his income by an amount which, if paid by him out of his own income, would not be an admissible deduction. While it is desirable that contractual obligations should not be rendered void *inter partes* by any safeguards that may be introduced to protect the Fiscus, such safeguards nevertheless appear to us to be necessary. Avoidance of tax by means of contractual arrangements would generally be effectively countered by a general provision along the lines of section 90, but it is our view that in certain cases further specific provisions could with advantage be introduced into the Act.

16. Types of contractual arrangements for which we consider specific statutory provision should be made include those which are based on alleged verbal partnership agreements and which have the effect of varying the manner in which the profits or income of a business are shared, thereby enabling a taxpayer to avoid or reduce his liability for the payment of tax. To counter such devices for the avoidance of tax, **we recommend** that provisions be introduced into the Act requiring the Commissioner, if any arrangement is entered into purporting to confer upon any person who previously enjoyed no right to participate in the income of any trade, a right so to participate and the effect of such arrangement is that liability for the payment of tax on income derived from such trade is avoided or the total amount of such tax payable by all persons in respect of the income of that trade is reduced below what it would have been had the arrangement not been entered into, unless such arrangement is reduced to writing on or before the date on which it purports to be effective, to disregard such arrangement and to determine the tax payable in respect of the income of such trade as though the arrangement had not been entered into and there had been no variation of the pre-existing rights of participation in the income: Provided that if any such arrangement is reduced to writing on a date subsequent to the date on which it purports to be effective, it shall be recognised as effective between the parties, for taxation purposes, subject to the provisions of section 90 of the Act, only with effect from the date on which it is signed by the parties.

Provision along these lines would provide an effective counter to the splitting of income, frequently between a parent and his children, on the basis of alleged verbal partnership arrangements.

17. Another type of contractual arrangement for the avoidance of tax for which we feel the Act should contain specific provisions is that under which a taxpayer is able to manipulate the affairs of his business are made to appear to have accrued from sources outside the Union. **We therefore recommend** that the Act be amended so as to provide that, where—

(1) an enterprise participates directly or indirectly in the management, control or capital of another enterprise and one of such enterprises carries on business in the Union and the other outside the Union (the term "enterprise" for purposes of this section including a company, partnership, trading venture or branch of a business); or

(2) the same persons participate directly or indirectly in the management, control or capital of an enterprise carrying on business in the Union and an enterprise carrying on business outside the Union; and

(3) in either case conditions are imposed between the different enterprises in their commercial or financial relations which differ from those which could reasonably be expected to be made between independent enterprises; and

(4) the conditions so imposed have had the effect of reducing the income subject to Union taxation of any person;

the income of that person and of any other person whose liability for taxation may be affected by such conditions, shall be adjusted for taxation purposes to such amounts as, in the opinion of the Commissioner, they would have been had such conditions not been imposed and the conditions had obtained which would reasonably be expected to have obtained between persons acting independently and at arm's length. Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.

Provision along these lines would provide an effective counter to tax avoidance brought about by the process of shifting taxable profits as, for example, between Union and non-Union branches of a business. Provision along substantially these lines already exists under the various reciprocal agreements entered into between the Union and the United Kingdom, United States of America and Rhodesia. Our recommendation would have the effect of making the same arrangements effective no matter in what country the non-resident enterprise was situated.

18. Certain aspects of the use of trusts, donations and settlements or other dispositions as a means of tax avoidance will be dealt with in Chapter 14 of this Report, in which certain recommendations to counter such activities are made. These recommendations will not entirely prevent tax avoidance by these means, however, and it will, therefore, be necessary to bear this matter in mind when formulating new provisions to replace those of section 90 of the present Act.

19. We shall now deal with the provisions of section 90 of the Act. We have already indicated in this Chapter that we consider that the retention of general provisions along the lines of this section are necessary. We are satisfied that without such a general clause it will be impossible to counter effectively all the schemes for the avoidance of tax that may be devised. Apart from its deterrent effect, which we have no doubt has been considerable, the section has the advantage of contributing substantially to the simplicity of the Act, since in its absence the law would have to contain numerous and intricate provisions to meet every possible scheme of tax avoidance, which in any event would clearly be impracticable.

20. The judgment of the Appellate Division in the *King* case has had the effect of severely limiting the scope of the section, and it is in our opinion necessary to examine the present scope of the section, as interpreted in that case, for the purpose of determining

21. The decision in the *King* case has resulted in the scope of section 90 as presently worded being limited to such transactions as result in the fruits of a taxpayer's capital or labour accruing to another. In these circumstances the present section would probably be held not to be capable of being invoked in the case of any transaction involving the alienation of income producing assets. The application of the present section is furthermore, as a result of the decision in the *King* case, limited to those cases in which tax avoidance or reduction was the *dominant* motive of the transaction.

22. While we feel that it should not be the object of the section to render any or all transactions of a taxpayer open to attack under its provisions, as in its present form the section purports to do, we are of opinion that the total exclusion of transactions involving the alienation of assets would preclude the application of the section to certain cases to which it is proper that it should apply. The transfer by alienation, of assets from a company to another company under the same control, for example, may well be resorted to for no other reason than the avoidance or reduction of tax, for the ultimate benefit of those in control of the companies concerned.

23. As regards the question of the degree of the tax avoidance purpose which should be present to bring a transaction within the ambit of the section, we feel that it is only where the tax avoidance motive is the sole or main purpose of a transaction that the transaction should be subject to attack under its provisions.

24. We regard that portion of the existing section 90 which permits of the disallowance of the set-off of any balance of assessed loss of a company in the circumstances therein described resulting from an agreement or change of shareholding entered into or effected solely or mainly for the purpose of deriving the benefit of such set-off, as reasonable and calling for no change.

25. Under the present provisions of section 90 the Commissioner's powers to effect adjustments in pursuance of the section are confined to determining the tax liability of the persons concerned "as if the transaction, operation or scheme had not been entered into or carried out". Circumstances may arise, however, in which adjustments effected on that basis would not provide an appropriate or practicable means of counteracting the tax avoidance motive of a transaction. We feel, therefore, that the Commissioner should be vested with alternative powers to effect the necessary adjustments, where it is expedient to do so, by other appropriate means.

26. To give effect to our view that the present section should be modified as to the scope of the transactions to which it should be applied, as to the degree of tax avoidance motive that should be present to bring the section into operation, and to extend the Commissioner's powers of effecting adjustments to counteract the tax avoidance motives of transactions falling within its provisions, **we recommend** that the present provisions of sub-section (1) (*a*) of section 90 be amended to read as follows:—

"90. (1) (*a*) Where any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act and including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out, which has the effect of avoiding liability for any tax, duty or levy on income (including any such tax, duty or levy imposed by a previous Act), or of reducing the amount thereof, and which the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out, is of opinion—

(i) ... employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or

(ii) has created rights or obligations which would not normally be created under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question,

and the Commissioner is not satisfied that some purpose other than the avoidance of such liability, or the reduction of the amount of such liability, was the sole or main purpose of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax, duty or levy on income and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance or reduction".

27. To give effect to the further views we have expressed that the onus imposed upon the taxpayer under the present provisions should not be varied, and that the present provisions relating to the disallowance of the assessed loss of a company under circumstances dealt with in the section call for no change, and in order to preserve the taxpayer's rights of objection and appeal against the decisions of the Commissioner under the section, **we further recommend** that sub-sections (1) (*b*) and (2) of section 90 be re-enacted substantially in their present form.

CHAPTER 12.

AGREEMENTS FOR RECIPROCAL RELIEF FOR THE AVOIDANCE OF DOUBLE TAXATION.

The Present Law.

1. Provision is contained in section 94 of the Income Tax Act of the Union (Act No. 31 of 1941, as amended), for the conclusion of agreements between the Union Government and the Governments of other countries for the prevention of, or relief from, double taxation, and for the rendering of reciprocal assistance in the administration of, and in the collection of taxes under, the income tax laws of the Union and such other countries. Under this section of the Act the Governor-General of the Union may enter into such agreements, which are required to be notified by proclamation in the *Government Gazette*, and tabled in both Houses of Parliament. In this manner these agreements are given the force of law.

Agreements Presently in Force.

2. A number of agreements have been concluded between the Governments of the Union and other countries, but the nature and scope of these agreements are not the same in every case. Such agreements may be classified into two main groups, as follows:—

(1) Fairly comprehensive agreements, comprising those concluded with the Governments of—
(*a*) the United Kingdom;
(*b*) the United States of America; and
(*c*) Southern Rhodesia.

(2) Agreements restricted to a particular class of income, comprising those concluded with the Governments of—

(*a*) Norway;
(*b*) Sweden;
(*c*) Canada;
(*d*) Denmark;

3. The following is a brief description of the main features of the agreements entered into by the Union with the Governments of other countries for reciprocal relief for the avoidance of double taxation in the matter of income tax.

(1) UNITED KINGDOM.

4. The agreement applies to income earned during the year of assessment ended 30th June, 1946, and subsequent tax years.

5. The agreement deals mainly with the " industrial or commercial profits ", as defined, of business enterprises of the two countries. Each country agrees not to tax the industrial or commercial profits of enterprises of the other country unless trade is carried on in its territory through a permanent establishment situated therein, and furthermore, if such a permanent establishment does exist, to confine its taxation to the profits of such permanent establishment. The agreement provides further that, as far as the United Kingdom is concerned any Union tax paid on industrial or commercial profits earned in the Union by a United Kingdom enterprise will be allowed as a credit against any tax chargeable on those profits under the income tax laws of the United Kingdom, and as far as the Union is concerned either that no tax will be charged by the Union on such profits derived from United Kingdom sources by a Union resident or, if any Union tax should be charged thereon, that a credit will be given for the amount of the United Kingdom taxes paid on such profits.

6. Under the present Income Tax Laws of the Union, a Union resident is not generally taxed on income derived from sources outside the Union so that no double taxation would result in any event on the receipt by a Union resident of income from a source in the United Kingdom, arising from trade carried on at a permanent establishment in the United Kingdom. No material difference in relation to industrial or commercial profits received by Union residents from United Kingdom sources is, therefore, brought about by the agreement. The general principle of the United Kingdom income tax system is, however, to tax its residents on income derived not only from United Kingdom sources but also from foreign sources. A United Kingdom resident deriving income from a foreign country which is taxed in that foreign country is thus subjected to double taxation. To some extent the burden of that double taxation is relieved by certain arrangements which are in force in the United Kingdom whereby, according to circumstances, either the amount of the foreign tax paid is allowed as a deduction in computing the taxpayer's income subject to United Kingdom tax or a credit, subject to certain limitations, is allowed for the foreign tax paid. In view of the existence of these general provisions for relief from double taxation under the laws of the United Kingdom, it cannot be said that but for the agreement no relief from double taxation would be available to the United Kingdom resident in respect of the double taxation imposed on income derived from the Union. Nevertheless, the right to relief by way of a credit for Union taxes against any United Kingdom taxes imposed on commercial and industrial profits derived from Union sources by a United Kingdom resident is a valuable and firm right which cannot be varied as long as the agreement continues in force. The agreement, therefore, can probably be said to have served a useful purpose in giving a greater degree of permanence to the right of United Kingdom investors in Union enterprises to appropriate double taxation relief than would exist if the right to such relief were conferred only by legislative provisions of the United Kingdom which might be subject to withdrawal or change from time to time.

7. [continued] royalties, interest and dividends. Where income of this sort accrues to a Union resident from a United Kingdom source it is taxed by the United Kingdom only and no double taxation, therefore, usually arises, but it can arise in respect of such income accruing to United Kingdom residents from Union sources. The only relief available to United Kingdom residents in respect of such forms of income derived from Union sources is under the arrangements in force in the United Kingdom for credit to be given for the Union taxes chargeable on the income, against the United Kingdom taxes imposed thereon.

8. Shipping and aircraft operating profits are specially dealt with in the agreement. Each country exempts the profits accruing to residents of the other country from operating ships or aircraft registered in the country of residence of the person so operating.

9. Reciprocal relief by way of exemption, subject to certain conditions, of income in the form of interest on Government stock, salaries and pensions of Government Servants, non-Governmental pensions and annuities, remuneration of teachers and professors and of visiting business or professional men, accruing to residents of one country from sources in the other, is also provided under the agreement.

10. Arrangements are also contained in the agreement for relief in respect of other forms of income which may be subject to double taxation, by way of the granting by the country of residence of the taxpayer, against the taxes imposed by it, of a credit in respect of taxes imposed in the country of origin of the income.

11. Relief from the Non-Resident Shareholders' Tax and the Undistributed Profits Tax of the Union, in respect of certain amounts referred to in Articles VI and VII of the Agreement for which liability would otherwise arise, is also provided.

12. Finally, the agreement provides for the exchange of information between the taxation authorities of the two countries for the purpose of carrying out its terms, or of preventing fraud or legal avoidance of the taxes of either country.

(2) UNITED STATES OF AMERICA.

13. The main provisions of this agreement, including those relating to industrial and commercial profits, apply to income earned on or after 1st July, 1946, although certain of its provisions, notably those dealing with profits derived from the operation of ships or aircraft, apply to income earned as from 1st July, 1948.

14. The principal provisions of the agreement are generally similar to those of the agreement concluded between the Governments of the Union and the United Kingdom. Under the agreement with the United States of America a business enterprise of one of the contracting States shall not be subject to taxation in the other contracting state in respect of its industrial and commercial profits, as defined, except in respect of such profits as are allocable to a permanent establishment in that other contracting State. The United States of America undertakes to give a credit against its taxes imposed upon income derived by its citizens or residents from Union sources, for the taxes imposed by the Union upon such income. The Union undertakes not to impose tax upon income derived from sources within the United States of America.

15. Provisions for relief in substantially similar terms to those described in paragraphs 9 and 10 above in relation to the agreement with the United Kingdom are also contained in the agreement with the United States of America which, however, unlike the former agreement, does not contain any arrangements for relief

16. This agreement, in addition to providing for the exchange of information between the taxation authorities of the two countries for the purpose of carrying out its terms, or of preventing fraud or legal avoidance of the taxes of either country, also contains provisions for each country to render assistance, within its territory and to a severely limited extent, in the collection of the taxes of the other country.

(3) Southern Rhodesia.

17. The agreement between the Governments of the Union and Southern Rhodesia is confined, as far as the Union is concerned, to relief in respect of normal and super taxes, and applies to incomes earned during the year ended 30th June, 1950, and subsequent years. The agreement follows closely the pattern of the agreement with the United Kingdom. Industrial and commercial profits of one of the countries are exempted from taxation in the other country, except to the extent that such profits may be attributed to a permanent establishment in that other country. In respect of interest and dividends, residents of each country are granted relief under arrangements embodied in the agreement whereby each country shall allow, as a credit against the taxes imposed by it, the further taxes imposed by the other country. As far as royalties and rents are concerned, the agreement provides that such income derived by a resident of one of the countries from sources within the other country shall be exempt from taxation in the first-named country if it is subjected to taxation in that other country. The agreement contains arrangements for the exchange of information between the taxation authorities of the two countries, but contains no arrangements for the rendering of assistance by either country in the collection of taxes of the other country.

(4) Finland, Norway, Sweden, Canada and Denmark.

18. Agreements have also been entered into between the Government of the Union and the Governments of Finland, Norway, Sweden, Canada and Denmark. The scope of these agreements is limited to profits derived from shipping and aircraft business, and the agreements provide in each case that neither country shall subject to taxation the income derived from such sources by a resident or corporation or partnership of the other country.

(5) Swaziland.

19. This agreement, which is effective in respect of income for the year ended 30th June, 1931, and subsequent years, was designed to afford relief from double taxation to farmers deriving income from both Union and Swaziland sources and to prevent tax evasion. Provision was made therein for the apportionment of the income of such farmers between the two countries on the basis of the assets employed in each country, and for the exchange of information between the taxation authorities concerned in respect of income arising out of such farming operations.

Submissions Made to the Committee and our Views Thereon.

20. Submissions were made to us urging—

(1) certain modifications and changes in the existing agreement between the Union and the United Kingdom mainly in the direction of extending its scope to cover certain forms of income not presently covered by its terms, e.g. royalties;

(2) certain modifications and changes in the existing agreement between the Union and the United States of America, also largely in the direction of extending its scope to cover certain forms of income not presently covered by its terms, and provision for relief in certain circumstances from the Non-Resident Shareholders' Tax, for relief from which tax the agreement with the United States of America, unlike that with the United Kingdom, presently makes no provision;

(3) that the Union should refrain from including provision in any agreements entered into witn foreign countries for the rendering of reciprocal assistance in the collection of taxes of the other country;

(4) the conclusion of an agreement between the Union and the Administration of South-West Africa for relief from double taxation.

21. As regards submissions (1) and (2) referred to in paragraph 20, the agreements concluded by the Union Government with the United Kingdom and the United States of America were doubtless concluded by negotiation between the contracting States in the light of the existing taxation laws in force in the respective countries, the extent of the double taxation created by those laws and the extent of the revenue losses which each country would suffer as the result of forgoing taxation by agreement in order to eliminate the double taxation, and we do not feel that it would be proper or competent for us to make any recommendations regarding the terms of the agreements.

22. As regards submission (3) referred to in paragraph 20, we find that it is only the agreement with the United States of America that contains any arrangements relative to the collection by each country of taxes imposed by the other. Such arrangements are effective in only a limited number of cases. The grounds upon which it is urged that such arrangements should not be included in agreements for the avoidance of double taxation are that—

(1) arrangements for the collection of each other's taxes is in no way a corollary of conventions between countries for the relief of double taxation. The taxation laws of every country should be so framed and administration should be sufficiently strong to make possible the collection of the taxes imposed without the necessity for obtaining the assistance of the taxation authorities of another country;

(2) difficulties of arriving at a suitable settlement on the question of collection of each other's taxes might well jeopardise the conclusion of an agreement between two countries at all and thereby make it impossible to bring about the highly desirable result of the elimination of double taxation between them;

(3) by accepting a commitment to collect the taxes of a foreign country, a country might well find itself placed in a position of having to enforce payment in its own territory of taxes of a discriminatory character imposed by such foreign country against the citizens of the country called upon to assist in collection.

We do not feel that this is a matter upon which it is incumbent upon us to make a recommendation. We agree that the conclusion of arrangements for assistance in the collection of each other's taxes is not a necessary corollary of an agreement on the subject of the avoidance of double taxation and should not be allowed to jeopardise such an agreement, but the desirability or otherwise of concluding such arrangements with a particular country is one for decision between the contracting parties and upon which we are not in a position to express an opinion.

23. As regards submission (4) referred to in paragraph 20, we are also not in a position to express an opinion. The matter is one for consideration by the Government in the light of the facts as to the extent of the double taxation which exists between the Union and South-West Africa and the extent to which either

or both are prepared to forgo part or all of the present revenues arising from such double taxation, as to which we have no information.

General Conclusions of the Committee.

24. With the high rates of taxation prevailing in most countries to-day, international double taxation, or the subjecting of the same income to taxation in the hands of the same person by more than one State, constitutes an important obstacle to the expansion of trade and investment among nations. Such double taxation arises in the main from the fact that while practically all countries impose taxation on income derived from sources within their respective territories, many countries in addition impose taxation on income derived by residents within their territories from outside sources as well. If all countries imposed taxation only on income derived from within their own territory, which is the principle generally followed in the Union, the problem would largely disappear. As long as the problem exists, however, and the principle of taxation on the basis of source and residence continues to be followed by many countries, it is desirable that every step should be taken to minimise its deterrent effects on trade and investment among nations. Such steps in our opinion should be taken in the interests not only of the individual taxpayers upon whom the burden falls but of States themselves. The expansion of trade and investment flowing from the removal of double taxation must tend to promote industrial and commercial development, leading to increased national income and thereby opening up new sources of income for the Government. This is of particular importance to a young and developing country like South Africa. **We, therefore, recommend** that the policy of negotiating bilateral agreements for the avoidance of double taxation between the Union and other countries, wherever possible, should continue to be actively pursued.

CHAPTER 13.

THE ASSESSMENT AND COLLECTION OF TAX ON THE INCOMES OF MARRIED PERSONS.

The Present Law.

1. The present Income Tax Act contains certain special rules relating to the assessment and collection of tax on the incomes of married persons as follows:—

(1) The income of a woman married with or without community of property and not separated from her husband under a judicial order or written agreement is deemed, for purposes of the Act, to be the income of her husband [section 9 (2)]. The effect of this section is that generally, but subject to sub-paragraphs (2)—(5) below, tax is assessed upon the combined incomes of husband and wife and the husband is liable for the total tax thereon.

(2) The tax payable by a husband in so far as it is payable in respect of the income of his wife may be recovered from the assets of the wife [section 85 (3)]. This provision affords a valuable safeguard to the Fiscus particularly in cases in which the income of the wife forms a large proportion of the combined incomes of the the spouses and the resources of the husband are insufficient to meet the total tax liability.

(3) If either of the spouses of a marriage applies to required to be rendered by the husband and wife separately [proviso to section 58 (1)].

(4) Any such separate returns which may be rendered are required to be separately assessed and separate assessments must be sent to the respective spouses. The total tax payable must not, however, be less than the total amount which would have been payable by the husband alone if the incomes of both spouses had been assessed as the income of the husband alone [section 67 (6)]. The method of apportioning the tax between the spouses, which is not specifically provided for in the section, is discussed in paragraphs 5 and 6 below.

(5) The tax due in respect of each separate assessment is payable by and recoverable from the spouse upon whom the assessment is made [section 84 (*b*)].

Submissions to the Committee and our Conclusions Thereon.

2. Only two submissions were received by us in connection with this matter.

3. In the first submission we were urged to recommend that section 9 (2) of the Act, under which provision has been made for the massing of the income of the parties to a marriage, be repealed, subject to the introduction into the Act of provisions to prevent collusion between the spouses. We have expressed the view, in paragraphs 58 to 61 of Chapter 3 (page 18) of our First Report, that the principles underlying section 9 (2) of the Act should be retained, and we are, therefore, unable to support this submission.

4. In the other submission it was advocated that section 58 (1) of the Act should be amended so as to make it necessary for both spouses to apply for separate income tax returns and assessments, instead of either spouse, as at present, and to ensure that, if either spouse refuses so to apply for a separate return and assessment, the husband will be called upon to pay the full amount of tax in respect of the massed income of the spouses. We do not favour the adoption of this suggestion. If one of the spouses applied to make a separate return and the other was not desirous of doing so, it would become necessary for the Commissioner to resolve the conflict either by insisting upon a separate return from the spouse who was unwilling to make such a return, under the right vested in the Commissioner to require separate returns when he considers it desirable, or by insisting on a return of the combined incomes by the husband, who might be the party anxious to make a separate return. We do not consider that the Commissioner should be placed in the position of having to adjudicate in such a matter. We do not think, moreover, that any prejudice to either party is likely to arise from a continuance of the practice which has long obtained of permitting separate returns to be made and separate assessments to be issued at the instance of either of the spouses particularly in view of the protection which is afforded to the spouse with the smaller income by the recently adopted method of apportionment of the tax liability on the massed incomes of the spouses. We are unable to recommend any change in the law in this respect.

The Apportionment of Tax Between the Spouses when Separate Assessments have been Issued.

5. As stated in paragraph 1 (4) above, the Act does not prescribe the manner in which the tax payable in respect of the massed incomes of the spouses shall be divided between them in cases where separate returns

for the allocation of the tax liability between the spouses was altered, and the principle underlying the present practice is as follows:—

(1) the tax payable in respect of the massed income of the spouses is determined;

(2) the tax payable in respect of the income of each spouse is calculated separately;

(3) the excess of the amount under (1) above over the sum of the amounts under (2) above is divided between the spouses on the basis of their separate incomes, and the share appertaining to each spouse is added to the respective amounts under (2) above;

(4) each spouse is required to pay the sum of his or her respective share of the amounts under (2) and (3) above.

This method of dividing the tax liability between the parties to a marriage in cases where separate returns of income have been completed, does not have the effect of inflating unduly the liability of either spouse, which would otherwise occur, by the operation of the system of progressive rates of tax, if the whole of the liability, and not merely the excess referred to in sub-paragraph (3) above, were divided between the spouses on the basis of their separate incomes. The system, therefore, appeals to us as being fair and reasonable.

6. Where the circumstances warrant the imposition of a penalty in a case where separate assessments are required to be issued to the parties to a marriage, the principle is followed of imposing the penalty upon the guilty party, but where the guilt is shared by the spouses the penalty is divided between them on the basis of the amount of tax payable by each. We consider that the present practice in this respect is also satisfactory.

7. In the circumstances we are of the opinion that all that is required in connection with the matters with which we have dealt in this Chapter is the amendment of the Act so as to confer upon the Commissioner statutory authority for the application of the present system. **We recommend accordingly.**

CHAPTER 14.

ASSESSMENT OF TRUST INCOME.

The Present Practice.

1. The Trustee entitled to the receipt, management, disposal or control of any income which is the subject of the Trust administered by him is, by section 69 of the Act, made the "representative taxpayer" in respect of that income. The Trustee may in certain circumstances be assessed in his representative capacity for the tax payable in respect of the income the subject of the Trust. In other circumstances the tax may be assessed not upon the Trustee but upon the beneficiaries under the Trust, or upon the creator of the Trust. In these latter circumstances the tax will be recoverable in the first instance from the beneficiaries or the creator of the Trust as the case may be, but if the Commissioner is unable to effect recovery from the person assessed it may be recovered from the Trustee. The circumstances under which the tax due in respect of income the subject of a Trust may be assessed upon the Trustee, the beneficiaries or the creator of the Trust are dealt with in paragraphs 2 to 6 below.

2. If the terms of the deed under which the Trust is administered are such that the trustee is required to pay any such income to a particular beneficiary, that income accrues to the beneficiary in question and the as representative taxpayer is accordingly taxable in respect of it. The Trustee in such circumstances is a mere conduit pipe by means of which the income is conveyed to the beneficiary who in law is entitled to it. This general rule will apply and the beneficiary and not the Trustee will be taxable even if, in accordance with the terms of the Trust, the amount is not actually paid direct to the beneficiary but is expended by the Trustee for the benefit of the beneficiary, or is accumulated or capitalised or otherwise dealt with in the name of the beneficiary or on his behalf—see section 8 of the Act.

3. Where the accrual is to a beneficiary, any exemption from tax provided in the Act in respect of the income will normally apply in the ordinary way. Thus, for example, if the income consists of dividends the exemption from normal tax provided in respect of dividends will continue to apply and super tax only will be charged upon the amount in the beneficiary's hands. Some modification of this rule applies in cases in which the income received by the beneficiary consists of an annuity payable by the Trustee in terms of the Trust deed. It is specifically provided in the Act that the exemptions from normal tax which ordinarily apply in respect of dividends or in respect of interest on Government or Municipal stocks received by a person not ordinarily resident nor carrying on business in the Union, shall not apply in respect of any portion of an annuity, so that where the payment by the Trustee to the beneficiary takes that form the modification applies. We have already expressed our view in favour of the continuance of the present law in this respect in paragraph 19 of Chapter 3 (page 14) of our First Report.

4. On the other hand, if the terms of the Trust are such that income has to be retained for later distribution and no person is presently entitled to the benefit of it, either by its payment to him or on his behalf, or by its accumulation specifically for his benefit, any tax due in respect of the income is either assessed upon the Trustee as the representative taxpayer or, in the special circumstances dealt with in section 9 (5) of the Act, is assessed upon the creator of the Trust. Where the assessment is made upon the Trustee the tax is assessed at the rates applicable to, and subject to the rebates provided for an unmarried individual taxpayer. In the determination of the amount subject to tax in the Trustee's hands deductions are allowed in respect of expenditure incurred in its production, including administration charges.

5. As has been indicated there are certain circumstances under which income the subject of a Trust may be taxed neither in the hands of the Trustee nor of any beneficiary, but in the hands of the creator of the Trust. Income the subject of a Trust is so taxed where—

(1) the income is required by the terms of a Trust created by a parent in favour of his minor child, to be paid to such child or expended for its maintenance, education or benefit, or accumulated for the benefit of the child [section 9 (3)];

(2) the creator of a Trust has made a stipulation in the Trust deed to the effect that the beneficiaries shall not receive the income until the happening of some event, in which case so much of the income as would, but for such stipulation, be received by the beneficiaries is, until the happening of the event or the death of the creator of the Trust, whichever first takes place, deemed to be the income of the creator and is taxable in his hands [section 9 (5)];

(3) the Trust deed contains any stipulation that the right to receive any income conferred by the Trust deed may be revoked or conferred upon another, in which case so much of the income as is received by or accrues to the beneficiaries is deemed to be the income of the creator of the

6. A further case in which income the subject of a Trust is taxed neither in the hands of the Trustee nor of the beneficiaries, is that in which such income is received by a minor child under a Trust created by a person other than the parent of the child, if that parent or his spouse has created a Trust or given some other consideration in favour of that person or his family in which case the income is assessed in the hands of the parent of the minor child beneficiary [section 9 (4)].

7. It is sometimes provided by testamentary disposition that the property of the estate of the testator shall be administered in Trust for a period which may be fixed or indefinite. The administrator, as he is usually called, of the estate assets in such a case has the obligations of a representative taxpayer, similar to those which have been described as attaching to a Trustee, in respect of the income of the estate assets.

Views and Recommendations of the Committee on the Present Provisions of the Act Relative to the Assessment of Income the Subject of a Trust.

8. The practice outlined in the preceding paragraph in relation to the taxation of income arising from the assets of an estate which is administered in terms of a testamentary disposition, appears to us to be reasonable and the present Law upon which it is based, in our opinion, calls for no change.

9. We are further of opinion that the general provisions of the Act under which income the subject of a Trust, is taxed either in the hands of the Trustee or in the hands of the beneficiaries according to circumstances as has been outlined, are reasonable and call for no change except in the direction of specifying more clearly in the Act the circumstances in which income the subject of a Trust shall be assessed in the hands of the Trustee or of the beneficiaries. Our recommendations on this point will be made later in this Chapter. We also support the principles on which the provisions of section 9 (3) and (6) of the Act are based and in terms of which such income is taxed in the hands of the creator of the Trust. No change, moreover, appears to us to be necessary in section 9 (4) under which such income is taxed in the hands of the parent of a minor child beneficiary.

10. The provisions of section 9 (5) referred to in paragraph 5 (2) above are, however, very far-reaching and, in our opinion, in some cases unfair in their effects, and some modification of the terms of that section seems to us to be necessary.

11. The section appears to proceed upon an assumption that it is justifiable for taxation purposes, to treat income the subject of a Trust as though it continued to be the income of the creator of the Trust, in all cases in which there is a suspension of the benefit of the enjoyment of such income by beneficiaries of the Trust.

12. This might be justifiable where the donor is in a position to continue to exercise a measure of control over the ultimate destiny of the income. Thus, if the income held in suspense is to devolve upon persons or institutions to be named by him in the future, it would clearly be justifiable. It would be justifiable even where the power of nominating the beneficiaries in the future is not exercisable by him in his personal capacity but in his capacity as a Trustee.

13. It is not, however, in our opinion, justifiable to treat such income as his income where, although the immediate enjoyment of the income by the beneficiaries is suspended, the ultimate devolution of the income is that the income of a Trust is to be accumulated until a fund of a certain amount is created and that amount is then to go to a named beneficiary or the heirs of that beneficiary. In that case there would be justification for taxing the Trustee on the income year by year but not for taxing the donor.

14. We think, therefore, that it is unreasonable to tax the donor in all cases in which there is a suspension of the enjoyment by beneficiaries of income the subject of a Trust as at present. In our opinion the reasonable course would be to provide for such income to be taxed in the hands of the donor, and not in the hands of the Trustee, when there is a suspension of the enjoyment by beneficiaries of such income, only if—

(1) by virtue of powers conferred upon the donor or or his spouse under the Trust deed, he or she is in a position in the capacity of Trustee of the property of the Trust, or otherwise, to control the ultimate devolution of funds derived from the accumulation of the income; or

(2) such funds or any portion of such funds, or any property of the Trust could by any means or under any circumstances devolve upon the donor, his estate or his spouse, or become available by way of loan or otherwise, for the use of, the donor, or his spouse.

We recommend that the Act be amended accordingly.

15. Under the present Law as has been pointed out, where income the subject of a Trust is not received by or does not accrue in favour of any ascertained beneficiary in whose hands it can be taxed or is not deemed, by any of the provisions of the Act, to be the income of the creator of the Trust, such income is taxed in the hands of the Trustee at the rates and subject to the rebates provided in respect of an unmarried individual. That arrangement has the effect of granting to a Trustee a substantial margin of tax-free income and makes it possible for income to be "split" by the creation of a number of Trusts for the purpose of gaining the advantage of a series of tax-free margins.

16. We have recommended that a system of concessional deductions should be introduced in place of the present system of rebates. We do not feel, however, that there is any justification for the making of any concessional deduction for normal tax purposes in the case of an assessment upon a Trustee in his representative capacity in respect of income the subject of a Trust. As pointed out in paragraph 6 of Chapter 6 of our First Report, the underlying principle on which the granting of concessional deductions is based, is the recognition that relief from taxation is necessary in respect of certain personal and domestic obligations that the taxpayer must bear. These considerations do not apply to a Trust and no concessional deduction based upon such considerations should, therefore, be granted for normal tax purposes. For super tax purposes, however, the justification for the granting of a concessional deduction to individuals does not rest solely upon considerations of the personal and domestic obligations of the taxpayer. The reason for the granting of a tax-free margin of a fairly substantial amount, by way of a concessional deduction, is rather in recognition of the fact that any dividend income contained in the taxpayer's income subject to super tax will already have borne normal tax in the hands of the company producing the profits out of which such dividend was paid, and in order to bring into operation the higher over-all rate of taxation involved in the super-imposing of the super tax upon the normal tax, at a fairly high income level. These are considerations which apply to a Trust in no less degree than to an individual taxpayer and in our opinion

Trustee in his representative capacity. While we feel, for the reasons given, that this question would be appropriately dealt with by granting no concessional deduction for normal tax and the full concessional deductions available to individuals for super tax purposes, in taxing a Trustee on income the subject of a Trust, we are of opinion that it would be advisable to provide an exemption limit of, say, £50 to be applied in the case of assessments upon Trustees in respect of income the subject of a Trust. Such an exemption limit would have the effect that in the case of a Trust the income of which was of relatively small amount, falling below the exemption limit provided, it would be unnecessary for assessments to be raised. Some saving of administrative work would thereby be effected and the necessity for the raising of assessments for relatively negligible amounts would be avoided. This substantial reduction in the tax-free margin would render less attractive the creation of a series of Trusts with the object of gaining the advantage of a number of tax-free margins. In all cases in which the income exceeded the exemption limit the full amount of the income would, however, be taxable. **We recommend accordingly.**

17. The considerations leading to the conclusions arrived at in the preceding paragraph that, in the assessment of Trusts, no concessional deduction should be allowed for normal tax purposes but that an exemption limit should be provided and that the full concessional deduction should be permitted for super tax purposes, apply with equal force to assessments of the incomes of such associations of persons (other than companies) and institutions generally as are taxable, and **we recommend** that, in this respect, such associations of persons and institutions should be accorded the same treatment as is recommended in the preceding paragraph in respect of Trusts. The recommendations contained in paragraph 16 on page 39 of our First Report on the subject of Concessional Deductions should be regarded as modified by the recommendations contained in this and the preceding paragraph.

18. We are of opinion, further, that where more than one Trust is created, substantially all the assets of which are received from one person, and the beneficiaries of which are one person, class or group of persons, then the income falling to be taxed in the hands of the Trustee should be taxed as one Trust in the hands of such one of the Trustees as the Commissioner may determine, with one exemption limit and one concessional deduction for super tax only. Provision along these lines should in our opinion effectively counter any abuse resulting from the creation of a number of Trusts by one person and with similar purposes, with the object of securing the benefits of a series of tax-free margins and a reduction in the progressive rate of tax on the incomes of the Trusts. **We recommend accordingly.**

19. As indicated in paragraph 9 of this Chapter, we are of opinion that the present Act could with advantage be amended by the introduction of specific provisions making it clear under what circumstances income the subject of a Trust is to be taxed in the hands of the Trustee in his representative capacity and in what circumstances the beneficiaries shall be taxed directly. This question has been the subject of much litigation in the past, and reasonably clear principles for the determination of the question under various circumstances have emerged from the decisions of the Courts from time to time. The substantial effect of these decisions, which in our opinion have established rules which are generally reasonable and fair, for the determination of this frequently difficult question, would be reflected by the introduction of a provision along the following lines, and **we recommend** that

"**Subject to the provisions of section 9 (3), (4), (5) and (6)—**

(1) Where income the subject of a trust is received by or accrues to a trustee in his representative capacity and at the time of its receipt by or accrual to him he is legally obliged to pay over such income or some part of it to, or to accumulate or expend such income or some part of it for the benefit of, any person specified in the trust deed as the beneficiary thereof or nominated as the beneficiary thereof by the trustee in the exercise of any discretionary power conferred upon him by the trust deed so to nominate, such income to the extent to which the trustee is so legally obliged to apply it shall be deemed to be the income of that beneficiary.

(2) In respect of any income the subject of a trust received by or accrued to any trustee which is not, in terms of sub-section (1), deemed to be the income of any other person, the trustee shall be chargeable to tax thereon."

20. A further point in regard to which we are of opinion that the Act should be amended is in regard to the duties and responsibilities of Trustees under the Act. In our opinion the Act should contain provision making it obligatory upon any Trustee to report to the Commissioner the existence of the Trust which he has been appointed to administer, to lodge with the Commissioner a copy of the Trust deed and to make annual returns of the income the subject of the Trust. Provision along these lines is in our opinion desirable both for the protection of the Fiscus and to avoid confusion, which we are inclined to think presently exists, regarding the obligations of Trustees in this respect. **We recommend** that the Act be amplified accordingly.

Submissions Received by the Committee and our Conclusions Thereon.

21. A submission received by the Committee on this subject drew attention to the following points:—

(1) The possible double taxation of the same amount where the beneficiary of a Trust receives income on condition that he pays some portion of it to another person;

(2) the liability for tax of Trusts formed entirely for charitable purposes.

22. As regards the first point raised in this submission, as has been explained, tax is assessed generally upon income the subject of a Trust, either upon the Trustee where there is no ascertainable beneficiary actually entitled to the income, or upon the beneficiary when there is such a beneficiary actually entitled to the income. Normally, therefore, no question of double taxation can arise. In the case referred to in the submission where a person is entitled to income on condition that he pays portion of it to another, the latter would clearly be the person entitled to the share of income due to him and as such the person to be taxed in respect of such share, the former being assessable to tax only on the net amount to which he is entitled.

23. Cases do arise, however, where property may be vested in a beneficiary under a Trust on condition that such beneficiary pays an annuity to another, but without the creation of a *fidei commissum* in favour of the annuitant, and it is probably cases of this nature that have given rise to the suggestion of the possibility of double taxation. In such a case the annuitant is by the present Law made subject to tax in respect of the

The payer of the annuity is, however, not permitted to deduct from the income of the property the amount of such annuity for the reason that it represents a capital payment, in the nature of what is called a bequest price in consideration of which he acquired the property. There is, however, no real question of double taxation involved in these circumstances. To the annuitant the annuity is clearly income. The non-deductibility of the amount of the annuity in determining the taxable income of the payer is merely the result of the application of the ordinary rule prohibiting the deduction of capital payments. If the payment made to acquire a property takes the form of a lump sum or even where the payments are by instalments, it cannot be suggested that any deduction should be permitted in determining the taxable income derived by the purchaser from the property. The fact that the payments in respect of the purchase price take the form of annuity payments can make no difference in this respect.

24. As regards the second point it was suggested that the income of all Trusts formed entirely for charitable purposes should be exempt from taxation, if the Commissioner is satisfied that a reasonable proportion of the income is distributed to recognised charities. This, it was urged, would put such Trusts on a basis comparable with associations formed not for purposes of gain. We do not think it would be practicable to adopt as the test for the exemption of income the subject of a Trust the reasonableness or otherwise of any proportion of such income as might be distributed to recognised charities. In accordance with the recommendation we have made in paragraph 19 above, any income the subject of a Trust which is distributed to any ecclesiastical, charitable or educational institution of a public character in pursuance of any legal obligation resting upon the Trustee, at the time of its receipt or accrual, so to distribute it, will, of course, be treated as income of the institution and entitled to the exemption provided in the Act in favour of such institutions. Where there is no such distribution then the Trustee in his representative capacity on behalf of the Trust remains the taxpayer and the test for deciding whether any exemption applies becomes whether or not the Trust itself is to be regarded as an ecclesiastical, charitable or educational institution of a public character. If the Trust is found to be such then the exemption applies to its entire income including any undistributed amounts, and if not, no exemption applies. The law in this respect appears to us to be reasonable and to require no change except possibly in the direction of introducing a direct reference to Trusts in the section of the Act in which provision is made for exemption in favour of ecclesiastical, charitable or educational institutions [section 10 (1) (*f*) of Act No. 31 of 1941, and Clause 10 (1) (*e*) of the Bill attached to our First Report], with the object of removing any doubt which might exist as to whether a Trust is to be regarded as an institution for purposes of that section. To give effect to this suggestion, **we recommend** that the section conferring such exemption be amended to read—

> "the receipts and accruals of all ecclesiastical, charitable, educational and scientific institutions (including trusts) of a public character, whether or not supported wholly or partly by grants from the public revenue: Provided that this exemption shall not apply to any such institution which does not carry out the objects for which it was formed or does not apply its receipts and accruals wholly and exclusively for those objects."

25. Certain other aspects of the taxation of income the subject of a Trust, in cases in which the formation

CHAPTER 15.

THE ADMINISTRATION OF THE INCOME TAX ACT BY THE STAFF OF INLAND REVENUE DEPARTMENT.

1. The successful administration of the income tax system is obviously largely dependent upon the efficiency of the staff employed upon it, and we have felt it proper that we should give some consideration to this aspect.

2. The Commissioner for Inland Revenue is, by section 2 of the present Income Tax Act, charged with the responsibility of carrying out its provisions. Many other revenue laws are administered by the Commissioner, but we understand that the number of staff employed on the administration of the Income Tax Act is considerably greater than that employed on any other single head of revenue. Apart from a large staff employed in the routine duties of obtaining completion of forms of return by taxpayers, enforcing payment of taxes after assessment and maintaining the appropriate records, a considerable proportion of the staff of the Department is engaged on the actual assessment of the taxes chargeable under the Act. Officers of the Department are freely transferable from the assessing to the other branches of the work of the Department.

3. The educational qualification required for the entry of male staff into the Inland Revenue Department, as in the case of Government Departments generally, is the Matriculation examination or its equivalent. We understand it to be the practice in the training of assessors to employ them in the first instance on the straight-forward assessment of salaried taxpayers and thereafter on the more difficult and involved work of the assessment of taxpayers in receipt of income from trade. A small staff of tutors consisting of experienced assessors is employed on the work of training. The grading of posts in the Inland Revenue Department is similar to that found in other Government Departments and is determined by the Public Service Commission. The scales of pay attaching to posts in the Inland Revenue Department are the same as those attaching to similarly graded posts in other Departments. A system of promotion of officers according to merit is in force in the Department. Some encouragement is given to officers to improve their academic qualifications, under an arrangement which applies generally throughout the Public Service, by granting a junior officer who is successful in passing a recognised University degree examination a special salary increment and a year's seniority.

4. The work of an income tax assessor, if it is to be satisfactorily performed, demands a high degree of efficiency and knowledge of an extremely technical nature. It requires not only an intimate knowledge of the detailed and intricate provisions of the Income Tax Law itself, but also a thorough understanding of accounting principles and the general principles of Mercantile, Company and Insolvency Law. In dealing with specialised types of taxpayers, a knowledge of other special laws is necessary as, for example, the laws relating to mining and stock exchanges. Mature judgment, too, is required of an assessor particularly in the exercise of many of the Commissioner's discretionary powers which have necessarily to be delegated to assessors.

5. As we have indicated, it is essential that assessors should possess a high degree of technical skill and knowledge if the best results are to be achieved in the administration of the Income Tax Act, and there seems to us to be some need for a revision of the present arrangements regarding the terms and condi-

incentive is offered to such officers to acquire the knowledge and skill necessary to the proper and efficient discharge of their assessing duties.

6. It seems to us that present arrangements put no real obstacle in the way of an officer of the Department progressing to a position of relative seniority without taking any steps to qualify himself by outside study, nor is he sufficiently encouraged so to qualify himself in the particular subjects that would be useful to him in the discharge of his duties as an assessor. The arrangement referred to in paragraph 3 whereby an officer acquiring a University degree is granted a special salary increment offers little real inducement and in any event is granted regardless of the particular type of degree taken and whether or not the subjects taken for degree purposes are likely to be of direct value to the officer in the performance of his duties.

7. We feel that it would go far towards promoting efficiency in the Department if a suitable form of departmental examination were devised which it would be necessary for officers of the Department to pass before being permitted to progress beyond a fairly junior stage in the Department. Such a system has been in force in the Justice Department for many years, and we understand that it now applies in the Department of Native Affairs and the Post Office, and also in Deeds Offices. The principle of qualification by examination applies in all the professions. Many institutions too, such as banks, building societies, and insurance companies, recognise the necessity for their employees qualifying themselves by private study for advancement in their service. We are further fortified in our opinion as to the desirability of the introduction of such an arrangement by the recommendation made by the Public Service Enquiry Commission in its Fifth Report (U.G. 53—'46), page 66, paragraph 480, reading as follows:—

> "In order to bring about greater efficiency in the Service your Commission further recommends that the Public Service Commission should consider whether efficiency barriers should not be instituted in scales in which they do not exist to-day, particularly in scales applicable to grades of entry."

More advanced examinations could in addition be prescribed which it would be necessary for officers to pass in order to qualify for consideration for the more senior posts in the Department. Partial or total exemption from these examinations could be granted in favour of those who obtain degrees covering some or all of the subjects which are embraced by the Departmental examinations.

8. There would be a real encouragement to assessing officers to qualify if those who were successful in passing the more advanced examinations prescribed were granted substantial pensionable allowances in addition to the ordinary scales of pay attaching to their posts, and higher status in recognition of their qualifications. We consider it necessary that these allowances should be substantial and pensionable for the reason that in our opinion the existing scales of pay are too low to attract the right type of recruit or to retain the services of progressive and efficient officers. We are convinced, too, that the granting of some recognised form of higher status to qualified officers, which would increase their standing in the eyes not only of their colleagues but also of the general public, would act as a powerful stimulus to officers to attain the prescribed qualifications.

9. It is our opinion that the introduction of arrangements along these lines would do much to improve the efficiency of assessing officers and that any additional expenditure which might be involved in paying higher salaries to those who qualify, would be money well spent in ensuring a greater yield of revenue as a result of ... considerable revenue would be gained if the Department had at its disposal sufficient officers who as a result of the inducements offered had qualified themselves to undertake the work with maximum efficiency. Investigation work, if it is to be carried out successfully, demands a particularly high degree of skill and technical knowledge which makes it essential that officers engaged upon it should not only have had wide assessing experience but should also be possessed of accounting and legal qualifications of a high order. Such arrangements would also serve to check the tendency which exists to-day for keen and efficient men who have attained useful qualifications by private study to leave the Department for employment outside the Public Service.

10. **We accordingly recommend** that in the interests of efficient income tax administration a system be introduced in the Inland Revenue Department, whereby officers of the Department who fail to qualify by the passing of an appropriate departmental examination are debarred from progressing beyond a certain stage and substantial incentives are offered to the attainment by such officers of higher qualifications which would be of direct benefit to them in the carrying out of their duties.

CHAPTER 16.

MISCELLANEOUS MATTERS.

Preliminary.

1. In this Chapter we shall deal with the remaining aspects of the Income Tax system to which we have felt it necessary, in pursuance of our terms of reference, to give consideration.

The Recording of Assessments.

2. Under the provisions of section 67 (2) of the present Act the Commissioner is required to record or file and keep in his office the particulars of every assessment which is issued and the amount of tax payable thereon. In terms of section 67 (3) of the Act the Commissioner is required, upon recording or filing the particulars of any assessment, to give notice of the assessment and the tax payable thereon to the taxpayer concerned.

3. The Commissioner has stated that the effect of these provisions as they are presently drafted is that the offices of the Department have become congested with copies of assessments dating back to 1925 and earlier years, and has submitted that the Act should be amended so as to contain provision for the destruction of such assessments after the expiry of a certain period.

4. To meet this difficulty, the Commissioner has suggested that section 67 (2) and (3) should be re-drafted along the following lines:—

> "(2) The amount of tax payable in respect of every assessment issued by the Commissioner to a taxpayer shall be recorded by the Commissioner as a debt due by that taxpayer to the Government of the Union and the Controller and Auditor-General shall be entitled to verify that the amount of tax payable as disclosed by the assessment issued to the taxpayer is in agreement with the debt recorded by the Commissioner against the taxpayer. The record so set up by the Commissioner shall be retained for such period as may be approved by the Controller and Auditor-General and may thereafter be destroyed.
>
> (3) Upon recording the amount of any debt due by the taxpayer or of any reduction in such debt the Commissioner shall give notice to the taxpayer of the assessment and of the tax payable thereon or of the amount by which any tax has been reduced on re-

of the taxpayer, for the year of assessment under charge, a copy of that notice of assessment disclosing the tax payable thereon or the amount by which any tax previously advised has been reduced.".

5. We agree with this submission and **we recommend** that the section be amended as suggested.

Appointment of the Government or Government Officials as Agent.

6. In terms of section 74 of the Income Tax Act of the Union (Act No. 31 of 1941, as amended), the Commissioner for Inland Revenue may, if he considers it to be necessary, declare any person to be the agent of any other person, and the person so declared agent may be required to pay any tax due from any funds which he may hold for, or which may become due to, the person whose agent he has been declared to be.

7. We understand that the present wording of the law in this respect presents the Commissioner with certain difficulties in connection with the recovery of taxes out of amounts held by the Government of the Union, the Railway Administration, Provincial Administrations and Local Authorities. To overcome these difficulties, the Commissioner has suggested that section 74 of the Act should be amended by the addition thereto of the following new paragraph:—

> "For purposes of this section, 'person' shall include the Government of the Union (including the Railway Administration), any Provincial Administration in the Union or any local authority.".

8. We support this suggestion and **we recommend** that the Act be amended accordingly.

Retrospective Legislation.

9. It was suggested to us that the practice of amending the Income Tax Act with effect retrospective to the year of enactment should be discontinued, and that consideration should be given to the publication of proposed fundamental changes to the Act before the commencement of the year of assessment in which they take effect.

10. We agree generally with these suggestions for the reason that we are opposed in principle to retrospective effect being given to legislation, and **we recommend** that, save for most exceptional reasons, tax legislation should not be made retrospective. **We also recommend** that as far as it is practicable any proposed fundamental alteration to the Law by amending legislation should take effect only from the year of assessment commencing on the 1st July following the date of enactment of such amending legislation.

Consolidation and Indexing of the Law.

11. To enable the taxpaying community to remain up to date with Income Tax Legislation, and to facilitate reference thereto, it was urged in a submission made to us that a consolidated Income Tax Act with a comprehensive supporting index should be published at least every three years. It was also suggested that if an amending Act is passed by Parliament it should immediately be followed by a consolidating Act, or the Government Printer should be instructed to print the Income Tax Act immediately in consolidated form.

12. We agree that it is necessary that something should be done to make the Income Tax Law readily available in up-to-date form, and **we therefore recommend** that the Income Tax Act should be consolidated

Returns—General.

13. It has been suggested to us that section 55 (6) of the present Act, which provides that any person signing any income tax return shall be deemed for all purposes in connection with the Act to be cognisant of all statements made in that return, should be amended in such a manner that not only the signatory to a return but also, in cases in which the return is signed by an agent of the taxpayer, the taxpayer himself shall be deemed to be cognisant of its contents.

14. We agree with this submission and are of opinion that the prosecution of taxpayers under the provisions of section 91 (1) (*a*) of the present Act, for making or causing or allowing false statements to be made in returns, would be facilitated by an appropriate amendment of section 55 (6) of the Act.

15. **We accordingly recommend** that sub-section (6) of section 55 of the Act be amended by the addition at the end of the sub-section of the words "and any person who permits or authorises any other person to sign any such return on his behalf shall be deemed to be cognisant of, and to have caused or allowed to be made, all statements made in that return".

16. We have examined the provisions of section 55 (8) of the present Act, in terms of which the Commissioner may appoint a person to make a return of income on behalf of another person who has failed to do so. We are of opinion that there is ample machinery elsewhere in the Act to deal with persons who fail to make returns of their income, and that it would be a better course, in the absence of a return, to proceed to impose such penalties as result from such absence rather than to compel some person to make, on behalf of another person, a return which will not necessarily be accurate, and the very existence of which may present obstacles to the imposition of the appropriate penalties. For these reasons we consider that section 55 (8) should be deleted from the Act, and **we recommend accordingly.**

17. Section 55 (14) of the Act presently provides that if any person when called upon to furnish a return under the Act is unable to do so, the Commissioner may accept a return of estimated income for assessment, and that such estimated assessment shall be adjusted by the Commissioner if and when a proper return of income is furnished. We have considered these provisions and have come to the conclusion that, having regard to the fact that ample machinery exists elsewhere in the Act to deal with such cases, this sub-section should be repealed. **We recommend accordingly.**

18. It has also been suggested by the Commissioner that section 55 (15) of the present Act, which provides that "persons carrying on any business in partnership shall make a joint return as partners in respect of such business, together with such particulars as may from time to time be prescribed, and each such partner shall be separately and individually liable for the rendering of the joint return", should be re-drafted along the following lines:—

> "(15) Persons carrying on business in partnership shall include in the returns required to be rendered by them personally under this Act their share of the partnership income for the period or year of assessment under charge and in support of such returns each partner shall furnish a copy of the accounts, and such other particulars as may from time to time be prescribed, disclosing the total income of the partnership for the period or year of assessment under charge: Provided that the Commissioner may dispense with copies of the accounts from such partners as he may decide."

20. We have also been urged to recommend that the income tax return form, which is issued to taxpayers for completion, should be simplified. In its present form the form has been criticised on the grounds that it is difficult to understand, that in many cases apparently superfluous information is called for and that the information which must be furnished by any one taxpayer is spread over the entire form.

21. We agree that there is room for improvement in the present form, and we understand from the Commissioner that the matter is receiving his attention.

Standing Advisory Committee.

22. We have received a submission in which it was suggested that a standing committee should be appointed to advise the Minister of Finance on matters relating to income tax.

23. It has come to our notice that such a Committee is in existence in Australia, and we have ascertained that the terms under which it is constituted require the Committee to examine such matters as are referred to it by the Treasurer of the Commonwealth in connection with income tax and other taxation laws of the Commonwealth, and to report to the Treasurer upon those matters. When so reporting to the Treasurer in respect of such matters the Committee is also required to recommend any changes in law or procedure which it considers necessary to achieve the objects of—

(1) making the laws as simple and intelligible to the taxpayer as the nature of the legislation admits;

(2) simplifying the duties of taxpayers, especially in the preparation of returns;

(3) removing anomalies in the laws; and

(4) providing an adequate and equitable basis of taxation.

From the fact that, in its first year of existence, the Australian Committee has dealt with a variety of problems it is evident that it is serving a useful purpose.

24. We have considered the possibility of the appointment in the Union of a committee with broadly similar terms of reference, and have come to the conclusion that this would be desirable. In our view such a Committee, if composed of suitably qualified members, would be eminently suitable to advise the Minister on matters relating to the taxation laws of the Union, especially since it would be able to present to the Minister information concerning economic considerations and the viewpoint of the taxpaying community which may not otherwise be available to him. We consider that this would contribute materially towards the better understanding of taxation problems and the attainment of a greater degree of equity in income tax legislation, and that the scope of the matters to be dealt with by the committee could be extended to other fiscal legislation should it prove to be expedient or desirable so to extend it. Such a Committee would in our opinion serve a particularly useful purpose when the necessity might again arise, in time of war or other emergency, for the introduction at short notice of special taxation measures, of the nature, for example, of the excess profits duty imposed during both the first and the second World Wars.

25. In our view the scope of the Committee's operations should be limited, as in the case of the Australian Committee, to such matters as may be referred to it by the Minister of Finance, to whom the Committee should report from time to time, and we would regard it as desirable that all reports so made should be published for general information as promptly as may be expedient.

26. As to the composition of the committee we con-

tives of the Inland Revenue Department, the Accounting profession and of either commerce, industry or mining, as may be required.

27. **We therefore recommend** that a Standing Advisory Committee be appointed and constituted along the lines we have suggested above.

Adjustment of Liabilities Allowed to be Deducted where Amount Involved is Recovered or Recouped, or the Liability is Extinguished.

28. Section 11 (4) of the Act provides for the inclusion in a taxpayer's income, for income tax purposes, of all amounts allowed to be deducted or set off under the deductions provisions of the Act (except deductions in respect of pension fund contributions and scientific research) which have been recovered or recouped by him. As we have stated in paragraph 28 of Chapter 3 on page 14 of our First Report, we regard as logical and reasonable these provisions which enable the Commissioner to subject to tax the amount of the recoupment of expenditure in respect of which the taxpayer has enjoyed the benefit of a deduction in the determination of his taxable income.

29. Some doubt exists, however, as to whether the subsequent extinction of a liability by some means such as its waiver or remission by a creditor may be regarded as constituting the recovery or recoupment of the amount involved within the meaning of section 11 (4) in its present form. In our view it is proper that the amount of a liability which has been so extinguished to the taxpayer's advantage should be subjected to tax to the extent that it has been allowed as a deduction in the determination of his taxable income.

30. In order that the position may be clarified, **we recommend** that section 11 (4) of the Act be re-drafted along the following lines:—

"(4) There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sub-section (2) [except paragraph (*i*), (*j*) *bis* and (*j*) *ter* thereof], or sub-section (3) or the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment, or the liability for the payment of which has been extinguished whether by waiver or remission or in any other manner."

31. With the adoption of the recommendation contained in the previous paragraph, it would seem to us to be unnecessary to retain the provisions contained in proviso (ii) to section 11 (3) (*a*) of the present Act, under which the balance of assessed loss of a taxpayer is required to be reduced by the amount or value of any benefit received by or accrued to him as the result of a concession granted by, or a compromise made with his creditors whereby his liabilities to them, which arose in the ordinary course of trade, have been reduced or extinguished. **We therefore recommend** that proviso (ii) to section 11 (3) (*a*) of the present Act be repealed.

The Taxation of Gifts or Donations.

32. Under the Income Tax Act of the Union (Act No. 31 of 1941, as amended), no tax is levied upon gifts or donations as such, although the provisions of the Act prohibit the allowance as deductions from taxable income of outgoings of this nature.

33. In submissions to the Committee the imposition of a gifts or donations tax was strongly opposed. It was urged that such a tax would retard the economic development of the country and that nothing should be done to hinder the free transfer of private capital. It was argued that gifts or donations of sufficient

subjecting to income tax only the fruits of capital. It was also submitted that a tax upon gifts or donations is a matter which is more properly dealt with under Death Duties than Income Tax legislation.

34. We have considered the advisability of the introduction of a gifts or donations tax, particularly as a deterrent against the employment of donations and gifts as a means of tax avoidance. We have ascertained that in Australia and Canada such a tax exists, and that in the latter case the relevant provisions have been incorporated in the income tax laws of that country.

35. We are of the opinion, however, that the *bona fide* and complete donation of income-producing assets cannot in any way be regarded as a scheme for the avoidance of income tax. We agree, moreover, that income tax legislation would not be an appropriate or proper medium for the imposition of a donations tax. We feel that the matter is one which, if it is to be dealt with in any way, should either be dealt with separately or in conjunction with Death Duties and is not one falling within our terms of reference. We are, therefore, unable to comment upon the advisability of introducing such a tax as a part of the fiscal system of the Union. We are also of the opinion that the provisions of sections 9 and 90 of the Act, amended in accordance with the recommendations which we have made in Chapters 11 and 14 of this Report will go as far as is necessary to counter the possible use of donations, settlements and other dispositions as a means of income tax avoidance. In the circumstances, therefore, we are unable to recommend the introduction of a gifts or donations tax.

The Definition of "Pension Fund" for Purposes of the Act.

36. The present Act contains a definition of the term "Pension Fund" for purposes of the Act in which it is provided, *inter alia*, that a fund shall not be approved by the Commissioner as a Pension Fund unless he is satisfied that "the rules of the fund provide that the employer and every member of the fund shall contribute to the fund in accordance with specified scales".

37. Cases may arise in which, while the rules of a fund may provide for contributions by employees to the fund according to a specified scale, no contributions are payable by the employer. On the other hand the rules might provide for contributions by the employer according to a specified scale but may require no contributions from employees.

38. In such cases there seems to us to be no reason, provided the remaining requirements of the definition are complied with, why such funds should not be recognised as pension funds for purposes of the Act. Although we understand it to be the practice of the Commissioner to grant recognition to such funds, the correctness of that practice is not altogether free from doubt, having regard to the present wording of the definition quoted above, and to remove such doubt **we recommend** that the definition be amended to admit of the recognition as a pension fund for purposes of the Act of a fund the rules of which provide that all contributions which are required to be made to the fund, whether by the employer or by members of the fund or by both, shall be made in accordance with specified scales.

Modification of Recommendations Regarding the Basis of Assessment of Income from Farming Proposed in our First Report.

39. In Chapter 12 of our First Report certain recommendations were made for the revision of the existing basis of assessment of income derived from farming. [illegible] for reasons fully set out in that

"stock" basis, i.e. taking into account the value of livestock and produce on hand and unsold at the beginning and end of each year of assessment, at not less than seventy-five per cent of "standard" values, fixed by regulation annually and representing the prevailing fair average current market values for each class of livestock and produce.

40. It was appreciated that some adjustment would be necessary in respect of the value of the stock on hand to be brought to account as the opening stock value at the beginning of the first year of application of the new system recommended.

41. In the case of the farmer who had previously rendered returns on what was known as the "cash basis", the amount of the stock adjustment that would be necessary to bring his returns on to the new basis would be the full value of his stock on hand at the beginning of the first year calculated on the basis of the standard values fixed by regulation for that year.

42. In the case of the farmer whose returns had previously been dealt with on the "stock basis" the amount involved would be the amount by which the value of his stock on hand at the beginning of the first year calculated on the new basis recommended, exceeded the value of his stock on the basis previously applied by him.

43. Since farmers would obviously derive considerable future advantage from being permitted to establish the value of their opening stock at a substantial figure, and would moreover already have derived considerable benefit from the application of the "cash basis" or the "stock basis" with low stock values in the past, it was felt that it would not be equitable that they should be relieved of taxation entirely in respect of the amount of the stock adjustment which would be effected at the beginning of the first year of application of the proposed new system.

44. It was accordingly proposed that tax should be imposed on the amount of the stock adjustment by way of a special tax to be designated Farmers' Stock Adjustment Tax. In order to avoid any hardship to farmers it was proposed that that tax should be imposed at a flat rate of 1/6d. per £ in the case of married persons and 1/9d. per £ in the case of unmarried persons and companies. These rates represent the minimum rates of normal tax, with the minimum surcharge for provincial income tax, which have been in force since 1941.

45. We remain of opinion that the results which would be brought about by the adoption of the proposals made by us in our First Report in this connection as we have briefly outlined them, would be fair and reasonable.

46. Having given the matter further consideration, however, we have come to the conclusion that certain misconceptions which it has become apparent have arisen regarding the true import of our proposals would be removed, and the scheme would be more readily understood and its true effects appreciated if some modification of our proposals were made as to the form of the taxation to be imposed on the amount of the stock adjustment concession to farmers. As a result no doubt of the taxation we proposed in respect of the stock adjustment having taken the form of a special and separate tax, it seems that the benefits accruing to farmers by way of relief from normal and super tax at possibly high progressive rates on the amount of the stock adjustment, have been totally obscured.

47. We accordingly withdraw our proposal that the taxation which we are of opinion should be imposed on

mended, should be imposed by way of a special and separate Farmers' Stock Adjustment Tax, and **we now recommend** that—

(1) the amount of the stock adjustment figure should be deemed to form part of the farmer's taxable income for the first year of application of the system recommended, although the amount of it should not be taken into account for purposes of determining the progressive rates of normal and super taxes payable by the farmer;

(2) the amount of the stock adjustment figure so included should be exempt from super tax and should be liable for normal tax only at a flat rate of 1/6d. per £ for married persons and 1/9d. per £ for unmarried persons and companies;

(3) where a farmer has an assessed loss he should be permitted the option of either paying normal tax at the rate proposed in respect of the stock adjustment figure or of having his assessed loss reduced by the amount thereof;

(4) if the Commissioner is satisfied that the circumstances of the case warrant it, the amount of the normal tax chargeable in respect of the stock adjustment figure should be spread so as to become payable as to one-third with the assessment for the year of assessment in respect of which the stock adjustment is effected and one-third with the assessments in respect of each of the two succeeding tax years, any balance remaining unpaid upon the death or insolvency of the farmer before the full amount chargeable has been assessed and paid to rank as a claim against the deceased or insolvent estate.

48. Provisions along the lines proposed in the preceding paragraph have been incorporated in the Draft Income Tax Bill which accompanies this Report. These provisions will result in the amount of the taxation to be imposed in respect of the stock adjustment remaining the same as under our proposals for the imposition of the special Farmers' Stock Adjustment Tax. The revised and simplified form of the charge will, however, clearly reflect the true extent of the concession to farmers involved in our proposals, namely, complete relief from super tax and the imposition of normal tax only at minimum flat rates in respect of the stock adjustment. The modification of our proposals along these lines will, moreover, bring the treatment of farmers in this respect into line with the treatment of taxpayers deriving income from professions who are required to alter the basis of their income tax returns from that of receipts to accruals, as recommended in paragraph 16 of Chapter 3 of this Report.

CHAPTER 17.

SUMMARY OF RECOMMENDATIONS.

DATE OF ACCOUNTS (ACCOUNTING PERIOD) (Chapter 1).

1. All taxpayers should be required to make returns of their incomes from all sources to the 30th June, save in the cases referred to under paragraphs 2 and 3 below. (Chapter 1, paragraph 18.)

2. Where it is established to the satisfaction of the Commissioner that the income of a person from a particular business can more conveniently be returned to a date other than 30th June, and that revenue will not be materially prejudiced by the acceptance of accounts drawn to such other date, the Commissioner should accept returns made up to a date other than 30th June agreed to by him. (Chapter 1, paragraph 18.)

3. Subject to the approval of the Commissioner, taxpayers who at present make returns of their incomes respect of such business operations only, for financial years with a closing date other than 30th June annually. (Chapter 1, paragraph 18.)

4. The system at present operating under the proviso to section 55 (13) of the 1941 Act should be discontinued in respect of the taxpayers referred to under paragraphs 2 and 3 above, and in such cases no adjustments should be made for either the trading period during which the financial year-end date selected by the taxpayer first becomes effective or the final trading period. (Chapter 1, paragraph 18).

5. Income which is reflected by accounts for a completed financial year ending upon a date other than 30th June within the period of twelve months from the 1st December of one year to the 30th November of the next, or by accounts for part of a financial year which, if completed, would end upon a date within that period, should be taxed at the rates applicable to and as though it formed income of the year of assessment ended upon the 30th June falling within that period. (Chapter 1, paragraph 18.)

6. In cases in which the taxpayer dies during the course of the year of assessment the concessional deductions to be allowed should be calculated with reference to the period the taxpayer was alive during any year of assessment in respect of which an assessment is made upon him, and not with reference to the period he was alive during any financial year of the business the accounts of which are drawn to a date other than 30th June. (Chapter 1, paragraph 18.)

7. In respect of the trading period during which the financial year-end date selected by the taxpayer first becomes effective and the final trading period, the Commissioner should be authorised to refuse to accept any accounts which cover a period which is in excess of fifteen months, and in respect of all other trading periods it should be stipulated that, unless the Commissioner otherwise agrees, the accounts to be drawn should cover a full period of twelve months ending upon the selected date annually. (Chapter 1, paragraph 18.)

8. Where, in the initial year, an adjustment has been made, on a basis of estimate, to the income of a taxpayer who at present renders returns of income to a date other than 30th June under the proviso to section 55 (13) of the 1941 Act, a corresponding adjustment should be made, in the year of assessment in respect of which the recommendations contained in this Chapter, if accepted, first become operative, as far as is practicable on such a basis as will ensure that the aggregate of the taxable income assessed to tax in the various tax years during which the business has been carried on is equal to the aggregate of the taxable income for the entire period of trading based upon the trading results reflected by the accounts of the business, and the Commissioner for Inland Revenue should be given statutory authority for the making of such an adjustment. (Chapter 1, paragraph 18.)

THE SYSTEM OF SELF-ASSESSMENT (Chapter 2).

9. Individual taxpayers should be afforded the facility of voluntarily assessing themselves, and paying the tax so computed by them when rendering their returns each year. (Chapter 2, paragraph 16.)

10. A discount of 2½ per cent, subject to a maximum of £100, should be given to individual taxpayers who so voluntarily assess themselves and tender payment of their taxes within three months from the 30th June, or, if their annual accounts close on a date later than 30th June, within three months from such later date. (Chapter 2, paragraph 16.)

11. The income tax return form should be amended so as to contain such information as will be necessary

12. The system of voluntary self-assessment should not be extended to companies. (Chapter 2, paragraph 16.)

13. In the light of the experience gained as the result of the introduction of such a restricted system of self-assessment, consideration should be given to the practicability of the introduction of a system of compulsory self-assessment applicable to all taxpayers at some future date. (Chapter 2, paragraph 16.)

ASSESSMENTS ON THE BASIS OF RECEIPTS AND ACCRUALS (Chapter 3).

14. The taxable income of any taxpayer who has hitherto rendered returns and been taxed on the basis of receipts in respect of any trade, business or profession should in future be determined on the basis of all amounts accrued to the taxpayer in respect of such trade, business or profession. (Chapter 3, paragraph 16.)

15. Any amounts which accrued to the taxpayer during any previous year of assessment and which were not included in his taxable income for such previous years of assessment should be included in the taxpayer's income for the first year of assessment in respect of which such provisions are made operative, but the amounts so included should not be taken into account for purposes of determining the progressive rates of normal and super taxes payable by the taxpayer. (Chapter 3, paragraph 16.)

16. No super tax shall be chargeable on the amount of any accruals of previous years which are so included in the taxpayer's taxable income and the rate of normal tax thereon should be a flat rate of 1s. 6d. per £1 in the case of married persons and 1s. 9d. per £1 in the case of unmarried persons and companies. (Chapter 3, paragraph 16.)

17. Where a taxpayer has an assessed loss, he should be permitted the option of either paying the tax at the rates referred to in paragraph 16 above on the amount of the untaxed accruals or of having his assessed loss reduced by such amount. (Chapter 3, paragraph 16.)

18. If the Commissioner is satisfied that the circumstances of the case warrant it, the amount of the tax chargeable at the rates referred to in paragraph 16 above should be spread so as to become payable as to one-third with the assessment for the current year and one-third with the assessments for each of the two succeeding tax years, any balance remaining unpaid upon the death or insolvency of the taxpayer before the full amount has been assessed and paid to rank as a claim against the deceased or insolvent estate. (Chapter 3, paragraph 16.)

THE PRESERVATION OF SECRECY IN INCOME TAX MATTERS (Chapter 4).

19. Subject to the recommendations under paragraphs 20 to 23 below, the secrecy provisions of the Act should be retained. (Chapter 4, paragraph 12.)

20. The Income Tax Special Court should be vested with the right, exercisable at its discretion, to direct the Commissioner to report to the Attorney-General any criminal practices which are revealed in the course of the hearing of any appeal. (Chapter 4, paragraph 12.)

21. The Commissioner should be permitted, at his discretion, to report to the Attorney-General any case in which it might appear to him, from information which is in his possession, that a taxpayer has been

22. The Commissioner should be granted statutory authority to utilize income tax information for the purposes of the adminstration by him of taxation laws and ordinances other than the Income Tax Act. (Chapter 4, paragraph 12.)

23. Section 4 (4) of the Act, which provides for the imposition of a fine upon a person acting in the execution of his office before subscribing to the prescribed oath of secrecy, should be withdrawn. (Chapter 4, paragraph 12.)

DISCRETIONARY POWERS CONFERRED BY THE INCOME TAX ACT (Chapter 5).

24. Discretionary powers should be vested in the Commissioner only in relation to—

(1) matters of routine administration and tax collection not affecting the extent of the taxpayers' liability to taxation;

(2) matters in respect of which rigid rules of assessment are incapable of being drawn without unduly endangering the proper and legitimate claims of the Fiscus, or giving rise to anomalies and hardships.

(Chapter 5, paragraph 17.)

25. There should be no change in the existing Law under which no appeal lies against the decisions of the Commissioner in the exercise of his discretionary powers in routine administrative matters and matters of tax collection not affecting the amount of the tax payable by the taxpayer or the amount of his assessed loss. (Chapter 5, paragraph 19.)

26. In cases where the decision of the Commissioner in the exercise of a discretionary power affects the amount of tax payable by the taxpayer or the amount of his assessed loss, the taxpayer should, with certain exceptions, be entitled to object and appeal against such decisions, but, as at present, no appeal in these matters should lie beyond the Income Tax Special Court. (Chapter 5, paragraph 20.)

27. The cases in which, notwithstanding that the decision of the Commissioner may affect the tax payable or the amount of the taxpayer's assessed loss, no right of objection and appeal should lie against the Commissioner's decision, are as follows:—

(1) The decision as to the amount of the deduction to be allowed for wear and tear of machinery, implements, etc., used by the taxpayer for purposes of trade.

(2) The decision as to whether to permit the percentage of gross profit to turnover in the case of hire purchase transactions to be calculated, for the purpose of arriving at the allowance for unearned profits, by viewing all transactions of this nature collectively.

(3) The decision as to whether lump sum contributions by an employer to any pension or benefit fund established for the benefit of his employees or lump sums given by an employer *ex gratia* to his employees who retire on the grounds of old age, ill-health or infirmity, should be deducted in one sum or in a series of annual instalments.

(4) The decision that amounts which have been included in an assessment should not have been so included, and that any amount made payable by means of an assessment was in excess of the amount properly chargeable under the Act, for

(5) The decision that reasonable grounds exist for delay in lodging an objection, and that reasonable grounds exist for delay in giving notice of an appeal, for the purpose of entertaining objections and appeals which have not been lodged within the prescribed periods.

(6) The determination of the extent of the element of improvement present in the replacement of a fixed asset, for the purpose of calculating the amount of the replacement allowance to be granted to a taxpayer.

(Chapter 5, paragraph 21.)

28. The Income Tax Special Court should continue to adjudicate upon objections raised against decisions of the Commissioner in the exercise of such discretionary powers vested in him as the Law provides should be subject to objection and appeal. (Chapter 5, paragraph 22.)

29. The provisions of section 65 (2) of the Act should be repealed and replaced by provisions which would admit of the remission of all or such part of the penalties imposable under the Act as the Commissioner may think fit. (Chapter 5, paragraph 28.)

30. The Commissioner's decision in the exercise of his powers of remission of penalties should be made appealable, but it should be provided that—

(1) the Income Tax Special Court be vested with powers not only to affirm the decision of the Commissioner or to reduce the penalty imposed, but also, where the Commissioner has granted any partial remission, to increase the penalty up to the full amount of the penalty imposable;

(2) no appeal shall lie to the Court where the amount of the penalty imposed either—

(*a*) amounts to a sum representing less than 20 per cent of the total additional tax chargeable in respect of the default, omission or incorrect statement in the taxpayer's return; or

(*b*) is less than £100.

(Chapter 5, paragraph 29.)

31. The Commissioner should be permitted to revise—

(1) any decision in discretionary matters, whether given by himself or a predecessor in office, only where new or further facts have emerged; and

(2) any decision of subordinate officers in discretionary matters, whether or not new or further facts have emerged, provided that where there are no new or further facts such revision takes place within two years.

(Chapter 5, paragraph 33.)

32. The decision of the Government Mining Engineer should not be subject to objection and appeal in the following cases:—

(1) The determination by him of the effective value of the preliminary surveys, boreholes, shafts, development and equipment, and also, if the recommendation contained in paragraph 18 of Chapter 14 of our First Report is adopted, the value of all the assets passing, upon the change of ownership of a mining property; and

(2) the determination of the life of a mine for income tax purposes; and

(3) the determination of the question of whether a concern falls within the definition of a "new gold mine" contained in section 1 of the Act.

Objections and appeals under the Income Tax Act (Chapter 6).

33. The Act should be amended so as to vest in the Commissioner for Inland Revenue the right to permit an extension of the original grounds of objection if the application therefor is made within a reasonable period. (Chapter 6, paragraph 10.)

34. The Income Tax Special Court should be empowered to permit an extension of the original grounds of an objection subject, if necessary, to the postponing of the case to give the Commissioner time to consider any new grounds of appeal which may be advanced by the taxpayer, and subject to the awarding at the discretion of the Court of wasted costs against the taxpayer in such an eventuality. (Chapter 6, paragraph 10.)

35. Section 78 of the Act should be amended so as to place it beyond doubt that the onus of proof on the taxpayer extends to questions of fact only and not to questions of law. (Chapter 6, paragraph 14.)

36. The statutory period within which objections must be lodged should be extended from 21 to 30 days. (Chapter 6, paragraph 17.)

37. Section 79 (2) of the Act should be amended so as to vest in both the appellant and the Commissioner the right to elect that the third member of the Income Tax Special Court shall be a qualified mining engineer. (Chapter 6, paragraph 18.)

38. Section 79 (8) of the Act should be re-drafted so as to preclude a taxpayer, in cases where an additional assessment has been issued or an assessment has been reduced as the result of an objection, from challenging any decision of the Commissioner which was incorporated in the original assessment and in respect of which the taxpayer's rights of objection and appeal have lapsed. (Chapter 6, paragraph 19.)

39. Section 79 (8) of the Act should be further amended so as explicitly to preclude a taxpayer from lodging objection and appeal against any assessment which may be issued in connection with any refund which may be made in terms of section 89 of the Act. (Chapter 6, paragraph 19.)

40. Section 81 of the Act, under which the Income Tax Special Court is required to state a case for an appeal from its decision to the Supreme Court, should be amended to meet the contingency of one or more members of the Income Tax Special Court which originally decided the case being no longer available when that Court is convened for the purpose of resolving a disagreement between the parties as to the terms of such stated case. (Chapter 6, paragraph 20.)

41. Section 66 of the Act, under which the Commissioner is authorised to raise additional assessments, and section 89 of the Act, in terms of which the Commissioner is authorised to make refunds of tax, should be amended to provide specifically that the Commissioner may act thereunder notwithstanding the provisions of section 77 (7), which provides that an assessment against which no objection has been made or in respect of which an objection has been allowed or withdrawn shall, subject to the taxpayer's rights of appeal, be final, and section 79 (17), which provides that any decision of the Income Tax Special Court upon a matter dealt with by it in terms of that section shall, subject to appeal to the Supreme Court on questions of law, be final. (Chapter 6, paragraph 21.)

42. Section 79 (6) of the Act, which provides that, to be of any force or effect, a notice of appeal shall be in writing and shall be lodged with the Commissioner within 30 days after the issue of the notice of any alteration, reduction or disallowance of an objection

to accept a notice of appeal even if lodged after expiry of the 30 days, if he is satisfied that reasonable grounds exist for the delay. (Chapter 6, paragraph 25.)

THE POWER OF THE COMMISSIONER FOR INLAND REVENUE TO RE-OPEN ASSESSMENTS (Chapter 7).

43. In cases in which an arithmetical error has been made in an assessment, or an erroneous interpretation of the Law has been given, the period within which the Commissioner may re-open such assessments should be limited to three years. (Chapter 7, paragraph 10.)

44. Section 66 (1) of the Act, under which the Commissioner is authorised to raise additional assessments, should be re-drafted so as to clarify the rights of the Commissioner to re-open assessments of loss. (Chapter 7, paragraph 14.)

REFUNDS OF TAX (Chapter 8).

45. Section 89 (1) of the Act, in terms of which the Commissioner "may" make refunds of tax under the conditions prescribed should be re-worded so as to provide that the Commissioner "shall" make such refunds subject to the conditions prescribed. (Chapter 8, paragraph 7.)

46. Interest payable by the Commissioner on amounts refunded as the result of successful appeals by taxpayers should be at a rate approximating to that charged on overdrafts by commercial banks. (Chapter 8, paragraph 8.)

47. Section 89 of the Act, under which the Commissioner is authorised to make refunds of tax, should be amended further so as to provide that, notwithstanding that an assessment may have become final and conclusive, the Commissioner may re-open such assessment or authorise a refund in cases where a taxpayer has lodged no objection or has not claimed a refund in respect of an assessment which includes amounts which the Commissioner is satisfied should not have been so included, or reflects an amount of tax which the Commissioner is satisfied was in excess of the amount properly chargeable under the Act. (Chapter 8, paragraph 13.)

THE PENALTIES IMPOSABLE UNDER THE INCOME TAX ACT (Chapter 9).

48. Section 63 (2) of the Act, under the provisions of which a person who has been convicted for failure to furnish the Commissioner with any return, information or reply, shall be liable to a fine of five pounds for each day during which such default continues, or to imprisonment without the option of a fine for a period not exceeding three months, should be re-drafted so as to include in the offences to which the section applies that of the failure to produce any book or document, and to admit of a remission or reduction of the fine of five pounds at the discretion of the Court. (Chapter 9, paragraph 12.)

49. Section 76 (8) of the Act, which provides for the imposition upon a company of a penalty not exceeding one pound for every day during which such company makes default in appointing a public officer or in certain other matters, should be amended so as to vest in the Commissioner the power of partial or total remission of such penalty. (Chapter 9, paragraph 13.)

50. Sections 63 (1) (*c*) and (*d*) of the Act should be combined and re-worded so as to provide that the taxpayer *and* his agent shall be deemed to be guilty of an offence in every case in which the return of that taxpayer's income, whether signed by the taxpayer

51. Section 65 (1) of the Act, under which additional taxes, commonly known as penalties, are imposable upon a taxpayer if he fails to render a return of his income, omits from his return any amount which ought to have been included therein, or makes any incorrect statement in his return resulting in the assessment of taxes at an amount which is less than the tax properly chargeable, should be amended so as to remove any doubt as to the power of the Commissioner to impose the penalty taxes upon the taxpayer in cases where the taxpayer's agent, and not the taxpayer himself, is guilty of the default, omission or incorrect statement. (Chapter 9, paragraph 18.)

52. Section 63 (1) (*f*) of the Act should be amended so as to provide that the records which must be retained by the taxpayer for a period of five years from the date of the last entry therein shall include stock sheets. (Chapter 9, paragraph 19.)

THE EFFECTS OF INFLATION UPON THE CALCULATION OF TAXABLE INCOME (Chapter 10).

53. In any case in which it is established to the satisfaction of the Commissioner that the replacement cost of a fixed asset used by the taxpayer in his trade and which is subject to the wear and tear allowances presently provided for in the Act exceeds the cost of such asset, the taxpayer should be entitled, at his option, to a replacement allowance in respect of such asset, subject to the conditions described in the following paragraphs. (Chapter 10, paragraph 40.)

54. The amount of the replacement allowance should be calculated each year by—

(1) establishing the excess of the cost of replacement over the original cost of the assets in question;

(2) reducing the amount under sub-paragraph (1) above by an amount which, in the opinion of the Commissioner, represents the value of the element of improvement, if any, present in the anticipated replacement;

(3) determining the just and reasonable percentage by which the value of the asset has been diminished by reason of wear and tear during the year of assessment; and

(4) applying the percentage so determined to the net sum arrived at under sub-paragraph (2) above. (Chapter 10, paragraph 40).

55. (1) Each year during the remainder of the life of the asset which is to be replaced, and in anticipation of its actual replacement, the taxpayer should be permitted to deduct from his income for income tax purposes the amount of such replacement allowance, provided that amounts equivalent to the sums so deducted are invested by the taxpayer in a special form of security issued by the Treasury and bearing interest at a reasonable rate; or

(2) if the taxpayer so elects, the granting of the annual replacement allowances should be deferred and such allowances should be aggregated and granted in full in respect of the year of assessment in which the replacement actually takes place, but if Treasury requirements render such a course impracticable, such allowance should be spread equally over a period not exceeding three years. (Chapter 10, paragraph 40.)

56. The securities required to be taken out by the taxpayer as a condition of the granting of annual replacement allowances in accordance with paragraph 55 (1) above should be suitably endorsed as to the amount of the income tax relief obtained by the taxpayer as a result of the granting of the allowance. (Chapter 10, paragraph 40.)

57. Such securities should be made redeemable at

in respect of which the allowances were granted, and if and to the extent that they are redeemed for any other purpose the taxpayer should forfeit the tax relief which was granted when the securities were purchased, subject to the right which should continue to vest in the taxpayer to the benefit of the deferred allowance referred to in paragraph 55 (2) above in the event of the asset concerned being replaced at some later date at an inflated price. (Chapter 10, paragraph 40.)

58. The securities should not be transferable from one taxpayer to another, but when a taxpayer dies or disposes of the assets in respect of which replacement allowances have been granted, without replacing such assets, the securities should be required to be redeemed within a period of six months of the death of the taxpayer or the disposal of the assets, or such further period as the Commissioner may deem to be reasonable, and subject to the forfeiture of the income tax relief granted in respect thereof. (Chapter 10, paragraph 40.)

59. The calculation of future wear and tear allowances in respect of any asset in respect of which a replacement allowance has been granted in accordance with these recommendations, should be based upon the balance of the cost of such asset after deducting the amount of the replacement allowance. (Chapter 10, paragraph 40.)

60. The amount of any replacement allowance granted in respect of any asset in accordance with these recommendations should be taken into account in the calculation of the scrapping allowance or the amount of any recoupment in respect of any asset purchased in replacement of such asset. (Chapter 10, paragraph 40.)

61. The Commissioner for Inland Revenue should be vested with discretionary power to determine the extent of the element of improvement present in the replacement of a fixed asset, for the purpose of calculating the amount of the replacement allowance to be granted to the taxpayer, and the decision of the Commissioner in the exercise of this discretionary power should not be subject to objection and appeal. (Chapter 10, paragraph 40.)

62. In determining the cost of stock on hand and unsold at the closing date of their accounts, taxpayers should be permitted, at their option, to adopt the "Last In—First Out" basis of valuation, but the taxpayer should not be permitted to vary such basis of valuation except with the consent of the Commissioner and subject to such conditions as he may impose. (Chapter 10, paragraph 40.)

The Prevention of the Avoidance or Evasion of Tax (Chapter 11).

63. Loans advanced by private companies, with or without interest, to their directors or shareholders, not in the ordinary course of the business of such companies, should be deemed to constitute dividends to the recipients in the year of assessment in which the liability is waived or remitted or written off as irrecoverable by the companies concerned. (Chapter 11, paragraph 14.)

64. If any arrangement is entered into purporting to confer upon any person who previously enjoyed no right to participate in the income of any trade a right so to participate and the effect of such arrangement is that liability for the payment of tax on income derived from such trade is avoided or the total amount of such tax payable by all persons in respect of the have been had the arrangement not been entered into, unless such arrangement is reduced to writing on or before the date on which it purports to be effective, the Commissioner should be empowered to disregard such arrangement and to determine the tax payable in respect of the income of such trade as though the arrangement had not been entered into and there had been no variation of the pre-existing rights of participation in the income: Provided that if any such arrangement is reduced to writing on a date subsequent to the date on which it purports to be effective, it shall be recognised as effective between the parties, for taxation purposes, subject to the provisions of section 90 of the Act, only with effect from the date on which it is signed by the parties. (Chapter 11, paragraph 16.)

65. The Act should be amended so as to provide that, where—

(1) an enterprise participates directly or indirectly in the management, control or capital of another enterprise and one of such enterprises carries on business in the Union and the other outside the Union (the term "enterprise" for purposes of this section including a company, partnership, trading venture or branch of a business); or

(2) the same persons participate directly or indirectly in the management, control or capital of an enterprise carrying on business in the Union and an enterprise carrying on business outside the Union; and

(3) in either case conditions are imposed between the different enterprises in their commercial or financial relations which differ from those which could reasonably be expected to be made between independent enterprises; and

(4) the conditions so imposed have had the effect of reducing the income subject to Union taxation of any person;

the income of that person and of any other person whose liability for taxation may be affected by such conditions, shall be adjusted for taxation purposes to such amount as, in the opinion of the Commissioner, they would have been had such conditions not been imposed and the conditions had obtained which would reasonably be expected to have obtained between persons acting independently and at arm's length. Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal. (Chapter 11, paragraph 17.)

66. Section 90 (1) (*a*) of the present Act, which authorises the Commissioner to disregard any transaction, operation or scheme which has been entered into or carried out for the purpose of avoiding liability for the payment of tax, should be amended to read as follows:—

"Where any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act and including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out, which has the effect of avoiding liability for any tax, duty or levy on income (including any such tax, duty or levy imposed by a previous Act), or of reducing the amount thereof, and which the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out, is of opinion—

(1) was entered into or carried out by means or in a manner which would not normally be

of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or

(2) has created rights or obligations which would not normally be created under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question,

and the Commissioner is not satisfied that some purpose other than the avoidance of such liability, or the reduction of the amount of such liability, was the sole or main purpose of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax, duty or levy on income and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance or reduction."

(Chapter 11, paragraph 26.)

67. To ensure that there will be no variations in the provisions of the Act which impose upon the taxpayer the onus of rebutting the presumption that a transaction, operation or scheme was entered into or carried out for the purpose of the avoidance of tax, and that the provisions relating to the disallowance of an assessed loss of a company in the circumstances dealt with in section 90, will be retained, and to preserve the taxpayer's rights of objection and appeal against decisions of the Commissioner under the provisions of the section, section 90 (1) *(b)* and (2) should be re-enacted in substantially their present form. (Chapter 11, paragraph 27.)

Agreements for Reciprocal Relief for the Avoidance of Double Taxation (Chapter 12).

68. The policy of negotiating bilateral agreements for the avoidance of double taxation between the Union and other countries, wherever possible, should continue to be actively pursued. (Chapter 12, paragraph 24.)

The Assessment and Collection of Tax on the Incomes of Married Persons. (Chapter 13).

69. The Act should be amended so as to confer upon the Commissioner for Inland Revenue statutory authority for the application of the present system relative to the apportionment of tax between the spouses when separate assessments have been issued. (Chapter 13, paragraph 7.)

Assessment of Trust Income (Chapter 14).

70. The Act should provide for income the subject of a Trust to be taxed in the hands of the donor, and not in the hands of the Trustee, when there is a suspension of the enjoyment by the beneficiaries of such income, only if—

(1) by virtue of powers conferred upon the donor or his spouse under the Trust Deed, he or she is in a position in the capacity of Trustee of the property of the Trust, or otherwise, to control the ultimate devolution of funds derived from the accumulation of the income; or

(2) such funds or any portion of such funds, or any property of the Trust could by any means or under any circumstances devolve upon the donor, his estate or his spouse, or become available by way of loan or otherwise, for the use

71. No concessional deductions should be allowed to Trusts for normal tax purposes, but the full concessional deduction should be permitted for super tax purposes. (Chapter 14, paragraph 16.)

72. An exemption limit of £50 should be provided for application in the case of assessments upon Trustees in respect of income the subject of a Trust.

(Chapter 14, paragraph 16.)

73. No concessional deductions should be allowed for normal tax purposes to such associations of persons (other than companies) and institutions generally as are taxable, but the full concessional deduction should be permitted for super tax purposes. (Chapter 14, paragraph 17.)

74. Where more than one trust is created, substantially all the assets of which are received from one person, and the beneficiaries of which are one person, class or group of persons, the income falling to be taxed in the hands of the Trustee should be taxed as one Trust in the hands of such one of the Trustees as the Commissioner may determine, with one exemption limit for normal tax and one concessional deduction for super tax only. (Chapter 14, paragraph 18.)

75. The Act should be amended by the introduction of specific provisions making it clear under what circumstances income the subject of a Trust is to be taxed in the hands of the Trustee in his representative capacity and in what circumstances the beneficiaries shall be taxed directly. (Chapter 14, paragraph 19.)

76. The Act should contain provisions making it obligatory upon any Trustee to report to the Commissioner the existence of the Trust which he has been appointed to administer, to lodge with the Commissioner a copy of the Trust Deed and to make annual returns of the income the subject of the Trust. (Chapter 14, paragraph 20.)

77. Section 10 (1) *(f)* of the Act, in which provision is made for exemption from taxation in favour of ecclesiastical, charitable or educational institutions, should be amended so as to contain a direct reference to Trusts, with the object of removing any doubts which may exist as to whether such exemption applies to Trusts which are formed for ecclesiastical, charitable or educational purposes. (Chapter 14, paragraph 24.)

The Administration of the Income Tax Act by the Staff of the Inland Revenue Department. (Chapter 15).

78. A system should be introduced in the Inland Revenue Department, whereby officers of the Department who fail to qualify by the passing of an appropriate Departmental examination are debarred from progressing beyond a certain stage and substantial incentives are offered to the attainment by such officers of higher qualifications which would be of direct benefit to them in the carrying out of their duties. (Chapter 15, paragraph 10.)

Miscellaneous Matters (Chapter 16).

79. Sections 67 (2) and (3) of the Act, under which the Commissioner is required to record or file and keep in his office particulars of every assessment which is issued and the amount of the tax payable thereon, and to give notice of the assessment and the tax payable thereon to the taxpayer concerned, should be re-drafted so as to authorise the Commissioner to destroy any such assessments after the expiry of such

80. Section 74 of the Act, which authorises the Commissioner to appoint a person as the agent of any other person, and to require him to pay any tax due out of funds which he may hold for, or which may become due to, the person whose agent he has been declared to be, should be amended so as to provide specifically that for this purpose the Commissioner may appoint as agent the Union Government, the Railway Administration, any Provincial Administration or Local Authority. (Chapter 16, paragraphs 7 and 8.)

81. Save for most exceptional reasons, tax legislation should not be made retrospective. (Chapter 16, paragraph 10.)

82. As far as it is practicable any proposed fundamental alteration to the Law by amending legislation should take effect only from the year of assessment commencing on the 1st July following the date of enactment of such amending legislation. (Chapter 16, paragraph 10.)

83. The Income Tax Act should be consolidated—or at least re-printed in amended form—at frequent intervals. (Chapter 16, paragraph 12.)

84. Section 55 (6) of the Act, which provides that any person signing any income tax return shall be deemed for all purposes of the Act to be cognisant of all statements made in that return, should be amended in such a manner that, not only the signatory to a return, but also, in cases in which the return is signed by an agent of the taxpayer, the taxpayer himself shall be deemed to be cognisant of its contents. (Chapter 16, paragraph 15.)

85. Section 55 (8) of the Act, in terms of which the Commissioner may appoint a person to make a return of income on behalf of another person who has failed to do so, should be repealed. (Chapter 16, paragraph 16.)

86. Section 55 (14) of the Act, which provides that, if any person when called upon to furnish a return under the Act is unable to do so, the Commissioner may accept a return of estimated income for assessment, should be repealed. (Chapter 16, paragraph 17.)

87. Section 55 (15) of the Act, which provides that "persons carrying on any business in partnership shall make a joint return as partners in respect of such business, together with such particulars as may from time to time be prescribed, and each such partner shall be separately and individually liable for the rendering of the joint return", should be re-drafted along the following lines:—

"(15) Persons carrying on business in partnership shall include in the returns required to be rendered by them personally under this Act their share of the partnership income for the period or year of assessment under charge and in support of such returns each partner shall furnish a copy of the accounts, and such other particulars as may from time to time be prescribed, disclosing the total income of the partnership for the period or year of assessment under charge: Provided that the Commissioner may dispense with copies of the accounts from such partners as he may decide."
(Chapter 16, paragraph 19.)

88. A Standing Advisory Committee should be appointed to advise the Minister of Finance on such matters relating to income tax as he may refer to it

89. Section 11 (4) of the Act, in terms of which there shall be included in a taxpayer's taxable income all amounts (with certain exceptions) allowed to be deducted or set off in the determination of his taxable income which have been recovered or recouped by such taxpayer, should be amended so as to ensure that the amount of a liability which has been extinguished by some means, such as its waiver or remission by a creditor, to the advantage of the taxpayer, shall be subjected to tax to the extent that it has been allowed as a deduction in the determination of his taxable income. (Chapter 16, paragraph 30.)

90. Proviso (ii) to section 11 (3) (*a*) of the Act, under which the balance of assessed loss of a taxpayer is required to be reduced by the amount or value of any benefit received by or accrued to him as the result of a concession granted by, or a compromise made with his creditors, whereby his liabilities to them, which arose in the ordinary course of trade, have been reduced or extinguished, should be repealed. (Chapter 16, paragraph 31.)

91. The definition of a pension fund should be amended to admit of the recognition as a pension fund for the purposes of the Act of a fund the rules of which provide that all contributions which are required to be made to the fund, whether by the taxpayer or by members of the fund or by both, shall be made in accordance with specified scales. (Chapter 16, paragraph 38.)

92. The recommendations made in Chapter 12 of our First Report regarding the imposition of a special and separate Farmer's Stock Adjustment Tax in respect of the stock adjustment concession to be granted to farmers should be regarded as withdrawn and substituted by the following:—

(1) the amount of the stock adjustment figure should be deemed to form part of the farmer's taxable income for the first year of application of the system recommended, although the amount of it should not be taken into account for purposes of determining the progressive rates of normal and super taxes payable by the farmer;

(2) the amount of the stock adjustment figure so included should be exempt from super tax and should be liable for normal tax only at a flat rate of 1s. 6d. per £ for married persons and 1s. 9d. per £ for unmarried persons and companies;

(3) where a farmer has an assessed loss he should be permitted the option of either paying normal tax at the rate proposed in respect of the stock adjustment figure or of having his assessed loss reduced by the amount thereof;

(4) if the Commissioner is satisfied that the circumstances of the case warrant it, the amount of the normal tax chargeable in respect of the stock adjustment figure should be spread so as to become payable as to one-third with the assessment for the year of assessment in respect of which the stock adjustment is effected and one-third with the assessments in respect of each of the two succeeding tax years, any balance remaining unpaid upon the death or insolvency of the farmer before the full amount chargeable has been assessed and paid to rank as a claim against the deceased or insolvent estate.

Conclusion.

1. This concludes our Second and Final Report which, read with our First Report dated 22nd December, 1951, and our Addendum thereto dated 21st April, 1952, embraces our views on the subjects covered by our terms of reference.

2. Mr. B. S. Farrell, who was appointed to the Secretaryship of the Committee shortly before the completion of our First Report, has continued to act in that capacity until the completion of this Report. We would record our sincere appreciation of the excellent work done by Mr. Farrell and also by Miss E. M. Khoury, who acted throughout as typiste to the Committee. We cannot speak too highly of the services rendered to the Committee by these two officials.

3. We also record our thanks to the Commissioner for Inland Revenue and members of his staff for their continued co-operation and assistance throughout our deliberations.

4. A Draft Income Tax Bill to give effect to the recommendations contained in our First Report appeared as Appendix 2 to that Report. Attached to this Report is a further Draft Income Tax Bill to give effect to all the recommendations contained in our First Report, our Addendum to that Report, and this Report. To facilitate comparison with the corresponding provisions of the present Income Tax Act (Act No. 31 of 1941, as amended), the clauses of the Draft Bill have been arranged in substantially the same order as those of the present Act. We are of the opinion, however, that when it has been decided which of the recommendations contained in our Reports should be accepted, and the necessity arises for the consequential amendment of the Law, consideration should be given to the re-arrangement of the provisions of the Statute in a more logical manner.

Raymond Steyn, *Chairman.*

A. S. Aiken, *Member.*

J. L. Barrie, *Member.*

P. P. Hill, *Member.*

R. W. Wamsley, *Member.*

Pretoria, 12th November, 1952.

APPENDIX 1.

Court Decisions

Referred to in the First and Second Reports

of the

Committee of Enquiry into the

Income Tax Act

	First Report.		*Second Report.*	
	Page.	*Paragraph.*	*Page.*	*Paragraph.*
Armstrong *v.* Commissioner for Inland Revenue (10 S.A.T.C. 1)	13	18	—	—
Bailey *v.* Commissioner for Inland Revenue (A.D. 1933)	—	—	30	11
Blott, Commissioners of Inland Revenue *v.* (125 L.T. 497)	61	19	—	—
	64	34	—	—
Booysens Estates, Limited, Commissioner of Taxes *v.* (1918 A.D. 576)	—	—	17	15
Bouch *v.* Sproule (1887, 12 Ap. Ca. 385)	64	34	—	—
Boyd, James, *v.* Commissioner for Inland Revenue (A.D. 1951)	60	6	—	—
City Deep, Limited, Commissioner for Inland Revenue *v.* (1 S.A.T.C. 18, 1924 A.D. 298)	—	—	17	16
Collins, Commissioner for Inland Revenue *v.* (1923 A.D. 347)	61	19	—	—
	64	34	—	—
Commissioner for Inland Revenue, Armstrong *v.* (10 S.A.T.C. 1)	13	18	—	—
Commissioner for Inland Revenue, Bailey *v.* (A.D. 1933)	—	—	30	11
Commissioners of Inland Revenue *v.* Blott (125 L.T. 497)	61	19	—	—
	64	34	—	—
Commissioner of Taxes *v.* Booysens Estates, Limited (1918 A.D. 576)	—	—	17	15
Commissioner for Inland Revenue *v.* James Boyd (A.D. 1951)	60	6	—	—
Commissioner for Inland Revenue *v.* City Deep, Limited (1 S.A.T.C. 18, 1924 A.D. 298)	—	—	17	16
Commissioner for Inland Revenue *v.* Collins (1923 A.D. 347)	61	19	—	—
	64	34	—	—
Commissioner for Inland Revenue *v.* Delfos (1933 A.D. 246, 6 S.A.T.C. 92)	—	—	5	1
Commissioner for Inland Revenue, Duke of Westminster *v.* (19 T.C. *pp.* 520–1)	—	—	29–30	9
Commissioner for Inland Revenue *v.* Goodrick (12 S.A.T.C. 279)	—	—	17	15
Commissioner for Inland Revenue, Joffe and Company, Limited *v.* (1946 A.D.)	26	5	—	—
Commissioner for Inland Revenue *v.* King (14 S.A.T.C. 198)	—	—	30	10
Commissioner for Inland Revenue, Kohler *v.* [1949 S.A.L.R. (4) 1022, 16 S.A.T.C. 312]	18	64	—	—
Commissioner for Inland Revenue *v.* Lever Brothers and Unilever Limited (14 S.A.T.C. 1)	19	71	—	—
Commissioner for Inland Revenue *v.* Myerson (1947 A.D., 14 S.A.T.C. 300)	99	13	—	—
Commissioner for Inland Revenue, Overseas Trust, Limited *v.* (1926 A.D. 454, 2 S.A.T.C. 71)	19	70	—	—
Commissioner for Inland Revenue, Port Elizabeth Tramway Company Limited *v.* (8 S.A.T.C. 13)	26	4	—	—
Commissioner for Inland Revenue, Reliance Land and Investment Company (Proprietary), Limited *v.* (14 S.A.T.C. 47)	—	—	17	15
Delfos, Commissioner for Inland Revenue *v.* (1933 A.D. 246, 6 S.A.T.C. 92)	—	—	5	1
Dickson, Perrin *v.* (1929) (14 T.C. 608)	13	15	—	—
Doughty, Burridge and Anr. *v.* Doughty and Others	64	34	—	—
Doughty and Others, Doughty, Burridge and Anr. *v.*	64	34	—	—
Duke of Westminster *v.* Commissioner for Inland Revenue (19 T.C. *pp.* 520–1)	—	—	29–30	9
Eisner *v.* Macomber (252 U.S. 189)	64	34	—	—
Fisher's Executors, Inland Revenue Commissioners *v.* (1926 A.C. 395)	64	34	—	—
Fletcher, Foley *v.* (1858 3 H. and N. 769, 28 L.J. Ex 100)	13	12	—	—
Foley *v.* Fletcher (1858 3 H. and N. 769, 28 L.J. Ex 100)	13	12	—	—
Goodrick, Commissioner for Inland Revenue *v.* (12 S.A.T.C. 279)	—	—	17	15
Hill, R. A. and Others *v.* Permanent Trustee Company of New South Wales, Limited and Others (1930 A.C. 720)	64	34	—	—
Income Tax Case No. 261 (7 S.A.T.C. 139)	76	45	—	—
Inland Revenue Commissioners *v.* Fisher's Executors (1926 A.C. 395)	64	34	—	—
Joffe and Company, Limited *v.* Commissioner for Inland Revenue (1946 A.D.)	26	5	—	—
King, Commissioner for Inland Revenue *v.* (14 S.A.T.C. 198)	—	—	30	10
King, The, Swan Brewery *v.* (1914 Ap. Ca. 231)	61	19	—	—
	64	34	—	—
Kohler *v.* Commissioner for Inland Revenue [1949 S.A.L.R. (4) 1022, 16 S.A.T.C. 312]	18	64	—	—
Lever Brothers and Unilever, Limited, Commissioner for Inland Revenue *v.* (14 S.A.T.C. 1)	19	71	—	—
Macomber, Eisner *v.* (252 U.S. 189)	64	34	—	—
Myerson, Commissioner for Inland Revenue *v.* (1947 A.D. 454, 14 S.A.T.C. 300)	99	13	—	—
Overseas Trust, Limited *v.* Commissioner for Inland Revenue (1926 A.D. 454, 2 S.A.T.C. 71)	19	70	—	—
Perrin *v.* Dickson (1929) (14 T.C. 608)	13	15	—	—
Permanent Trustee Company of New South Wales, Limited and Others, R. A. Hill and Others *v.* (1930 A.C. 720)	64	34	—	—
Port Elizabeth Tramway Company, Limited *v.* Commissioner for Inland Revenue (8 S.A.T.C. 13)	26	4	—	—
Reliance Land and Investment Company (Proprietary), Limited *v.* Commissioner for Inland Revenue (14 S.A.T.C. 47)	—	—	17	15
Sproule, Bouch *v.* (1887, 12 Ap. Ca. 385)	64	34	—	—
Strong and Company of Romsey *v.* Woodifield (1905 A.C. 448, 453)	26	5	—	—
Swan Brewery *v.* The King (1914 Ap. Ca. 231)	61	19	—	—
	64	34	—	—
Woodifield, Strong and Company of Romsey *v.* (1905 A.C. 448, 453)	26	5	—	—

APPENDIX 2.

BILLS

TO PROVIDE FOR THE TAXATION OF INCOMES AND TO CONSOLIDATE AND AMEND THE LAWS RELATING THERETO

AND

TO AMEND THE FINANCIAL RELATIONS CONSOLIDATION AND AMENDMENT ACT, 1945.

(AS DRAFTED BY THE COMMITTEE OF ENQUIRY INTO THE INCOME TAX ACT.)

BILL

TO PROVIDE FOR THE TAXATION OF INCOMES AND TO CONSOLIDATE AND AMEND THE LAWS RELATING THERETO.

ARRANGEMENT OF SECTIONS.

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Section.

1 Interpretation (1).

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ADMINISTRATION.

2 Officer by whom Act shall be administered (2*).
3 Exercise of powers and performance of duties (3).
4 Preservation of secrecy (4).

CHAPTER II.

INCOME TAX.

PART I.

Normal Tax.

5 Levy of normal tax and rates thereof (5).
6 Rates of normal tax (6).
7 Definitions for purposes of Chapter II (7).
8 Circumstances in which amounts deemed to have accrued to a person (8* and 9).
9 Circumstances in which amounts deemed to have accrued within the Union (9).
10 Exemptions (10).
11 Determination of taxable income (11).
12 Cases in which no deductions shall be made (12).
13 Concessional deductions allowed in determination of taxable amount (13).
14 Taxation of income derived from farming (14).
15 Assessment of owners or charterers of ships or aircraft residing outside the Union or not managed and controlled in the Union (15).
16 Assessment in the case of submarine cable or wireless business (16*).
17 Insurance businesses (18*).
18 Taxable income of public servants (19*).
19 Determination of the taxable income derived from certain enterprises (19*bis*).
20 Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations (20).
21 Calculation of capital expenditure on change of ownership of a mining property (21).
22 Hire purchase or other agreements providing for postponement of passing of ownership of property concerned (22).

PART II.

Super Tax.

23 Levy of super tax and rates thereof (23).
24 Super tax rate (24).
25 Meaning of " income subject to super tax " and " amount subject to super tax " (25).
26 Method of determining income subject to super tax (27 and 28).
27 Amounts not to be included in income subject to super tax (30).
28 Assessment for normal tax to be final for super tax purposes (26).
29 Concessional deductions to be deducted in determination of amount subject to super tax (29).
30 Special rates of super tax to apply in certain cases (New).
31 Return of payments in respect of bearer warrants (31*).

Section.

PART III (New).

Special Provisions relating to Certain Persons.

PART IV.

Non-Resident Shareholders' Tax.

PART V (New).

Undistributed Profits Tax.

CHAPTER III.

GENERAL PROVISIONS.

PART I.

Returns and Assessments.

Section.

PART II.

Representative Taxpayers.

PART III.

Objections and Appeals.

PART IV.

Payment and Recovery of Tax.

PART V.

Miscellaneous.

FIRST SCHEDULE.

SECOND SCHEDULE.

THIRD SCHEDULE.

NOTE.—The numbers appearing in brackets behind the sections set out in this index indicate the numbers of the corresponding sections of the Income Tax Act, 1941 (Act No. 31 of 1941), and such of the sections of

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

PRELIMINARY.

1. In this Act, unless the context otherwise indicates—

"**agent**" includes any partnership, company or any other body of persons corporate or unincorporate when acting as an agent;

"**assessment**" means—

(*a*) the determination of an amount upon which any tax leviable under this Act is chargeable; or

(*b*) the determination of any loss ranking for set-off;

and includes, for the purposes of Part III of Chapter III, any determination by the Commissioner in respect of any of the concessional deductions referred to in section *thirteen*;

"**benefit fund**" means any fund (other than a pension fund as defined in this section) which, in respect of the year of assessment in question, the Commissioner is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members or for providing benefits for the widows, children, dependants or nominees of deceased members and includes any fund which would, but for the fact that it does not provide for the payment of annuities on the retirement of its members, be approved under the definition of "pension fund" in this section;

"**company**" includes—

(*a*) any association incorporated by or under or registered or deemed to be registered under any law in force in the Union or in any part thereof; or

(*b*) any association which is incorporated or registered outside the Union, but carries on business or has an office or place of business therein; or

(*c*) any association which is incorporated or registered outside the Union and is a shareholder in or member of any company as defined in paragraph (*a*) or (*b*) of this definition, either directly, or indirectly by reason of the fact that it is a shareholder in or member of any other company;

"**dependant**" in relation to any taxpayer means—

(*a*) any person (other than a child or step-child of the taxpayer who by reason of ill-health is incapable of earning a living) incapacitated by old age, infirmity or any other reason satisfactory to the Commissioner from maintaining himself; and

(*b*) any child (other than the child or step-child of such taxpayer) under the age of eighteen years on the last day of the year of assessment;

towards whose maintenance the taxpayer has expended in cash or otherwise during the year of assessment not less than twenty-four pounds;

"**dividend**" means all amounts distributed by a company [not being an association or institution to which paragraph (*c*) of sub-section (1) of section *ten* applies] to its shareholders, and in this definition the expression "amounts distributed" includes—

(*a*) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, earned before or during the winding up or liquidation; and

(*b*) in relation to a company that is not being wound up or liquidated any profits distributed, whether in cash or otherwise, and whether of a capital nature or not, including an amount equal to the nominal value of any bonus shares, debentures or securities awarded to the shareholders; and

(*c*) in the event of the partial reduction of the capital of a company, any cash or the value of any asset which is given to a shareholder in excess of the cash equivalent of the nominal value by which the shares of that shareholder are reduced; and

(*d*) in the event of the reconstruction of a company, any cash or the value of any asset which is given to a shareholder in excess of the nominal value of the shares held by him before the reconstruction;

"**local authority**" means any divisional council, rural council, municipal council, town council, village council, town board, local board, village management board, health committee or school board, district council, the Transkei General Council, the Pondoland General Council and any local or general council established under the provisions of Act No. 23 of 1920, and also includes the Rand Water Board;

"**married**" means married not only in the legal sense but also in accordance with any "married person" includes any person who during any portion of the period in respect of which the assessment is made was married but does not include a person who during the whole of such period was separated under a judicial order or written agreement;

"mining operations" and "mining" include every method or process by which any mineral is won from the soil or from any substance or constituent thereof;

"new gold mine" means an independent workable proposition in respect of which the Governor-General or the Minister of Mines, as the case may be, on the recommendation of the Mining Leases Board, has, after the twenty-eighth day of February, 1946, signified in writing his decision to grant a lease of the right to mine for gold, and any other gold mine which, in the opinion of the Government Mining Engineer is an independent workable proposition which was established as such after the said date: Provided that any decision by the Government Mining Engineer in the exercise of the discretion conferred upon him by this section shall not be subject to objection and appeal;

"pension fund" means a superannuation, pension, provident, widows' or orphans' fund established by law and any such fund not established by law which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund unless, in respect of the year of assessment in question, he is satisfied that—

(1) the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for employees or benefits for widows, children, dependants or nominees of deceased employees; and

(2) the rules of the fund provide—

(i) that all contributions which are required to be made to the fund, whether by the employer or by members of the fund, or by both, shall be made in accordance with specified scales;

(ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which the fund comes into operation;

(iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than twelve months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;

(iv) that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled, may be commuted for a single payment, except where the annual amount of such annuity or annuities does not exceed thirty pounds;

(v) for the administration of the fund in such a manner as to preclude the employer, except in the case of a local authority, from controlling the management or assets of the fund, and from deriving any monetary advantage from moneys paid into or out of the fund; and

(vi) that the Commissioner shall be notified of all amendments of the rules; and

(3) the rules of the fund have been complied with;

"prescribed" means prescribed by or under this Act;

"regulation" means a regulation lawfully made and in force under this Act;

"scientific research" means any activity in the field of natural or applied science for the extension of knowledge;

"tax" or "the tax" or "taxation" means any levy or tax leviable under this Act;

"taxpayer" means any person chargeable with any tax leviable under this Act and, for the purpose of any provision relating to any return, includes every person required by this Act to furnish such return;

"this Act" includes the regulations;

"trustee", in addition to every person appointed or constituted such by act of parties, by will, by order or declaration of court or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, *fidei commissum* or other limited interest, or acting in any fiduciary capacity or having, either in a private or an official capacity, the possession, direction, control or management of any property of any person under legal disability;

CHAPTER I.

Administration.

2. (1) The Commissioner for Inland Revenue (hereinafter referred to as "the Commissioner") shall be responsible for carrying out the provisions of this Act. Officer by whom Act shall be administered.

(2) For the purpose of this Act, "Commissioner for Inland Revenue" includes any person lawfully acting in that capacity.

(3) A notice in the *Gazette* that any person has been appointed to hold office as Commissioner for Inland Revenue or to act in that capacity, shall be conclusive evidence of such appointment without further proof.

3. (1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act or any amendment thereof or by or under the provisions of any previous Income Tax Act of the Union, or any amendment thereof, may be exercised or performed by the Commissioner personally, or by any officer engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner. Exercise of powers and performance of duties.

(2) Any decision made and any notice or communication issued or signed by any such officer may be withdrawn or amended by the Commissioner, or by the officer concerned, and shall, for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner: Provided that a decision made by any such officer in the exercise of any discretionary power under the provisions of this Act or of any previous Income Tax Act of the Union shall not be withdrawn or amended after the expiration of two years from the date thereof if all the material facts necessary for such decision were known to the said officer when he made his decision.

(3) Any decision made by the Commissioner personally in the exercise of any discretionary power under the provisions of this Act or of any previous Income Tax Act of the Union shall not be withdrawn or amended by the Commissioner if all the material facts necessary for such decision were known to him when he made his decision.

4. (1) Every person employed in carrying out the provisions of this Act shall preserve, and aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his duties under this Act or by order of a competent court of law: Provided that— Preservation of secrecy.

(i) any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act of the Union may be used for the purposes of the provisions of any other fiscal law administered by him;

(ii) if, from information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act of the Union, it appears to him that a taxpayer has committed any criminal offence, the Commissioner may transmit that information to the Attorney-General;

(iii) if the evidence adduced at the hearing of an income tax appeal by a special court reveals any criminal practices on the part of any person, the Commissioner shall, if the said court so directs, transmit to the Attorney-General particulars of such evidence.

(2) Every person so employed shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace, such oath of fidelity or secrecy as may be prescribed: Provided that an oath of secrecy taken and subscribed under the provisions of any previous Income Tax Act of the Union by any person who is employed in carrying out the provisions of this Act shall be deemed to be an oath taken and subscribed in terms of this sub-section.

(3) Every person who, in contravention of the provisions of this section or of the true intent of the oath of fidelity or secrecy taken by him and without lawful excuse, reveals any matter or thing which has come to his knowledge in the course of his official duties to any person whatsoever or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

CHAPTER II.

INCOME TAX.

PART I.

Normal Tax.

5. (1) There shall be paid annually for the benefit of the Consolidated Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income, as defined in this Chapter, received by or accrued to or in favour of any company during the year of assessment ending the thirtieth day of June, 1954, and each succeeding year of assessment thereafter. Levy of normal tax and rates thereof.

(2) The rates of tax chargeable under this section in respect of each such succeeding year of assessment shall be fixed annually by Parliament, but the rates fixed by this Act for the year of assessment ending the thirtieth day of June, 1954, and the rates fixed by any Act of Parliament in respect of any subsequent year of assessment shall be deemed to continue in force until the next such determination of rates and shall be applied for the purposes of calculating the tax

and collection of the tax chargeable in respect of such taxable income cannot be postponed until after the rates for that year have been determined without risk of loss of revenue: Provided that after the next such determination of rates any tax paid in pursuance of such interim application shall be adjusted in accordance with such subsequent rates; for which purpose amounts paid in excess shall be refunded and amounts short-paid shall be recoverable.

Rates of normal tax payable by companies, and the maximum basic tax and the standard rate of normal tax levied by Provinces.

6. (1) The rates of the normal tax imposed by sub-section (1) of section *five* in respect of the year of assessment ending on the thirtieth day of June, 1954, shall be as follows:—

(*a*) In respect of the taxable income [excluding so much as is derived by any company from mining in the Union for gold or diamonds but including in the case of mining for gold so much as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (*f*) of the definition of "gross income" in section *seven*] derived by every company, for each pound of the taxable income, ...

(*b*) in respect of so much of the taxable income as has been derived by any company from mining in the Union for diamonds, for each pound of the taxable income, ...
....

(*c*) in respect of so much of the taxable income as has been derived by any company from mining in the Union for gold [but with the exclusion of so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (*f*) of the definition of "gross income" in section *seven*], on each pound of the taxable income a percentage determined in accordance with the formula:

$$y = \ldots\ldots\ldots\ldots - \frac{\ldots\ldots}{x},$$

in which formula (and in the formulae set out in the proviso hereto) y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion) bears to the income so derived (with the said exclusion): Provided that if the taxable income so derived (with the said exclusion) does not exceed twenty thousand pounds, the rate of tax shall not exceed a percentage determined in accordance with the formula:

$$y = 20\left(1 - \frac{6}{x}\right),$$

and if such taxable income exceeds twenty thousand pounds, the rate of tax shall not exceed a percentage determined in accordance with the formula arrived at by adding to the number 20 in the formula:

$$y = 20\left(1 - \frac{6}{x}\right),$$

one for each completed amount of twelve hundred and fifty pounds by which the said taxable income exceeds twenty thousand pounds;

(*d*) in respect of so much of the taxable income of any company the sole or principal business of which in the Union is mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, as the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (*f*) of the definition of "gross income" in section *seven* for each pound so determined to be attributable to the inclusion of any such amount, the amount by which the average rate of normal tax as determined under paragraph (*b*) of sub-section (2) exceeds the rate prescribed in paragraph (*a*).

(2) (*a*) For the purposes of sub-section (1) income derived from mining in the Union for gold shall include any income derived from silver, osmiridium, uranium, pyrites, or other minerals which may be won in the course of the mining for gold, and any income which, in the opinion of the Commissioner, results directly from mining for gold.

(*b*) For the purposes of paragrah (*d*) of sub-section (1), the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with the said paragraph for the period assessed) paid by the company concerned in respect of its aggregate taxable income from gold mining for the period from the first day of July, 1916, to the end of the period assessed, by the number of the pounds contained in the said aggregate taxable income.

(*c*) The tax determined in accordance with any one of the paragraphs (*a*), (*c*) or (*d*) of sub-section (1), shall be payable in addition to the tax determined in accordance with any other of the said paragraphs.

(3) For the purpose of the normal tax imposed by a provincial council in the exercise of its powers under the Financial Relations Consolidation and Amendment Act, 1945 (Act No. 38 of 1945), as amended, on the incomes of persons other than companies—

(*a*) the basic tax payable by any person in respect of the year of assessment ending the thirtieth day of June, 1954, and each succeeding year of assessment thereafter shall not exceed an amount of ....; and

(*b*) the standard rates of tax in respect of the year of assessment ending the thirtieth day of June, 1954, and each succeeding year of assessment thereafter in the case of every person shall be—

(i) for the first ....hundred pounds of the taxable amount,

(ii) for the second..........................hundred pounds of the taxable amount, ...shillings and....................pence for every pound thereof;

(iii) for the third............................hundred pounds of the taxable amount, ...shillings and....................pence for every pound thereof;

....
....
....

Definitions for purposes of Chapter II.

7. For the purposes of this Chapter—

"gross income" means the total amount whether in cash or otherwise received by or accrued to or in favour of any person, excluding such receipts or accruals of a capital nature as are not receipts or accruals referred to in paragraphs (*a*) to (l), in any year or period assessable under this Chapter from any source within the Union or deemed to be within the Union, and includes the following:—

(*a*) Any amount so received or accrued by way of annuity: Provided that in the case of an annuity purchased by the taxpayer and payable for a fixed period there shall be included in the gross income of such taxpayer for any year or period of assessment only so much of the amount of the annuity received by or accrued to him during such year or period of assessment as exceeds the amount arrived at by dividing the purchase price of the annuity by the number of years contained in the said fixed period;

(*b*) any amount, including any voluntary award, so received or accrued in respect of services rendered or to be rendered: Provided that any amount received by or accrued to an employee, upon and because of the termination of his services, by way of bonus, gratuity or compensation, shall be deemed to be received or to accrue in three successive equal annual instalments in such manner that the first instalment is calculated on the date of receipt or accrual of such amount and the subsequent instalments on the anniversary of that date, if—

(i) the termination of the services of such employee is due to superannuation, ill-health or infirmity; or

(ii) the Commissioner is satisfied that the circumstances of the case warrant this concession;

(*c*) any amount so received or accrued in commutation of amounts due under any contract of employment or service;

(*d*) any amount received or accrued from another person which is paid by such other person as a premium or consideration in the nature of a premium for the right of use or occupation of land or buildings or of the use of plant or machinery or of the use of any patent, design, trade mark or copyright as defined in the Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature: Provided that the provisions of this paragraph shall not apply to any amount received by or accrued to the cedent of any lease of land or buildings which is paid by the cessionary as a premium or a consideration in the nature of a premium for the cession of such lease or of the rights thereunder, if such lease—

(i) is a lease or sub-lease of any lot or stand which is registrable in the office of the Rand Townships Registrar in terms of the Registration of Mining Rights Proclamation, 1902 (Proclamation No. 35 of 1902, Transvaal), as read with section *one* of the Mining Titles Registration Act, 1908 (Act No. 29 of 1908, Transvaal); or

(ii) confers on the lessee the right to acquire freehold title of the property which is the subject of the lease, as distinct from an option to purchase the said property; or

(iii) has been granted, or is renewable at the will of the lessee, in perpetuity or for a period of not less than twenty-five years or for periods (including the original period for which the lease was granted) amounting in the aggregate to not less than twenty-five years;

(*e*) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person—

(i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

(ii) if no amount is so stipulated, an amount representing, in the opinion of the Commissioner, the fair and reasonable value of the improvements;

(*f*) any amount by which recoupments of capital expenditure which has been allowed to be deducted under paragraph (*g*) of sub-section (2) of section *eleven*, or the corresponding provisions of any previous Income Tax Act, exceed the unredeemed balance of such capital expenditure calculated in terms of section *twenty;*

(*h*) any amount so received or accrued by way of dividends: Provided that a dividend distributed by any company shall be deemed to have been received or to have accrued from a source within the Union to the extent (as determined by the Commissioner) that it has been distributed out of profits derived by such company from a source within the Union or deemed to be within the Union and shall be deemed not have accrued from a source within the Union to the extent (as determined by the Commissioner) that it has been distributed out of profits derived by such company from any other source, irrespective of whether the business of such company is managed and controlled within or outside the Union;

(*i*) in the case of any person who has received or to whom there has accrued in any such year or period any benefit (other than an annuity) under a policy of insurance upon his own life or upon the life of another person, the amount by which the value of the said benefit exceeds the sum of all premiums paid under such policy, if—

(i) the benefit has been so received or has so accrued because of the occurrence of an event other than the death, birth, ill-health or disablement of any person; and

(ii) the said event has occurred not more than ten years from the date on which the policy was effected;

(*j*) any amount allowed to be deducted or set-off under the provisions of sub-section (2) of section *eleven* (except paragraphs (*n*) and (*o*) of the said sub-section) or sub-section (3) of the said section or the corresponding provisions of any previous Income Tax Act of the Union, whether in the current or any previous year or period of assessment, which has been recovered or recouped, or the liability for the payment of which has been extinguished whether by waiver or remission or in any other manner, during the current year or period of assessment;

(*k*) any amount representing the whole or any portion of any loan made to the taxpayer by a company, whether in the current or any previous year or period of assessment, which has been written off as irrecoverable, or the liability for the payment of which has been extinguished whether by waiver or remission or in any other manner, during the current year or period of assessment, unless the lending of money was part of such company's ordinary business and the loan was made in the ordinary course of such business and if—

(i) the said company is recognized as a private company in terms of section *fifty*: and

(ii) the taxpayer was or is a director or shareholder of such company;

(*l*) any amount which in terms of other sections of this Act are specifically required to be included in the taxpayer's income,

but the scope of this definition shall not be limited in any way by the mention therein of the particular matters referred to in paragraphs (*a*) to (*l*);

"income" means the amount remaining of the gross income of any person for any such year or period after deducting therefrom any amounts exempt from normal tax under this Chapter;

"taxable income" means the amount remaining after deducting from the income of any person all the amounts (other than concessional deductions) allowed to be deducted or set off under this Chapter;

"taxable amount" means the amount remaining after deducting from the taxable income of any person any concessional deductions allowed under this Chapter;

"trade" includes every profession, trade, business, employment, calling, occupation or venture including the letting of any property, and the use or the grant of permission to use any patent, design, trade mark or copyright as defined in the Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature.

Circumstances in which amounts deemed to have accrued to a person.

8. (1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalised by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in account or re-invested or accumulated or capitalised or otherwise dealt with in his name or on his behalf and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

(2) Any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of, a woman married with or without community of property and not separated from her husband under a judicial order or written agreement of separation shall be deemed for purposes of this Act to be income accrued to her husband.

(3) Any income shall be deemed to have been received by the parent of any minor child, if by reason of any donation, settlement or other disposition made by that parent of that child or by reason of the accumulation or re-investment of any income arising from any such

(*a*) it has been received by or accrued to or in favour of, or has been deemed to have been received by or accrued to or in favour of that child or has been expended for the maintenance, education or benefit of that child; or

(*b*) it has been accumulated for the benefit of that child.

(4) Any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any minor child of any person, by reason of any donation, settlement or other disposition made by any other person, shall be deemed to be the income of the parent of such minor child, if such parent or his spouse has made a donation, settlement or other disposition or given some other consideration in favour directly or indirectly of the said other person or his family.

(5) If any person has made in any deed of donation, settlement or other disposition, a stipulation to the effect that the beneficiaries thereof, or some of them, shall not receive the income thereunder, or some portion of that income, until the happening of some event, whether fixed or contingent; and—

(*a*) if, by virtue of the powers conferred under such deed upon that person or his spouse, he or she is in a position in the capacity of trustee, or otherwise, to control the ultimate devolution of the income thereunder or of any funds derived wholly or in part from the accumulation of such income; or

(*b*) if the income or the funds referred to in paragraph (*a*), or any portion of such income or funds, or any property under the deed can by any means or in any circumstances, devolve upon that person, his estate or his spouse, or become available by way of loan or otherwise for the use of that person or his spouse,

so much of any income as would, in consequence of the donation, settlement or other disposition, but for the aforesaid stipulation, be received by or accrue to or in favour of or be deemed to be received by or to accrue to or in favour of the beneficiaries, shall, until the happening of that event, or the death of that person, whichever first takes place, be deemed to be the income of that person.

(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any income as, in consequence of the donation, settlement or other disposition, is received by or accrues to or in favour of or is deemed to be received by or to accrue to or in favour of the person on whom that right is conferred, shall be deemed to be the income of the person by whom it is conferred, so long as he retains those powers.

(7) So much of any amount, which has been paid by any person as an allowance or advance to a director, manager, employee or other person in respect of expenses of travelling, entertainment or other service, as the Commissioner is not satisfied was actually expended by the recipient on such travelling, entertainment or in the performance of such service, shall be deemed to be part of the taxable income of the recipient.

Circumstances in which amounts deemed to have accrued within the Union.

9. An amount shall be deemed to have accrued to any person from a source within the Union, whenever it has been received by or has accrued to or in favour of such person by virtue of—

(*a*) any contract made by such person within the Union for the sale of goods, whether such goods have been delivered or are to be delivered in or out of the Union;

(*b*) the use in the Union of or the grant of permission to use in the Union any patent, design, trade mark, or copyright as defined in the Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature, wheresoever such property has been produced or such permission has been granted or payment for such use has been made or is to be made and whether such payment has been made or is to be made by a person resident in or out of the Union;

(*c*) any business carried on by such person (being a person who is ordinarily resident in the Union or a company the business of which is managed and controlled in the Union) as owner or charterer of any ship or aircraft or the disposal by such person of any commodity acquired in connection with the operation of such ship or aircraft, wheresoever such ship or aircraft may be operated or such disposal of the commodity may be effected;

(*d*) any service rendered or work or labour done by such person in the carrying on in the Union of any trade, whether the payment for such service or work or labour is made or is to be made by a person resident in or out of the Union and wheresoever payment for such services or work or labour is made or is to be made;

(*e*) any contract of employment entered into for the performance of services or work or labour notwithstanding that such services or work or labour may be performed outside the Union, if the remuneration therefor is paid by the Government of the Union (including the Railway Administration) or any provincial administration or local authority in the Union, or out of funds provided by any of the said bodies, and if the amount of such remuneration is not chargeable with income tax in the country in which the services are performed or, in the event of any such income tax being chargeable in that country, if the said income tax is not borne by the person himself but is paid on his behalf by the Government or the provincial administration or local authority concerned, or out of funds provided by any of the said bodies: Provided that nothing ...

emolument paid to any person in the employment of the Railway Administration or of the South African Police in respect of any period for which such person is stationed in the territory of South West Africa;

(*f*) any services rendered or work or labour done by such person, being a person ordinarily resident in the Union, as officer or member of the crew of any ship or aircraft referred to in paragraph (*c*), notwithstanding that such services are rendered or such work or labour is done outside the Union, and wheresoever payment for such services or work or labour is made or is to be made;

(*g*) any pension or annuity granted to such person wheresover payment of that pension or annuity is made and wheresoever the funds from which payment is made are situate, by—

(i) the Government of the Union (including the Railway Administration) or a provincial administration or any local authority in the Union; or

(ii) any person whether residing in or carrying on business in the Union or not: Provided the services in respect of which that pension or annuity was granted were performed within the Union for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due: Provided further that if such pension or annuity was granted in respect of services which were rendered partly within and partly outside the Union, only a proportionate part of such pension or annuity shall be deemed to be derived from a source within the Union. Such proportionate part shall be calculated in accordance with the ratio that the period during which the said services were rendered within the Union bears to the total period during which the said services were rendered;

(*h*) any contract under which interest is payable to such person on any amount owing by a person ordinarily resident or carrying on business in the Union, wheresoever such contract was entered into, wheresover payment of the interest is made or is to be made and wheresoever the funds from which payment is made or is to be made are situated, except to the extent that in respect of any year of assessment the Commissioner is satisfied that the funds loaned were, during such year, employed outside the Union.

Exemptions.

10. (1) There shall be exempt from normal tax—

(*a*) the revenues of the Government of the Union (including the Railway Administration) and of any provincial administration in the Union and the revenues of any other State (other than revenues derived from any trade carried on in the Union by such State);

(*b*) the revenues of local authorities in the Union;

(*c*) the receipts and accruals (including receipts and accruals from investments) of any building society, pension fund or benefit fund, or of any institution which is, in the opinion of the Commissioner, a mutual savings bank or a mutual loan association;

(*d*) the receipts and accruals of—

(i) any company, society or other association of persons, whether or not registered under any law [other than a company referred to in paragraph (*f*) or a co-operative society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939)], the profits or gains of which, other than profits or gains from investments, are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon any person any benefit other than benefits accruing to that person from transactions with or on behalf of that person; and

(ii) associations which are in the opinion of the Commissioner amateur sporting associations,

except as regards any receipts or accruals from investments by any such company, society or association;

(*e*) the receipts and accruals of all ecclesiastical, charitable, educational and scientific institutions (including trusts) of a public character, whether or not supported wholly or partly by grants from the public revenue: Provided that this exemption shall not apply to any such institution which does not carry out the objects for which it was formed or does not apply its receipts and accruals wholly and exclusively for those objects;

(*f*) the receipts and accruals of any company registered in pursuance of a licence granted under section *twenty-one* of the Companies Act, 1926 (Act No. 46 of 1926), which has not been revoked;

(*g*) the receipts and accruals of any association or society which does not carry on any trade and which was formed with the object of fostering the development of commerce, industry or any branch of agriculture: Provided the Commissioner is satisfied—

(i) that such association or society is carrying out the objects for which it was

(ii) that the income or any portion of the income of such association or society is not distributed to any person;

(*h*) the receipts and accruals of—

(i) the Electricity Supply Commission;

(ii) Control Boards established under the Marketing Act (Act No. 26 of 1937);

(iii) the Fuel Research Institute;

(iv) the Land and Agricultural Bank of South Africa; and

(v) the South African Tourist Corporation;

(*i*) the receipts and accruals of—

(i) the South African Broadcasting Corporation; and

(ii) the Silicosis Board;

(*j*) any person [other than a natural person, a trust referred to in paragraph (*k*) or a company] if the taxable income of such person does not exceed fifty pounds for the year of assessment under charge;

(*k*) any trust [being a trust which is assessable jointly with any other trust in terms of sub-section (2) of section *thirty-five*] if the massed taxable income of such trust and the trust or trusts with which it is jointly assessable does not exceed fifty pounds for the year of assessment under charge.

(2) There shall be exempt from normal tax—

(*a*) the salaries and emoluments payable to—

(i) the Governor-General; and

(ii) any person who performs services or work or labour in the Union and is stationed in the Union for that purpose and is not ordinarily resident in the Union, if the salary or emoluments are payable by any of Her Majesty's Governments, other than the Government of the Union of South Africa, or by any other Government, or out of funds provided by any such Government, and if the said services or work or labour is not connected with any trade which is carried on in the Union by any such Government or by any other person: Provided that this exemption shall not apply to any salaries or emoluments payable by the Government, or out of funds supplied by the Government, of any country which levies income tax on the salaries and emoluments payable by the Government of the Union (including the Railway Administration), or out of funds supplied by the Government of the Union (including the Railway Administration), to persons (other than persons who are ordinarily resident in the country concerned) in respect of services or work or labour performed by them in that country;

(*b*) interest accrued in respect of any Union Loan Certificates;

(*c*) interest received or accrued from any deposit in the Post Office Savings Bank of the Union, including interest on Post Office Savings Bank Certificates or on Tax Redemption Certificates, or interest received or accrued from any savings bank account with any building society, bank or any institution which, in the opinion of the Commissioner, is of a similar character and any amount received or credited in respect of any share in any building society: Provided that the exemption in respect of interest from the said deposits, certificates, savings bank accounts and shares made or held by any person or, in the case of a married person who is not separated from his spouse under a judicial order or written agreement, by any person and his spouse shall be limited in the aggregate to the sum of................................pounds;

(*d*) any amount received by or accrued to an author of a work in respect of the assignment of or grant of an interest in a copyright in such work if such amount is chargeable with income tax in a country other than the Union: Provided that this exemption shall not apply to any person who is not the first owner of a copyright in terms of Chapter IV of the Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or to a company;

(*e*) interest received by or accruing to any person not ordinarily resident nor carrying on business in the Union from stock or securities (including Treasury Bills) issued by the Government of the Union or any colony included in the Union or any local authority within the Union or the Electricity Supply Commission;

(*f*) dividends received or accrued from any company, including those from companies whose profits are exempted under the provisions of paragraph (*g*) of this sub-section;

(*g*) the profits of mining made under a lease granted under section *forty-six* of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908) of the Transvaal;

(*h*) any amount received as a war pension or as an award or a benefit under any law relating to miners' phthisis or as an old age pension under any law in the Union;

(*i*) any amount received by or accrued to any member of the defence forces of the Union, in time of war or during a period of three months thereafter, whether in cash or otherwise, as an allowance for any uniform, ration or lodging;

(*j*) so much of any gratuity received by or accrued to any person from his employer as (*k*) the proceeds derived from any race meeting or from any cinema or theatre performance or from any other entertainment held by any person specifically for the purpose of raising funds for any charitable institution of a public character if the Commissioner is satisfied that such proceeds (after deduction only of expenditure actually and necessarily incurred in connection with the holding of such race meeting, performance or entertainment) have been paid over to the said institution;

(*l*) any amount included in the taxpayer's gross income under the provisions of paragraph (*k*) of the definition of " gross income " in section *seven*:

Provided, notwithstanding the exemptions in paragraphs (*e*), (*f*), (*k*) and (*l*) of this sub-section, that—

(i) all amounts falling within the scope of the said paragraphs shall be set out by the taxpayer in the return rendered by him;

(ii) the exemption in paragraphs (*e*) and (*f*) shall not apply in respect of any annuity or any portion of an annuity.

(3) The exemptions provided by paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*i*) of sub-section (1) and paragraphs (*g*) and (*k*) of sub-section (2) shall not extend to salaries, wages, allowances or pensions paid out of the revenues, receipts, accruals, profits or proceeds mentioned in the said paragraphs.

Determination of taxable income.

11. (1) For the purpose of determining the taxable income of any person there shall be deducted from or set off against the income of such person as defined by section *seven* the amounts set out in sub-sections (2) and (3).

(2) The deductions allowed shall be—

(*a*) any expenditure and losses actually incurred during the year of assessment in the course of and by reason of the ordinary operations undertaken by the taxpayer during that or any previous year of assessment for the production of income, as defined in this Act, except to the extent that such expenditure and losses are of a capital, private or domestic nature;

(*b*) expenditure actually incurred during the year of assessment on the repairs of property occupied for the purpose of trade or in respect of which income is receivable, and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;

(*c*) such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery [less any deductions made in any previous year of assessment under paragraph (*d*) *bis* of sub-section (2) of section *eleven* of the Income Tax Act, 1941], implements, utensils and articles used by the taxpayer for the purposes of his trade has been diminished by reason of wear and tear during the year of assessment: Provided that—

(i) where a deduction has been allowed under paragraph (*b*), the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;

(ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature; and

(iii) the decision of the Commissioner in the exercise of his discretion under this paragraph shall not be subject to objection and appeal;

(*d*) an allowance in respect of any premium or consideration in the nature of a premium paid by any taxpayer for the right of use or occupation of land or buildings or for the right of use of any plant, or machinery or of any patent, design, trade mark or copyright, as defined in the Patents, Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature, where the property is used or occupied for the production of income or income is derived therefrom: Provided that—

(i) such allowance shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater; and

(ii) if the taxpayer is entitled to such use or occupation for an indefinite period he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation;

(*e*) an allowance in respect of any expenditure actually incurred by the taxpayer, in pursuance of an obligation to effect improvements on land or to buildings, incurred under an agreement whereby the right of use or occupation of the land or buildings is granted by any other person, where the land or buildings are used or occupied for the production of income or income is derived therefrom; Provided that—

(i) the aggregate of the allowances under this paragraph shall not exceed the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements, or if no amount is so stipulated, an amount representing, in the opinion of the Commissioner, the fair and reasonable value of the improvements;

(ii) any such allowance shall not exceed for any one year such portion of said aggregate divided by the number of years (calculated from the date on which the improvements are completed) for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said aggregate, whichever is the greater; and

(iii) if the taxpayer is entitled to such use or occupation for an indefinite period he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for such period as, in the opinion of the Commissioner, represents the probable duration of such use or occupation;

(*f*) such allowance in respect of any amounts included in the taxpayer's gross income under paragraph (*d*) or paragraph (*e*) of section *seven*, as the Commissioner may deem reasonable, having regard to any special circumstances of the case, and in the case of an amount so included under the said paragraph (*e*) to the original period for which the right of use or occupation was granted;

(*g*) in respect of income from mining operations an amount to be ascertained under the provisions of section *twenty*, in lieu of the allowances in paragraphs (*c*), (*d*), (*e*), (*m*) and (*u*) of this sub-section;

(*h*) the amount of any debts due to the taxpayer to the extent to which they are proved to the satisfaction of the Commissioner to be bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer's income;

(*i*) such an allowance as may be made each year by the Commissioner in respect of such debts due to the taxpayer as he considers to be doubtful, provided that such allowance shall be included in the income of the taxpayer in the following year of assessment: any deduction made by the Commissioner in respect of doubtful debts under paragraph (*h*) of sub-section (2) of section *eleven* of the Income Tax Act, 1941, shall be deemed to be an allowance in terms of this paragraph and the amount of such deduction shall be included in the income of the taxpayer;

(*j*) any sum contributed by a taxpayer to any pension or benefit fund established for the benefit of the employees of such taxpayer: Provided that—

(i) in respect of annual contributions of a recurrent nature to any such benefit fund, the total deduction allowable in any year of assessment under this paragraph shall not exceed a sum equivalent to ten per cent of the total amount of the remuneration which accrued during the year of assessment, in respect of their employment by the taxpayer, to the employees who are members of such benefit fund; and

(ii) in respect of a lump sum contribution to any such pension or benefit fund, the Commissioner may determine that the said sum shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assessment in which it is contributed, and the residue in such subsequent years of assessment, and in such proportions as the Commissioner may determine, until the contribution is extinguished: Provided that the decision of the Commissioner in the exercise of his discretion under this paragraph of the proviso shall not be subject to objection and appeal;

(*k*) any amount paid by way of annuity during the year of assessment by any taxpayer—

(i) to a former employee who has retired from the taxpayer's employ on grounds of old age, illhealth or infirmity; or

(ii) to any person who is dependent for his maintenance upon a former employee or (where such former employee is deceased) was so dependent immediately prior to his death:

Provided that the deduction under sub-paragraph (ii) shall not exceed in respect of the persons so dependent on any one retired or deceased employee the sum of three hundred pounds;

(*l*) any amount paid by way of a lump sum during the year of assessment by any taxpayer to an employee or former employee who retires or who has retired from the taxpayer's employ on grounds of old age, ill-health or infirmity: Provided that the Commissioner may determine that the said amount shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assesment in which it is paid, and the residue in such subsequent years of assessment, and in such proportions as the Commissioner may determine, until the amount is extinguished: Provided further that any decision of the Commissioner in the exercise of his discretion under the first proviso to this paragraph shall not be subject to objection and appeal;

(*m*) an allowance in respect of any machinery, implements, utensils and articles used by the taxpayer for the purposes of his trade which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such machinery, implements, utensils or articles over the total amount arrived at by adding all the allowances made in respect thereof under paragraph (*c*) or the corresponding provisions of any previous Income Tax Act, and paragraph (*d*) *bis* of sub-section (2) of section *eleven* of the Income Tax Act, 1941, (*n*) expenditure incurred during the year of assessment by any taxpayer—

(i) for the purpose of scientific research undertaken by him for the development of his business, if such expenditure is not of a capital nature; or

(ii) by way of contributions to any association, institute, college or university, to be used in scientific research relating to the taxpayer's own business, if the Council for Scientific and Industrial Research certifies to the Commissioner that it approves the proposals of such association, institute, college or university in regard to such research and that it is satisfied that such contributions will be used in such research;

(*o*) if the Commissioner is satisfied that expenditure of a capital nature has been incurred by a taxpayer after the thirtieth day of June, 1945, for the purpose of scientific research undertaken by him for the development of his business, and the Council for Scientific and Industrial Research certifies to the Commissioner that during the year of assessment in question, such research was carried on and was financed by such expenditure, an amount in respect of the year of assesment in which such research commenced and of any succeeding year of assessment, calculated at the rate of twenty-five per cent of such expenditure: Provided that—

(i) the total deduction under this paragraph together with the total deduction under paragraph (*j*) *ter* of sub-section (2) of section *eleven* of the Income Tax Act, 1941, shall not exceed the amount of such expenditure: and

(ii) if in any year of assessment the taxpayer discontinues such research or if the Council for Scientific and Industrial Research is unable, in respect of any year of assessment, to certify as provided in the foregoing provisions of this paragraph, there shall be included in his income for that year of assessment the sum of the total of the deductions under this paragraph, whether in the current or any previous year of assessment, and the total of the deductions under paragraph (*j*) *ter* of sub-section (2) of section *eleven* of the Income Tax Act, 1941, less one-tenth of the amount of such expenditure, in respect of each completed period of one year, not exceeding ten, contained in the period during which such research was carried on;

(*p*) any loss, due to theft or embezzlement, which the Commisssioner is satisfied has been suffered by the taxpayer during the year of assessment in the ordinary course of trading operations carried by him in the Union, provided such loss is, in the opinion of the Commissioner, not of a capital nature;

(*q*) such allowance as the Commissioner may think just and reasonable in respect of expenditure (other than expenditure of a capital nature) which the taxpayer is likely to incur in the future in consequence of any undertaking or guarantee given by him in respect of goods sold or work performed by him: Provided that—

(i) the amount receivable in respect of the sale of such goods or of the performance of such work has been included in the income of the taxpayer for the year of assessment under charge or for any previous year of assessment; and

(ii) the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer for the following year of assessment;

(*r*) in respect of the income derived by any co-operative society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939), the amount of any bonus distributed by such company or society to its members in respect of the year of assessment under charge: Provided that the provisions of this paragraph shall not apply to any bonus distributed to its members by any farmers' special co-operative company or any co-operative trading society which is not a closed company or society, as defined in section *ninety-seven* of the said Act, as amended;

(*s*) in respect of the income derived by any company, society or other association of persons, whether or not registered under any law [other than a society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939)], which has been established with the object of providing facilities for co-operative buying by its members of consumer goods, the amount of any bonus distributed by such company, society or association to its members in respect of the year of assessment under charge: Provided the Commissioner is satisfied that such company, society or association—

(i) is carrying out the object for which it has been established; and

(ii) does not deal with persons who are not members to a greater extent than, in his opinion, is in the particular circumstances of the case essential to the proper carrying out of the said object;

(*t*) in respect of the income derived from the embarking of passengers or the loading of livestock, mails or goods by the taxpayer as the owner or charterer of any ship, such allowance as the Commissioner may consider fair and reasonable in respect of expenditure which the taxpayer is likely to incur in the future on repairs to such ship: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer for the following year of assessment;

(*u*) an allowance granted and determined in accordance with the provisions of sub-section utensils and articles used by the taxpayer for the purposes of his trade: Provided that in no case shall any allowance be made in respect of the anticipated or actual replacement of buildings or other structures or works of a permanent nature.

(3) There shall be set off any assessed loss (other than an assessed loss incurred by the taxpayer in carrying on any class of long-term insurance business as defined in the First Schedule to this Act) incurred by the taxpayer in any previous year of assessment to the extent to which such assessed loss has not been allowed to be set off in the determination of his taxable income for a previous year of assessment under the provisions of this Act or of any previous Income Tax Act of the Union: Provided that—

(i) any assessed loss which was incurred by the taxpayer prior to the year of assessment ending the thirtieth day of June, 1951, and which he was, under the provisions of paragraph (*a*) of sub-section (3) of section *eleven* of the Income Tax Act, 1941, not entitled to carry forward and set-off in the determination of his taxable income for the said year of assessment shall not be allowed to be set off under this sub-section;

(ii) a deduction under this sub-section shall be made as far as possible in the first year of assessment after that in which the assessed loss was incurred and, in so far as it cannot so be made, then in the next year of assessment, and so on;

(iii) no person, whose estate has been voluntarily sequestrated, shall, unless the order of sequestration has been set aside, be entitled to carry forward any assessed loss incurred prior to the date of sequestration.

For the purpose of this sub-section, "assessed loss" means any amount, as established to the satisfaction of the Commissioner, by which the deductions admissible under this section exceeded the income in respect of which they are so admissible and includes an assessed loss, as defined in sub-paragraph (2) of paragraph 8 of the First Schedule to this Act, derived from the carrying on of any class of short-term insurance.

(4) If any company has incurred expenditure or has made a contribution towards expenditure incurred for the purpose of scientific research undertaken by another company on behalf of, and for the development of the business of, such first-named company, the expenditure so incurred by it or the contribution so made by it shall for the purposes of paragraphs (*n*) and (*o*) of sub-section (2) be deemed to be expenditure incurred by the said first-named company for the purpose of scientific research undertaken by it for the development of its business.

(5) (*a*) No deduction shall be allowed under paragraph (*d*) or paragraph (*e*) of sub-section (2) in respect of any premium or consideration in the nature of a premium paid, or of any expenditure incurred, by any person as the cessionary of any lease of land or buildings or of the rights under such a lease, if such lease—

(i) is a lease or sub-lease of any lot or stand which is registrable in the office of the Rand Townships Registrar in terms of the Registration of Mining Rights Proclamation, 1902 (Proclamation No. 35 of 1902, Transvaal), read with section *one* of the Mining Titles Registration Act, 1908 (Act No. 29 of 1908, Transvaal); or

(ii) confers on the lessee the right to acquire freehold title of the property which is the subject of the lease, as distinct from an option to purchase the said property; or

(iii) has been granted, or is renewable at the will of the lessee, in perpetuity or for a period of not less than twenty-five years or for periods (including the original period for which the lease was granted) amounting in the aggregate to not less than twenty-five years.

(*b*) The aggregate of the allowances to be deducted under paragraph (*d*) of sub-section (2) read with paragraph (*a*) of this sub-section in respect of any premium or consideration in the nature of a premium paid by any person as the cessionary of a lease or as the lessee under a sub-lease shall not exceed the sum of—

(i) so much of any premium or consideration in the nature of a premium [including any expenditure referred to in paragraph (*e*) of sub-section (2) not exceeding an amount determined in accordance with paragraph (i) of the proviso to the said paragraph] which was paid by the person ceding the lease or by the person who grants the sub-lease (as the case may be) as has not yet been deducted by way of annual allowances in the determination of his taxable income under paragraph (*d*) or paragraph (*e*) of sub-section (2) or under the corresponding provisions of any previous Income Tax Act; and

(ii) the amount by which the premium or consideration paid by the said cessionary or lessee exceeds the deduction allowed under paragraph (*f*) of sub-section (2) to the person referred to in sub-paragraph (i) in respect of the inclusion in his gross income of the premium or consideration referred to in this sub-paragraph.

(6) The following provisions shall apply in respect of any trading stock acquired and held or disposed of by any person in respect of any trade (other than that of farming) carried on by him—

(*a*) the value of any trading stock held and not disposed of by such person at the beginning and end of each year of assessment shall, except as provided in paragraph (*c*), not be taken into account in the determination of his taxable income;

(*b*) for the purpose of paragraph (*a*) of sub-section (2) the expenditure incurred by such the year of assessment in which such item is disposed of and during no other year of assessment;

(*c*) for the purpose of determining the expenditure incurred by the taxpayer in acquiring any trading stock disposed of by him during any year of assessment there shall be added to the value of all trading stock held and not disposed of by him at the end of the preceding year of assessment the cost price of any trading stock acquired by him during the year of assessment under charge and from the sum so arrived at there shall be deducted the value of all trading stock held and not disposed of by the taxpayer at the end of the year of assessment under charge;

(*d*) for the purpose of determining the value of any trading stock held and not disposed of at any date each item of such trading stock shall be listed and shall be valued at cost price and the sum of the values as so determined of all the items shall be the value of the trading stock held and not disposed of at the said date: Provided that the value as so determined of the trading stock held and not disposed of may be reduced by such sum as the Commissioner may think just and reasonable as representing the amount by which the value of such trading stock has been diminished by reason of damage, deterioration, change in fashion or decrease in the market value or for other reasons satisfactory to the Commissioner;

(*e*) for the purpose of determining the cost price of any trading stock held and not disposed of by him at any date the taxpayer may elect the basis whereunder the sales of any class of trading stock are deemed to have been made from the latest purchases of that class of trading stock: Provided that the taxpayer shall notify the Commissioner of such election in writing and such election shall not be varied by him in respect of subsequent years of assessment except with the consent of the Commissioner and subject to such conditions as the Commissioner may impose;

(*f*) in the event of any person acquiring any trading stock (other than trading stock which has been produced or manufactured by him) in any manner other than by way of purchase, the value to be placed on the stock so acquired shall be such value as the Commissioner may determine having regard to the value for which such stock could have been acquired by purchase as at the date of acquision thereof by the taxpayer;

(*g*) if any person derives income from the disposal, under agreements referred to in section *twenty-two*, of lots or stands in any township of which he is the owner and the Commissioner is satisfied that such person is under an obligation to incur expenditure in the future in respect of the provision of electricity, the making of roads, the piping of water or the provision of any other facilities in such township, the amount of such expenditure likely to be incurred in the future shall be estimated by the taxpayer as at the end of each year of assessment and a proportionate part of the amount so estimated at the end of any year of assessment shall, for the purposes of paragraph (*c*), be included in the cost price of lots or stands disposed of by him during that year of assessment: Provided that—

(i) the proportionate part of the estimated future expenditure to be included in the cost price of lots or stands disposed of during any year of assessment shall be an amount which bears to the amount of such future expenditure [as estimated as at the end of such year of assessment and reduced in accordance with the provisions of paragraph (iii) of this proviso] the same ratio as the area of the lots or stands disposed of during that year of assessment bears to the area of the lots or stands held and not disposed of at the commencement of such year of assessment;

(ii) the amount of any expenditure actually incurred by the taxpayer in providing the facilities referred to in this paragraph shall be reduced by the sum of all amounts included under this paragraph in the cost price of lots or stands disposed of during previous years of assessment and the amount as so reduced shall thereafter for the purposes of this Act be deemed to be the expenditure incurred by the taxpayer in providing the said facilities;

(iii) the amount estimated in terms of this paragraph as at the end of any year of assessment in respect of the expenditure to be incurred in the future shall be reduced by the sum of all amounts [other than any such amounts as have in terms of paragraph (ii) of this proviso been deducted from the amount of any expenditure actually incurred by the taxpayer] included under this paragraph in the cost price of lots or stands disposed of during previous years of assessment;

(iv) if in any year of assessment the Commissioner ceases to be satisfied that any amount included under this paragraph in the cost price of lots or stands disposed of by the taxpayer (whether in the current or any previous year of assessment) will be expended by the taxpayer in providing the facilities referred to in this paragraph, such amount shall be included in the income of the taxpayer for the current year of assessement;

(*h*) If in the manufacture by him of any articles of trading stock any person has used any mineral (other than gold) which he has won from the soil and the right to which has been acquired by him for a consideration, there shall be included in the such mineral consumed in the manufacture of such article: Provided that the aggregate of the allowances included in the cost incurred by such person in the manufacture of all such articles shall not exceed the amount of the said consideration;

(*i*) in the event of any person disposing during any year of assessment of any trading stock (other than trading stock which is used during such year in the manufacture of other articles in the course of any trade carried on by such person) in any manner other than by way of sale or exchange, the value of the trading stock held by such person at the end of the preceding year of assessment or the cost price of any trading stock acquired by him during the year of assessment under charge (as the case may be) shall for the purpose of paragraph (*c*) be reduced by the amount included, in the said value or in the said cost price, in respect of the trading stock so disposed of;

(*j*) if trading stock is disposed of otherwise than in the ordinary course of the trade for which it was acquired and for a consideration which is, in the opinion of the Commissioner, less than the fair market value of such trading stock and the parties to the transaction are not at arms length, the Commissioner shall determine the value of the trading stock so disposed of and the value as so determined shall be included in the income of the person so disposing of the trading stock: Provided that the value determined in accordance with the provisions of this paragraph shall be deemed to be the value for which the trading stock in question is acquired by the person to whom the ownership therein is transferred;

(*k*) any reference in this sub-section to the beginning or to the end of a year of assessment includes—

(i) where the trade in question has been carried on by the taxpayer for a period of less than twelve months during any year of assessment, a reference to the beginning or to the end, as the case may be, of such period;

(ii) where accounts are accepted under the proviso to paragraph (*a*) of sub-section (12) of section *fifty-nine* to a date other than the thirtieth day of June, a reference to the beginning or to the end, as the case may be, of the period covered by such accounts;

(iii) where the period assessed is less than twelve months, a reference to the beginning or to the end, as the case may be, of the period assessed.

(7) For the purpose of determining the taxable income derived by any person from any trade carried on by him there shall be deducted from the income so derived only such amounts (being amounts which are allowed to be deducted from income in the determination of taxable income under the provisions of this Act) as are relatable to that trade and against the amount remaining after deducting from such income the said amounts there shall be set off—

(*a*) firstly, any assessed loss incurred by the taxpayer in any previous year of assessment in carrying on the trade in question to the extent to which such assessed loss is in terms of sub-section (3) allowable to be set off in the determination of his taxable income; and

(*b*) thereafter—

(i) any assessed loss incurred by the taxpayer in any previous year of assessment in carrying on any other trade (other than any class of long-term insurance business as defined in the First Schedule to this Act) to the extent to which such assessed loss is in terms of sub-section (3) allowable to be set off in the determination of his taxable income;

(ii) any assessed loss incurred by the taxpayer in the same year of assessment in carrying on any other trade (other than any class of long-term insurance business as defined in the First Schedule to this Act): Provided that—

(i) only so much of any assessed loss incurred by the taxpayer in any previous year of assessment in carrying on any trade as cannot be set off in the determination of his taxable income derived from that trade during the year of assessment under charge shall be allowed to be set off in the determination of the taxable income derived by him from any other trade;

(ii) if the taxpayer derives taxable income [as determined before the set-off of any assessed loss under the provisions of paragraph (*b*) of this sub-section] from two or more trades there shall be set off in the determination of the taxable income derived from each of the said trades a proportionate part of any assessed loss incurred by the taxpayer in carrying on any other trade. Such proportionate part of any assessed loss to be allowed in the determination of the taxable income derived from any of the said trades shall be calculated in the ratio that the taxable income [as determined before the set-off of any loss under the provisions of paragraph (*b*) of this sub-section] derived from such trade bears to the total taxable income (determined as aforesaid) derived from the said trades.

(8) (*a*) If in respect of any year of assessment a taxpayer desires to make application for an allowance under paragraph (*u*) of sub-section (2) in respect of the anticipated replacement of any

such period after the date on which such return is furnished as the Commissioner in the circumstances of the case may consider reasonable.

(*b*) In this sub-section—

"amount of the tax relief" means the amount by which a taxpayer's liability for tax has been reduced as the result of the deduction of an allowance under paragraph (*u*) of sub-section (2) in the determination of his taxable income;

"anticipated cost price" in relation to a new asset means the price the taxpayer would, in the opinion of the Commissioner, have had to pay for the new asset if he had replaced the existing asset at the end of the year of assessment in question;

"cost of replacement" in relation to an existing asset in respect of any year of assessment means the amount by which the anticipated cost price of the new asset exceeds the value of the element of improvement in the anticipated replacement of the existing asset in respect of that year of assessment;

"cost price" in relation to an existing asset means the price at which that asset was acquired by the taxpayer;

"existing asset" means the asset in respect of the anticipated replacement of which the taxpayer makes an application under paragraph (*a*);

"new asset" means the asset which it is anticipated will replace the existing asset; and

"value of the element of improvement" in relation to the anticipated replacement of an existing asset means that portion of the amount by which the anticipated cost price of the new asset exceeds the cost price of the existing asset which the Commissioner considers to be due to the improvement (if any) in the quality, condition, efficiency and capacity of the new asset as compared with the quality, condition, efficiency and capacity of the existing asset at the time of its acquisition by the taxpayer.

(*c*) If a taxpayer makes an application under sub-paragraph (*a*) in respect of any year of assessment and furnishes all the information which the Commissioner may require, the Commissioner shall, in respect of that year of assessment, determine—

(i) the anticipated cost price of the new asset;

(ii) the value of the element of improvement in the anticipated replacement; and

(iii) the extent, expressed as a percentage, to which in his opinion the value of the existing asset has been diminished by reason of wear and tear during that year of assessment.

(*d*) The Commissioner's determination of the value of the element of improvement in the anticipated replacement of an existing asset shall not be subject to objection and appeal.

(*e*) The amount of the allowance under paragraph (*u*) of sub-section (2) shall, in respect of any year of assessment, be an amount arrived at by applying the percentage determined under sub-paragraph (iii) of paragraph (*c*) to the amount, by which the cost of replacement of the existing asset exceeds the cost price of that asset: Provided that the allowance shall not, in respect of any year of assessment, exceed an amount which, if added to the amounts of the allowances granted in respect of previous years of assessment in respect of the anticipated replacement of the existing asset would result in a sum greater than the amount by which the cost of replacement of such existing asset exceeds the cost price of that asset.

(*f*) Every taxpayer, in the determination of whose taxable income there has been allowed the deduction of an allowance under paragraph (*u*) of sub-section (2) in respect of any year of assessment, shall deposit with the Treasury an amount equal to the amount of the said allowance. Such amount shall be deposited within thirty days after the date of issue of the notice of assessment under which the said deduction is allowed or within such further period as the Commissioner, in the circumstances of the case, may consider reasonable. Any amount so deposited by the taxpayer shall be invested on his behalf in securities to be prescribed by regulation under the Act and bearing interest at such rate as may be determined by the Treasury.

(*g*) If in respect of any year of assessment a taxpayer fails to deposit any amount as required under paragraph (*f*), the Commissioner shall re-open the taxpayer's assessment in respect of that year of assessment and shall disallow the deduction of the said amount in the determination of the taxpayer's taxable income: Provided that the provisions of paragraph (*k*) shall apply to any allowance the deduction of which has been disallowed under this paragraph.

(*h*) The amount of the tax relief enjoyed by the taxpayer as the result of a deduction referred to in paragraph (*f*) shall be determined by the Commissioner and shall be endorsed on the certificate issued to the taxpayer by the Treasury in respect of the relevant investment made in terms of the said paragraph.

(*i*) The securities referred to in paragraph (*f*) shall be subject to such conditions as may be prescribed by regulation under this Act: Provided that—

(i) such securities shall not be transferable;

(ii) such securities shall be redeemable at the full amount of their face value only upon production of proof by the taxpayer that an amount not less than their face value has been expended by him, on the replacement of the asset in respect of the anticipated replacement of which the relevant allowances under paragraph (*u*) of sub-section (2) were granted;

(iii) if such securities are redeemed by a taxpayer and such taxpayer fails to produce the proof referred to in sub-paragraph (ii) of this proviso he shall forfeit an amount equal securities as exceeds the amount, if any, which he proves to have been expended by him on the replacement of the asset in respect of the anticipated replacement of which the relevant allowances under paragraph (*u*) of sub-section (2) were granted;

(iv) if, before he replaces an asset in respect of the anticipated replacement of which any allowances under paragraph (*u*) of sub-section (2) have been granted, the taxpayer dies or he disposes of such asset (otherwise than with a view to its replacement) the relevant securities shall be redeemed within six months, or such further period as the Commissioner may deem reasonable, from the date of the taxpayer's death or from the date on which the asset was disposed of, as the case may be, and an amount equal to the amount of the tax relief relatable to such securities shall be forfeited by the taxpayer or his estate.

(*j*) Any amount which has been forfeited by a taxpayer or by his estate under paragraph (iii) or (iv) of the proviso to paragraph (i) shall be deemed to be a collection in respect of, and shall be allocated by the Commissioner to, the taxes the liability for which was reduced as the result of the relevant deductions under paragraph (*u*) of sub-section (2) and the amount so allocated shall be paid by the Treasury into the Consolidated Revenue Fund or into the provincial revenue fund of the province concerned, as the case may be.

(*k*) A taxpayer may, if he so elects and if he informs the Commissioner of his election in writing, defer the deduction of any allowance determined under paragraph (*e*) until the year of assessment in which the anticipated replacement of the existing asset in question is effected and any amount, the deduction of which has been so deferred, shall be allowed as a deduction under paragraph (*u*) of sub-section (2) in the determination of the taxpayer's taxable income for the said year of assessment: Provided that if for any year of assessment in respect of which he is entitled to an allowance as determined under paragraph (*e*) the determination of the taxable income of any person would, with or without the deduction of such allowance, result in an assessed loss, the deduction of the said allowance shall be deferred as provided in this paragraph.

(*l*) The provisions of paragraph (*f*) shall not apply to any amount which is allowed as a deduction under paragraph (*u*) of sub-section (2) in the determination of the taxable income of a taxpayer for the year of assessment in which the existing asset in question is replaced.

(*m*) If, in terms of paragraph (iii) or (iv) of the proviso to paragraph (*i*), a portion of the value of any securities has been forfeited by any taxpayer on the grounds that, at the time of the redemption of such securities, he had not replaced the existing asset in question and if—

(i) he subsequently replaces that asset; and

(ii) the amount expended by him on such replacement exceeds the price at which the asset so replaced was acquired by him,

such taxpayer shall, if he so elects, be entitled to a deduction, in the determination of his taxable income for the year of assessment in which the replacement is effected, of an allowance under paragraph (*u*) of sub-section (2) equal to the amount of the allowance to which he would have been entitled if he had elected to defer the deduction of the allowance in the manner provided in paragraph (*k*).

(*n*) Where any deduction under paragraph (*u*) of sub-section (2) has been allowed to a taxpayer in respect of the anticipated or actual replacement by him of an existing asset, the cost to such taxpayer of the new asset by which the said existing asset is replaced shall, for the purposes of any deductions to be allowed to him under paragraphs (*c*) and (*m*) of sub-section (2) in respect of the new asset, be reduced by the amount of such deduction.

Cases in which no deductions shall be made.

12. No deduction shall in any case be made in respect of the following matters:—

(*a*) Domestic or private expenses including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade, or of any dwelling-house or domestic premises except in respect of such part as may be occupied for the purposes of trade;

(*b*) any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security or indemnity;

(*c*) the taxation levied on incomes;

(*d*) income carried to any reserve fund or capitalised in any way;

(*e*) any expenses incurred in respect of any amounts received or accrued which are not included in the term " income " as defined in this Chapter;

(*f*) interest which might have been made on any capital employed in trade;

(*g*) donations which, in the opinion of the Commissioner, are not remuneratory donations.

Concessional deductions allowed in determination of taxable amount.

13. (1) For the purpose of determining the taxable amount of any person, there shall, subject to the provisions of sub-section (6), be deducted from the taxable income of that person such of the concessional deductions set out in this section as are applicable.

(2) The concessional deductions shall, subject to the provisions of sub-sections (3), (4) and (5), be—

(*a*) a sum of three hundred and fifty pounds in the case of—

(i) a married person;

(ii) a person (other than a married person) who was or would have been had he lived over the age of sixty years (in the case of a male) or fifty-five years (in the case of a female) on the last day of the year of assessment;

(iii) a person who during the whole of the period in respect of which the assess-under a judicial order or written agreement and was not or would not have been had he lived over the age of sixty years (in the case of a male) or fifty-five years (in the case of a female) on the last day of the year of assessment, provided such person is entitled to the full concessional deduction in respect of a child under paragraph (*c*);

(*b*) a sum of one hundred and fifty pounds in the case of a person other than a person referred to in paragraph (*a*);

(*c*) in respect of any unmarried child of the taxpayer who was alive during any portion of the year of assessment and who—

(i) by reason of ill-health was incapable of earning a living and was during such period maintained by the taxpayer; or

(ii) not being a child referred to in the preceding sub-paragraph was not or would not have been had he lived over the age of sixteen years, or if he was a full-time student at any school, college or university, over the age of twenty-one years, on the last day of the year of assessment,

a sum of seventy-five pounds in the case of an only child or the elder or eldest of two or more children of the taxpayer referred to in this paragraph and a sum of forty pounds in the case of a child who is not such an only child or such elder or eldest child;

(*d*) the aggregate of—

(i) any sum contributed by such person during the year of assessment by way of contribution to any pension fund where the making of such a contribution is a condition of the holding by the taxpayer or by his wife of any office or employment;

(ii) any premiums paid by such person during the year of assessment upon policies under which he, his wife or his children referred to in paragraph (*c*) is or are insured against death, accident or sickness;

(iii) any fees or subscriptions paid by such person during the year of assessment to any benefit fund; and

(iv) any contributions made by such person or his wife during the year of assessment as an employee under any Act in force in the Union relating to unemployment insurance to a fund established under any such Act;

subject to a maximum deduction of one hundrd and fifty pounds: Provided that no allowance shall be made in respect of insurance under a policy of motor insurance or under any other policy, if the amount paid as premium for such other policy has been allowed as a deduction from the income of such person under the provisions of section *eleven;*

(*e*) any amounts expended by such person in cash or otherwise during the year of assessment towards the maintenance of any dependants: Provided that the deduction in respect of any one dependant shall not exceed the sum of forty pounds.

(3) The amount of the concessional deduction under paragraph (*c*) of sub-section (2) in respect of any child shall be subject to reduction. Such reduction shall be by one pound for each completed pound by which any income received by or accrued to such child during the year of assessment exceeds such concessional deduction, or, when the period assessed is less than twelve months, by which the income of the child for such period exceeds so much of the said concessional deduction as is proportionate to the period assessed, and the amount as so reduced shall be the concessional deduction to be allowed under the said paragraph: Provided that any income of such child, which is by virtue of other provisions of this Act deemed to be the income of the person entitled to the concessional deduction, shall for the purposes of this sub-section be deemed not to be the income of such child.

(4) In any case in which the period assessed is less than twelve months, the concessional deductions under paragraphs (*a*), (*b*) and (*c*) of sub-section (2) and the maximum concessional deduction in respect of any dependant under paragraph (*e*) of the said sub-section shall be such amounts as bear to the full amount of the respective concessional deductions provided for under the said paragraphs (*a*), (*b*) and (*c*) and the full maximum concessional deduction provided for under the said paragraph (*e*) the same ratio as the period assessed bears to twelve months, unless in the case of any such period, terminating at the death of the taxpayer, or commencing at the death of the spouse of the taxpayer, the Commissioner, in the special circumstances of the case, otherwise directs.

(5) (*a*) A person who has been divorced or separated under a judicial order or written agreement shall not be entitled to a concessional deduction under paragraph (*c*) of sub-section (2) in respect of any child unless the Commissioner is satisfied that such person has maintained such child during the year of assessment: Provided that if the Commissioner is satisfied that the cost of maintaining such child during the year of assessment has been borne jointly by such person and his spouse or former spouse, the concessional deduction in respect of such child shall be allowed partly to such person and partly to such spouse or former spouse in such proportions as the Commissioner may determine.

(*b*) To the extent that the cost of maintenance of any child has been paid out of an amount received by any person by way of alimony or allowance or maintenance of his spouse or an order of divorce, such child shall for the purpose of paragraph (*a*) be deemed to have been maintained by the spouse or former spouse to whom or on whose behalf that amount was paid and not by the person who paid such amount.

(6) No concessional deductions shall be allowed in the case of any person other than a natural person.

14. The taxable income of any person carrying on pastoral, agricultural or other farming operations (including afforestation) shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the Second Schedule thereto. **Taxation of income derived from farming.**

15. (1) When any person (not being a person who is ordinarily resident in the Union or a company the business of which is managed and controlled in the Union), embarks passengers or loads livestock, mails or goods in the Union, as an owner or charterer of any ship or aircraft, such person shall be deemed to have derived therefrom (apart from any taxable income derived by him from any other sources) a taxable income equal to ten pounds for every one hundred pounds payable to him or to any agent on his behalf, whether the amount be payable in or outside the Union, in respect of passengers, livestock, mails and goods so embarked or loaded: Provided that the provisions of this section shall not apply to any such person who renders accounts which in the opinion of the Commissioner satisfactorily discloses the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods, as aforesaid. **Assessment of owners or charterers of ships or aircraft residing outside the Union or not managed and controlled in the Union.**

(2) Where the person so embarking passengers or loading livestock, mails or goods has no recognized agent in the Union other than the master of the ship or the pilot of the aircraft in connection with which any such amounts are payable, or where the agent fails to make returns of any such amounts payable in respect of any ship or aircraft—

(*a*) the Commissioner may make the assessment from such information as may be available to him;

(*b*) the tax thereon shall be payable to the Commissioner prior to the clearance of the ship or aircraft;

(*c*) the principal officer of customs at the port or airport where such ship or aircraft is being cleared shall have power to detain the clearance until such payment is made; and

(*d*) upon such payment the master, pilot or agent (as the case may be) shall be entitled to a certificate from such officer of customs that the amount so paid has been paid under the provisions of this Act, and such certificate shall be sufficient warrant to such master, pilot or agent of the amount so paid.

16. (1) Any person who carries on in the Union the business of transmitting messages to places outside the Union by submarine cables or by any form of wireless apparatus shall be deemed to have derived therefrom (apart from any taxable income derived from other sources) a taxable income equal to five pounds for every hundred pounds payable to such person, in respect of messages transmitted from any office of such person in the Union, whether the amount be payable in or outside the Union. **Assessment in the case of submarine cable or wireless business.**

(2) For the purposes of this section any message which is delivered at any office in the Union of the person who carries on the business referred to in sub-section (1) for transmission in any manner whatsoever shall be deemed to be transmitted from that office.

(3) The provisions of this section shall not apply to any person so carrying on business who renders accounts which in the opinion of the Commissioner satisfactorily disclose the taxable income derived by such person from the business carried on by him in the Union.

17. (1) The taxable income of any person carrying on the business of insurance shall, in so far as it is derived from such business, be determined in accordance with the provisions of the First Schedule to this Act: Provided that nothing in this section shall be construed as relieving any such person so carrying on business from liability for taxation on any taxable income derived otherwise than from the business of insurance or as depriving any such person of the right to set off against the taxable income derived from insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of sub-section (3) or sub-section (7) of section *eleven*. **Insurance business.**

(2) Every company, association or other person carrying on the business of life assurance or of granting annuities within the Union shall, if the Commissioner so requires, furnish a return showing the nature and value of all investments relating to policies of assurance existing upon lives of persons resident within the Union, whether such investments have been made within or outside the Union.

18. The taxable income received by or accrued to or in favour of any person from employment in the public service or railway and harbour service of the Union in respect of such employment shall include any payment made by way of allowance except payments made to meet expenditure incurred by such person in connection with his official duties. **Taxable income of public servants.**

19. (1) Where— **Determination of taxable income derived from certain enterprises.**

(*a*) an enterprise participates directly or indirectly in the management, control or capital of another enterprise and one of such enterprises carries on business in the Union and the other outside the Union; or

(*b*) the same person or persons participate directly or indirectly in the management

(c) in either case conditions are imposed between the different enterprises in their commercial or financial relations which differ from those which could reasonably be expected to be made between independent enterprises;

the Commissioner may, for the purpose of giving effect to any agreement entered into under section *one hundred and four* or if any person's liability for tax under this Act has been reduced as the result of the conditions referred to in paragraph (*a*), determine the taxable income of that person, or of any other person whose liability for tax may be affected by those conditions, at such amount as, in his opinion, the taxable income of such person or such other person would have been if the conditions had not been imposed as aforesaid.

(2) For the purposes of this section the expression "enterprise" includes a company, partnership, trading venture, business or branch of a business.

Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations.

20. (1) Subject to the provisions of sub-sections (2), (3), (4) and (5), the amount to be deducted each year under sub-section (2) (*g*) of section *eleven* in respect of income from mining operations shall be ascertained as follows:—

The balance of capital expenditure unredeemed at the commencement of the year of assessment after subtracting therefrom any recoupments received during the year from capital expenditure (irrespective of the date when such capital expenditure was originally incurred), shall be added to the amount of capital expenditure ranking for redemption incurred during that year.

The aggregate amount of the sums so added shall then be divided by the estimated number of years during which mining operations may be expected to continue. That number of years is hereinafter referred to as the life of the mine.

The quotient resulting from the division shall be the amount to be deducted as aforesaid.

(2) In the case of incomes derived from the working of any diamond mines existing on the thirtieth day of December, 1910, there shall in lieu of the said quotient be deducted the actual expenditure incurred during the year on maintenance and renewal of equipment and in additions thereto and extensions thereof.

(3) The amount to be deducted each year under paragraph (*g*) of sub-section (2) of section *eleven* from income derived from the working of a new gold mine, shall, in respect of the year of assessment during which such mine commences the production of gold, be the amount of capital expenditure incurred up to the close of that year of assessment, and thereafter in respect of each succeeding year of assessment the actual capital expenditure incurred during that year of assessment.

(4) Subject to the provisions of sub-section (5), the amount to be deducted each year in the case of income derived from the working of gold mines other than new gold mines shall be an amount equivalent to twenty-seven and a half per cent of the sum of the unredeemed balance of capital expenditure at the beginning of the year of assessment and the capital expenditure incurred during that year, or the quotient resulting from dividing the said sum by the life of the mine, whichever is the greater.

(5) In the case of any person carrying on gold mining operations, other than on new gold mines, who commenced or commences the production of gold after the thirty-first day of December, 1935, the amount to be deducted with reference to each year of assessment, in respect of the capital expenditure ranking for redemption, incurred by that person prior to the date of commencement of such production, shall, until the aggregate of the amounts deducted is equal to the amount of such capital expenditure, be such sum as will, when multiplied by ten, or, where the life of the mine as estimated or revised under the provisions of sub-sections (6) and (7) is less than ten years, by such lesser number, equal the amount of such capital expenditure: Provided that any capital expenditure in respect of which deduction is made under this sub-section shall not rank for deduction under sub-section (4).

(6) The life of the mine shall be determined by the Government Mining Engineer and such determination shall not be subject to objection and appeal. When the life of the mine, estimated and determined as aforesaid, exceeds thirty years then so long as the estimate exceeds that period, the allowance shall be calculated on a period of thirty years.

(7) The life of the mine shall be subject to revision at the instance of the person liable to the tax or of the Commissioner, whenever any material alteration takes place in any circumstances relating to the mine or its working which affects the life of the mine and shall otherwise be subject to revision in every third year after the last preceding determination. In any such revision the same provisions shall apply as in the original determination of the life of the mine.

No such revision shall affect any assessment determined or any allowance made or presumed to have been made under this Act or any previous law for the taxation of the profits of mining.

(8) When separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately according to the estimated life of each such mine.

(9) For the purposes of this section—

"capital expenditure" means expenditure—

(a) shaft sinking and equipment, including any single renewal or replacement (*b*) on development, general administration and management (including any interest payable after the thirty-first day of December, 1950, on loans utilized for mining purposes) prior to the commencement of production or during any period of non-production; and

(*c*) in the form of any premium paid for the right of use or occupation of any property referred to in paragraph (*d*) of sub-section (2) of section *eleven*: Provided that—

(i) where such right of use or occupation has been acquired as part of or together with other rights or property the amount to be included in capital expenditure under this paragraph shall, whether or not the amount of the consideration for such right of use or occupation has been separately stated, be such proportion of the total consideration given for the assets acquired as, in the opinion of the Commissioner, represents a fair and reasonable consideration for such right of use or occupation;

(ii) no amount in respect of any consideration given for mineral rights or for rights to mine shall be included in capital expenditure under this paragraph;

"expenditure on shaft sinking" includes the expenditure on sumps, pump-chambers, stations and ore bins accessory to a shaft;

"expenditure" means nett expenditure after taking into account rebates, recoupments, or returns from expenditure.

(10) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance shown to be unredeemed in the last assessment for normal income tax made by the Commissioner prior to the commencement of this Act.

Calculation of capital expenditure on change of ownership of a mining property.

21. (1) Whenever there takes place a change of ownership of a mining property the Commissioner shall allow to rank as capital expenditure for redemption by the new owner the effective value to him, at the time the change of ownership takes place, of the preliminary surveys, boreholes, shafts, development and equipment included in the assets passing by such change of ownership: Provided that if, in a case in which consideration is given, the effective value of the assets so passing exceeds the consideration, the amount allowed to rank for redemption by the new owner shall be such proportion of the consideration as such effective value of the preliminary surveys, boreholes, shafts, development and equipment bears to the effective value of all the assets passing.

(2) The amount allowed to rank as capital expenditure for redemption by the new owner under the provisions of sub-section (1) shall for the purposes of paragraph (*f*) of the definition of the expression "gross income" contained in section *seven* be deemed to be a recoupment from capital expenditure by the person from whom ownership was acquired.

(3) If the value of the consideration given or of the property passing where no consideration is given is in dispute, it may be fixed by the Commissioner if the new owner consents thereto; otherwise the value shall be determined in the same manner as if transfer duty were payable.

(4) (*a*) The effective value, at the time the change of ownership takes place, of the assets passing, shall be determined by the Government Mining Engineer who for the purposes of such determination, notwithstanding the repeal of the Second Schedule to the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act No. 30 of 1918), shall have all the powers which were conferred upon him by the provisions of that Schedule.

(*b*) For purposes of this section the words "assets passing" shall mean all the assets passing whether of a mining nature or not to the new owner by such change of ownership and the effective value of the assets passing shall be determined by the Government Mining Engineer separately in respect of—

(i) preliminary surveys, boreholes, shafts, development and equipment; and

(ii) all other assets passing:

Provided that the Government Mining Engineer may be guided in his determination of the effective value of the other assets referred to in item (ii) by any sworn appraisement of the fair market value of those other assets submitted by the seller or by the new owner: Provided further that on request by the Government Mining Engineer the Commissioner may authorise the Government Mining Engineer to obtain a sworn appraisement or sworn appraisements of the value of the assets referred to in item (ii) and the cost of such appraisements shall be met from the Vote of the Department of Inland Revenue.

(*c*) Any determination made by the Government Mining Engineer under the provisions of this sub-section shall not be subject to objection and appeal.

Hire purchase or other agreements providing for postponement of passing of ownership of property concerned.

22. (1) If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, ownership shall pass, or, in the case of immovable property, transfer shall be passed, from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the day on which the agreement was entered into: Provided that—

income an allowance determined in accordance with the provisions of sub-section (2); and

(ii) any allowance made under paragraph (i) of this proviso in respect of any year of assessment shall be included in the income of the taxpayer for the following year of assessment.

(2) The allowance granted under paragraph (i) of the proviso to sub-section (1) shall be a percentage of so much of any amount referred to in the said sub-section as has in terms of the relevant agreement not become due and payable at the close of the taxpayer's accounting period and the said percentage shall be the same proportion (expressed as a percentage) as the gross profit (including any finance charges) arising out of the agreement bears to the selling price of the property disposed of thereunder or, if the Commissioner so decides, the ratio expressed as a percentage which the total gross profit (including any finance charges) arising out of all such agreements entered into by the taxpayer during the year of assessment bears to the aggregate of the selling prices of the property disposed of under the said agreements: Provided—

(i) that in the determination for the purposes of this sub-section of the gross profit realized from the disposal of any property there shall be included in the cost price of such property any amount required to be included therein under the provisions of paragraph (*g*) of sub-section (6) of section *eleven*;

(ii) that the decision of the Commissioner in the exercise of his discretion under this sub-section shall not be subject to objection and appeal.

PART II.

Super Tax.

Levy of super tax and rates thereof.

23. (1) In addition to the normal tax chargeable under any provincial ordinance there shall be paid annually for the benefit of the Consolidated Revenue Fund a tax (referred to in this Act as the super tax) in respect of such incomes as are hereinafter declared to be subject to super tax received by or accrued to or in favour of any person other than a company during the year of assessment ending on the thirtieth day of June, 1954, and each succeeding year of assessment thereafter.

(2) All the provisions as to the fixing of rates and the continuance in force of the rates fixed in respect of any year of assessment, as provided in respect of the levy of normal tax on companies in section *five*, shall be applicable to the charge of super tax under this section.

(3) The super tax shall be calculated in the manner specified hereunder subject to the conditions and deductions in this Part provided.

Super tax rate.

24. The rate of super tax in respect of the year of assessment ending on the thirtieth day of June, 1954, and each succeeding year of assessment thereafter in the case of every person shall be—

(i) for the first .... hundred pounds of the amount subject to super tax, ... shillings and .... pence for every pound thereof;

(ii) for the second .... hundred pounds of the amount subject to super tax, ... shillings and .... pence for every pound thereof;

(iii) for the third .... hundred pounds of the amount subject to super tax, ... shillings and .... pence for every pound thereof;
....
....
....

Meaning of "income subject to super tax" and "amount subject to super tax".

25. In this Act the expression—

"income subject to super tax" means an amount as determined in terms of section *twenty-six* that has been received by or has accrued to or in favour of, or that is deemed to have been received by or to have accrued to or in favour of any person during any year of assessment; and

"amount subject to super tax" means the amount remaining after deducting from the income subject to super tax of any person the concessional deductions allowable in terms of section *twenty-nine*.

Method of determining income subject to super tax.

26. Subject to the provisions of section *twenty-seven* the income subject to super tax of any person shall be determined—

(*a*) by taking the aggregate of—

(i) the taxable income of such person as determined for normal tax purposes, except when that determination results in an assessed loss, and excluding in respect of the year of assessment ending the thirtieth day of June, 1954, so much, if any, of the taxable income of such person as is exempt from super tax by virtue of the provisions of sub-section (4) of section *thirty-six* or paragraph 14 of the Second Schedule to this Act;

(ii) any amounts excluded in the calculation of that taxable income under the provisions of paragraphs (*f*) and (*l*) of sub-section (2) of section

(iii) any deduction made for super tax purposes in respect of the last preceding year of assessment under the provisions of sub-paragraph (ii) of paragraph (*b*) or under the provisions of paragraph (*b*) of section *twenty-eight* of the Income Tax Act, 1941; and

(*b*) by deducting from or setting off against such aggregate—

(i) any expenditure or losses, other than expenditure or losses of a capital nature, actually incurred by the taxpayer during the year of assessment in the production of any amounts included in his income subject to super tax under the provisions of sub-paragraph (ii) of paragraph (*a*);

(ii) any balance of loss as at the close of the year of assessment under charge which the taxpayer would be entitled under the provisions of sub-section (3) of section *eleven* to carry forward and set off for normal tax purposes against his taxable income for a succeeding year of assessment: Provided that in the event of the balance of loss so ranking for deduction exceeding an amount sufficient to relieve the taxpayer from liability to super tax in respect of the year of assessment under charge, the amount deducted shall be limited to a sum sufficient to give such relief.

27. (1) There shall not be included in the income subject to super tax of any person— Amounts not to be included in income subject to super tax.

(*a*) dividends received by or accrued to or in favour of such person if he is not ordinarily resident nor carrying on business in the Union;

(*b*) any dividend which is distributed by any company (being a company that is not being wound up or liquidated) wholly and exclusively out of profits of a capital nature: Provided such dividend is specifically declared out of such profits and is paid to the shareholders within twelve months from the date on which the said profits accrued to such company;

(*c*) so much of any dividend declared by any company during the year of assessment ending on the thirtieth day of June, 1954, as is proved to the satisfaction of the Commissioner to have been distributed out of any profits of that company which had previously been apportioned to its shareholders under the provisions of section *thirty-seven* of the Income Tax Act, 1941, as the taxable income or income subject to super tax of such company.

(2) For the purposes of paragraph (*b*) of sub-section (1), no dividend nor any portion of a dividend received by any company from another company shall be deemed to be a profit of a capital nature.

28. Whenever the taxable income of any person and the concessional deductions to which he is entitled have been finally determined for normal tax purposes, the amounts so determined shall be final for the purpose of determining the income subject to super tax or the amount subject to super tax of that person. Assessment for normal tax to be final for super tax purposes.

29. (1) The concessional deductions to be deducted from the income subject to super tax of any person for the purpose of determining the amount subject to super tax of that person shall be— Concessional deductions to be deducted in determination of amount subject to super tax.

(*a*) the sum of .... pounds; and

(*b*) the sum of the concessional deductions allowed to be deducted under section *thirteen* in the determination of the taxable amount of such person for normal tax purposes.

(2) If the period assessed is less than twelve months and unless, in the case of any such period terminating at the death of the taxpayer or commencing at the death of the spouse of the taxpayer, the Commissioner in the special circumstances of the case otherwise directs, the concessional deductions shall be proportionately reduced.

30. (1) If the amount subject to super tax of any person in respect of any year of assessment exceeds the annual average amount subject to super tax [as determined in accordance with the provisions of sub-section (3)] of such person by an amount equal to not less than .... per centum of such annual average amount, the amount of super tax payable by such person for that year of assessment shall, if such person so requests in writing at any time before his assessment for that year is issued or by a date not later than twenty-one days from the date of issue of such assessment or such later date as the Commissioner may allow, be determined as provided in sub-section (2). Special rates of super tax to apply in certain cases.

(2) The amount of super tax payable by a person referred to in sub-section (1) shall be determined as follows:—

(*a*) on so much of the amount subject to super tax of such person as is equal to the annual average amount subject to super tax, the tax shall be calculated at the rate applicable for the year of assessment under charge to an amount subject to super tax which is equal to the actual amount subject to super tax of such person; and

(*b*) on so much of the amount subject to super tax of such person as exceeds the said annual average amount, the tax shall be calculated at the rate applicable for the year of assessment under charge to an amount subject to super tax which is equal to the said annual average amount.

(3) (*a*) For the purposes of sub-sections (1) and (2) the annual average amount subject to super tax of any person means the annual average amount subject to super tax derived by such

(*a*) the amount of—

(i) any dividend (excluding such portion thereof as consists of an interim dividend) declared after the thirtieth day of June, 1954, by any company the business of which is managed and controlled in the Union; and

(ii) any interim dividend the payment of which is approved after the said date by the directors of any company referred to in sub-paragraph (i) or by some other person or persons under authority conferred by the memorandum and articles of association of such company,

if the shareholder to whom the dividend or interim dividend is payable, is—

(1) a person (other than a company) not ordinarily resident nor carrying on business in the Union; or

(2) a company the business of which is not managed and controlled in the Union; or

(3) the holder of bearer scrip irrespective of whether he is a person (other than a company) resident within or outside the Union or a company the business of which is managed and controlled in or outside the Union; and

(*b*) the amount by which the taxable income (as determined for normal tax purposes) for each year of assessment commencing with the year of assessment ending on the thirtieth day of June, 1954, of any company the business of which is not managed and controlled in the Union exceeds the normal tax payable thereon under this Act:

Provided that the shareholder for purposes of paragraph (*a*) shall be the shareholder as at the date of declaration of the dividend or, if some date other than the date of declaration of the dividend is specified as the date at which a shareholder is required to be registered to be entitled to the dividend, such other date.

Rate of non-resident shareholders' tax.

39. The rate of tax shall be one shilling and sixpence on each pound of any dividend referred to in paragraph (*a*) of section *thirty-eight* or of the amount by which the taxable income of any company referred to in paragraph (*b*) of the said section exceeds the normal tax payable thereon.

Exemptions.

40. There shall be exempt from the tax—

(*a*) dividends distributed by—

(i) any society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939); or

(ii) any insurance society or company subject to assessment in terms of the First Schedule to this Act;

(iii) any public utility company established by or under a special Act of Parliament;

(*b*) any dividend referred to in paragraph (*b*) of sub-section (1) of section *twenty-seven.*

Determination of the tax if the company paying the dividend derives income from sources outside the Union.

41. If any dividend referred to in paragraph (*a*) of section *thirty-eight* is distributed by a company which derives income from sources within and outside the Union, the tax payable in respect of that dividend shall be calculated on an amount which bears to the amount of such dividend the same ratio as the sum of the net profits of the company derived from Union sources bears to the total sum of its net profits from all sources as last determined by the Commissioner or, in cases in which there has been no such previous determination, as estimated by the Commissioner according to such information as is available to him.

Person liable for the non-resident shareholders' tax.

42. The person liable for the tax shall be—

(i) if the amount subject to the tax is a dividend, the shareholder to whom such dividend has been paid or is payable; or

(ii) if the amount subject to the tax is the amount by which the taxable income of a company exceeds the normal tax payable thereon, the company concerned.

Recovery of the non-resident shareholders' tax.

43. Notwithstanding the provisions of section *forty-two* the tax payable in respect of any dividend shall be payable by and recoverable from the persons set out hereunder:—

(*a*) In the case of a dividend distributable by any company to any person whose address appearing in the share register of the company is outside the Union or to any holder of bearer scrip, the company by which the dividend is declared.

(*b*) In the case of a dividend received by any agent in the Union on behalf of any shareholder referred to in paragraph (*a*) of section *thirty-eight*, the agent so receiving the dividend. For the purposes of this paragraph a person shall be deemed to be the agent of a shareholder and shall be deemed to have received a dividend on behalf of that shareholder if such person's address appears in the share register of the company as the registered address of the shareholder and the dividend warrant or the cheque in payment of the dividend is delivered at that address: Provided that any person so deemed to be the agent of any shareholder shall as regards such shareholder and in respect of any income received by or accruing to him or in his favour have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the Union. Nothing contained in this paragraph shall be construed as relieving any company by which a dividend is declared from the duties and responsibilities imposed upon it by section *seventy-eight* as the agent of any shareholder or member absent from the Union:

Provided that any tax payable in terms of this section by any company or by any agent for any

44. (1) The company, which in terms of paragraph (*a*) of section *forty-three* is required to pay the tax on any dividend, shall pay to the Commissioner the tax due on such dividend within thirty days, or such further period as may be approved by the Commissioner, of the date on which the dividend is payable and shall furnish him with a return showing the names and addresses of the persons (with the amount of the dividend in each case) to whom the dividend accrues and in the case of dividends payable in respect of bearer scrip the total dividends distributable to holders of such scrip.

Date of payment of the non-resident shareholders' tax.

(2) The agent in the Union by whom the tax is payable in terms of paragraph (*b*) of section *forty-three* shall within thirty days of the date of delivery at his address of the dividend warrant or cheque in payment of the dividend, or such further period as may be approved by the Commissioner, pay the tax to the Commissioner and furnish him with a return showing the amount of the dividend and the name and address of the person to whom it has accrued.

(3) The company which in terms of paragraph (ii) of section *forty-two* is required to pay the tax in respect of the amount by which its taxable income exceeds the normal tax payable thereon shall pay the tax to the Commissioner on the date specified in the notice of assessment issued to the public officer of such company in terms of section *seventy-two*.

(4) The provisions of sub-sections (1) and (2) shall not prevent the Commissioner from recovering from the person liable any tax which has not been paid and which the Commissioner may ascertain to be due after the dates specified in the said sub-sections.

45. Whenever the taxable income of any company referred to in paragraph (*b*) of section *thirty-eight* has been finally determined for normal tax purposes, the amount so determined shall be final for the purpose of this tax.

Determination of company's taxable income for normal tax purposes to be final for non-resident shareholders' tax purposes.

46. (1) If and when it is proved to the satisfaction of the Commissioner that any dividend or any portion of a dividend received by or accrued to a shareholder (being a person other than a company) ordinarily resident or carrying on business in the Union has been distributed by a company out of profits which have at any time been subjected to this tax in the hands of that company, such shareholder shall be entitled as a charge against the Consolidated Revenue Fund to a sum equal to the amount of this tax paid by such company on so much of the said profits as is included in such dividend: Provided that the claim for the benefit conferred by this sub-section is made within two years (or such further period as the Commissioner may allow) from the date on which the dividend in question has been declared.

Certain shareholders to be entitled to a credit in respect of the non-resident shareholders' tax paid by a company.

(2) The amount to which any shareholder becomes entitled in terms of sub-section (1) shall be dealt with as follows:—

(*a*) so much as does not exceed the sum of the taxes, interest and penalties payable by such shareholder (or by the person in whose hands the income of such shareholder is taxable otherwise than in a purely representative capacity) under this Act and any previous Income Tax Act and under any ordinance which imposes or imposed personal taxes or taxes on income, shall be applied as a set-off in liquidation of such taxes, interest and penalties; and

(*b*) so much as exceeds the sum to be set off in terms of paragraph (*a*) shall be paid to such shareholder in such manner as the Commissioner may decide.

PART V.

UNDISTRIBUTED PROFITS TAX.

47. There shall be paid annually for the benefit of the Consolidated Revenue Fund a tax (referred to in this Act as the undistributed profits tax) by every company, the business of which is managed and controlled in the Union and which in terms of section *fifty* is recognised as a private company for the year of assessment under charge, in respect of its undistributed profits for the year of assessment ending on the thirtieth day of June, 1954, and each succeeding year of assessment thereafter.

Levy of undistributed profits tax.

48. In this Part—

Definitions.

"distributable dividend income" of any company for any year of assessment means the amount arrived at by deducting from the sum of—

(1) all dividends received by or accrued to or deemed to have been received by or accrued to that company from a source within the Union during such year of assessment; and

(2) the amount allowed as a deduction under the provisions of paragraph (*c*) in the determination of the company's distributable dividend income for the immediately preceding year of assessment, the sum of—

(*a*) any taxes paid in respect of the said dividends under the law of any other country;

(*b*) so much as the Commissioner may allow of any expenditure (*c*) any balance of loss as at the close of the year of assessment under charge which the company would be entitled under the provisions of sub-section (3) of section *eleven* to carry forward and set off for normal tax purposes against its taxable income for a succeeding year of assessment: Provided that the amount deducted under this paragraph shall not in respect of any year of assessment exceed the amount by which the sum of the amounts referred to in paragraphs (1) and (2) exceeds the sum of the amounts referred to in paragraphs (*a*) and (*b*);

"distributable income" of any company for any year of assessment means the aggregate of the distributable dividend income and the distributable taxable income of that company for such year of assessment;

"distributable taxable income" of any company for any year of assessment means an amount equal to seventy *per centum* of the amount by which the taxable income of that company as determined for normal tax purposes (except when that determination results in an assessed loss) for such year of assessment exceeds the normal tax chargeable thereon under this Act;

"dividend" includes also any amount to which the provisions of paragraph (*k*) of the definition of "gross income" in section *seven* apply;

"non-preferent shares" mean shares other than shares the rights (of participation in the profits or income of the company) attaching to which are restricted to an annual dividend of not more than ten *per centum* of the nominal value of such shares and on liquidation of the company or redemption of the shares to a return of the amounts paid on such shares and to a premium not exceeding twenty-five *per centum* of the said amounts;

"prescribed period" in relation to the distribution by way of dividends of the distributable income of any company for any year of assessment means the period of twelve months covered by the two periods of six months, the one ending on the specified date and the other the period of six months thereafter;

"shareholder" in relation to any company and in respect of any share in such company means the person who, whether or not he is the registered holder of such share, is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profit or income attaching to such share and includes any person in whose gross income there is included any amount erferred to in paragraph (*k*) of the definition of "gross income" in section *seven;*

"specified date" in relation to any year of assessment means the thirtieth day of June or, if accounts of the company concerned are accepted under the proviso to paragraph (*a*) of sub-section (12) of section *fifty-nine* to a date other than the thirtieth day of June, such other date;

"undistributed profits" of any company for any year of assessment means the amount by which the distributable income of that company for such year of assessment exceeds the amount of such dividends as are distributed by the company during the prescribed period and are in terms of section *forty-nine* deemed to be distributed out of the said distributable income.

Determination of undistributed profits.

49. (1) For the purpose of determining the undistributed profits for any year of assessment of any company referred to in section *forty-seven* any dividends [other than dividends referred to in sub-section (2)] distributed by that company during the prescribed period shall be deemed to be distributed out of the distributable income of that company for such year of assessment.

(2) There shall not be taken into account in the determination of the undistributed profits of any company any dividends referred to in paragraph (*b*) or (*c*) of sub-section (1) of section *twenty-seven* which are distributed by such company.

(3) If the amount of the dividends [other than dividends referred to in sub-section (2)] distributed by any company referred to in section *forty-seven* during the prescribed period relating to any year of assessment exceeds the distributable income of that company for such year of assessment, the amount of such excess shall be carried forward and shall for the purpose of sub-section (1) be deemed to be a dividend distributed by such company during the prescribed period relating to the next succeeding year of assessment.

Classification of companies for purposes of undistributed profits tax.

50. (1) For the purposes of this tax every company, the business of which is managed and controlled in the Union, shall in respect of each year of assessment be recognized as either a public or a private company and the Commissioner shall, upon the request of any such company, inform that company whether it is recognized as a public company or as a private company.

(2) The following companies [being companies referred to in sub-section (1)] shall, subject to the provisions of section *fifty-one*, be recognized as public companies—

(*a*) any company all classes of whose non-preferent shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority: Provided the Commissioner is satisfied that—

(i) the stock exchange is a recognized and *bona fide* stock exchange under adequate control; and

(ii) the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of

(iii) the memorandum and articles of association of the company contain no such restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in any class of the company's non-preferent shares; and

(iv) the general public is substantially interested (directly as shareholders in such company or indirectly as shareholders in another company) in every class of the non-preferent shares issued by the company; or

(*b*) any other company in respect of which the Commissioner is satisfied that—

(i) the general public is substantially interested (directly as shareholders in such company or indirectly as shareholders in another company) in every class of the non-preferent shares issued by the company; and

(ii) the business of the company is conducted and its profits are distributed in such a manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which would have been recognized as as public company under paragraph (*a*); or

(*c*) any company which the Commissioner is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven *per centum* on the nominal value of his shareholding; or

(*d*) any society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939); or

(*e*) any insurance society or company subject to assessment in terms of the First Schedule to this Act; or

(*f*) any public utility company, established by or under a special Act of Parliament; or

(*g*) any company the sole or principal business of which in the Union is mining for gold or diamonds.

(3) A company the business of which is managed and controlled in the Union and which at the specified date in respect of any year of assessment is not recognized as a public company shall be recognized as a private company for such year of assessment.

Change in company's status from a public to a private company.

51. If, owing to changes in the constitution or shareholding of any company which has been recognized as a public company under paragraph (*a*), (*b*) or (*c*) of sub-section (2) of section *fifty*, or for any other reason, the Commissioner is no longer satisfied of the matters of which in terms of the paragraph under which that company has been so recognized he is required to be satisfied or the company ceases to comply with the requirements of that paragraph, the Commissioner may notify the public officer that the company will as from the next succeeding specified date be recognized as a private company.

Determination by Commissioner of shareholders' rights to participate in income or profits of private company.

52. (1) The Commissioner shall, subject to the provisions of sub-section (2), for each year of assessment in respect of which a company is in terms of section *fifty* recognized as a private company, determine the rights of each person who was a shareholder of such company on the specified date to participate, directly or indirectly, immediately or at a future date, in the profits or income of such company. In making such determination the Commissioner shall have regard *inter alia* to—

(*a*) the provisions of the company's memorandum and articles of association and amendments thereto;

(*b*) the purposes of the company's incorporation;

(*c*) any special circumstances affecting the company's operations;

(*d*) the terms of any agreement or contract between a registered shareholder and the company or any other person; and

(*e*) any facts affecting such determination which he may have ascertained.

(2) If any shareholder in any company referred to in sub-section (1) is vested with rights or powers exceeding those of other shareholders in that company, the Commissioner may determine that such shareholder was entitled to the profits or income of the company for the year of assessment under charge, to the exclusion of such other shareholders, except to the extent to which such other shareholders have participated by way of dividends in the said profits or income, unless it is shown to the satisfaction of the Commissioner that the said rights or powers have not been exercised in that year of assessment.

Apportionment by Commissioner of undistributed profits of a company.

53. The undistributed profits for each year of assessment of any company referred to in section *forty-seven* shall be apportioned by the Commissioner between those persons who were shareholders of such company on the specified date, according to the rights of each such shareholder to participate in the profits or income of the company as determined in accordance with the provisions of section *fifty-two*.

Rates of undistributed

54. The rates of the undistributed profits tax shall be—

(*a*) in respect of so much of the undistributed profits of any company as is in terms of in the Union or being companies, were not companies the business of which on the specified date was managed and controlled in the Union, for each pound of the amount so apportioned, one shilling and sixpence;

(*b*) in respect of so much of the undistributed profits of any company as is in terms of section *fifty-three* apportioned to shareholders who, being persons other than companies, were on the specified date ordinarily resident or carrying on business in the Union or, being companies, are companies the business of which on the specified date was managed and controlled in the Union, for each pound of the amount so distributed .... shillings.

Companies deriving income from sources within and outside the Union.

55. (1) Any company referred to in section *forty-seven* which derives income from sources within and outside the Union shall, for the purpose of section *forty-nine*, be deemed to have distributed by way of dividends during any prescribed period an amount which bears the same ratio to the total amounts distributed by the company by way of dividends [excluding any dividends referred to in sub-section (2) of the lastnamed section] during that period as the distributable income of the company for the year of assessment in question bears to its aggregate distributable income for the said year of assessment, as determined in terms of sub-section (3).

(2) If the amount of this tax for which any company referred to in sub-section (1) would be liable if determined with reference to the aggregate distributable income of the company for any year of assessment and the total amounts distributed by the company by way of dividends [excluding any dividends referred to in sub-section (2) of section *forty-nine*] during the prescribed period would be less than the amount of the tax determined in accordance with the provisions of sub-section (1), such company shall be liable for the lesser amount.

(3) For the purposes of sub-section (1) and (2) the aggregate distributable income of any company for any year of assessment shall be the amount by which the total profits [as determined in terms of sub-section (4)] of the company for such year of assessment together with all dividends received by or accrued to such company during that year exceed the sum of—

(*a*) all taxes (excluding this tax) paid on such total profits and dividends; and

(*b*) so much as the Commissioner may allow of any expenditure actually incurred by the company during the said year of assessment in the production of such dividends.

(4) The total profits of a company from all sources for any year of assessment shall be a sum calculated in the manner prescribed in this Act for the determination of taxable income in respect of that year of assessment but irrespective of the source from which the profits are derived.

Assessment of the tax.

56. The Commissioner shall after the close of the prescribed period in respect of each year of assessment issue to the public officer of every company liable to this tax an assessment notifying the amount of the undistributed profits as determined by him, the amount of the tax payable by the company and the date on which such tax shall be paid.

Exemptions.

57. There shall be exempt from the tax—

(*a*) any company in respect of which the provisions of section *twenty* are applicable to the determination of the taxable income derived from its principal business;

(*b*) any company whose distributable income for the year of assessment is not more than one *per centum* of its total paid-up capital as at the last day of the year of assessment.

Assessment of taxable income for normal tax to be final for undistributed profits tax purposes.

58. Whenever the taxable income of any company has been finally determined for normal tax purposes, the amount so determined shall be final for the purpose of determining the distributable taxable income of such company.

CHAPTER III.

GENERAL PROVISIONS.

PART I.

RETURNS AND ASSESSMENTS.

Notice by Commissioner requiring returns for assessment of taxes under this Act and manner of furnishing returns and interim returns.

59. (1) The Commissioner shall annually give public notice that all persons liable to taxation under the provisions of this Act, whether personally or in any representative capacity, are required to furnish within thirty days after the date of such notice, or within such further time as the Commissioner may for good cause allow, returns for the assessment of the tax.

(2) Such notice shall state the places at which the prescribed forms may be obtained, and it shall be the duty of all such persons, and of all persons required by this Act to furnish such returns, to apply for the prescribed forms of returns.

(3) Any such person failing to furnish such returns shall not be relieved from any penalty by reason only of his having received no notice to furnish the same, or of the prescribed form not having been delivered to him; but the Commissioner may, if he deem it so advisable, cause forms to be delivered or sent by post to any person.

(4) The Commissioner may, prior to the issue of any such annual notice, require any person

(5) Every person shall, on publication of the annual notice or on receipt of any such written notice, prepare and deliver in the prescribed manner, within the period mentioned in such notice, to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed. Such return shall be signed by the taxpayer, or by his agent duly authorized in that behalf.

(6) Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognisant of all statements made in that return and any person who permits or authorises any other person to sign any such return on his behalf shall be deemed to be cognisant of, and to have caused or allowed to be made, all statements made in that return.

(7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act, shall be deemed to be duly made and signed by the person affected unless such person proves that such return was not made or signed by or on his behalf.

(8) The returns furnished by or on behalf of every person required to furnish returns under this Act shall contain such particulars, be in such form, and be furnished to the person appointed to receive the same at such time as may be prescribed by the Commissioner.

(9) The Commissioner may, when and as often as he thinks necessary, require any person to make further or more detailed returns respecting any matter of which a return is required or prescribed by this Act.

(10) All returns required to be furnished under this Act shall be delivered at, or sent by post to, the prescribed address.

(11) Any such return shall, if marked with the words "Income Tax" and "On Her Majesty's Service" be carried and delivered free of postal or other charges by the postal department.

(12) (*a*) The return of income to be made by any person in respect of any year of assessment shall be a full and true return for the whole period of twelve months ending upon the last day of the year of assessment under charge: Provided that—

- (i) where a person establishes to the satisfaction of the Commissioner that the income derived by him from any business can more conveniently be returned to a date other than the thirtieth day of June, the Commissioner shall, in so far as the income derived by that person from such business is concerned, accept accounts made up to a date agreed to by the Commissioner;
- (ii) where returns of any person have been accepted under the proviso to sub-section (13) of section *fifty-five* of the Income Tax Act, 1941, to a date other than the thirtieth day of June, the date to which such person's returns have been so accepted shall be deemed to be the date agreed to by the Commissioner under paragraph (i) of this proviso in respect of the income derived from any business which was commenced by such person before the year of assessment in respect of which the provisions of this Act first take effect and such person shall not be entitled, without the consent of the Commissioner, to submit accounts in respect of any such business made up to a date other than the said date.

(*b*) If in respect of any year of assessment any person has, in terms of paragraph (i) of the proviso to paragraph (*a*), submitted accounts made up to a date other than the thirtieth day of June in respect of the income derived by him from any business, that person shall not in respect of any subsequent year of assessment be entitled, without the consent of the Commissioner, to submit accounts in respect of the income derived from such business made up to a date other than the said date.

(*c*) In no circumstances shall the Commissioner be obliged to accept from any person accounts which cover a period of more than fifteen months.

(*d*) The income reflected in any accounts made up to a date which has been agreed to by the Commissioner under paragraph (i) of the proviso to paragraph (*a*) and which falls within the period of twelve months commencing on the first day of December of any year and ending on the thirtieth day of November of the following year shall be assessed as the income derived by the person concerned from the business in question for the year of assessment ending the thirtieth day of June falling within the said period: Provided that where for any reason accounts in respect of the income derived by any person from any business are at any time required for the purposes of this Act to be made up to any date preceding the date agreed to by the Commissioner as aforesaid, the income reflected in such accounts shall be assessed in accordance with the provisions of this paragraph as if such income had been reflected in accounts made up to the date agreed to by the Commissioner notwithstanding that the said income may be assessed as the income of such person for a year of assessment during no portion of which that person was alive or in existence.

(*e*) Paragraph (*d*) shall not be construed as conferring on any person the benefit of any concessional deduction to which he would otherwise not be entitled or as reducing or increasing the amount of any concessional deduction to which he would otherwise be entitled.

(*f*) If the returns of any person have been accepted under the proviso to sub-section (13) of section *fifty-five* of the Income Tax Act, 1941, to a date other than the thirtieth day of June, the Commissioner shall, in the determination of the taxable income of that person for the year of assessment in respect of which the provisions of this Act first take effect, make such adjustment as he may consider necessary for the purpose of ensuring that the taxable income of such person as determined under the provisions of this Act or of any previous Income Tax Act of the Union for the years of assessment to and including the said year of assessment corresponds as nearly as

(13) Persons carrying on any business in partnership shall include in the returns required to be rendered by them personally under this Act their respective shares of the partnership income for the year or period of assessment under charge and in support of such returns each partner shall furnish a copy of the accounts, and such other particulars as may from time to time be prescribed, disclosing the total income of the partnership for the year or period of assessment under charge: Provided that the Commissioner may dispense with copies of the accounts from such partners as he may decide.

Half-yearly returns by persons engaged in gold mining.

60. (1) Notwithstanding anything contained in this Act, the Commissioner may require any person whose sole or principal business is mining for gold to furnish, in respect of each year of assessment, half-yearly returns for the assessment of the taxes leviable under this Act.

(2) Each such return shall be furnished within two months of the close of the half-year to which it refers, and the person furnishing it shall simultaneously pay to the Commissioner the amount of any tax appearing therefrom to be payable.

(3) The returns furnished and the payment made in respect of the first half-year of any year of assessment shall be treated by the Commissioner as a provisional return and a provisional payment, and the Commissioner in making his assessment in respect of the year of assessment as a whole shall make such adjustments as he considers necessary to bring the assessment into accord with the liability of the taxpayer for such year of assessment.

(4) The Commissioner shall recover from or repay to any such person any amount whereby the assessment in respect of the year of assessment as a whole exceeds or falls short of any payment made by such person in respect of the tax for the year of assessment.

Commissioner may prescribe forms.

61. All forms of returns and other forms required for the administration of this Act shall be in such form as may be prescribed by the Commissioner from time to time.

Income of married women and minor children.

62. (1) The income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of, a woman married with or without community of property and not separated from her husband under a judicial order or written agreement shall be included by him in returns of income required to be rendered by him under this Act: Provided that if either the husband or the wife make written application therefor to the Commissioner, or the Commissioner considers it desirable, returns of income may be required to be rendered by any such husband or wife separately.

(2) In the event of the death of the husband during any year in respect of which such income is chargeable, the income of the wife for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate income of such wife.

(3) Any amount payable by way of alimony or allowance or maintenance of his spouse or former spouse and any children under any judicial order or written agreement of separation or under any order of divorce shall be returned as the separate income of such spouse to whom or on whose behalf the amount is paid and shall form part of the taxable income of such spouse. The person by whom such amount is payable shall have his taxable income reduced thereby.

(4) (*a*) Every parent shall be required to include in his return any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any of his minor children either directly or indirectly from himself or his wife together with such particulars as may be required by the Commissioner.

(*b*) Every parent shall be required to include in his return any income deemed to be his in terms of sub-sections (3) and (4) of section *eight*.

Duty to furnish returns as to employees, their earnings and other matters.

63. (1) Every person shall, if required by the Commissioner, furnish to him, in such form and at such time as may be prescribed or as the Commissioner may require, returns of all or any particular class of persons employed by him, and the earnings, salary, wages, allowances or pensions, whether in money or otherwise, paid or allowed to each person so employed.

(2) Every person carrying on business in the Union shall, in such manner and form and at such times as may be prescribed by the Commissioner furnish to the Commissioner returns showing—

(*a*) all payments made to any person in respect of any share or interest in such business;

(*b*) all moneys received by him from any person on deposit for any fixed time or period with or without interest, and any amount of interest received or paid by him; and

(*c*) all such other information in his possession with regard to the income received by, or accruing to or in favour of, himself or any other person as may be required by the Commissioner.

(3) In addition to the returns specified in this and in sub-sections (1) and (2), every person, whether a taxpayer or not, shall, as and when required by the Commissioner, supply such information and make such returns or such further or other returns as the Commissioner may require.

(4) Every person to whom a form of return is sent by the Commissioner shall complete the same in accordance with the requirements of the Commissioner and shall return it to the Commissioner at such time and place as the Commissioner may direct.

Duty of companies to furnish returns

64. (1) Every company which pays interest upon or in respect of debentures or debenture stock or which pays interest on any loans or advances shall, within thirty days after the thirtieth day of June in each year, furnish to the Commissioner a return giving the full name and address

(2) Every company which pays any dividends, awards any bonus shares, debentures or securities or pays any liquidation dividends to shareholders in such company, in respect of the shares held by them, shall within thirty days after the thirtieth day of June in each year furnish to the Commissioner a return giving the full name and address of each shareholder and the amount or value of such payment or award to each such shareholder.

(3) Every company which is recognized as a private company under section *fifty* shall within thirty days after the thirtieth day of June in each year furnish a return giving the name and address of and the number of shares held by every person who was, on the specified date as defined in section *forty-eight* a shareholder of the company.

(4) Every company shall file with the Commissioner a copy of the memorandum and articles of association constituting the company and copies of all amendments thereto.

(5) Every company shall, within thirty days of the registration by the Registrar of Companies of any prospectus proposed to be issued by it, file with the Commissioner a copy of the prospectus.

Return as to shareholdings.

65. Every person who makes a return of his own income, or in a representative capacity, makes a return of the income of some other person, shall attach to such return a statement showing fully—

(*a*) the number of shares in any company registered in the name of the taxpayer for whom the return is rendered;

(*b*) the dividends from any company received by or accrued to the taxpayer for whom the return is rendered;

(*c*) the name and address of the person, if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, or, in the case of a private company, to participate in the profits or income of any such company, who, under any agreement or arrangement, is entitled to receive and retain such dividends or to participate in such profit or income;

(*d*) the number of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which such taxpayer under an agreement or arrangement with the registered owner obtains all dividends payable by such company or in the case of a private company the rights of the registered owner to participate in the profit or income of such company;

(*e*) the dividends so received by the taxpayer for whom the return is rendered from the person in whose name such shares are registered.

Duty of persons submitting accounts in support of returns or preparing accounts for other persons.

66. (1) If any person submits in support of any return furnished by him under this Act, any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, if the Commissioner so requires, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up, and recording in so far as may be ascertained by such examination, whether or not the entries in such books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.

(2) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall at the request of such other person, furnish him with the certificate or statement required under sub-section (1).

Production of documents and evidence on oath.

67. (1) For the purpose of obtaining full information in respect of any income of any taxpayer or of any part thereof, the Commissioner may require any person to produce for examination by the Commissioner or by any person appointed by him for that purpose, at such time and place as may be appointed by the Commissioner in that behalf, any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Commissioner may deem necessary for the purposes of this Act, and if any such deeds, plans, instruments, books, accounts, lists or documents are not in one of the official languages, the Commissioner may by notice in writing require the taxpayer to produce at such time and place as may be appointed, at the taxpayer's expense, a translation in one of the official languages prepared and certified by a sworn translator or a person other than a sworn translator approved by the Commissioner.

(2) The Commissioner may, by notice in writing, require any person entitled to or in receipt of any income (whether on his own behalf, or as the representative of any person) or any person whom the Commissioner may deem able to furnish information, to attend at a time and place to be named by the Commissioner for the purpose of being examined on oath respecting the income of any such person or any transactions or matters affecting the same or any of them or any part thereof. Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by such person in so attending.

(3) Any officer engaged in carrying out the provisions of this Act who has in relation to the affairs of a particular person been authorized thereto by the Commissioner in writing or by telegram, may, for the purposes of the administration of this Act—

(*a*) without previous notice, at any time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts or documents;

(*b*) in carying out any such search, open or cause to be removed and opened, any article in which he suspects any moneys, books, records, accounts or documents to be contained;

(*c*) seize any such books, records, accounts or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;

(*d*) retain any such books, records, accounts or documents for as long as they may be

(4) Any authorized person exercising any power under sub-section (3), shall on demand produce the written authority furnished to him by the Commissioner.

(5) The person to whose affairs any books, records, accounts or documents seized under sub-section (3) relate, shall be entitled to examine and make extracts from them during office hours under such supervision as the Commissioner may determine.

Penalty on default.

68. (1) Any person who—

(*a*) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or

(*b*) without just cause shown by him, refuses or neglects to furnish any information or reply or to attend and give evidence as and 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 books or papers required of him by the Commissioner or any such officer; or

(*c*) whether personally or through any person acting on his behalf, in any return made by him or by another person on his behalf or in any return prepared or rendered by him on behalf of any other person, fails to show any portion of the gross income received by or accrued to or in favour of himself or the person represented by him, as the case may be, or, when such return is being prepared or made, fails to disclose to the Commissioner any material facts which should have been disclosed or any facts which, if so disclosed, might result in increased taxation; or

(*d*) obstructs or hinders any officer in the discharge of his duties; or

(*e*) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him, fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, stock lists, invoices and all other books of account relating to any trade carried on by him and recording the details from which his returns for the assessment of taxes under this Act were prepared; or

(*f*) submits or furnishes a false certificate or statement under section *sixty-six*;

shall be guilty of an offence and liable to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

(2) Any person who has been convicted under the provisions of sub-section (1) shall, if he fails within any period deemed by the Commissioner to be reasonable and of which notice has been given to him by the Commissioner, to furnish the return, information or reply, or to produce any book or document, in respect of which the offence was committed, be guilty of an offence and shall be liable to a fine not exceeding five pounds for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding three months.

Estimated assessments.

69. (1) In every case in which any person makes default in furnishing any return or information or if the Commissioner is not satisfied with the return or information furnished by such person or if, in the case of any person whose business extends to any country outside the Union, an accurate return of his taxable income or income subject to super tax cannot be made, the Commissioner may estimate either in whole or in part the taxable income or the income subject to super tax in relation to which the return or information is required.

(2) If it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income, the Commissioner may agree with such person what shall be the taxable income or income subject to super tax of such person and any taxable income or income subject to super tax so agreed shall not be subject to any objection and appeal.

Additional tax in the event of default or omission.

70. (1) A taxpayer shall be required to pay, in addition to the tax chargeable in respect of his taxable income or income subject to super tax—

(*a*) if default is made in rendering a return of the income of the taxpayer in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income or income subject to super tax for that year of assessment; or

(*b*) if there is omitted from the return of income of the taxpayer any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income or income subject to super tax returned and the tax properly chargeable in respect of his taxable income or income subject to super tax as finally determined after including the amount omitted; or

(*c*) if any incorrect statement is made in any return of the taxpayer which results or would, if accepted, result in the assessment of the normal or the super tax at an amount which is less than the tax properly chargeable an amount equal to twice the difference between the tax as assessed in accordance with the return made and the tax properly chargeable if the incorrect statement had not been made.

(2) The Commissioner may remit all or such part of the additional charge as he may think fit if he is satisfied that the default in rendering the return was not due to any intent either to defraud the revenue or to postpone the payment by the taxpayer of the tax chargeable or that any such omission or incorrect statement was not due to any intent to evade taxation on the part of the taxpayer or if there are other reasons which, in the opinion of the Commissioner, justify such remission.

(3) There shall be no right of objection and appeal against the decision of the Commissioner

(*a*) the Commissioner has remitted more than eighty *per centum* of the additional charge; or

(*b*) the additional charge or the portion thereof which has not been remitted by the Commissioner is less than one hundred pounds.

(4) The additional amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or income subject to super tax or any part thereof is estimated by the Commissioner in terms of section *sixty-nine* or agreed with the taxpayer in terms of the proviso to sub-section (2) of the said section as well as in cases where such taxable income or income subject to super tax or any part thereof is determined from accounts rendered by the taxpayer.

(5) The powers conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act, to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax or attempting to do so.

(6) Any taxpayer who in determining his taxable income or income subject to super tax, as disclosed by his return, deducts or sets off any amount, the deduction or set-off whereof is not permissible under the provisions of this Act or any amendment thereof, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

(7) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's income on an amount which is higher than the amount upon which such income would be taxable on such return, shall be deemed for the purposes of this section, to have omitted from his return the amount by which the former amount exceeds the latter.

(8) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall be deemed, for the purposes of this section, to have omitted from his return for the first-mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

Additional assessments.

71. (1) If at any time the Commissioner is satisfied that any amounts which should have been subject to tax have not been assessed to tax either under this Act or any previous Income Tax Act of the Union, he shall raise assessments in respect of such amounts, notwithstanding that assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amounts in question are assessable and that such assessments may have become final and conclusive: Provided that where an assessment has been made upon any person in respect of any year of assessment and any amount which should have been assessed to tax under such assessment was not so assessed because of an error of calculation or an erroneous interpretation of the law, the Commissioner shall not be entitled to raise an assessment under this section in respect of the said amount after the expiration of three years from the date of such first-mentioned assessment.

(2) For the purposes of this section any amount referred to in sub-section (1) shall include an amount the incorporation of which in an assessment would result in the reduction of any loss ranking for set-off or in only portion of such amount becoming chargeable with tax.

(3) The provisions of sections *sixty-nine* and *seventy* of this Act shall apply to any assessments or additional assessments made by the Commissioner under the powers conferred by this section.

(4) If the assessments, under which any amounts referred to in sub-section (1) should have been assessed to tax, have become final and conclusive, the taxpayer's right of objection and appeal in regard to matters which were germane to such assessments shall not be revived by the issue of any additional assessments under this section.

Assessments and the recording thereof.

72. (1) All assessments required to be made under this Act shall, subject to the provisions of section *three* of this Act, be made by the Commissioner or under his direction.

(2) The amount of tax payable in respect of every assessment issued by the Commissioner to a taxpayer shall be recorded by the Commissioner as a debt due by that taxpayer to the Government of the Union and the Controller and Auditor-General shall be entitled to verify that the amount of tax payable as disclosed by the assessment issued to the taxpayer is in agreement with the debt recorded by the Commissioner against the taxpayer. The record so set up by the Commissioner shall be retained for such period as may be approved by the Controller and Auditor-General and may thereafter be destroyed.

(3) Upon recording the amount of any debt due by the taxpayer or of any reduction in such debt the Commissioner shall give notice to the taxpayer of the assessment and of the tax payable thereon or of the amount by which any tax has been reduced on re-assessment and shall thereupon attach to the return of the taxpayer, for the year of assessment under charge, a copy of that notice of assessment disclosing the tax payable thereon or the amount by which any tax previously advised has been reduced.

(4) Such notice shall be sent to such person by post or delivered to such person in such other manner as the Commissioner may consider necessary or convenient.

(6) (*a*) Any separate returns which may be rendered by spouses in terms of the proviso to sub-section (1) of section *sixty-two* shall be separately assessed and separate notices of assessment shall be sent to the respective spouses.

(*b*) The total tax payable in respect of the separate assessments issued under paragraph (*a*) shall not be less than the total amount which would have been payable by the husband alone if the incomes of both husband and wife had been assessed as the income of the husband alone.

(*c*) Subject to the provisions of paragraph (*d*), the amount of tax payable by each spouse shall be the sum of—

(i) the total amount of tax which would have been payable by the husband alone on the combined incomes of the spouses if such combined incomes had been equal to the income of the spouse concerned; and

(ii) a proportionate part (calculated in the ratio that the income of the spouse concerned bears to the combined incomes of the spouses) of the amount by which the total tax payable in terms of paragraph (*b*) exceeds the sum of the taxes determined as described in item (i) in respect of both spouses.

(*d*) Where separate assessments are issued in terms of this sub-section and the husband or any person acting on his behalf or the wife or any person acting on her behalf has been guilty of a default or omission or the making of an incorrect statement, any additional charge imposed under section *seventy* in respect of such offence shall be payable by the spouse by whom or by whose agent the offence was committed: Provided that, if the spouses were (personally or through their agents) jointly responsible for any such offence, each spouse shall be liable to pay a share of the additional charge imposed in respect of the said offence, which share of the additional charge so payable by any spouse shall be determined in the ratio that the amount of the tax (excluding the additional charge) payable by such spouse in terms of paragraph (*c*) bears to the total amount of tax (excluding the additional charge) payable by both spouses.

(7) Separate assessments shall be made upon partners, the provisions of sub-section (13) of section *fifty-nine* notwithstanding.

Inspection of record of assessments.

73. The record of assessment shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Commissioner of such recorded particulars as relate to him.

PART II.

Representative Taxpayers.

Meaning of representative taxpayer.

74. For the purposes of this Act, "representative taxpayer," means—

(*a*) in respect of the income of a company, the public officer thereof;

(*b*) in respect of the income under his management, disposition or control, the agent of any person, including an agent appointed as such under the provisions of section *seventy-nine*. For the purposes of this paragraph the term "agent" includes further every person in the Union having the receipt, management or control of income on behalf of any person permanently or temporarily absent from the Union or remitting or paying income to or receiving moneys for such person;

(*c*) in respect of income the subject of any trust or in respect of the income of any minor, or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to, or receiving moneys on behalf of such person under disability;

(*d*) in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;

(*e*) in respect of the income of any person who dies during any year of assessment or who dies after the close of any year of assessment but before rendering a return of his income for such year of assessment, the executor or administrator of the estate of such person,

but nothing herein contained shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Act.

Liability of representative taxpayer.

75. (1) Every representative taxpayer, as regards the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, shall be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(2) Any abatement, deduction, exemption or right to set off a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his capacity as such.

(3) Any tax payable in respect of any such assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control.

(4) Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

Right of representative taxpayer to indemnity.

76. Every representative taxpayer who, as such, pays any tax shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

Personal liability of representative taxpayer.

77. Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity, if, while it remains unpaid—

(*a*) he alienates, charges, or disposes of the income in respect of which the tax is chargeable; or

(*b*) he disposes of or parts with any fund or money, which is in his possession or comes to him after the tax is payable when from or out of such fund or money the tax could legally have been paid.

Company regarded as agent for absent shareholder.

78. Where a shareholder or a member of a company is absent from the Union, such company shall, for the purposes of this Act, be deemed to be the agent for such shareholder or member, and shall as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the Union.

Power to appoint agent.

79. The Commissioner may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax due from any moneys, including pensions, salary, wages or any other remuneration, which may be held by him for or due by him to the person whose agent he has been declared to be. For the purposes of this section " person " shall include the Government of the Union (including the Railway Administration), any provincial administration or any local authority in the Union.

Remedies of Commissioner against agent or trustee.

80. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as he would have against the property of any person liable to pay any tax and in as full and ample a manner.

Public officers of companies.

81. (1) Every company carrying on business or having an office in the Union shall at all times be represented by an individual residing therein.

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act: Provided that in the event of any company being placed in voluntary or compulsory liquidation the liquidator or liquidators duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation.

(3) The representative shall be called the public officer of the company and shall be appointed, in the case of a company which at the commencement of this Act so carries on business or has an office in the Union, within two months after such commencement, and in the case of a company which thereafter begins to carry on business or has an office in the Union, within one month after so beginning to carry on business or acquiring the office.

(4) In default of any such appointment the public officer of any company shall be such managing director, director, secretary or other officer of the company, as the Commissioner may designate for that purpose.

(5) Every company within the period prescribed by sub-section (3) shall also appoint a place within the Union approved by the Commissioner at which any notice or other instruments under this Act affecting the company may be served or delivered or to which any such notices or documents may be sent.

(6) No appointment shall be deemed to have been made under sub-section (3) or (5), until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Commissioner.

(7) Every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with sub-section (5); and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner within fourteen days of such change taking effect.

(8) Any company which makes default in appointing a public officer or appointing a place for service or delivery of notices in accordance with this Act, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices or which fails to notify to the Commissioner any change of public officer or of the place for the service or delivery of notices, and every person who acts within the Union as agent or manager or representative of such company, shall incur a penalty of one pound for every day during which the default continues, and every such penalty shall be recoverable by the Commissioner by action in any court of competent jurisdiction: Provided that the Commissioner may remit such part or all of the said penalty as he may think fit.

(9) Every notice, process or proceeding which under this Act may be given to, served upon or taken against any company, may be given to, served upon, or taken against its public officer and if at any time there is no public officer, then any such notice, process or proceeding may be

(10) Every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Act by a taxpayer, and in case of default, shall be liable to the penalties provided in respect of defaults by a taxpayer.

(11) Everything done by any public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(12) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act; but the company shall in all respects be subject to and liable to comply with the provisions of the Act as if there were no requirement to appoint such officer.

(13) Any public officer who was appointed or is deemed to have been appointed under the provisions of the Income Tax Act, 1941, and is holding office at the commencement of this Act, shall, provided that no objection to his continuance in office is raised by the Commissioner, be deemed to be a public officer appointed under this Act.

PART III.

OBJECTIONS AND APPEALS.

Objection and appeal against certain decisions of the Commissioner in the exercise of his discretionary powers.

82. Except where otherwise specially provided, any decision of the Commissioner in the exercise of any discretionary power conferred on him under this Act shall be subject to objection and appeal as provided in this Part if such decision affects the amount of the taxpayer's liability for tax or the amount of his assessed loss: Provided that the decision of the Commissioner in the exercise of his discretion under sub-section (2) of section *eighty-three* or under sub-section (6) of section *eighty-five* shall not be subject to objection and appeal.

Time and manner of lodging objections.

83. (1) Objections to any assessment or to any decision made under this Act may, subject to the provisions of sub-section (2), be made within thirty days after the date of the assessment notice or of the decision, in the manner and under the terms prescribed by this Act by any taxpayer who is aggrieved by any assessment or decision in which he is interested.

(2) No objection shall be entertained by the Commissioner which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the Commissioner is satisfied that reasonable grounds exist for delay in lodging the objection.

(3) Every objection shall be in writing and shall specify in detail the grounds upon which it is made: Provided that the Commissioner may allow the grounds of objection to be extended if application for such extension is made within such period after the date on which the objection is lodged as the Commissioner deems reasonable.

(4) On receipt of a notice of objection to an assessment or to a decision the Commissioner may reduce or alter the assessment, or withdraw or amend the decision, or may disallow the objection and shall send the taxpayer notice of such alteration, reduction, withdrawal, amendment or disallowance, and record any alteration or reduction made in the assessment.

(5) Where no objections are made to any assessment or decision or where objections have been allowed or withdrawn, such assessment or altered or reduced assessment or such decisions or amended decisions, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

The burden of proof as to exemptions, deductions or abatements.

84. In regard to questions of fact the burden of proof that any amount is exempt from or not liable to any tax chargeable under this Act or is subject to any deduction, abatement or set-off in terms of this Act, shall be upon the person claiming such exemption, non-liability, deduction, abatement or set-off and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

Appeal to a specially constituted court against Commissioner's decision.

85. (1) Any person entitled to make an objection who is dissatisfied with any decision of the Commissioner as notified to him in terms of sub-section (4) of section *eighty-three* may appeal therefrom to a special court for hearing income tax appeals, constituted in accordance with the provisions of this section.

(2) Every court so constituted shall consist of a judge of the Supreme Court who shall be the President of the Court, and an accountant of not less than ten years' standing and a representative of the commercial community: Provided that in all cases relating to the business of mining, such third member shall, if the appellant or the Commissioner so desires, be a qualified mining engineer.

(3) The Governor-General may, by proclamation in the *Gazette*, constitute such court or courts for such area or areas as he may think fit and may from time to time by such proclamation abolish any existing court or courts or constitute such additional courts as circumstances may require: Provided that the courts so constituted under the provisions of the Income Tax Act, 1941, shall for the purpose of this Act be deemed to be courts constituted in accordance with this section.

(4) Any appeals lodged under the provisions of the Income Tax Act, 1941, may be heard and determined by any court constituted under the provisions of this Act or deemed to be so constituted.

(5) (*a*) The members of the courts other than judges shall be appointed by the Governor-General by proclamation in the *Gazette*. Every such appointment unless sooner terminated by the

abolition of the court in terms of sub-section (3), shall be for a period of five years from the date of such proclamation: Provided that any person so appointed shall be eligible for re-appointment for such further period or periods as the Governor-General may think fit: Provided further that the members of the courts constituted under the provisions of the Income Tax Act, 1941, and deemed to be constituted under the provisions of this Act, shall be deemed to be persons appointed under the provisions of this sub-section as from the commencement of this Act.

(*b*) The Judge-President of the Provincial Division of the Supreme Court having jurisdiction in the area for which a court has been constituted shall nominate and second a judge or acting judge of such division to be the President of such court, and such secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.

(6) Every notice of appeal shall be in writing and shall be lodged with the Commissioner within thirty days after the date of the notice mentioned in sub-section (4) of section *eighty-three*. A notice of appeal which has not been lodged within the time prescribed in this sub-section shall be of no force or effect whatsoever unless the Commissioner is satisfied that reasonable grounds exist for delay in lodging such notice.

(7) (*a*) At any such appeal the person who made the objection shall be limited to the grounds stated in his notice of objection and to such additional grounds as the Commissioner may have admitted under the proviso to sub-section (3) of section *eighty-three*: Provided that the court shall have the power to permit the appellant to advance such additional grounds as the court may allow.

(*b*) Where additional grounds are admitted by the court under the proviso to paragraph (*a*) the court may adjourn the hearing of the appeal as provided in sub-section (10) to enable the Commissioner to consider the additional grounds so admitted and may, in that event, make such order as to wasted costs against the appellant as it may decide.

(8) If the assessment has been altered or reduced or the decision has been amended, the assessment as altered or reduced or the decision as amended shall be deemed to be the assessment or decision, as the case may be, against which the appeal is made.

(9) At least ten days before the date fixed for the hearing of an appeal the Commissioner shall send to the person who made the objection or to his duly authorized attorney or representative a written notice of the time and place appointed for the hearing of such appeal.

(10) The hearing of an appeal may be adjourned by the court from time to time to any time and place that may seem convenient.

(11) The sittings of the court for the hearing of such appeals shall not be public, and the court shall, at any time on the application of the appellant, exclude from such sitting or require to withdraw therefrom all or any persons whomsoever whose attendance shall not be necessary for the hearing of the appeal under consideration.

(12) The Commissioner or any person authorized by him may appear in support of the assessment or the decision on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, attorney or agent.

(13) (*a*) Subject to the provisions of this Act, the court—

(i) may, in the case of any assessment under appeal, order such assessment to be amended, reduced or confirmed, or may, if it so thinks fit, refer the assessment back to the Commissioner for further investigation and assessment; and

(ii) may, in the case of any decision under appeal, order such decision to be withdrawn, amended or confirmed, or may, if it so thinks fit, refer the matter back to the Commissioner for further consideration and decision.

(*b*) The power conferred on the court under item (ii) of paragraph (*a*) to amend any decision of the Commissioner shall, in the case of an appeal against any decision of the Commissioner in the exercise of his discretion under sub-section (2) of section *seventy*, include the power to restore in part or in whole such portion of the additional charge imposed under sub-section (1) of the said section as may have been remitted by the Commissioner.

(14) Any assessment or decision made by the Commissioner on a reference under paragraph (*a*) of sub-section (13) shall be subject to objection and appeal as in this Part provided.

(15) Any matter of law arising for decision before the Court, and any question as to whether a matter for decision as a matter of fact or a matter of law, shall be decided by the President of the Court, and the other members shall have no voice in such decision.

(16) Any decision of the court shall be recorded by the Commissioner.

(17) Subject to the provisions of paragraph (*b*) of sub-section (7) the court shall not make any order as to costs save when the claim of the Commissioner is held to be unreasonable or the grounds of appeal therefrom to be frivolous.

(18) Any decision of the court under this section shall, subject to the provisions of section *eighty-nine*, be final.

Summoning of witnesses and penalty for non-attendance.

86. (1) The Commissioner, the appellant or the President of a special court, may procure the attendance of any witness (whether residing or for the time being within the area of jurisdiction of that court or not) in the manner prescribed in the regulations.

(2) If any person who has been duly subpoenaed to give evidence at the hearing of an appeal or to produce any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document

oath or by the return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding twenty-five pounds or, in default of payment, imprisonment for a period not exceeding one month.

(3) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the proceedings, the President of the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in sub-section (2).

(4) The President of the court may, on cause shown, remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The President of the court may order the costs of any postponement or adjournment occasioned, by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under sub-section (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a magistrate's court in circumstances such as are described in the relevant sub-section, and the provisions of any law which are applicable in respect of such a penalty imposed by a magistrate's court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said sub-sections.

Contempt of special court.

87. (1) If during the sitting of a special court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the President of the court may make an order committing that person to imprisonment for any period not exceeding one month or order that person to pay a fine not exceeding fifty pounds or in default of payment thereof to be imprisoned for such a period.

(2) An order made under sub-section (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that sub-section, and the provisions of any law which are applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the said sub-section.

Payment of tax pending appeal.

88. The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commsisioner so direct, be suspended by any appeal or pending the decision of a court of law under section *eighty-nine*, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded with interest from the date of receipt and amounts short-paid shall be recoverable with interest from the due date: Provided that the interest payable on amounts refunded in accordance with the provisions of this section shall be at such rate as may be fixed by regulation under this Act .

Appeal in questions of law.

89. (1) There shall be no right of appeal against any decision of the special court on a question of fact but upon the determination of an appeal by the special court, the appellant or the Commissioner, if dissatisfied with that determination as being erroneous in law, may require the special court by notice in writing addressed to the registrar of the court, to state a case setting forth the facts, the contentions of the parties and the determination of the court, for an appeal—

(*a*) to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area in which the sitting of the special court was held; or

(*b*) if the appellant and the Commissioner lodge their written consent thereto with the Registrar of the special court, to the Appellate Division of the Supreme Court of South Africa, without any intermediate appeal to such provincial or local division,

and the provincial or local division of the Appellate Division, as the case may be, may upon the hearing of the appeal decide any question of law which was or could have been properly raised before the special court, and reverse, affirm or amend the determination of the special court or remit the matter to the special court with such instructions as the said division may think fit to give, or make such other order as it may deem fit.

(2) An appeal shall lie to the Appellate Division of the Supreme Court of South Africa from a decision of a provincial or local division under this section.

(3) Any such notice shall be lodged with the registrar of the special court within thirty days of the date of the notice issued by him notifying the decision of the special court.

(4) The court by which a case shall be stated for an appeal in terms of sub-section (1) shall consist of the persons who were members of the court which made the determination appealed against, notwithstanding that any such person may no longer be a judge or acting judge or that his appointment as a member may since have terminated: Provided that if any such person has died or is for some other reason unable to act, either his place may be taken as to the President by a judge or acting judge nominated and seconded in terms of paragraph (*b*) of sub-section (5) of section *eighty-five* and as to any member other than the President by an accountant, a person representative of the commercial community or a qualified mining engineer, as the case may require, appointed as a member in terms of paragraph (*a*) of sub-section (5) of section *eighty-five*, or, if the appellant and the Commissioner agree, the said court shall consist

(5) Nothing in this section contained shall be construed as entitling the appellant or the Commissioner to appeal against any decision of the special court which involves the exercise of any discretionary power referred to in section *eighty-two*.

90. A member of any special court and a judge of any division of the Supreme Court of South Africa shall not, solely on account of his liability to be assessed under this Act, be deemed to be interested in any matter upon which he may be called upon to adjudicate thereunder. Members of courts not disqualified from adjudicating.

PART IV.

Payment and Recovery of Tax.

91. (1) Any tax chargeable under this Act shall be paid on such days and at such places as may be notified by the Commissioner or as may be specified in this Act, and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Commissioner having regard to the circumstances of the case: Provided that nothing herein contained shall deprive any taxpayer of the right to pay his tax either through the post or personally at the chief office of the Commissioner. Appointment of day for payment of tax and payment of tax before issue of assessments.

(2) Any taxpayer who fails to pay his tax on or before the day on which it is payable (in this Act called the due date) shall pay, on any amount paid after the due date in respect of such tax, interest at the rate of three half-pence on each completed one pound of such amount for every completed month contained in the period reckoned from the due date to the date on which the said amount is paid: Provided that interest shall not be collected on any amount of tax which is paid within such period as may be notified by the Commissioner in the notice of assessment or within any extension of such said period which the Commissioner may grant having regard to the circumstances of the case.

(3) When rendering his return of income for any year or period of assessment but not later than the date by which such return is required to be rendered in terms of sub-section (1) of section *sixty-three*, any person other than a company may pay to the Commissioner an amount equal to the amount by which the amount of tax appearing from such return to be payable exceeds the lesser of the following amounts:—

(*a*) An amount equal to two and a half *per centum* of the amount of tax appearing as aforesaid to be payable; or

(*b*) one hundred pounds.

(4) The Commissioner shall treat any payment made by a taxpayer in terms of the provisions of sub-section (3) as a provisional payment and shall recover from or repay to such taxpayer any amount by which such payment falls short of or exceeds the amount of the taxpayer's liability for tax, as determined by the Commissioner in respect of the year of assessment under charge.

(5) If any taxpayer makes a payment as provided in sub-section (3) in respect of any year of assessment, there shall, in the determination of such taxpayer's liability for tax in respect of such year of assessment, be allowed as a deduction from the amount of tax payable by him (as calculated before the deduction of the rebate provided for in this sub-section) in respect of the said year of assessment a rebate equal to the lesser of the amounts referred to in paragraphs (*a*) and (*b*) of sub-section (3): Provided that in no event shall the rebate allowed to any taxpayer under this sub-section exceed, in respect of any year of assessment, an amount equal to two and a half *per centum* of the amount of tax which would have been payable by such taxpayer in respect of such year of assessment if the provisions of this sub-section had not been enacted.

92. Subject to the provisions of this Act normal tax and super tax leviable thereunder shall be payable— Persons by whom normal and super taxes payable.

(*a*) by the representative taxpayer, in respect of any income received or controlled by him in such representative capacity;

(*b*) by the spouse upon whom any separate assessment notice has been served, where separate assessments have been made upon two spouses under the provisions of sub-section (6) of section *seventy-two*;

(*c*) in respect of every other income and in all other cases, by the person by whom the income is received or is deemed to have been received or to whom or in whose favour it accrues or is deemed to accrue or who is legally entitled to the receipt thereof: Provided that any person may recover so much of the taxation paid by him under this Act as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of sub-section (3), (4), (5) or (6) of section *eight*, from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the income so included.

93. (1) Any tax shall, when it becomes due or is payable, be deemed to be a debt due to the Government of the Union and shall be payable to the Commissioner in the manner and at the place prescribed, and may be sued for and recovered by action by the Commissioner in any court of competent jurisdiction. Recovery of tax.

by action in the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(3) Any tax due and payable by any person married without community of property and not separated from his wife under a judicial order or written agreement may be recovered from the assets of his wife in so far as the tax is payable in respect of the income of his wife deemed to be his under the provisions of sub-section (2) of section *eight*.

(4) So much of any tax payable by any person under this Act as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of sub-section (3), (4), (5) or (6) of section *eight*, may be recovered from the assets by which the income so included was produced.

Tax to be a liquid debt.

94. (1) Proceedings in any court for the recovery of any tax shall be deemed to be proceedings for the recovery of a liquid debt.

(2) In any action or proceedings for the recovery of any tax it shall not be competent for the defendant to question the correctness of any assessment, notwithstanding that objection and appeal may have been lodged thereto.

Collection of taxes under arrangements made or deemed to be made under section 104.

95. (1) If the Commissioner has, in accordance with any arrangements made with the Government of any other country or territory by an agreement entered into or deemed to have been entered into under section *one hundred and four* with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in the Union of an amount alleged to be due by him under the income tax laws of such other country or territory, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.

(2) The Commissioner may—

(*a*) if such person so admits liability; or

(*b*) (i) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof; and

(ii) if the President of the special court has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country or territory,

by notice in writing require such person to pay the amount for which he has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such other country or territory.

(3) If such person fails to comply with the notice under sub-section (2), the amount in question may be recovered for transmission to the said authority but subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such other country or territory for determining his liability for the said amount, as if it were a tax payable by such person under this Act.

(4) No steps taken in any other country or territory under any arrangements referred to in sub-section (1), for the collection of an amount alleged to be due by any person under the income tax laws of the Union, and no judgment given against any such person in pursuance of such arrangements in such other country or territory for any such amount, shall affect his right to have his liability for any such amount determined in the Union in accordance with the provisions of the relevant law.

Substitution of section 101 of Act No. 24 of 1936.

96. Section *one hundred and one* of the Insolvency Act, 1936, as substituted by section *eighty-seven* of the Income Tax Act, 1941, is hereby repealed and the following section substituted therefor: —

"Preference in regard to taxes on income.

101. Thereafter any balance of the free residue shall be applied in paying—

(*a*) any tax on the income of the insolvent levied under any Act of Parliament relating to income tax or to any other tax upon income or profit or any part thereof, or under any provincial ordinance imposing normal tax on the incomes of persons other than companies, in respect of any period prior to the date of the sequestration of his estate, whether or not that tax has become payable after that date;

(*b*) in the case of an insolvent partnership, so much of any tax due and payable by any partner as is referable to the taxable income derived by him from the partnership. The amount to be deemed to be so referable shall be a sum which bears to the total amount due by him as tax the same ratio that his taxable income derived from the partnership business bears to his total taxable income from all sources within the Union."

Evidence as to assessments.

97. The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any notice of assessment shall be conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be

PART V.

MISCELLANEOUS.

98. (1) If, notwithstanding that an assessment may have become final and conclusive, it is proved to the satisfaction of the Commissioner that— Refunds and discharges.

(*a*) any amounts which have been included in any such assessment either under this Act or any previous Income Tax Act of the Union should not have been so included; or

(*b*) any amount made payable by means of any such assessment was in excess of the amount properly chargeable under this Act or any previous Income Tax Act of the Union,

the Commissioner shall, to the extent that may be necessary, alter the assessment and/or authorize a refund of any tax overpaid: Provided that no amount included in an assessment in accordance with the practice prevailing at the time when the assessment was made shall be deemed to have been otherwise than properly so included.

(2) The Commissioner shall not under this section alter any assessment nor authorize any refund if the application for such alteration or the claim for such refund is made on a date later than three years after the due date of the assessment, unless the alteration of the assessment or the refund is necessary to avoid the taxation of the same amount in the hands of the same taxpayer in respect of more than one year of assessment, or the taxation of the same amount in the hands of more than one person.

(3) Any altered assessment which is issued by the Commissioner under sub-section (1) or any decision which is made by the Commissioner in the exercise of his discretion under the said sub-section shall not be subject to objection and appeal.

99. If any arrangement entered into on or after the first day of July, 1953, purports to confer upon any person who previously enjoyed no right to participate in the income of any trade a right so to participate has the effect of avoiding liability for any tax on the income derived from such trade or of reducing the amount of such liability, the Commissioner may, if the said arrangement has not been reduced to writing, determine the liability for tax on the income derived from such trade and the amount of such liability as if the arrangement had not been entered into and there had been no variation of the pre-existing rights of participation in such income: Provided that, if any such arrangement is reduced to writing on a date subsequent to that on which it purports to have come into effect, such arrangement shall, subject to the provisions of section *one hundred*, be recognised as being effective for the purposes of this Act from the date on which it is signed by all the parties thereto. Arrangements for the variation of rights of participation in the income of any trade which are not in writing.

100. (1) (*a*) Where any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out which has the effect of avoiding liability for any tax, duty or levy on income (including any such tax, duty or levy imposed by a previous Act) or of reducing the amount thereof, and which the Commissioner, having regard to the circumstances in which the transaction, operation or scheme was entered into or carried out, is of opinion— Transactions, operations or schemes for purpose of avoiding liability for or reducing amounts of taxes on income.

(i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or

(ii) has created rights or obligations which would not normally be created under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question;

and if the Commissioner is not satisfied that some purpose other than the avoidance of such liability, or the reduction of the amount of such liability, was the sole or main purpose of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax, duty or levy on income and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance or reduction.

(*b*) Whenever the Commissioner is satisfied that any agreement or any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to any company during any year of assessment, has at any time before or after the commencement of the Income Tax Act, 1946, been entered into or effected by any person solely or mainly for the purpose of utilising any balance of assessed loss incurred by the company, in order to avoid liability on the part of any person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such balance against any such income may be disallowed.

(2) Whenever in any proceedings relating to any objection and appeal against any decision of the Commissioner under sub-section (1) it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance of liability for payment of any tax, duty or levy on income or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved—

(*a*) in the case of any such transaction, operation or scheme, that it was entered into or carried out for the purpose of avoiding such liability or of reducing the amount thereof; and

(*b*) in the case of any such agreement or change in shareholding, that it has been entered

Offences.

101. (1) Any person who with intent to evade or to assist any other person to evade assessment or taxation—

(*a*) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this Act; or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or

(*b*) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorised by him or any officer referred to in section *three;* or

(*c*) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or

(*d*) makes use of any fraud, art or contrivance whatsoever, or authorises the use of any such fraud, art or contrivance,

shall be guilty of an offence and shall be liable to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return rendered under this Act by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made or to have caused or allowed to be made that false statement or entry with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

Authentication and service of documents.

102. (1) Every form, notice, demand or other document issued or given by, or on behalf of the Commissioner or other officer under this Act shall be sufficiently authenticated if the name of the Commissioner or officer by whom the same is issued or given is stamped or printed thereon.

(2) Any notice required or authorised under this Act to be served upon any person shall be effectually served—

(*a*) if delivered to him; or

(*b*) if left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in the Union; or

(*c*) if despatched by registered post in an envelope on which is written his name and his last known address, which may be any such place or office as is referred to in paragraph (*b*) or his last known post office box number or that of his employer;

and in the case of a company, shall be effectually served—

(i) if delivered to the public officer of the company; or

(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under sub-section (5) of section *eighty-one* or if no such place has been appointed by the company, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company in the Union; or

(iii) if despatched by registered post in an envelope on which is written the name of the company or its public officer, and its or his last known address, which may be any such office or place as is referred to in paragraph (ii) or its or his last known post office box number or that of his employer.

Regulations.

103. (1) The Governor-General may make regulations for all or any of the following purposes, that is to say—

(*a*) prescribing the duties of all persons engaged or employed in the administration of this Act;

(*b*) defining the limits of areas within which such persons are to act;

(*c*) prescribing the nature of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;

(*d*) prescribing the procedure to be observed in the conduct and hearing of objections and appeals before the special courts, and generally for giving effect to the objects and purposes of this Act;

(*e*) any other purposes for which regulations are under this Act required to be made.

(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of twenty pounds.

Prevention of, or relief from, double taxation.

104. (1) The Governor-General may enter into an agreement with the Government of any other country or territory, whereby arrangements are made with such Government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Union and of such other country or territory, of income tax in respect of the same income, or to the rendering of reciprocal assistance in the administration of, and in the collection of taxes under, the income tax laws of the Union and of such other country or territory.

(2) As soon as may be after the conclusion of any such agreement the arrangements thereby made shall be notified by proclamation by the Governor-General in the *Gazette,* whereupon until such proclamation is revoked by the Governor-General, the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of Union income tax, have effect as if enacted in this Act, but only if and for so long as such arrangements, so far as they relate to immunity, exemption or relief in respect of income tax levied or leviable in such other country or territory, have the effect of law in such country or territory.

(3) As soon as may be after the publication in the *Gazette* of any such proclamation copies thereof shall be laid upon the Tables of both Houses of Parliament.

(4) The Governor-General may at any time revoke any such proclamation by proclamation in the *Gazette*, and the arrangements notified in such earlier proclamation shall cease to have effect upon a date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

(5) As soon as may be after the publication in the *Gazette* of any proclamation revoking any such proclamation, copies thereof shall be laid upon the Tables of both Houses of Parliament.

(6) The duty imposed by any law to preserve secrecy with regard to income tax shall not prevent the disclosure to any authorized officer of the country or territory mentioned in any proclamation issued in terms of sub-section (2), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such proclamation.

(7) Any proclamation issued before the commencement of this Act under the provisions of section *seventy-one bis* of the Income Tax Act, 1925 (Act No. 40 of 1925), as inserted by section *three* of the Income Tax Act, 1935 (Act No. 28 of 1935), or of section *ninety-four* of the Income Tax Act, 1941 (Act No. 31 of 1941), shall be deemed to have been issued under this section.

Repeal of laws.

105. The laws specified in the Third Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule: Provided that notwithstanding such repeal, any tax which would have been leviable under any such law and which has not been collected at the commencement of this Act may be collected in accordance with and subject to the provisions of such repealed law.

Short title and commencement.

106. This Act shall be called the Income Tax Act, 1954, and shall come into operation on the first day of July, 1954.

FIRST SCHEDULE.

COMPUTATION OF TAXABLE INCOME DERIVED FROM THE BUSINESS OF INSURANCE (SECTION *SEVENTEEN* OF THIS ACT).

1. In this Schedule—

"company" means any company, association of two or more persons, or individual;

"insurance" includes re-insurance;

"insurance fund" in relation to any class of long-term insurance business carried on by any company means the amount of the insurance fund as reflected in the revenue account furnished by such company under the provisions of the Insurance Act in respect of the class of long-term insurance business in question;

"long-term insurance business" means life insurance business (including the business of granting annuities), industrial insurance business, funeral insurance business and sinking fund insurance business;

"the Insurance Act" means the Insurance Act, 1943 (Act No. 27 of 1943), as amended from time to time;

"short-term insurance business" means any insurance business other than long-term insurance business.

2. Any reference in this Schedule to the beginning or to the end of a year of assessment includes—

(*a*) where the business in question has been carried on in the Union for a period of less than twelve months during any year of assessment, a reference to the beginning or to the end, as the case may be, of such period;

(*b*) where the financial year of any company ends on a date other than the thirtieth day of June and accounts for such financial year are accepted under the proviso to paragraph (*a*) of sub-section (12) of section *fifty-nine* of this Act, a reference to the beginning or to the end, as the case may be, of such financial year;

(*c*) where the period assessed is less than twelve months, a reference to the beginning or to the end, as the case may be, of the period assessed.

Determination of Taxable Income Derived from any Class of Long-term Insurance Business.

3. (1) For the purpose of determining the taxable income derived by any company during any year of assessment from any class of long-term insurance business carried on by it in the Union there shall be deducted from or set off against the sum of—

(*a*) all amounts (other than amounts of a capital nature or amounts which are exempt (*b*) the amount of the company's liabilities under unmatured policies [as determined in accordance with the provisions of sub-paragraph (4)] relating to the said business at the end of the preceding year of assessment;

the amounts set out in sub-paragraphs (2) and (3).

(2) The deductions allowed shall be—

(*a*) all expenditure and losses actually incurred by the company during the year of assessment in the carrying on of the business in question: Provided—

(i) that such expenditure or losses are not of a capital nature or were not incurred in the production of amounts which are excluded from the provisions of item (*a*) of sub-paragraph (1); and

(ii) that any claims under policies or any bonuses voted to policyholders or any other amounts which are unpaid at the end of the year of assessment and which are taken into account in the determination of the company's liabilities under unmatured policies for the purposes of item (*b*) shall not be allowed as deductions under this item;

(*b*) the amount of the company's liabilities under unmatured policies [as determined in accordance with the provisions of sub-paragraph (4)] relating to the business in question at the end of the year of assessment;

(*c*) any amount carried forward from the preceding year of assessment in terms of sub-paragraph (2) of paragraph 5 in respect of any assessed loss incurred by the company during such preceding year of assessment in the carrying on of the business in question;

(*d*) in respect only of the year of assessment ending on the thirtieth day of June, 1954, any amount by which at the end of the year of assessment ended on the thirtieth day of June, 1953, the amount of the company's liabilities under unmatured policies [as determined in accordance with the provisions of sub-paragraph (4)] relating to the business in question exceeded the company's insurance fund in respect of the said business: Provided that, if the company did not maintain separate insurance funds in respect of the business carried on by it in the Union, on the one hand, and in respect of the business which it carried on outside the Union, on the other hand, and such company is unable to determine what proportion of its insurance fund in respect of the business carried on by it in the Union and elsewhere related to the business carried on by it in the Union, such proportion shall for the purposes of this item be determined by taking a proportion of the insurance fund in respect of the business carried on by the company in the Union and elsewhere in the ratio that the premiums received by the company during the year of assessment ended on the thirtieth day of June, 1953, in respect of the business carried on by it in the Union bear to the total premiums received by the company during the said year of assessment in respect of the business carried on by it in the Union and elsewhere.

(3) The amounts allowed to be set-off shall be—

(*a*) any amount determined in accordance with the provisions of sub-paragraph (1) of paragraph (5) in respect of any assessed loss incurred by the company during the same year of assessment in the carrying on of any other class of long-term insurance business in the Union;

(*b*) any amount determined in accordance with the provisions of paragraph 6 in respect of any assessed loss incurred by the company in the carrying on in the Union of any trade other than long-term insurance business.

(4) For the purposes of sub-paragraphs (2) and (3), the amount of any company's liabilities under unmatured policies relating to any class of long-term insurance business carried on by it in the Union shall—

(*a*) if the amount of such company's liabilities under unmatured policies relating to the class of long-term insurance business in question carried on by it in the Union has, as at the relevant date, been determined under the provisions of the Insurance Act, be the amount as so determined; or

(*b*) if as at the relevant date there has been no determination as aforesaid, be the amount which in the opinion of the company would have been so determined if there had been such a determination.

4. (1) The amount remaining after deducting from the sum of the amounts referred to in sub-paragraph (1) of paragraph 3 the amounts allowed to be deducted or set off under sub-paragraphs (2) and (3) of the said paragraph shall be deemed to be the taxable income derived by the company during the year of assessment from the carrying on in the Union of the class of long-term insurance business in question.

(2) If the amounts allowed to be deducted under sub-paragraph (2) of paragraph 3 exceed the sum of the amounts referred to in sub-paragraph (1) of the said paragraph, the amount of such excess shall be deemed to be the assessed loss incurred by the company during the year of assessment from the carrying on in the Union of the class of long-term insurance business in question.

5. (1) So much of the assessed loss or so much of the sum of the assessed losses, as the case may be incurred by any company during any year of assessment from the carrying on in

income [as determined before allowing any set-off under sub-paragraph (3) of paragraph 3] or the sum of the taxable incomes (as so determined) as the case may be, derived by such company during the same year of assessment from any other class or classes of long-term insurance business carried on by it in the Union shall be allowed as a set-off under the provisions of item (*a*) *of* sub-paragraph (3) of paragraph 3 in the determination of the taxable income derived by the company during the same year of assessment from such other class or classes of long-term insurance business: Provided that where the company derives taxable incomes from two or more such other classes of long-term insurance business, the amount allowed to be set-off under the said item in the determination of the taxable income derived by such company from any one of such other classes of long-term insurance business shall be an amount which bears to the total amount permitted by this sub-paragraph to be set off the same ratio as the taxable income (determined as aforesaid) derived from that one such other class of long-term insurance business bears to the sum of the taxable incomes (as so determined) derived from all such other classes of long-term insurance business.

(2) The assessed loss incurred by any company from the carrying on of any class of long-term insurance business shall not be allowed to be set off in the determination of the taxable income derived by such company from any other trade (other than any class of long-term insurance business) and so much of any such assessed loss as is by virtue of the provisions of sub-paragraph (1) not allowed to be set off in the determination of the taxable income derived by such company from any other class or classes of long-term insurance business shall be carried forward and be allowed as a deduction under item (*c*) of sub-paragraph (2) of paragraph 3 in the determination of the taxable income derived by such company during the following year of assessment from the class of long-term insurance business in respect of which the assessed loss in question was incurred.

6. The amount allowed to be set off under item (*b*) of sub-paragraph (3) of paragraph 3 in respect of any assessed loss incurred by the company during the same year of assessment in the carrying on of any other trade (not being another class of long-term insurance business) shall be determined in accordance with the provisions of sub-section (7) of section *eleven* of this Act: Provided that no amount shall be so determined to be set off under the said item for the purposes of determining the taxable income derived by any company from any class of long-term insurance before there shall first have been deducted or set off in the determination of the said taxable income the amounts (if any) allowed to be deducted or set off under item (*c*) of sub-paragraph (2) of paragraph 3 and item (*a*) of sub-paragraph (3) of the said paragraph.

Determination of Taxable Income Derived from any Class of Short-term Insurance Business.

7. (1) For the purpose of determining the taxable income derived by any company during any year of assessment from any class of short-term insurance business carried on by it in the Union there shall be deducted from or set off against the sum of all amounts (other than amounts of a capital nature or amounts which are exempt from normal tax in terms of section *ten* of this Act) receivable by the company during the year of assessment in respect of such business the amounts set out in sub-paragraphs (2) and (3).

(2) The deductions allowed shall be—

(*a*) all expenditure and losses actually incurred by the company during the year of assessment in the carrying on of the business in question: Provided that such expenditure or losses are not of a capital nature or were not incurred in the production of amounts which are exempt from normal tax in terms of section *ten* of this Act:

(*b*) so much as the Commissioner may allow of any amount set aside by the company at the end of the year of assessment for unearned premiums: Provided that—

(i) any amount so allowed as a deduction shall be carried forward and be deemed, for the purposes of sub-paragraph (1), to be an amount receivable by the company in the following year of assessment;

(ii) in respect of the year of assessment ending on the thirtieth day of June, 1954, there shall, for the purposes of sub-paragraph (1), be included in the sum of the amounts receivable by such company during that year the amount, in the opinion of the Commissioner, of the unearned premiums at the end of the year of assessment ended on the thirtieth day of June, 1953; and

(iii) the deduction allowed in terms of this item shall not in respect of any year of assessment be less than the amount which has, in terms of paragraph (ii) of this proviso, been included in the sum of the amounts receivable by the company during the year of assessment ending on the thirtieth day of June, 1954;

(*c*) such an allowance as may be made by the Commissioner in respect of outstanding claims (under policies of insurance issued by the company) arising out of events which occurred before the end of the year of assessment but the amounts of which claims have not been determined or agreed to by the company at the end of the year of assessment: Provided that such allowance shall, for the purposes of sub-paragraph (1), be included in the sum of the amounts receivable by such company during the following year of assessment.

(2) Every farmer who was carrying on farming operations on the thirtieth day of June, 1953, and who did not on that day discontinue farming operations, shall submit with his return of income in respect of the year of assessment ending on the thirtieth day of June, 1954, particulars of all livestock and produce held and not disposed of by him on the first day of July, 1953, and shall indicate the values he elects to have placed thereon in accordance with the proviso to paragraph 4.

(3) Every farmer referred to in item (*b*) of sub-paragraph (1) of paragraph 2 shall submit with his return of income for the year of assessment during which he commenced or re-commenced farming operations particulars of all livestock and produce held and not disposed of by him on the date on which he so commenced or re-commenced farming operations.

(4) Every farmer shall submit with his return of income for any year of assessment particulars of any livestock or produce—

(*a*) acquired by him during such year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations;

(*b*) donated by him during such year of assessment.

7. (1) If it is proved to the satisfaction of the Commissioner—

(*a*) that any farmer has in any of the years of assessment ended on the thirtieth day of June, 1948, to 1951, sold livestock on account of drought or stock disease; and

(*b*) that such farmer has within four years after the close of the year of assessment in which such sale took place purchased livestock to replace the livestock so sold;

the cost of the livestock so purchased shall be allowed, at the option of such farmer, as a deduction in the determination of his taxable income for the said year of assessment: Provided—

(i) that the claim for such deduction is made within five years after the close of the said year of assessment; and

(ii) that such farmer has carried out the provisions of sub-paragraph (3) or (4) of paragraph 18 of the Third Schedule to the Income Tax Act, 1941, as amended.

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases are made but such livestock shall nevertheless for all other purposes of this Schedule be regarded as having been acquired by purchase during the year of assessment in which the purchases are made and if any of such livestock is donated by such farmer during the said year an amount equal to the purchase price paid for the livestock so donated shall be included in his income for that year.

(3) In any case in which a deduction is allowed in terms of sub-paragraph (1), the provisions of the proviso to sub-paragraph (3) of paragraph 18 of the Third Schedule to the Income Tax Act, 1941, as amended, shall continue to apply as if such deduction had been allowed in terms of sub-paragraph (1) of the said paragraph.

8. (1) Subject to the provisions of sub-paragraph (2) there shall be allowed as deductions in the determination of the taxable income of any farmer any expenditure incurred by him during the year of assessment in respect of—

(*a*) the eradication of noxious plants;

(*b*) the prevention of soil erosion;

(*c*) dipping tanks;

(*d*) dams, boreholes, pumping plants and irrigation schemes;

(*e*) fences;

(*f*) the erection of buildings used in connection with farming operations other than those used for the domestic purposes of the farmer, his employees or any other person;

(*g*) the establishment of orchards and vineyards;

(*h*) the building of roads used in connection with farming operations.

(2) The total of the amounts to be allowed to any farmer for any year of assessment as deductions in respect of items (*c*) to (*h*) of sub-paragraph (1) shall not exceed the amount of the taxable income [as calculated before allowing any deductions in respect of the said items (*c*) to (*h*)] derived by him from farming operations during such year of assessment: Provided that the amount by which the expenditure incurred during the year of assessment in respect of the said items exceeds the amount allowable in terms of this sub-paragraph shall be carried forward to the next succeeding year of assessment and shall for purposes of sub-paragraph (1) be deemed to be expenditure so incurred in such next succeeding year of assessment.

(3) No deduction shall be allowed under paragraphs (*c*), (*m*) and (*u*) of sub-section (2) of section *eleven* of this Act in respect of machinery, articles or plant for which a deduction under sub-paragraph (1) of this paragraph is allowable and no deduction shall be allowed under paragraph (*o*) of the said sub-section in respect of expenditure of a capital nature for which a deduction under sub-paragraph (1) of this paragraph is allowable.

9. (1) Any amount received by or accrued to a farmer in respect of the disposal of plantation shall, whether such plantation is disposed of separately or with the land on which it is growing, be deemed not to be a receipt or accrual of a capital nature and shall form part of such farmer's gross income.

(2) Where plantation is disposed of by a farmer with the land on which it is growing the amount to be included in such farmer's gross income in terms of sub-paragraph (1) shall—

(*a*) if the amount representing the consideration payable in respect of the disposal of the plantation is agreed to between the parties to the transaction, be the amount so agreed (*b*) if there is no agreement as aforesaid between the parties to the transaction, be such portion of the total consideration payable in respect of the disposal of the land and the plantation as, in the opinion of the Commissioner, represents the consideration payable for the plantation.

10. (1) In the determination of the taxable income of any farmer there shall be allowed as a deduction—

(*a*) any expenditure incurred by such farmer during the year of assessment in respect of the establishment and maintenance of plantation;

(*b*) any expenditure incurred by such farmer prior to the first day of July, 1948, in respect of the establishment and maintenance of any plantation or the cost of acquisition of any plantation purchased by such farmer whether before or after the first day of July, 1948: Provided that—

(i) any deductions allowed under this item in respect of any plantation shall not in respect of any year of assessment exceed the gross income derived by such farmer in that year from the said plantation;

(ii) the aggregate of the deductions allowed in terms of this item or by virtue of any other provision of this Act or the provisions of any previous Income Tax Act in respect of plantations shall not exceed the amount of such expenditure or such cost of acquisition.

(2) For the purpose of calculating the cost of acquisition of any plantation the provisions of sub-paragraph (2) of paragraph 9 shall apply *mutatis mutandis* in the case of plantation acquired by any farmer with the land on which it is growing.

11. For the purposes of paragraphs 9 and 10—

" plantation " means any artificially established tree as ordinarily understood or any forest of such trees and includes any natural extension of such trees;

" forest produce " means anything which is derived from trees and includes trees, timber, wood, bark, leaves, seeds, gum, resin and sap.

12. There shall, in respect of the year of assessment ending the thirtieth day of June, 1954, be included in the gross income of any farmer who was carrying on farming operations on the thirtieth day of June, 1953, and who did not on that day discontinue farming operations, an amount determined in accordance with the provisions of paragraph 13.

13. (1) Subject to the provisions of sub-paragraph (2) the amount to be included in a farmer's gross income under paragraph 12 shall—

(*a*) in the case of a farmer the value of whose livestock and produce held and not disposed of at the end of the year of assessment ended on the thirtieth day of June, 1953, was taken into account for the purpose of determining his taxable income for that year, be the amount by which the value allowed in terms of sub-item (i) of item (*a*) of sub-paragraph (1) of paragraph 2 as a deduction from his income for the year of assessment ending the thirtieth day of June, 1954, exceeds the value of such livestock and produce as taken into account for the purpose of determining his taxable income for the year of assessment ended on the thirtieth day of June, 1953; and

(*b*) in the case of a farmer the value of whose livestock and produce held and not disposed of at the end of the year of assessment ended on the thirtieth day of June, 1953, was not taken into account for the purpose of determining his taxable income for that year, be the amount by which the value allowed in terms of sub-item (i) of item (*a*) of sub-paragraph (1) of paragraph 2 as a deduction from his income for the year of assessment ending on the thirtieth day of June, 1954, exceeds the sum of—

(i) such amount as the Commissioner may allow as representing the value of livestock and produce acquired by such farmer prior to the first day of July, 1953, otherwise than by purchase or natural increase or in the ordinary course of farming operations and in respect of which no allowance has been made in the determination of his taxable income under the provisions of any previous Income Tax Act of the Union;

(ii) such amount as the Commissioner may allow as representing the value of livestock and produce held and not disposed of by such farmer on the thirtieth day of June, 1913, or on the date upon which he commenced or re-commenced farming operations, whichever date is the later, and in respect of which no adjustment or allowance has been made in the determination of his taxable income under the provisions of any previous Income Tax Act of the Union; and

(iii) so much of any expenditure incurred by such farmer prior to the first day of July, 1953, in the purchase of livestock as has by virtue of the provisions of paragraph 4 of the Third Schedule to the Income Tax Act, 1941, as amended, not been allowed as a deduction in the determination of his taxable income for the year of assessment ended on the thirtieth day of June, 1953, or any previous year of assessment.

who is employed in carrying out the provisions of such ordinance shall be deemed to be an oath taken and subscribed under the said sub-section as applied to such ordinance by this sub-section; and

(ii) special courts shall not be constituted under the provisions of such ordinance for hearing and determining appeals lodged in terms of sub-section (1) of section *eighty-five* of the said Act, as applied by this sub-section, in respect of assessments made under such ordinance and such appeals shall be heard and determined by the courts constituted under the provisions of the said Act or deemed to be so constituted.

(9) A province shall not have the power to levy the normal tax on any company and shall have the power to levy the tax in respect of any year of assessment only on a person (other than a company) who—

(*a*) is ordinarily resident in the province at the end of such year of assessment; or

(*b*) is ordinarily resident outside the Union at the end of such year of assessment but was ordinarily resident in the province during a portion of that year; or

(*c*) was ordinarily resident outside the Union during the whole of such year of assessment but whose principal place of business in the Union during that year was situated in the province; or

(*d*) was not ordinarily resident and did not carry on business in the Union during any portion of such year of assessment but whose income, determined by the Commissioner to have been derived from sources within the province, exceeded for that year his income determined by the Commissioner to have been derived from sources within each of the other provinces:

Provided that—

(i) the normal tax shall not be levied by any province on any person who, after having been ordinarily resident in that province during any year of assessment, thereafter becomes ordinarily resident in any other province during the same year of assessment and is liable in respect of such year for the normal tax under any ordinance in force in such other province;

(ii) a reference in this sub-section to the end of the year of assessment shall be deemed to include, where the period assessed is less than twelve months, a reference to the end of the period assessed.

(10) The amount derived in any province from any source of revenue specified in the First Schedule shall, if collected by the Government, be paid over to the provincial revenue fund with or without any deduction for the cost of collection as may be arranged between the Treasury and the province concerned."

Amendment of section 9 of Act No. 38 of 1945.

3. Section *nine* of the principal Act is hereby amended—

(i) by the deletion of paragraph (*a*) of sub-section (1) and the substitution of the following new paragraph therefor:—

"(*a*) in respect of the normal tax: three halfpence upon each completed one pound of the amount of the tax for every completed month during which such amount of tax remains unpaid;"; and

(ii) by the substitution for the words "personal tax" in paragraph (*b*) of the said sub-section of the words "normal tax".

Amendment of section 10 of Act No. 38 of 1945.

4. Section *ten* of the principal Act is hereby amended—

(*a*) by the insertion after the words "direct taxation" in sub-section (1) of the words "[other than the normal tax referred to in sub-section (5) of section *eight* ";

(*b*) by the deletion of sub-section (2) and the substitution of the following new sub-section therefor:—

"(2) Anything to the contrary notwithstanding in the South Africa Act, 1909, or in this Act, a provincial council shall not have power to make an ordinance imposing direct taxation [other than the normal tax referred to in sub-section (5) of section *eight*] upon the persons, lands, habitations or incomes of natives, and whenever any ordinance of a provincial council imposes direct taxation (other than the said normal tax) upon persons, lands, habitations or incomes, natives and their lands, habitations and incomes shall be exempt from the provisions thereof: Provided that a provincial council may levy a hospital contribution not exceeding two shillings and sixpence on every native who is liable to pay the general tax under the Natives Taxation and Development Act, 1925 (Act No. 41 of 1925), and who, on the date such contribution becomes due, is registered within the province for the purposes of the payment of the said general tax."

Amendment of First Schedule to Act No. 38 of 1945, as amended by section 1 of

5. The First Schedule to the principal Act is hereby amended by the deletion of paragraphs 8 and 9 and the substitution of the following new paragraph therefor:—

"8. The normal tax referred to in sub-section (5) of section *eight*."

6. The amendments effected by the provisions of this Act shall first take effect from and including the year of assessment ending on the thirtieth day of June, 1954.

APPENDIX 3.

Consolidated Index

to the

First and Second Reports

of the

Committee of Enquiry into the

Income Tax Act

E.

R.